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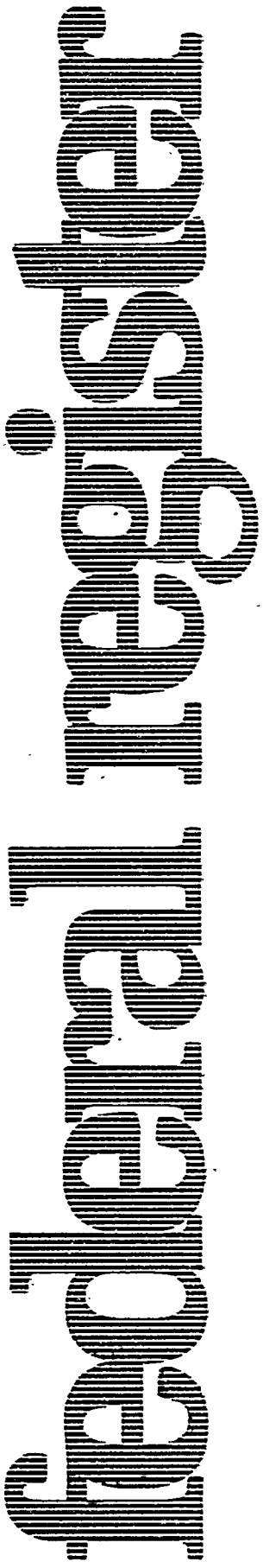

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Friday, December 19, 1980

Highlights

83467 **Protocol to Trade Agreement Relating to Customs Valuation** Presidential memorandum delegating authority

83469 **Modification of U.S. Tariff Schedules** Presidential proclamation

83465 **Military Assistance for Liberia** Presidential determination

83554 **Grant Programs—Health** HHS/PHS proposes rules for Community Health Services Projects; comments by 2-17-81

83566 **Grant Programs—Health** HHS/PHS proposes rules governing Migrant Health Centers program; comments by 2-17-81

83497 **Grant Programs—Construction** EPA issues rule to establish amount of construction grant funds to be allotted to each State; effective 12-19-80

83579 **Medicaid** HHS/HCFA issues notice of decision to develop regulations regarding conditions of participation for hospitals, conditions for coverage of services of independent laboratories and transfusion and blood banking services

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Highlights

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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.

83816 **Improving Government Regulations** HHS announces semiannual agenda of regulations (Part V of this issue)

83772 **Medical Assistance Program** HHS/HCFA proposes rules concerning Title XIX Administrative Sanctions; comments by 2-17-81 (Part II of this issue)

83914 **Labor** Labor/ESA proposes rules concerning labor standards on projects or productions assisted by grants from the National Endowments for the Arts and Humanities; comments by 2-17-81 (Part VII of this issue)

83686 **Comprehensive Employment and Training Act** Labor/ETA provides for allocating funds for the Fiscal Year 1981 Native American Private Sector Initiatives Program

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Presidential Documents

Title 3—

The President

Presidential Determination No. 80–30 of December 9, 1980

Determination To Authorize the Furnishing of Immediate Military Assistance to Liberia

Memorandum for the Secretary of State

Pursuant to the authority vested in me by Section 506(a) of the Foreign Assistance Act of 1961, as amended (the Act), I hereby determine that:

1) an unforeseen emergency exists which requires immediate military assistance to Liberia; and

2) the aforementioned emergency requirement cannot be met under the authority of the Arms Export Control Act or any other law except Section 506(a) of the Act.

Therefore, I hereby authorize the furnishing of up to $1,000,000 in defense articles and services by the Department of Defense to Liberia under the provisions of chapter 2 of part II of the Act.

You are requested, on my behalf, to report this determination to the Congress as required by law, and none of the defense services provided for herein shall be furnished to Liberia until after such report has been made.

This determination shall be published in the Federal Register.

THE WHITE HOUSE,
Washington, December 9, 1980.

[FR Doc. 80–39698
Filed 12–17–80; 4:11 pm]
Billing code 3195–01–M

Presidential Documents

Memorandum of December 17, 1980

Memorandum for the United States Trade Representative

I have signed into law an Act "To approve and implement the protocol to the trade agreement relating to customs valuation, and for other purposes" (P.L. 96–490). That action enables you to exercise delegated authority to accept for the United States the Protocol to the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade. Following such acceptance, that portion of the above-mentioned Act implementing the Protocol may become effective when the European Economic Community also implements the Protocol. I hereby delegate to you the authority to make that determination as required by section 2 of the Act.

This document shall be published in the Federal Register.

Jimmy Carter

THE WHITE HOUSE
Washington, December 17, 1980.

[FR Doc. 80-39749
Filed 12-18-80; 10:45 am]
Billing code 3195-01-M

Presidential Documents

Proclamation 4809 of December 17, 1980

Proclamation To Make Effective the Amendments of Section 3(b) of Public Law 96–490 and for Other Purposes

By the President of the United States

A Proclamation

1. Proclamation No. 4768 of June 28, 1980, implementing the Customs Valuation Code, made numerous changes to the Tariff Schedules of the United States (TSUS) (19 U.S.C. 1202) and established staged reductions in the rates of duty proclaimed therein, pursuant to the General Agreement on Tariffs and Trade and other trade agreements.

2. Pursuant to the authority of sections 503(a)(1) and 503(a)(2)(A) of the Trade Agreements Act of 1979 (93 Stat. 251), and by Proclamation No. 4768, I designated certain articles, identified by specific TSUS item numbers, to receive advanced staging of reductions in the rates of duty applicable to such items.

3. Section 3 of the Act to Approve and Implement the Protocol to the Trade Agreement relating to Customs Valuation, and for Other Purposes (Public Law 96–490 of December 2, 1980) made a number of technical amendments to schedule 4 of the TSUS and authorized the President to proclaim the effective date for certain of those amendments.

4. In order to continue the previously proclaimed staged reductions and the provisions for advanced staging established pursuant to sections 503(a)(1) and 503(a)(2)(A) of the Trade Agreements Act of 1979 for those products affected by the technical amendments made by P.L. 96–490, it is necessary to make certain conforming modifications to the TSUS.

NOW, THEREFORE, I, JIMMY CARTER, President of the United States of America, acting under the authority vested in me by the Constitution and the statutes, including but not limited to Section 604 of the Trade Act of 1974, Titles II and V of the Trade Agreements Act of 1979, and Section 3(b) of P.L. 96–490, do proclaim that:

(1) The amendments to the TSUS set forth in section 3(b) of P.L. 96–490 shall be effective on the date of this Proclamation and shall be effective as to articles exported to the United States on or after the date of this Proclamation;

(2) Schedule 4, part 1C of the TSUS is modified by deleting items 411.40 (as amended by P.L. 96–490) and 411.42 and by substituting the following in lieu thereof:

	"Papaverine and its salts:			
411.40	Products provided for in the Chemical Appendix to the Tariff Schedules	26.8% ad val.	11.6% ad val.	7¢ per lb. + 104% ad val.
411.42	Other	11.6% ad val.		7¢ per lb. + 104% ad val.";

(3) The rates of duty established for products of least developed developing countries (LDDC's) by Proclamation No. 4768 for item numbers 404.32, 406.36, and 408.24 of the TSUS shall be the rates inserted in the column entitled "LDDC" for items 403.74, 406.73, and 408.31, respectively, as added by section 3(a) of P.L. 96–490;

(4) The rates of duty, including rates in the column entitled "LDDC", and the staged reductions in those rates, established by Proclamation No. 4768 for item numbers 403.76, 408.32, 411.40, and 411.42, shall continue to apply to such item numbers, whether the provisions of the TSUS referred to by these item numbers were amended by P.L. 96–490 or modified by this Proclamation;

(5) The amendments made by paragraphs 2, 3, and 4 of this Proclamation shall be effective on the date of this Proclamation and shall be effective with respect to articles exported on or after the date of this Proclamation.

IN WITNESS WHEREOF, I have hereunto set my hand this seventeenth day of December, in the year of our Lord nineteen hundred and eighty, and of the Independence of the United States of America the two hundred and fifth.

Jimmy Carter

[FR Doc. 80-39750
Filed 12-18-80; 10:46 am]
Billing code 3195-01-M

Rules and Regulations

Federal Register
Vol. 45, No. 246
Friday, December 19, 1980

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

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 213

Excepted Service; Office of Personnel Management; Correction

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

SUMMARY: This document corrects the designation of an Office of Personnel Management excepted service authority under Schedule B.

EFFECTIVE DATE: December 19, 1980.

FOR FURTHER INFORMATION CONTACT: Beverly M. Jones, Issuance System Manager 202–254–7086.

SUPPLEMENTARY INFORMATION: On November 20, 1979, OPM added a new § 213.3290 headed "Office of Personnel Management" to reflect the Reorganization Plan No. 2 of 1978, as well as to add a new Schedule B authority (44 FR 66571). This authority was redesignated as § 213.3291 on December 28, 1979 (44 FR 76747). Inadvertently, OPM did not redesignate a Civil Service Commission Schedule B excepted service appointing authority which had been designated § 213.3270. This document correctly redesignates that authority, and revokes the outdated section heading.

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

Accordingly OPM is amending 5 CFR Part 213 as follows:

(1) Section 213.3270(a) is redesignated as § 213.3291(b) and reads as follows:

§ 213.3291 Office of Personnel Management.

* * * * *

(b) Twelve positions of faculty members at grades GS–13 through 15, at the Federal Executive Institute. Individual appointments under this authority may be made for initial period(s) up to 3 years which may be followed by an appointment of indefinite duration.

* * * * *

§ 213.3270 [Removed]

(2) Section 213.3270 is removed.

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

[FR Doc. 80-39469 Filed 12-18-80; 8:45 am]
BILLING CODE 6325-01-M

5 CFR Part 214

Senior Executive Service; Correction

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

SUMMARY: This document corrects Senior Executive Service regulations published September 19, 1980. This is an editorial change only.

EFFECTIVE DATE: October 20, 1980.

FOR FURTHER INFORMATION CONTACT: Ann Ugelow (202) 632–6820.

SUPPLEMENTARY INFORMATION: On September 19, 1980, at 45 FR 62413, OPM published Senior Executive Service regulations [FR Doc. 80–29082]. This document corrects a typographical error in those regulations.

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

Accordingly, 5 CFR 214.402(c)(2)(ii) is revised to read as follows:

§ 214.402 Career reserved positions.

* * * * *

(c) * * *
(2) * * *

(ii) Other positions requiring impartiality, or the public's confidence in impartiality, as determined by an agency in light of its mission.

* * * * *

(5 U.S.C. 3132)

[FR Doc. 80-39469 Filed 12-18-80; 8:45 am]
BILLING CODE 6325-01-M

5 CFR Part 351

Reduction in Force; Correction

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

SUMMARY: This document corrects the amendatory language of a final reduction-in-force regulation published May 2, 1980.

EFFECTIVE DATE: May 2, 1980.

FOR FURTHER INFORMATION CONTACT: Beverly M. Jones, Issuance System Manager, 202–254–7086.

SUPPLEMENTARY INFORMATION: On May 2, 1980, OPM published final reduction-in-force regulations at 45 FR 29263 [FR Doc. 80–13633]. As published, the amendatory language reads: "Accordingly, 5 CFR Part 351 is revised to read as follows:" This document corrects that amendatory language to read: "Accordingly, 5 CFR Part 351 is amended as follows:"

Office of Personnel Management.
(5 U.S.C. 1302, 3502)
Beverly M. Jones,
Issuance System Manager.

[FR Doc. 80-39432 Filed 12-18-80; 8:45 am]
BILLING CODE 6325-01-M

5 CFR Part 352

Reemployment Rights; Correction

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

SUMMARY: This document corrects a section of the reemployment regulations by removing gender-specific language and by removing a reference to a part of OPM's regulations which has been revoked. This is an editorial change only.

EFFECTIVE DATE: December 19, 1980.

FOR FURTHER INFORMATION CONTACT: Beverly M. Jones, Issuance System Manager, 202–254–7086.

SUPPLEMENTARY INFORMATION: Following enactment of the Civil Service Reform Act of 1978 and Reorganization Plan No. 2 of 1978, the Office of Personnel Management revoked 5 CFR Part 772 from title 5 of the Code of Federal Regulations. (See 44 FR 44820, July 31, 1979, and 44 FR 46249, August 7, 1979.) This document removes a

reference to Part 772 from 5 CFR Part 352, and also removes gender-specific language from § 352.205a.

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

Accordingly, 5 CFR 352.205a is revised to read as follows:

§ 352.205a Authority to return employee to his/her former agency.

The transfer of an employee with a grant of reemployment rights under this subpart authorizes the return of the employee to his/her former agency without regard to Parts 351, 752, or 771 of this chapter when the employee is reemployed in his/her former agency—

(a) Without a break in service of 1 workday or more in a position at the same or higher grade in the same occupational field and in the same geographical area as the position he/she last held in the former agency; and

(b) At not less than the rate of pay he/she would have been receiving in the position last held in the former agency if he/she had not been transferred.

(5 U.S.C. 3101 note, 3301, 3302; E.O. 10577, 3 CFR, 1954–1958 Comp., p. 218)

[FR Doc. 80-39488 Filed 12-18-80; 8:45 am]

BILLING CODE 6325-01-M

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5 CFR Part 734

Executive Personnel Financial Disclosure Requirements; Correction

AGENCY: Office of Personnel Management.

ACTION: Final rule; correction.

SUMMARY: This document makes corrections to the executive personnel financial disclosure requirement regulations which were published October 21, 1980. These are editorial changes only.

EFFECTIVE DATE: November 20, 1980.

FOR FURTHER INFORMATION CONTACT: Norman B. Smith, Office of Government Ethics, (202) 632–7642.

SUPPLEMENTARY INFORMATION: On October 21, 1980, in FR Doc. 80–32692, the Office of Personnel Management published final rules on executive personnel financial disclosure requirements [45 FR 69776]. This document corrects a number of typographical errors contained in those rules.

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

Accordingly, 5 CFR Part 734 is amended as follows:

(1) The introductory text of § 734.201(b) is revised to read as follows:

§ 734.201 General requirements for filing.

* * * * *

(b) *New entrants.* Within 30 days of assuming a new position or office described in § 734.202, a reporting individual shall file a report containing the information prescribed in Subpart C of this part, unless such individual:

* * * * *

(2) In § 734.301, paragraph (d)(2)(iii), Example 4. No. 4 is revised to read as follows:

§ 734.301 Reports of incumbents.

* * * * *

(d) * * *
(2) * * *
(iii) * * *

Example (4) * * *

No. (4)—2 contracts August 1980 Gold (Comex), 5/13/79; 9/19/79

* * * * *

(3) In § 734.401, paragraphs (a)(1) and (b)(2) are revised to read as follows:

§ 734.401 Qualified trusts; general considerations.

(a) * * *

(1) Prior to enactment of the Act's qualified trust provisions, there was no accepted definition of a properly formulated blind trust. However, there was general agreement that the use of blind trusts frequently could ameliorate potential conflict of interest situations. An underlying concept is that if a Government official does not know the identity of his or her financial interests, his or her official actions should not be subject to collateral attack by questions of conflict of interest or the appearance of such a conflict. In other words if the Government official does not know what he or she owns, it is impossible for him or her intentionally to take actions to benefit specifically his or her own personal interests. Therefore, the general public policy goal to be achieved through the use of blind trusts is an actual "blindness" or lack of knowledge by the Government official with respect to the holdings held in trust. In unusual cases, this goal may be deemed to have been achieved with respect to an official appointed to a position by the President, by and with the advice and consent of the Senate, where there is a general dispersion of securities held in trust among individual entities and economic sectors under circumstances in which it is unlikely that official actions taken by him or her will affect individual holdings to such a degree that the overall value of the entire portfolio will be materially enhanced. The result of wide diversification under the conditions prescribed is considered tantamount to actual blindness.

* * * * *

(b) * * *

(2) *A trust document meeting certain minimum standards.* Under § 734.404, regarding qualified diversified trusts, the trust document must, except for limited exceptions, expressly prohibit communications between the trustee and the Government official, and other interested parties, regarding the trust's holdings and activities. The trustee must be empowered to make investment decisions independent of any consultation with or control by the interested parties. Generally, communications about the trust between the interested parties and the trustee must be in writing. Copies of all written communications must be filed with the Office of Government Ethics. The trust document must also provide that the interested parties will not attempt to obtain information about the trust holdings and activities except as specifically provided therein.

* * * * *

(4) In § 734.404 paragraph (d) is revised to read as follows:

§ 734.404 Qualified diversified trusts.

* * * * *

(d) *Personal income tax returns.* In the case of a trust to which this section applies, the trustee shall be given power of attorney to prepare, and shall file, on behalf of any interested party, the personal income tax returns and similar returns which may contain information about the trust. Appropriate Internal Revenue Service power of attorney forms shall be used for this purpose. Communications regarding decisions such as whether to file joint or separate returns, the portions of a tax obligation to be borne by each spouse, the amounts and timing of tax payments, and the sources of funds therefor, shall be subject to paragraph (c)(6)(ii) of this section.

* * * * *

(5) In § 734.405, paragraph (b) is revised to read as follows:

§ 734.405 Certification of trusts proposed for qualification; other matters.

* * * * *

(b) *Absence of control by interested party.* Except as expressly approved by the Director, Office of Government Ethics, in the case of a trust proposed for certification under the provisions of § 734.403, any asset transferred to a trust under this subpart shall be free of any restriction on its transfer or sale. Accordingly, in the case of interests in

tax shelters, partnerships, and close corporations, the interested party shall demonstrate to the satisfaction of the Director that, under all the facts and circumstances, the interests are free of any restriction with respect to their transfer or sale.

* * * * *

(6) In § 734.604, paragraph (b)(6)(ii)(C) is revised to read as follows:

§ 734.604 Review of reports.

(b) * * *

(6) * * *

(ii) * * *

(C) The head of the agency, for any other officer or employee, except in the case of the Postmaster General or Deputy Postmaster General, the Director of the Office of Government Ethics shall recommend to the Governors of the Board of Governors of the United States Postal Service the action to be taken. In unusual circumstances, the Office of Government Ethics may order corrective action as authorized by section 402(b)(9) of the Act.

* * * * *

(Titles II and IV of Pub. L. 95-521 (October 26, 1879), as amended by Pub. L. 96-19 (June 13, 1979))

[FR Doc. 80-39487 Filed 12-18-80; 8:45 am]

BILLING CODE 6325-01-M

5 CFR Part 1001

Statements of Employment and Financial Interests; Changes in Filing and Reviewing Procedure

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: Subpart D of Part 1001 originally contained a list of U.S. Office of Personnel Management officials required to file statements of employment and financial interest under Executive Order 11222 of May 8, 1965 (30 FR 6469). Because the Civil Service Reform Act of 1978 and Reorganization Plan No. 2 have produced changes in the title, and in some cases, changes in the requirements of positions for which incumbents are required to file financial statements, OPM is deleting any reference to specific positions until such time as each office or group makes a final determination of employees required to file statements under the criteria established in § 735.402 and § 735.404. OPM is also revising the list of officials who must review employee statements.

EFFECTIVE DATE: December 19, 1980.

FOR FURTHER INFORMATION CONTACT: Llewellyn M. Fischer, (202) 632-4518.

SUPPLEMENTARY INFORMATION: Since this is a regulation that applies solely to OPM employees, the provisions for notice and posting required by 5 U.S.C. 1103(b) are not applicable. OPM has determined this is a non-significant regulation for purposes of Executive Order 12044.

Office of Personnel Management.

Beverly M. Jones,

Issuance System Manager.

Subpart D—Statements of Employment and Financial Interest

Accordingly, Subpart D of Part 1001 is amended by revising the introductory text of § 1001.735-401 and revising § 1001.735-409(a) to read as follows:

§ 1001.735-401 Employees required to submit statements.

Employees shall submit statements of employment and financial interests in accordance with the criteria established in 5 CFR 735.402 and 735.404.

* * * * *

§ 1001.735-409 Review of statements.

(a) All statements of employment and financial interest shall be submitted to the staff office, program office or regional office where the position is located. The head of the office, regional director or delegee, shall review all statements for potential conflicts of interest before forwarding them to the Office of the General Counsel where the statements will be maintained.

* * * * *

(EO 11222, 30 FR 6469, 3 CFR 1964-65 Comp. p. 306; 5 CFR 735.101 et seq.)

[FR Doc. 80-39014 Filed 12-18-80; 8:45 am]

BILLING CODE 6325-01-M

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 273

[Amdt. No. 162]

Food Stamp Program: Thrifty Food Plan Amounts for Puerto Rico

AGENCY: Food and Nutrition Service, USDA.

ACTION: Emergency final rule.

SUMMARY: The Food Stamp Act of 1977, requires that the Thrifty Food Plan (the least costly of the Department's four food plans) be used as the basis for uniform coupon allotments for all households eligible for the Food Stamp Program. The 1980 amendments to the Act require the Secretary to adjust the Thrifty Food Plan each January to reflect price changes published in the Consumer Price Index (CPI) as they relate to items covered by the food plan and the deductions. In accordance with the Act, this emergency final rule sets forth the Thrifty Food Plan amounts to be effective for the period of January 1, 1981 through December 31, 1981 for Puerto Rico.

EFFECTIVE DATE: January 1, 1981.

FOR FURTHER INFORMATION CONTACT: Larry R. Carnes, Chief, Policy and Regulations Section, Program Standards Branch, Program Development Division, Family Nutrition Programs, Food and Nutrition Service, United States Department of Agriculture, Washington, D.C. 20250; 202-447-9075. Actions of this kind were anticipated under the provisions of the final rule to implement the Thrifty Food Plan amount, for all areas operating Food Stamp Program and are specifically considered in the Final Impact Statement prepared for that action. The impact statement is available on request from the above named individual.

SUPPLEMENTARY INFORMATION: This final action has been reviewed under USDA procedures established in Secretary's Memorandum 1955 to implement Executive Order 12044, and has been classified "not significant." Robert Greenstein, Administrator, Food and Nutrition Service, has determined that an emergency situation exists which warrants publication without opportunity for a public comment period on this emergency final action because of the legislative mandate for placing this notice into effect January 1, 1981, and the lead-time needed by the State agency for implementation. Further, pursuant to the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that notice and other public procedure with respect to this emergency final action are impracticable and contrary to the public interest; and good cause is found for making this emergency final action effective less than 30 days after publication of this document in the Federal Register.

Background

Pub. L. 96-249, 94 Stat. 357, May 26, 1980 changed the timing for making adjustments to the Thrifty Food Plan amounts from semi-annual adjustments each July 1 and January 1 to annual adjustments each January 1. Additionally the law prescribed the manner in which these annual adjustments will be computed for January 1, 1981, January 1, 1982 and each January 1 thereafter. This final action only addresses the procedures

prescribed in Pub. L. 96-249 for computing the January 1, 1981 adjustments. The procedures prescribed for future January adjustments will be addressed at the appropriate time such adjustments will take effect.

Thrifty Food Plan—Puerto Rico

Section 3(0) of the Food Stamp Act of 1977, as amended by Pub. L. 96-249, requires that the Thrifty Food Plan shall be the basis for uniform allotments for all households regardless of their actual composition, except that the Secretary shall (1) make cost adjustments taking into account economies of scale; (2) make household size adjustments in the Thrifty Food Plans for Alaska and Hawaii to reflect the cost of food in those States; (3) make cost adjustments in the separate Thrifty Food Plans for Guam, Puerto Rico, and the Virgin Islands of the United States to reflect the cost of food in those States, but not to exceed the cost of food in the fifty States and the District of Columbia; and (4) adjust the cost of such diet every January 1st to the nearest dollar increment to reflect changes in the cost of food. For January 1, 1981, the adjustment to the Thrifty Food Plan shall reflect changes in the cost of food for the 12 months ending the preceding September 30. Under this provision, an adjustment has been made in the cost of the Thrifty Food Plan amounts by household size for Puerto Rico (appearing in Appendix A of § 273.10 of the Food Stamp Program Regulations). The adjustment is based on the cost of the Thrifty Food Plan in September.

Accordingly, 7 CFR Part 273 is being amended as follows:

PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS

1. In § 273.10, the heading of paragraph (e) and (e)(4)(ii) is revised to read as follows:

§ 273.10 Determining household eligibility and benefit level.

* * * * *

(e) *Calculation of net income and benefit levels.* * * *

(4) * * *

(ii) *Annual adjustment.* Effective January 1, 1981, the Thrifty Food Plan amounts shall be adjusted annually to reflect changes in the Consumer Price Index for all Urban Consumers (CPI-U) for the cost of food. The annual adjustments shall be rounded to the nearest whole dollar (amounts of 50 cents shall be rounded to the next highest whole dollar). The January 1, 1981 adjustment shall reflect changes in the price of food for the 12 months ending the preceding September 30.

* * * * *

(2) Appendix A to § 273.10 is revised to read as follows:

§ 273.10 Determining household eligibility and benefit levels.

* * * * *

Appendix A.—Thrifty Food Plan—48 States and the District of Columbia, Alaska, Hawaii, Guam, the Virgin Islands, and Puerto Rico

Benefit Determination. To determine the monthly allotment to be issued to households: Subtract 30 percent of the household's net monthly income from the Thrifty Food Plan amount shown below for that size household for the appropriate area involved, as set forth in § 273.10(e)(2)(ii). (All one and two-person households shall receive a minimum monthly allotment of $10.00):

Thrifty Food Plan Amounts—September 1980

Household size	48 States [1] and District of Columbia	Alaska [2]	Hawaii [3]	Guam [4]	Virgin Islands [4]	Puerto Rico [4]
1	$70	$108	$95	$101	$88	$66
2	128	197	175	185	161	122
3	183	283	250	256	230	174
4	233	359	318	337	292	221
5	277	426	378	400	347	262
6	332	512	453	480	416	315
7	367	565	501	531	460	348
8	419	646	572	607	526	398
Each additional member	+53	+81	+72	+76	+66	+50

[1] Adjusted to reflect the cost of food in September and adjusted for each household size in accordance with economics of scale.

[2] Adjusted to reflect cost of food in this State based on September food price data increased by 9.8% to account for higher food prices in cities and towns outside of Anchorage.

[3] Adjusted to reflect cost of food in this State based on September food price data.

[4] Adjusted to reflect cost of food in this area based on September food price data.

(91 Stat 958 (7 U.S.C. 2011-2027))

(Catalog of Federal Domestic Assistance, No. 10.551, Food Stamp)

Dated: December 11, 1980.

Carol Tucker Foreman,

Assistant Secretary for Food and Consumer Services.

[FR Doc. 80-39084 Filed 12-18-80; 8:45 am]

BILLING CODE 3410-30-M

Agricultural Marketing Service

7 CFR Part 910

[Lemon Reg. 284]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This regulation establishes the quantity of fresh California-Arizona Lemons that may be shipped to market during the period December 21-27, 1980. Such action is needed to provide for orderly marketing of fresh lemons for this period due to the marketing situation confronting the lemon industry.

EFFECTIVE DATE: December 21, 1980.

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

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

This action is consistent with the marketing policy for 1980-81 which was designated significant under the procedures of Executive Order 12044. The marketing policy was recommended by the committee following discussion at a public meeting on July 8, 1980. A final impact analysis on the marketing policy is available from Malvin E. McGaha, Chief, Fruit Branch, F&V AMS, USDA, Washington, D.C. 20250, telephone 202-447-5975

The committee met again publicly on December 16, 1980, at Los Angeles,

California, to consider the current and prospective conditions of supply and demand and recommended a quantity of lemons deemed advisable to be handled during the specified week. The committee reports the demand for lemons is active.

It is further found that there is insufficient time between the date when information became available upon which this regulation is based and when the action must be taken to warrant a 60 day comment period as recommended in E.O. 12044, and 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). It is necessary to effectuate the declared purposes of the act to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

Section 910.584 is added as follows:

§ 910.584 Lemon Regulation 284.

(a) The quantity of lemons grown in California and Arizona which may be handled during the period December 21, 1980, through December 27, 1980, is established at 210,000 cartons.

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

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

Dated: December 18, 1980.

D. S. Kuryloski,

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

[FR Doc. 80-39757; Filed 12-18-80 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 984

Walnuts Grown in California; Free and Reserve Percentages for the 1980–81 Marketing Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule establishes marketing percentages for California walnuts during the 1980–81 season. The estimated 1980 walnut production is in excess of domestic markets, and the percentages tailor the supply to domestic needs. Excess supplies would be available chiefly for export. The percentages were recommended by the Walnut Marketing Board. The Board works with USDA in administering the Federal marketing order for California walnuts.

EFFECTIVE DATES: August 1, 1980, through July 31, 1981.

FOR FURTHER INFORMATION CONTACT: J. S. Miller, Chief, Specialty Crops Branch, Fruit and Vegetable Division, AMS, USDA, Washington, D.C. 20250, (202) 447–5053. The Final Impact Statement describing options considered in developing this action and the impact of implementing each option is available on request from J. S. Miller.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established in Secretary's Memorandum 1955 to implement Executive Order 12044 and has been classified "not significant". On November 24, 1980, notice was published in the Federal Register (45 FR 77447) inviting written comments, not later than December 10, 1980, on the establishment of the marketing percentages hereinafter discussed. None was received.

It is further found that good cause exists for not postponing the effective time of this action until 30 days after publication in the Federal Register (5 U.S.C. 553). The relevant provisions of the order require that the free and reserve percentages established for a particular marketing year shall apply to all walnuts certified as merchantable from the beginning of that year. The 1980–81 marketing year began August 1, 1980.

This action establishes free and reserve percentages for the California walnuts of 71 percent and 29 percent, respectively, for the 1980–81 marketing year. The marketing percentages would be established pursuant to § 984.49 of the marketing agreement, and Order No. 984, both as amended (7 CFR Part 984), regulating the handling of walnuts grown in California. The amended marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674).

The Walnut Marketing Board's recommendation was based on estimates for the current marketing year of supply, and inshell and shelled trade demand, adjusted for handler carryover. The total 1980–81 supply subject to regulation is estimated at 192.5 million pounds kernelweight. Inshell and shelled trade demands adjusted for handler carryover are estimated at 32.4 and 104.4 million pounds kernelweight, or a total adjusted trade demand of 136.8 million pounds kernelweight. Dividing this by the total 1980–81 supply subject to regulation of 192.5 million pounds kernelweight, and rounding to the nearest full percent, results in a free percentage of 71 percent. Subtracting the resulting free percentage from 100 percent results in a reserve percentage of 29 percent.

The marketing percentages would establish the supply of merchantable walnuts available to the domestic inshell and shelled markets at maximum quantities that reasonably can be expected to be utilized during the 1980–81, season, while also providing an ample supply of walnuts for use next year until the 1981 crop is available for market. The quantity in excess of 1980–81 domestic needs would be for export, oil, feed, or other outlets noncompetitive with outlets for free merchantable walnuts.

After consideration of all relevant matter presented, including that in the notice, the information and recommendation submitted by the Board, and other available information, it is further found that establishment of the free and reserve percentages under the order, as hereinafter set forth, will tend to effectuate the declared policy of the act.

The marketing percentages are as follows:

§ 984.226 Free and reserve percentages for California walnuts during the 1980–81 marketing year.

The free and reserve percentages for California walnuts during the marketing year beginning August 1, 1980, shall be 71 percent and 29 percent, respectively.

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

Dated: December 16, 1980.

D. S. Kuryloski,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 80-39517 Filed 12-18-80; 8:45 am]

BILLING CODE 3410-02-M

Rural Electrification Administration

7 CFR Part 1701

Rescission and Reclassification of REA Bulletins Included in Appendix A to 7 CFR Part 1701

AGENCY: Rural Electrification Administration.

ACTION: Final rule.

SUMMARY: Appendix A to 7 CFR Part 1701, Public Information, is hereby amended to provide for the rescission and reclassification of certain bulletins as a result of a review of all bulletins included in Appendix A. Appendix A bulletins set forth REA policies and requirements for financing under legislation administered by REA. The review was made pursuant to Executive Order No. 12044, Improving Government

Regulations; Executive Order No. 12174, Paperwork; Secretary's Memorandum No. 1955, Improving USDA Decisions and Regulations; and the Rural Electrification Act of 1936, as amended.

This action will reduce the number of regulations REA borrowers must operate under and will make Appendix A a more useful tool in the administration of the REA program.

EFFECTIVE DATE: December 10, 1980.

FOR FURTHER INFORMATION CONTACT: Mr. Clair Callan, Assistant to the Administrator, Rural Electrification Administration, Room 4064, South Building, U.S. Department of Agriculture, Washington, D.C. 20250, telephone (202) 447-3106. The final impact statements describing this action are available on request from the above named individual.

SUPPLEMENTARY INFORMATION: REA regulations are issued pursuant to the Rural Electrification Act, as amended (7 U.S.C. 901 et seq.).

This final action has been reviewed under USDA procedures established in Secretary's Memorandum No. 1955 to implement Executive Order 12044, "Improving Government Regulations," and has been classified not significant.

REA published a notice of this proposed action in the Federal Register on July 15, 1980 (45FR47436) and invited public comments. No comments were received. Programs listed in the Catalog of Federal Domestic Assistance which are affected are (a) 10.850 Rural Electrification Loans and Loan Guarantees, (b) 10.851 Rural Telephone Loans and Loan Guarantees, and (c) 10.852 Rural Telephone Bank Loans.

A listing of the bulletins rescinded or reclassified are as follows:

REA Appendix A Bulletins Rescinded—(To Be Removed from Binder)

Bulletin 1-4:300-3 Participation by Electrification Borrowers in Telephone Program
Bulletin 3-3 Protection of Territorial Integrity of Electric Borrowers
Bulletin 9-1:309-1 Community Development
Bulletin 20-1:321-1 Selection of the Trustee Where Deeds of Trust Secure Loans
Bulletin 20-11:320-17 Waiver of Government's Mortgage Lien on Motor Vehicles of Electric and Telephone Borrowers
Bulletin 21-2 Service Entrance Equipment
Bulletin 27-1 Loans Involving Provisions for the Acquisition of Existing Electric Facilities
Bulletin 62-3 Narrow Profile Electric Transmission Line Structure Design
Bulletin 112-7 Contracts for Electric Street Lighting Service
Bulletin 300-8 Financial Participation by Telephone Borrowers in CATV
Bulletin 340-7 Effective Planning of Telephone System Construction
Bulletin 360-2 Area Coverage Design
Bulletin 388-1 Inventory and Appraisal of Existing Telephone Plant Retained as Part of the New System

REA Bulletins Removed From Appendix A—(Should be Retained as Informational Program Aids)

Bulletin 1-3:300-2 Rural Electrification Act of 1936 With Amendments as Approved to August 4, 1977
Bulletin 3-1:302-1 Proceedings Before and Discussions With Regulatory Bodies and Officials
Bulletin 3-2:303-1 State and Local Legislation Affecting REA Programs
Bulletin 6-1:306-1 System for Classifying and Issuing REA Policies, Procedures and Other Published Material
Bulletin 40-4 Guide for Mapping and Location Numbering of Electric Distribution Systems
Bulletin 60-7 Service Reliability
Bulletin 60-8 System Planning Guide, Electric Distribution Systems
Bulletin 60-9 Economical Design of Primary Lines for Rural Distribution Systems
Bulletin 61-1 Conductor—Low Voltage Circuits
Bulletin 61-6 Power Line Crossings Over Communications Lines
Bulletin 80-5 Conductor Installation for Electric Distribution Lines
Bulletin 86-5:387-2 Contract to Construct Buildings, REA Form 257
Bulletin 100-5:400-3 Agreements for the Operation and Management of Borrower's Systems
Bulletin 101-5 REA Model Act Bylaws
Bulletin 102-1:402-3 Capital Credits—Consumer Benefits
Bulletin 105-4 Financial Management
Bulletin 105-7 Long Range System and Financial Planning Power Supply Borrowers
Bulletin 109-2:409-3 Labor Relations
Bulletin 185-2:465-2 Audit Working Paper Guide
Bulletin 340-4 Scheduling of Work and Reporting of Progress
Bulletin 341-2 Replacement of Line Stakes, Telephone Program
Bulletin 360-1 Checklist for Review of a Supplemental Loan Proposal or an Area Coverage Design
Bulletin 385-4 Special Equipment Contracts and Specifications
Bulletin 405-1 Financial Planning by Telephone Borrowers
Bulletin 440-1 Telephone Borrowers' Technical Operations and Maintenance Activities
Bulletin 462-1 Evaluation and Enforcement of Internal Control of Borrowers' Enterprises

Dated: December 10, 1980.

Susan T. Shepherd,
Acting Administrator.

[FR Doc. 80-39256 Filed 12-18-80, 8:45 am]
BILLING CODE 3410-15-M

Animal and Plant Health Inspection Service

9 CFR Part 82

Exotic Newcastle Disease; and Psittacosis or Ornithosis in Poultry; Area Released From Quarantine

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: The purpose of this amendment is to release a portion of Fort Bend County in Texas, from areas quarantined because of exotic Newcastle disease. Surveillance activity indicates that exotic Newcastle disease no longer exists in the area quarantined.

EFFECTIVE DATE: December 15, 1980.

FOR FURTHER INFORMATION CONTACT: C. G. Masson, Chief, National Emergency Field Operations, Emergency Programs, Veterinary Services, USDA, 6505 Belcrest Road, Federal Building, Room 751, Hyattsville, MD 20782, 301-436-8073.

SUPPLEMENTARY INFORMATION: This amendment excludes a portion of Fort Bend County in Texas, from the areas quarantined because of exotic Newcastle disease under the regulations in 9 CFR Part 82, as amended. Therefore, the restrictions pertaining to the interstate movement of poultry, mynah and psittacine birds, and birds of all other species under any form of confinement, and their carcasses and parts thereof, and certain other articles from quarantined areas, as contained in 9 CFR Part 82, as amended, will not apply to the excluded area.

Accordingly, Part 82, Title 9, Code of Federal Regulations, is hereby amended in the following respect.

§ 82.3 [Amended]

In § 82.3(a)(3), relating to the State of Texas, paragraph (i) relating to the premises of Tim Gebhard, 18 Windsor Court, Missouri City, Fort Bend County is removed.

* * * * *

(Secs. 4-7, 23 Stat. 32, as amended; secs. 1 and 2, 32 Stat. 791-792, as amended; secs. 1-4, 33 Stat. 1264, 1265, as amended; secs. 3 and 11, 76 Stat. 130, 132; (21 U.S.C. 111-113, 115,

117, 120, 123–126, 134b, 134f); 37 FR 28464, 28477; 38 FR 19141)

This amendment relieves certain restrictions no longer deemed necessary to prevent the spread of exotic Newcastle disease, and must be made effective immediately to be of maximum benefit to affected persons. It does not appear that public participation in this rulemaking proceeding would make additional relevant information available to the Department.

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

Further, this final rule has not been designated as "significant," and is being published in accordance with the emergency procedures in Executive Order 12044 and Secretary's Memorandum 1955. It has been determined by E. C. Sharman, Acting Assistant Deputy Administrator, Animal Health Programs, APHIS, VS, USDA, that the emergency nature of this final rule warrants publication without opportunity for prior public comment or preparation of an impact analysis statement at this time.

This final rule implements the regulations in Part 82. It will be scheduled for review in conjunction with the periodic review of the regulations in that Part required under the provisions of Executive Order 12044 and Secretary's Memorandum 1955.

Done at Washington, D.C., this 15th day of December 1980.

Dated: December 15, 1980.

J. K. Atwell,

Acting Deputy Administrator, Veterinary Services.

[FR Doc. 80-39385 Filed 12-18-80; 8:45 am]

BILLING CODE 3410-34-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34-17368]

Dissemination and Display of Transaction Reports, Last Sale Data and Quotation Information

AGENCY: Securities and Exchange Commission.

ACTION: Rule amendment.

SUMMARY: In order to allow time for further development and implementation of certain quotation processing facilities, the Commission extends the effective date of portions of its rule governing the dissemination and display of market information to September 1, 1981.

EFFECTIVE DATE: December 19, 1980.

FOR FURTHER INFORMATION CONTACT: Bruce Beatt, Division of Market Regulation, Securities and Exchange Commission, Room 390, 500 North Capitol Street, Washington, D.C. 20549, (202) 272-2888.

SUPPLEMENTARY INFORMATION: On February 19, 1980, the Commission announced the adoption of Rule 11Ac1-2 ("Rule") under the Securities Exchange Act of 1934, as amended ("Act").[1] Among other things, the Rule requires that (1) vendors providing quotation information provide, at a minimum, either a best bid and offer, including market identifier and size ("BBO"), derived from quotations from all reporting market centers, including third market makers, or a montage of such quotations ("BBO Requirement"); (2) vendors provide a consolidated last sale and quotation display by means of a stroke sequence involving either a fewer number of key strokes than is used to retrieve displays of individual market center information or by an equal number of key strokes if the transmit key to recall consolidated displays is more prominent ("Key Stroke Requirement"); and (3) vendors provide a display of consolidated transaction information which contains, subject to limited exceptions, all categories of information available in individual market center displays (collectively, "Vendor Display Provisions"). The Vendor Display Provisions were initially due to be effective on October 5, 1980.

Subsequent to the adoption of the Rule, however, the Commission received indications from a number of vendors that the costs which they would have to incur to comply with the BBO Requirement might be reduced if a central facility was developed which could calculate and disseminate the BBO to all vendors. The Commission understands that calculating the BBO, without the use of a central processor, would require storage by each vendor of all exchange and third market quotations and development of software to select and disseminate the BBO each time any quotation changes. Thus, a central processor may save vendors some storage, processing and communications costs. For this reason the Commission, on June 24, 1980, announced that it was deferring the effective date of the Vendor Display Provisions from October 5, 1980, to January 3, 1981, because it believed that those provisions:

> Should not become effective . . . until the exchanges and the vendors have had an opportunity to explore appropriate methods of providing for more efficient and less costly methods of calculating the [BBO].[2]

In addition, in order to ensure quick process toward this end, the Commission also requested that the self-regulatory organizations participating in the Consolidated Quotation Plan ("CQ Plan Participants") submit to the Commission a joint written report regarding their willingness to develop a BBO central processor.

As discussed more fully below, significant progress has been made toward the development of a new central facility to calculate and disseminate the BBO ("BBO Central Processor"). As a result, the Commission has determined to defer the effective date for the Vendor Display Provisions to September 1, 1981, to permit the CQ Plan Participants and the Securities Industry Automation Corporation ("SIAC"), as CQ Plan processor, the time necessary to complete development and implementation of a BBO Central Processor.

II. Discussion

In response to the action taken by the Commission deferring the effective date of the Rule, the CQ Plan Participants, after some delay, authorized SIAC to create a proposal for developing and implementing a BBO Central Processor.

[1] Securities Exchange Release No. 16590 (February 19, 1980) ("Vendor Display Release") 45 FR 12391.

[2] Securities Exchange Release No. 16924 (June 24, 1980) at 4 ("Deferral Release"), 45 FR 44922 at 44923. The Commission also raised concerns that time lags in updating Autoquote bids and offers might cause the BBO display to be misleading. These delays raised the possibility that brokerage firms, registered representatives and investors inquiring for the BBO during the time interval between dissemination of changes in the quotation in the primary market and generation of corresponding changes in regional quotations by the Autoquote systems may be misled as to the "true" BBO by a stale quotation from a regional exchange.

Subsequently, Quotron Systems, Inc. ("Quotron"), the processor of Autoquote for the Boston ("BSE"), Midwest ("MSE") and Pacific ("PSE") Stock Exchanges, has made certain revisions to the PSE's Autoquote system which have reduced time delays in that system from approximately one minute both at the opening and during the trading day to five seconds at the opening and one second during the trading day. Moreover, Quotron has indicated to the Commission's staff that it intends to take similar action, if necessary, with respect to the Autoquote systems of the BSE and MSE. These enhancements, in conjunction with SIAC's planned systems upgrade, which will be discussed in more detail *infra*, should eliminate the Commission's regulatory concerns regarding misleading information.

Subsequently, on August 29, 1980, SIAC submitted a BBO Central Processor proposal to the CQ Operating Committee. After receiving comments on its proposal from the CQ Plan Participants and the vendors, SIAC revised its proposal and, on October 13, 1980, again presented it to the CQ Operating Committee for consideration.

SIAC proposed that the CQ Operating Committee authorize it to develop a BBO Central Processor capability in conjunction with its proposed upgrade and relocation of the New York Stock Exchange's ("NYSE") Market Data System and accompanying upgrade of the computer, communications and processing systems employed by the consolidated quotation and transaction reporting systems ("CQS and CTS"). This upgrade, as proposed, would, among other things, (1) split the CQS and CTS data streams so that each system would depend on separate computer hardware and communications lines; [3] (2) upgrade the computer hardware for both systems; (3) add higher capacity CQS communications lines and (4) employ the new CQS processor and lines to calculate and disseminate the BBO. In response to concerns raised by certain vendors over the costs to them entailed in receiving information from SIAC's new higher capacity communications lines, SIAC also indicated that CTS and CQS information (but not BBO information) would continue to be available to vendors through lower capacity lines. Accordingly, if a vendor chose to separately calculate the BBO it would not have to make the system changes entailed in receiving information through SIAC's new upgrade lines.

The Commission understands that the CQ Operating Committee unanimously approved "in principle" SIAC's proposal.[4] In addition, the Commission understands that the CQ Operating Committee authorized the NYSE's counsel to draft an amendment authorizing the development, by SIAC, of a BBO Central Processor capability and SIAC to draft final specifications for its upgrade. Finally, the Commission has been informed that representatives of SIAC and the CQ Operating Committee held an informational meeting with the vendors in which SIAC's revised proposal was described and that, while the vendors indicated that they would have to review the proposal in detail, none raised any serious concerns at the meeting.

The Commission continues to believe that the Vendor Display Provisions, especially the BBO Requirement, are essential both for the successful operation of the CQS and to enhance the ability of public investors to ensure best execution of their orders. However, the Commission also believes that the development of a BBO Central Processor would be the most efficient and least costly manner of calculating and disseminating the BBO. Accordingly, the Commission consistently has encouraged the industry to create such a capability within a time period which would not unduly delay the effective date of the Vendor Display Provisions.

While progress toward developing a BBO Central Processor has been slow, it now appears that each of the CQS participants are committed to developing such a capability along the guidelines set forth in SIAC's revised proposal. In addition, the vendors appear generally positive about SIAC's revised proposal even though, if they choose to receive the BBO from SIAC, they will have to revise their systems to accept information from SIAC's new, higher capacity, communications lines. Accordingly, the Commission now believes that it is highly probable that a Central BBO Processor will be implemented in the near future.

In light of the above, the Commission believes that it is appropriate to delay the effective data of the Vendor Display Provisions until September 1, 1981, in order to provide the CQ Plan Participants and SIAC the time necessary to develop and implement a central BBO Processor. The Commission understands that SIAC has indicated to the CQ Plan Participants that, barring any delays in approval by the CQ Operating Committee of the final specifications, the upgrade, including the implementation of the BBO Central Processor, could be accomplished by August, 1981. Therefore, the Commission anticipates that no further deferral of the Vendor Display Provisions will prove necessary.[5]

For the reason stated above and pursuant to the Administrative Procedure Act (5 U.S.C. 551 *et seq.*), the Commission finds for good cause that notice and public procedure of this amendment to the Rule are impracticable, unnecessary and contrary to the public interest and that there is good cause for making this amendment effective immediately. The Commission also finds that adoption of this amendment to the Rule does not impose any burdens on competition that are not necessary or appropriate in furtherance of the purposes of the Act.

The Securities and Exchange Commission, acting pursuant to the Act, and particularly Sections 1, 3, 6, 9, 10, 15, 17 and 23, Pub. L. No. 78–291, 48 Stat. 881, 882, 885, 889, 891, 895, 897 and 901, as amended by Sections 2, 3, 4, 11, 14 and 18, Pub. L. No. 94–29, Stat. 97, 104, 121, 137 and 155 (15 U.S.C. §§ 78b, 78c, 78f, 78i, 78j, 78o, 78g, and 78w); Section 15A, as added by Section 1, Pub. L. No. 75–219, 52 Stat. 1070, as amended by Section 12, Pub. L. No. 94–29, 89 Stat. 127 (15 U.S.C. § 78o–3); Section 11A, as added by Section 7, Pub. L. No. 94–29, 98 Stat. 111 (15 U.S.C. 78k–1), hereby revises paragraph (h) of § 240.11Ac1–2 of Title 17 of the Code of Federal Regulations to postpone to September 1, 1981, the effective date of paragraphs (b)(2)(ii), (b)(2)(vi) and (c)(2)(i), (ii), (iv), (v) of said § 240.11Ac1–2. The text of the amendment is as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

§ 240.11Ac1–2 Display of transaction reports, last sale data and quotation information

* * * * *

(h) *Effective date.* The effective date of this section shall be April 5, 1980, except for paragraph (c)(2)(vi), which shall become effective on July 5, 1980, and paragraphs (b)(2)(ii), (b)(2)(vi) and (c)(2)(i), (ii), (iv), (v) which shall become effective on September 1, 1981.

By the Commission.

George A. Fitzsimmons,

Secretary.

December 11, 1980.

[FR Doc. 80–39522 Filed 12–18–80; 8:45 am]

BILLING CODE 8010–01–M

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17 CFR Part 249

[Release No. 34–17370]

Increase In Filing Fee For Associated Persons of Non-member Broker-Dealers

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

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[3] The National Association of Securities Dealers and the Philadelphia Stock Exchange, which presently supply transaction and quotation information to SIAC over one line, would, however, be permitted to continue to do so.

[4] The CTA Operating Committee also has authorized SIAC's proposed upgrade to the extent it affects the consolidated transaction reporting system.

[5] In this connection, the Commission requests that SIAC provide the Commission with a complete description of, and timetable for, the completion of the planned upgrade as well as periodic status reports, on no less than a quarterly basis, on progress toward the implementation of a BBO Central Processor and completion of the planned upgrade.

SUMMARY: The Commission is amending Form U–4, a personnel form filed by non-member broker-dealers concerning their associated persons, to raise the level of the initial registration fee for associated persons of such broker-dealers from $35 to $50. The increase in the Form U–4 filing fee will set the level of the initial registration fee for non-member broker-dealers at the same level as the corresponding fee imposed by the National Association of Securities Dealers, Inc. on its members.

EFFECTIVE DATE: January 19, 1981.

FOR FURTHER INFORMATION CONTACT: William J. Finegan, Office of Reports and Information Services, Securities and Exchange Commission, 1100 L Street, NW., Washington, D.C. 20549 (202) 523–5545.

SUPPLEMENTARY INFORMATION: Section 15(b)(8) of the Act [15 U.S.C. 78*o*(b)(8)] authorizes the Commission, by rule, to establish and levy such reasonable fees and charges as may be necessary to defray the costs of additional regulatory duties required to be performed with respect to registered brokers or dealers who are not members of a registered national securities association ("SECO broker-dealers") and their associated persons.[1] Pursuant to that section, the Commission adopted Securities Exchange Act Rules 15b8–1 [17 CFR 240.15b8–1] and 15b9–1 [17 CFR 240.15b9–1], which require SECO broker-dealers to file a Form U–4 [17 CFR 249.502] concerning each associated person engaged in securities activities on behalf of the broker-dealer and to pay to the Commission the fee prescribed by the form.

The amendment to Form U–4 adopted today raises the fee required to be paid by SECO broker-dealers in connection with filing Form U–4 from $35 to $50. This increase will conform the filing fee imposed on SECO broker-dealers to the level of the corresponding fee imposed by the National Association of Securities Dealers, Inc. (the "NASD") on its members.

The Amendment to Form U–4 was proposed by the Commission in Securities Exchange Act Release No. 17162 (September 24, 1980) and was published for public comment in the Federal Register on September 30, 1980. No comments were received by the Commission. As noted in the release proposing this amendment to Form U–4,[2] the Commission's experience has been that maintaining annual SECO assessment and specific SECO fees at rates or levels comparable to those imposed by the NASD generates revenues which have reasonably approximated expenditures incident to the administration of the SECO program. It is the Commission's belief that, for the most part, the costs of administering the SECO program continue to warrant the imposition of fees at rates similar to those imposed by the NASD. In addition, the Congress has indicated an intention that SECO broker-dealers be subject to regulation comparable to the NASD's regulation of its members.[3]

The Commission, of course, recognizes the statutory mandate that SECO fees and assessments be reasonable and that they be used to defray the costs of administering the SECO program. In connection with its ongoing responsibilities the Commission may seek to determine whether the rates of specific fees, including Form U–4 filing fees, bear a reasonable correlation to the relevant costs incurred by the Commission in administering the SECO regulatory program. If such an analysis discloses significant variance between the fees collected and the costs incurred in administering the relevant portion of the SECO program, the Commission may consider whether SECO fees should differ from those applicable to NASD members.[4]

On the basis of the foregoing, the Commission hereby amends Part 249 of the Code of Federal Regulations to raise the level of the initial registration fee for associated persons of nonmember broker-dealers. The Commission finds that the amendment to Form U–4 does not impose any burdens on competition not necessary or appropriate in furtherance of the purposes of the Act. The amendment to the special instructions to Form U–4 is adopted pursuant to the Commission's authority in Sections 15(b)(8) and 23(a) [15 U.S.C. 78*o*(b)(8), 78*w*(a)] of the Securities Exchange Act of 1934, effective January 19, 1981.

In § 249.502, the amendment to the special instructions reads as follows:

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

§ 249.502 Form U–4, personnel form, to be filed by registered brokers or dealers not members of a registered national securities association, for associated persons of such brokers and dealers.

* * * * *

Special Instructions for Completing Form U–4, Uniform Application for Securities and Commodities Industry Representative and/or Agent.

* * * * *

A filing fee of $50 must accompany this form. A check should be made payable to the Securities and Exchange Commission and mailed along with one (1) copy of this Form to the Office of the Comptroller.

* * * * *

By the Commission.

George A Fitzsimmons,

Secretary.

December 12, 1980.

[FR Doc. 80-39523 Filed 12-18-80; 8:45 am]

BILLING CODE 8010-01-M

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17 CFR Part 270

[Release No. IC–11493; File No. S7–866]

Interim Rules Exempting Business Development Companies and Certain of Their Affiliates From Provisions of the Investment Company Act

AGENCY: Securities and Exchange Commission.

ACTION: Adoption of interim rules; request for comment.

SUMMARY: The Commission is adopting, on an interim basis, two rules under the Investment Company Act of 1940 as recently amended by the Small Business Investment Incentive Act of 1980. The first of these rules recognizes the intent of Congress to permit certain transactions between a business development company and a company controlled by it or certain affiliated persons of such latter company without requiring prior approval of the Commission. The second rule recognizes the intent of Congress to permit a business development company to acquire the securities of and operate a wholly-owned small business investment company. The Commission is also soliciting public comment on whether these interim rules should be adopted as permanent ones.

EFFECTIVE DATE: December 16, 1980. Comments on the interim rules must be received by January 30, 1981.

ADDRESSES: All communications on the matters discussed in this release should

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[1] A non-member broker-dealer who is a member of a national securities exchange may, under limited circumstances, be exempt from this provision. *See*, Securities Exchange Act Rules 15b9–1(e) [17 CFR 240.15b9–1(e)] and 15b9–2(e)(3) [17 CFR 240.15b9–2(e)(3)].

[2] Securities Exchange Act Release No. 17162 (September 24, 1980 (45 FR 64599 (1980)).

[3] *H. Rep. No. 1418, 88th Cong., 2nd Sess. at 12* (1964).

[4] *See*, Securities Exchange Act Release No. 16235 (October 2, 1979) (44 FR 57387 (1979)).

be submitted in triplicate to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Comments should refer to File No. S7-866 and will be available for public inspection and copying in the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C. 20549.

FOR FURTHER INFORMATION CONTACT: Marsha Gilman, Esq. (202-272-3036), Division of Investment Management, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: On October 21, 1980, the President signed into law amendments (the "1980 Amendments") to the Investment Company Act of 1940 (the "1940 Act") [15 U.S.C. 80a-1 *et seq.*], as Title I of the Small Business Investment Incentive Act of 1980 [Pub. L. No. 96-477]. The 1980 Amendments, which became effective immediately upon their signing by the President, represent the considerable efforts of Congress and numerous other participants, including representatives of the Commission and the "venture capital" industry, to enhance the flow of capital to small, developing businesses and financially troubled businesses. The 1980 Amendments make available to certain companies, defined as "business development companies," exemptions from certain provisions of the 1940 Act, and permit such companies to take advantage of a carefully-tailored pattern of substantive regulation which takes into account their special needs and characteristics, while at the same time preserving important investor protections.

A business development company is defined as a domestic, closed-end company [1] which is operated for the purpose of making certain types of investments [2] and which makes available significant managerial assistance [3] to the companies in which it invests. Generally, a company which elects to be treated as a business development company,[4] or intends within 90 days to so elect,[5] is exempt from certain provisions of sections 1 through 53 of the 1940 Act [15 U.S.C. 80a-1 through 15 U.S.C. 80a-52] and, in lieu of the provisions of sections 1 through 53 (except to the extent provided in sections 59 through 65 [15 U.S.C. 80a-58 through 15 U.S.C. 80a-64]), a carefully tailored regulatory structure is substituted.

In enacting this regulatory structure for business development companies, Congress ought to encourage capital investment in small, developing businesses and financially troubled businesses.[6] It has come to the Commission's attention, however, that there are two instances in which these purposes may be impeded by what appear to be inadvertent drafting errors in the 1980 Amendments. First, under the 1980 Amendments, prior Commission approval would be required [7] for transactions in which a business development company and a company controlled by it or affiliated persons of such controlled company participate as principals. Second, a business development company is prohibited under these amendments from acquiring the securities of and operating a wholly-owned small business investment company ("SBIC"). The legislative history of the 1980 Amendments strongly suggests that Congress did not intend either result.

Therefore, in recognition of Congress' belief in the potential importance of business development companies to the American economy, the Commisson has determined to issue, on an interim basis, two rules which it believes will correct the inadvertent consequences of the drafting errors and to solicit public comment on whether these interim rules should be adopted as permanent rules.

Transactions With Affiliates: Rule 57b-1

Section 17 of the 1940 Act [15 U.S.C. 80a-17], in relevant part, generally requires Commission approval before a registered investment company engages in transactions in which conflicts of interest may exist because of the participation of affiliated persons [8] of, or principal underwriters for, the company. This requirement ensures that no person who might be capable of overreaching an investment company be allowed to deal with it until the Commission has determined that the proposed transactions are fair and that there will not be any such overreaching. The Commission has promulgated rules exempting from the prohibitions of section 17 certain transactions as to which it has determined that the possibility that affiliated persons may overreach the investment company is remote.

Section 57 [15 U.S.C. 80-56] is applicable to business development companies in lieu of those provisons of section 17 which relate to transactions by registered investment companies with affiliated persons.[9] The effects of

[1] A closed-end company is defined generally by section 5(a)(2) of the 1940 Act [15 U.S.C. 80a-5(a)(2)] as a company which does not issue any redeemable security.

[2] Section 55(a) of the 1940 Act [15 U.S.C. 80a-54(a)], in part, describes the securities of companies in which business development companies can invest. These securities generally must comprise at least 70 percent of the value of the business development company's investment assets. The companies in which business development companies can invest are primarily "eligible portfolio companies," which are defined in section 2(a)(46) of the 1940 Act [15 U.S.C. 80a-2(a)(46)]. The list of qualifying investments in section 55(a) is in keeping with the intent of the 1980 Amendments: to enhance the flow of capital to small, developing businesses and financially troubled businesses.

[3] The term "significant managerial assistance" is defined in section 2(a)(47) of the 1940 Act [15 U.S.C. 80a-2(a)(47)].

[4] A company may elect to be treated as a business development company by filing with the Commission a notification of election pursuant to section 54(a) [15 U.S.C. 80a-53(a)].

[5] A privately-held company which would be excluded from the definition of investment company except that it presently proposed to make a public offering of its securities may notify the Commission, pursuant to section 6(f)(2) [15 U.S.C. 80a-6(f)(2)], that it intends, within 90 days, to elect to be treated as a business development company.

[6] The legislative history of the bill which became the 1980 Amendments discusses the need for the legislation:

> The Committee [on Interstate and Foreign Commerce] is well aware of the slowing of the flow of capital to American enterprise, particularly to smaller, growing businesses, that has occurred in recent years. The importance of these businesses to the Amercian economic system in terms of innovation, productivity, increased competition and the jobs they create is, of course critical. Hence, the need to reverse this downward trend is of compelling public concern. Without doubt, the slowdown that has occurred is the product of many economic forces quite apart from the costs of securities regulation—taxes and inflation principal among them—and the Congress has been separately addressing all these factors in a wide variety of ways. But no undue cost should be shielded from scrutiny. As but one means of dealing with the more general problem, this Bill seeks specifically to reduce some of the costs of government regulation imposed on the capital-raising process, to the extent that it can be done without sacrificing necessary investor protection.

H.R. Rep. No. 1341, 96th Cong., 2d Sess. 20 (1980) ["Committee Report"] *See also* S. Rep. No. 958, 96th Cong., 2d Sess. 4 (1980).

[7] But see discussion in the text following note 16, *infra*, of existing Commission exemptive rules which are applicable to business development companies.

[8] The term "affiliated person" is defined in section 2(a)(3) of the 1940 Act [15 U.S.C. 80a-2(a)(3)].

[9] Section 57 separates into two groups persons related to a business development company and, depending upon the nature of that relationship, permits transactions with those persons to proceed after review and approval by either the Commission or the business development company's board of directors. The prohibited transactions set forth in sections 57(a) and 57(d) [15 U.S.C. 80a-56(a) and 15 U.S.C. 80a-56(d)] apply, respectively, to those persons set forth in sections 57(b) and 57(e) [15 U.S.C. 80a-56(b) and 15 U.S.C. 80a-56(e)]. Transactions of a business development company with persons not specifically identified in these sections can proceed without formal review by the Commission or the business development company's board. Of course, as part of its fiduciary responsibility, the board of directors of a business development company has a duty to consider the appropriateness of a business development company's participation in all transactions.

these two sections are similar in that each reflects an intent to prohibit transactions in which business development companies or investment companies may be overreached by their respective affiliates. However, while Commission exemptive rulemaking under section 17 permits transactions between investment companies and their affiliates in those situations where the possibility of overreaching is remote, Congress incorporated directly into the 1940 Act similar permissive provisions with respect to transactions between business development companies and specified affiliated persons.

The exemptive rules under section 17 relate to transactions between an investment company and certain affiliated persons of the investment company.[10] Among others, non-controlled portfolio affiliates [11] of the investment company may participate in such transactions, as well as persons directly or indirectly controlled by the investment company.[12] Section 57 also prohibits transactions between a business development company and certain of its affiliated persons. However, non-controlled portfolio affiliates of a business development company are not among those persons whose participation in transactions with the business development company requires Commission approval [under section 57(c) [15 U.S.C. 80a–56(c)]] or specific statutory findings regarding the transaction by the company's board of directors [under section 57(f) [15 U.S.C. 80a–56(f)]].[13] The legislative history of the 1980 Amendments indicates that Congress also did not intend to require Commission approval or such specific statutory findings by the board of directors of a business development company for transactions between the company and a controlled portfolio affiliate. As the House Committee Report on the bill which became the 1980 Amendments states:

Conspicuously absent from the prohibitions in section 57 against transactions with the business development company are *persons which it controls* or of which it holds at least 5 percent of the outstanding securities. Also omitted from the prohibitions are persons affiliated with such so-called "downstream affiliates" of the business development company. In this regard, it should be noted that the Commission has undertaken through rulemaking to exempt all investment companies from prohibitions relating to transactions solely between investment companies and such downstream affiliates. The Committee again wishes to note that if experience demonstrates that under such exclusion from statutory prohibitions investors are not being adequately protected, the Committee would expect to revisit this area.

H.R. Rep. No. 1341, 96th Cong., 2d Sess. 48 (1980) ["Committee Report"] (emphasis added).[14] However, due to an apparently inadvertent drafting error, business development company transactions involving controlled portfolio affiliates and certain affiliated persons of such affiliates must be approved by the Commission.[15] The Commission proposes to correct this error by the instant rulemaking.

As noted above, this corrective result is comparable to rules 17a–6 and 17d–1(d)(5) which the Commission has adopted under section 17 with respect to investment companies.[16] Rules 17a–6 and 17d–1(d)(5) are also relevant to the instant rulemaking because section 57(i) [15 U.S.C. 80a–56(i)] makes the Commission's rules under section 17 available to business development companies until rules are adopted under sections 57(a) and 57(d). Thus, business development companies relying on section 57(i) could take advantage of the exemptive rules under section 17, including those provisions which would permit transactions involving controlled and non-controlled portfolio affiliates. Because of the clear Congressional intent that a statutory exemption be provided for a business development company's transactions with noncontrolled and controlled downstream affiliates, and that business development companies not be required in this respect to rely on rules under section 17, the Commission believes it is more appropriate in this instance to adopt this rule under section 57(b). Of course, to the extent they contain exemptive relief not already granted directly by the 1980 Amendments, the rules under section 17, especially rule 17d–1, will continue to apply to business development companies as provided in section 57(i).

Based upon the legislative history of the 1980 Amendments and the Commission's understanding of the negotiations, in which its representatives participated, preceding the drafting of the legislation, it is clear that the legislation's prohibitions of business development company transactions with controlled portfolio affiliates was a drafting error. Pursuant to the authority of the Commission under section 6(c) [15 U.S.C. 80a–6(c)], section 38(a) [15 U.S.C. 80a–37(a)] and section 59 [15 U.S.C. 80a–58], the Commission, therefore, is adopting interim rule 57b–1 to permit without prior Commission approval transactions between a business development company and a person directly or indirectly controlled by it or certain affiliated persons of such a person.

Functions and Activities of Business Development Companies: Rule 60a–1

Section 12(d)(1) of the 1940 Act [15 U.S.C. 80a–12(d)(1)] limits the acquisition by an investment company of securities issued by other investment companies. Generally, an investment company may not invest more than five percent of its assets in another investment company, nor own more than three percent of another investment company's voting stock.[17] Section

[10] *See, e.g.*, rules 17a–6 and 17d–1(d)(5) [17 CFR 270.17a–6 and 17 CFR 270.17d–1(d)(5), respectively].

[11] Section 2(a)(3)(B) [15 U.S.C. 80a–2(a)(3)(B)] includes within the definition of "affiliated person" "any person 5 per centum or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote" by another person. Because such a 5 percent interest does not constitute control under section 2(a)(9) [15 U.S.C. 80a–2(a)(9)], this type of downstream affiliate is often described as a "non-controlled portfolio affiliate."

[12] Section 2(a)(3)(C) [15 U.S.C. 80a–2(a)(3)(C)] defines an affiliated person to include "any person directly or indirectly . . . controlled by" another person. This type of downstream affiliate is often described as a "controlled portfolio affiliate."

[13] *See* sections 57(b) and 57(e).

[14] *See also* S. Rep. No. 958, 96th Cong., 2d Sess. 31 (1980).

[15] Section 57(b)(2) [15 U.S.C. 80a–56(b)(2)] applies the prohibitions of section 57(a) to, among others, "any * * * person directly or indirectly * * * controlled by * * * a business development company * * * or any person who is, within the meaning of section 2(a)(3)(C) or (D), an affiliated person of any such person * * *."

[16] In this regard, it should be noted that like the result with respect to investment companies under the section 17 rules, a transaction involving a business development company where a person controlled by a person identified in section 57(b) is also a participant would require prior approval by the Commission pursuant to section 57(c). Thus, for example, if a business development company held a controlling interest in one of its portfolio affiliates and an officer of the business development company also held a controlling interest in that portfolio affiliate, Commission approval under section 57(c) would be required for any transaction involving the business development company and such controlled portfolio affiliate not because the portfolio affiliate is controlled by the business development company but because it is controlled by an officer of the business development company. In this case, rule 57b–1 would not exempt any such transaction because the controlled portfolio affiliate is not affiliated with the business development company "solely because" it is controlled by the business development company; rather, it would be affiliated with the business development company also because of the affiliation through the controlling interest held by one of its officers. Of course, the business development company, its controlled portfolio affiliate or its officer may submit an application pursuant to section 57(c) which provides that the Commission may exempt any transaction involving both the business development company and its officer and the controlled portfolio affiliate if its terms meet the relevant standards.

[17] Section 12(d)(1) states, in part:

(A) It shall be unlawful for any registered investment company (the "acquiring company") and any company or companies controlled by such

Footnotes continued on next page

12(d)(1) was intended to prohibit pyramiding of investment companies, *i.e.*, the ownership and control of one investment company by another. Pyramiding may present an opportunity for an individual or group to exercise control over the activities of an investment company while having only a comparatively nominal financial stake in the company. Pyramiding was a concern of the Commission and of Congress when it enacted the 1940 Act, and when it enacted amendments to the 1940 Act in 1970.[18] Indeed, Congress specifically stated in the 1940 Act that the national public interest and the interest of investors are adversely affected "when the control of investment companies is unduly concentrated through pyramiding or inequitable methods of control."[19] New section 60 of the 1940 Act [15 U.S.C. 80a-59] makes section 12(d)(1) applicable to business development companies to the same extent as if they were registered closed-end investment companies.[20] Therefore, a business development company could not acquire more than limited amounts of securities issued by an investment company.

Small business investment companies ("SBICs") are licensed by the Small Business Administration pursuant to the Small Business Investment Act of 1958 [15 U.S.C. 631 *et seq.*] to provide capital to small businesses. Because of their investments, SBICs may fall within the 1940 Act's definition of "investment company."[21] Even if an SBIC were excluded from the definition of investment company by section 3(c)(1) of the 1940 Act [15 U.S.C. 80a-3(c)(1)],[22] it would nevertheless be deemed to be an investment company for purposes of section 12(d)(1).[23] Thus, neither business development companies nor investment companies may invest in the securities of an SBIC in an amount which exceeds the stringent limitations in section 12(d)(1).

The Commission has, on occasion, granted exemptive relief from certain provisions of the 1940 Act to permit investment companies to conduct venture capital-like activities through wholly-owned SBICs.[24] In doing so, however, the Commission has required certain conditions to be met, and thereby preserved important investor protections.[25]

It is clear that Congress did not intend to prohibit business development companies from acquiring the securities of and operating wholly-owned SBICs. Indeed, the 1980 Amendments specifically recognize the possibility of such ownership. Under the 1980 Amendments, a significant portion of the assets of a business development company must be invested in securities of eligible portfolio companies.[26] A wholly-owned SBIC is expressly identified as an eligible portfolio company.[27] The Commission therefore believes that, solely by reason of a drafting error, SBICs which are wholly-owned by business development companies are brought within the anti-

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Footnotes continued from last page

acquiring company to purchase or otherwise acquire any security issued by any other investment company (the "acquired company"), and for any investment company (the acquiring company") and any company or companies controlled by such acquiring company to purchase or otherwise acquire any security issued by any registered investment company (the "acquired company"), if the acquiring company and any company or companies controlled by it immediately after such purchase or acquisition own in the aggregate—

(i) more than 3 per centum of the total outstanding voting stock of the acquired company;

(ii) securities issued by the acquired company having an aggregate value in excess of 5 per centum of the value of the total assets of the acquiring company; or

(iii) securities issued by the acquired company and all other investment companies (other than Treasury stock of the acquiring company) having an aggregate value in excess of 10 per centum of the value of the total assets of the acquiring company.

[18] *See* Report of the Securities and Exchange Commission on Investment Trusts and Investment Companies, pt. III, H.R. Doc. No. 136, 77th Cong. 2739 (1941); Hearings on S. 3580 Before a Subcommittee of the Senate Committee on Banking and Currency, 76th Cong., 3d Sess. 180 (1940); Public Policy Implications of Investment Company Growth, H.R. Rep. No. 2337, 89th Cong., 2d Sess. 307-324 (1966); H.R. Rept. No. 1382, 91st Cong., 2d Sess. 10-11, 23 (1970).

[19] Section 1(b)(4) of the 1940 Act [15 U.S.C. 80a-1(b)(4)].

[20] Section 60 states, in relevant part: "Notwithstanding the exemption set forth in section 6(f), section 12 shall apply to a business development company to the same extent as if it were a registered closed-end investment company * * *." Section 6(f) [15 U.S.C. 80a-6(f)] generally exempts business development companies from the provisions of sections 1 through 53 of the 1940 Act.

[21] An SBIC could be an investment company with the 1940 Act's definitions in either section 3(a)(1) [15 U.S.C. 80a-3(a)(1)] or section 3(a)(3) [15 U.S.C. 80a-3(a)(3)]. Section 3(a)(1) defines investment company to mean "any issuer which is or holds itself out as being engaged primarily, or proposes to engage primarily, in the business of investing, reinvesting, or trading in securities." Section 3(a)(3) defines as an investment company "any issuer which is engaged or proposes to engage in the business of investing, reinvesting, owning, holding, or trading in securities, and owns or proposes to acquire investment securities having a value exceeding 40 per centum of the value of such issuer's total assets (exclusive of Government securities and cash items) on an unconsolidated basis."

[22] Any issuer whose outstanding securities (other than short-term paper) are beneficially owned by not more than one hundred persons and which is not making and does not presently propose to make a public offering of its securities is excluded from the definition of investment company, pursuant to section 3(c)(1). An SBIC most likely would not be able to rely upon any other exclusion from the definition of investment company.

[23] While an issuer relying on the exclusion provided by section 3(c)(1) would not have to register or be regulated as an investment company, under section 3(c)(1)(A) any such issuer, including any SBIC, "nonetheless is deemed to be an investment company for purposes of section 12(d)(1)." Thus, an SBIC which is wholly-owned by a business development company would be deemed to be an investment company for the purposes of section 12(d)(1) if that SBIC were relying upon section 3(c)(1).

[24] *See, e.g.*, Boston Capital Corp., Investment Company Act Releade No. 5353 (Apr. 22, 1968); Southeastern Capital Corp., Investment Company Act Release No. 6181 (Sept. 9, 1970); First Midwest Capital Corp., Investment Company Act Release No. 6213 (Oct. 15, 1970).

[25] Among the conditions in the orders cited in note 24 *supra* were the following: that the parent's investment in the SBIC subsidiary not exceed 25 percent of the parent's assets; that the subsidiary be wholly-owned; that the subsidiary comply with section 15 of the 1940 Act [15 U.S.C. 80a-15] with respect to any advisory or underwriting contracts and that the shareholders or directors of both the parent and the subsidiary approve any such contracts; that the shareholders of both the parent and subsidiary approve changes in the subsidiary's fundamental investment policies; that the parent individually and on a consolidated basis with the subsidiary meet the asset coverage requirements of section 18(a) of the 1940 Act [15 U.S.C. 80a-18(a)]; and that reports to stockholders by the parent include separate financials for the subsidiary.

These conditions were imposed because, even if the SBIC subsidiary could rely on then section 3(c)(1), section 48(a) of the 1940 Act [15 U.S.C. 80a-47(a)] prohibits a registered investment company from doing indirectly what it cannot do directly. If a registered investment company were permitted to form a subsidiary which would engage in investment company activities outside the substantive regulatory scheme created by the 1940 Act, the investment company and its investment company subsidiary both could violate certain substantive prohibitions of the 1940 Act, as well as section 48(a), to the detriment of the registered investment company's shareholders. Thus, any company which is primarily engaged in investment company activities and which is controlled by a registered investment company is also subject through the operation of section 48(a) to the regulatory requirements of the 1940 Act. This conclusion of law is reflected in the orders discussed in note 24 *supra*.

Congress obviously understood this problem, for as part of the 1980 Amendments if modified section 48 of the 1940 Act as it applies to business development companies. New section 65 of the 1940 Act [15 U.S.C. 80a-64] provides that section 48 not be construed to require any company which, although it is wholly-owned or controlled by a business development company, is not itself an investment company within the meaning of section 3(a) of the 1940 Act, to comply with the provisions of the 1940 Act solely because it is wholly-owned or controlled by a business development company. The legislative history makes clear that, unlike registered investment companies with SBIC subsidiaries, business development companies frequently own controlling interests in downstream affiliates which may be operating companies not within the ambit of section 3(a) of the 1940 Act. Accordingly, because Congress intended to encourage the operation of small, developing businesses and financially troubled businesses which were not engaged in investment company activities, it excluded such operating subsidiaries from the regulation imposed by the usual construction of section 48(a), discussed above. *See* Committee Report at 61 and S. Rep. No. 958, 96th Cong., 2d Sess. 37 (1980).

[26] The term "eligible portfolio company" is defined in section 2(a)(46) of the 1940 Act.

[27] *See also* Committee Report at 29 and S. Rep. No. 958, 96th Cong., 2d Sess. 15 (1980).

pyramiding limitations of section 12(d)(1). Because of this drafting error, and pursuant to the authority under sections 6(c), 38(a) and 59, the Commission is adopting interim rule 60a–1 to permit an SBIC to be a wholly-owned subsidiary of a business development company notwithstanding the restrictions of section 12(d)(1). However, notwithstanding the status of the subsidiary as a business development company itself and whether or not it was excluded from registration as an investment company by section 3(c)(1), such a subsidiary still would be subject to the regulatory provisions of the 1940 Act because its parent is a business development company whose investment company subsidiaries would also be subject to the 1940 Act's regulatory provisions through the application of section 65.[28] If a business development company which has such a wholly-owned subsidiary did not wish its subsidiary to be subject to certain of the regulatory requirements of the 1940 Act, it could file an application for exemptive relief.[29]

Procedural Matters

The Commission believes that the interim rules adopted today will correct inadvertent results of the 1980 Amendments and that their prompt adoption is required in order that business development companies might effectively provide capital to small, developing businesses and financially troubled businesses. In accordance with section 553(d)(1) of the Administrative Procedure Act ("APA") [5 U.S.C. 553(d)(1)], because each of these rules is exemptive in nature, publication thirty days before their effective dates is unnecessary. In accordance with section 553(b)(B) of the APA [5 U.S.C. 553(b)(B)], the Commission, for good cause, finds that notice and opportunity for public comment on the adoption of the interim rules are similarly not required because such notice and opportunity would be unnecessary and contrary to the public interest. However, the Commission is simultaneously soliciting public comment on whether these interim rules should be adopted as final rules.

[28] Section 65 states that section 48 of the 1940 Act shall apply to business development companies as if they were closed-end investment companies. *See* note 25 *supra*. Thus, a business development company cannot do indirectly through a subsidiary what it is prohibited from doing directly. This provision effectively regulates the actions of the subsidiary in much the same manner as its parent business development company.

[29] In this regard, the business development company might consider the conditions under which the exemptive orders mentioned in note 24 *supra* were issued.

TEXT OF RULES

Part 270 of Chapter II of Title 17 of the Code of Federal Regulations is hereby amended as follows:

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

1. By adding § 270.57b–1 to read as follows:

§ 270.57b–1 Exemption for downstream affiliates of business development companies.

Notwithstanding subsection (b)(2) of section 57 of the Act, the provisions of subsection (a) of that section shall not apply to any person (a) solely because that person is directly or indirectly controlled by a business development company or (b) solely because that person is, within the meaning of section 2(a)(3) (C) or (D) of the Act, an affiliated person of a person described in (a) of this section.

2. By adding § 270.60a–1 to read as follows:

§ 270.60a–1 Exemption for certain business development companies.

Section 12(d)(1) (A) and (C) of the Act shall not apply to the acquisition by a business development company of the outstanding voting securities of a small business investment company licensed to do business under the Small Business Investment Act of 1958 which is operated as a wholly-owned subsidiary of the business development company.

(Rules 57b–1 and 60a–1 are adopted pursuant to section 6(c) (15 U.S.C. 80a–6(c)), section 38(a) (15 U.S.C. 80a–37(a)) and section 59 (15 U.S.C. 80a–58) of the Act)

By the Commission.

George A. Fitzsimmons,

Secretary.

December 16, 1980.

[FR Doc. 80-39520 Filed 12-18-80; 8:45 am]
BILLING CODE 8010-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 522

Implantation or Injectable Dosage Form New Animal Drugs Not Subject to Certification; Revocation of Certain Regulations

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is revoking that portion of the regulations reflecting approval of a new animal drug application (NADA) providing for use of sodium pentobarbital injection for anesthesia in dogs and cats. Burns-Biotec Laboratories, Inc., sponsor of this NADA, requested the withdrawal of approval.

EFFECTIVE: December 29, 1980.

FOR FURTHER INFORMATION CONTACT: Leonard D. Krinsky, Bureau of Veterinary Medicine (HFV–216), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4093.

SUPPLEMENTARY INFORMATION: In a notice published elsewhere in this issue of the Federal Register, approval of NADA 46–588 and all supplements is being withdrawn. This document amends the regulation to delete that portion which reflects approval of this NADA.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(e), 82 Stat. 345–347 (21 U.S.C. 360b(e))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1) and redelegated to the Director of the Bureau of Veterinary Medicine (21 CFR 5.84), Part 522 is amended in § 522.1704 *Sodium pentobarbital injection* in paragraph (b)(2) by deleting the phrase "Nos. 000845 and".

Effective date. December 29, 1980.

(Sec. 512(e), 82 Stat. 345–347 (21 U.S.C. 360b(e)))

Dated: December 3, 1980.

Terence Harvey,

Deputy Director, Bureau of Veterinary Medicine.

[FR Doc. 80-39110 Filed 12-18-80; 8:45 am]
BILLING CODE 4110-03-M

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Tylosin; Revocation of Portion of Regulation

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration is revoking that portion of the regulations reflecting approval of a new animal drug application (NADA) providing for use of a 10-gram-per-pound tylosin (as tylosin phosphate) premix in making complete swine feeds. The feeds are indicated for increased rate of weight gain and improved feed efficiency. The sponsor, Illini Feeds, requested the withdrawal of approval.

EFFECTIVE DATE: December 29, 1980.

FOR FURTHER INFORMATION CONTACT:

David N. Scarr, Bureau of Veterinary Medicine (HFV–214), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1846.

SUPPLEMENTARY INFORMATION: In a notice published elsewhere in this issue of the Federal Register, approval of NADA 110–202 is withdrawn. This document amends the regulations to delete that portion which reflects approval of this NADA.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(e), 82 Stat. 345–347 (21 U.S.C. 360b(e))), under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1) and redelegated to the Bureau of Veterinary Medicine (21 CFR 5.84), Part 558 is amended in § 558.625 *Tylosin* by revoking paragraph (b)(55) and marking it "reserved".

Effective date. December 29, 1980.

(Sec. 512(e), 82 Stat. 345–347 (21 U.S.C. 360b(e)))

Dated: December 3, 1980.

Terence Harvey,

Acting Director, Bureau of Veterinary Medicine.

[FR Doc. 80-39119 Filed 12-18-80; 8:45 am]

BILLING CODE 4110-03-M

21 CFR Parts 510 and 558

New Animal Drugs for Use in Animal Feeds; Tylosin

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) amends the animal drug regulations to reflect approval of a new animal drug application (NADA) filed for Tyson Foods, Inc., providing for safe and effective use of 1-, 2-, and 5-gram-per-pound tylosin premix for making a complete swine feed, and to add this firm to the list of approved NADA sponsors.

EFFECTIVE DATE: December 19, 1980.

FOR FURTHER INFORMATION CONTACT:

Jack C. Taylor, Bureau of Veterinary Medicine (HFV–136), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5247.

SUPPLEMENTARY INFORMATION: Tyson Food, Inc., S. Johnson Rd., Springdale, AR 72764, is sponsor of NADA 121–290 submitted on its behalf by Elanco Products Co. The NADA provides for use of premixes containing 1, 2, and 5 grams of tylosin (as tylosin phosphate) per pound for making complete swine feed used to increase rate of weight gain and improve feed efficiency.

Approval of this NADA relied upon safety and effectiveness data contained in Elanco's approved NADA 12–491. Use of the data in NADA 12–491 to support this NADA was authorized by Elanco. This approval does not change the approved use of the drug. Consequently, approval of this NADA poses no increased human risk from exposure to residues of the animal drug, nor does it change the conditions of the drug's safe use in the target animal. Accordingly, under the Bureau of Veterinary Medicine's supplemental approval policy (42 FR 64367; December 23, 1977) the approval of this NADA has been treated as would an approval of a Category II supplement and did not require reevaluation of safety and effectiveness data in NADA 12–491.

Tyson Food, Inc., has not previously been included in the regulations in the list of approved sponsors. The regulations are amended to reflect this approval and to include this firm in the list of sponsors.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (formerly the Hearing Clerk's office) (HFA–305), Food and Drug Administration, Room 4–62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The agency has determined pursuant to 21 CFR 25.24(d)(1)(i) (proposed December 11, 1979; 44 FR 71742) that this action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1) and redelegated to the Bureau of Veterinary Medicine (21 CFR 5.83), Part 510 and 558 are amended as follows:

1. In Part 510, § 510.600 is amended by adding a new sponsor alphabetically to paragraph (c)(1) and numerically to paragraph (c)(2) to read as follows:

§ 510.600 Names, addresses, and drug labeler codes of sponsors of approved applications.

* * * * *

(c) * * *

(1) * * *

Firm name and address	Drug labeler code
* * * * * *	
Tyson Foods, Inc., S. Johnson Rd., Springdale, AR, 72764	035221
* * * * * *	

(2) * * *

Drug labeler code	Firm name and address
* * * * *	
035221	Tyson Foods, Inc., S. Johnson Rd., Springdale, AR, 72764.
* * * * *	

2. In Part 558, § 558.625 is amended by adding new paragraph (b)(75) to read as follows:

§ 558.625 Tylosin.

* * * * *

(b) * * *

(75) to 035221: 1, 2, and 5 grams per pound: Paragraph (f)(1)(vi)(*a*) of this section.

* * * * *

Effective date. This regulation is effective December 19, 1980.

(Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)))

Dated: December 10, 1980.

Gerald B. Guest,

Acting Director, Bureau of Veterinary Medicine.

[FR Doc. 80-39114 Filed 12-18-80; 8:45 am]

BILLING CODE 4110-03-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1952

Approval of Supplement of Wyoming State Plan

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Final rule.

SUMMARY: This notice approves a State plan supplement containing the amended Wyoming Rules of Practice and Procedure. The rules incorporate the amendments in Wyoming's Enrolled Act No. 13, which amended the Wyoming Occupational Health and Safety Act (WOHS Act). The effective date of the revised rules was July 8, 1980.

EFFECTIVE DATE: December 19, 1980.

FOR FURTHER INFORMATION CONTACT:

Charlie Boyd, Project Officer, Office of State Programs, Occupational Safety and Health Administration, 200

Constitution Avenue, N.W., Washington, D.C. 20210, (202) 523–8081.

SUPPLEMENTARY INFORMATION:

Background

Part 1953 of Title 29, Code of Federal Regulations, provides procedures under section 18 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 667) (hereinafter referred to as the Act) for review of changes and progress in the development and implementation of State plans which have been approved in accordance with section 18(c) of the Act and Part 1902 of this Chapter.

On May 3, 1974, a notice was published in the Federal Register (39 FR 15394) of the approval of the Wyoming plan and the adoption of Subpart BB of Part 1952 containing the decision. On July 11, 1980, the State of Wyoming submitted a supplement to its plan involving an Evaluation Change (see Subpart D of Part 1953). The change contained the amended Wyoming Rules of Practice and Procedure.

Wyoming Rules of Practice and Procedure were amended to incorporate the appropriate civil penalties contained in the State's Enrolled Act No. 13. The amended rules now generally parallel the Federal rules and regulations pertaining to civil penalties and general enforcement.

Description of the Supplement

The supplement contains the revised Wyoming Rules of Practice and Procedure which have been amended as follows: (1) To convert to a statutory coding system, (2) to add a definition for "employee representative," (3) to incorporate appropriate civil penalties, (4) to provide for prosecution by the State Attorney General or his representative, and (5) to provide procedures for appropriate hearings to be conducted by a hearing examiner, the review board or the Occupational Health and Safety Commission.

Location of the Plan and its Supplement for Inspection and Copying

A copy of the revised Wyoming Rules of Practice and Procedure, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, Occupational Safety and Health Administration, Federal Office Building, Room 15010, 1961 Stout Street, Denver, Colorado 80202; Occupational Safety and Health Administration, Office of State Programs, Room N3613, 200 Constitution Avenue, N.W., Washington, D.C. 20210; the Wyoming Occupational Health and Safety Department, 200 East Eight Avenue, Cheyenne, Wyoming 82001.

Public Participation

Under § 1953.2 of this Chapter, the Assistant Secretary may prescribe alternative procedures to expedite the review of changes to State plans or for any other good cause which may be consistent with applicable law. The Assistant Secretary finds that the revised Wyoming Rules of Practice and Procedure are substantially identical to the Federal Occupational Safety and Health Rules and Regulations pertaining to penalties and general enforcement, and that accordingly, public comment on the supplement is not necessary.

Decision

After careful consideration, the Wyoming plan supplement outlined above is approved under Part 1953. This decision incorporates the requirements of the Act and implementing regulations applicable to State plans generally. In addition, Subpart BB of 29 CFR Part 1952 is hereby amended to reflect this approved plan change. Accordingly, § 1952.344 of Subpart BB is hereby amended by adding a new paragraph (f) as follows:

§ 1952.344 Completed developmental steps.

* * * * *

(f) In accordance with § 1952.343(b), Wyoming has promulgated its rules of practice and procedure which were approved by the Assistant Secretary on December 11, 1980.

(Sec. 18 Pub. L. 91–596, 84 Stat. 1608 (29 U.S.C. 667))

Signed at Washington, D.C. this 11th day of December 1980.

Eula Bingham,

Assistant Secretary of Labor.

[FR Doc. 80-39382 Filed 12-18-80; 8:45 am]

BILLING CODE 4510-26-M

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29 CFR Part 1952

Approval of Supplement to Wyoming State Plan

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Final rule.

SUMMARY: This notice approves a State Plan supplement containing Enrolled Act No. 13, which amends the Wyoming Occupational Health and Safety Act (WOHS Act). The amendments to the WOHS Act replaced certain criminal penalties with appropriate civil penalties, so that the penalties now established by the WOHS Act generally parallel OSHA's penalties. The amendments were effective on June 2, 1980.

EFFECTIVE DATE: December 19, 1980.

FOR FURTHER INFORMATION CONTACT: Charles Y. Boyd, Project Officer, Office of State Programs, Occupational Safety and Health Administration, 200 Constitution Avenue, N.W., Washington, D.C. 20210, (202) 523–8081.

SUPPLEMENTARY INFORMATION:

Background

Part 1953 of Title 29, Code of Federal Regulations, provides procedures under Section 18 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 667) (hereinafter referred to as the Act) for review of changes and progress in the development and implementation of State plans which have been approved in accordance with Section 18(c) of the Act and Part 1902 of this chapter.

On May 3, 1974, a notice was published in the Federal Register (39 FR 15394) of the approval of the Wyoming plan and the adoption of Subpart BB of Part 1952 containing the decision. On June 11, 1980, the State of Wyoming submitted a supplement to its plan involving an Evaluation Change (see Subpart D of Part 1953). The Change contained the State's Enrolled Act No. 13, which amends the WOHS Act.

The Wyoming plan was approved with language in its WOHS Act which could be interpreted to require criminal prosecution for the assessment and collection of all penalties. The State, however, considered its penalties to be civil and operated under that interpretation, with penalties assessed by a State administrative review board. In July, 1978, the Wyoming Attorney General rendered an opinion that all penalties under the State WOHS Act were criminal. Under this opinion, Wyoming law provided for penalty collection from employers only upon their conviction in criminal court, where a higher burden of proof and potential for jury trial exist. The failure of the State to amend its enabling legislation to provide for the more expeditious civil collection of penalties further negated any assurances or reasonable expectations that the plan would meet the enforcement criteria for an effective State plan.

Because of OSHA's concern about these issues, a letter was sent to the Director of the Wyoming Occupational Health and Safety Department on August 15, 1979, asking him to show cause why OSHA should not withdraw approval of the Wyoming plan. However, on March 4, 1980, the State legislature passed amendments to the WOHS Act which satisfied the

objections raised by OSHA in the letter of August 15,

Description of the Supplement

The supplement contains Wyoming Enrolled Act No. 13, which amends the WOHS Act by replacing certain criminal penalties with appropriate civil penalties. Amendments to the WOHS Act became effective on June 2, 1980. The penalty section of the State law now generally parallels the penalty section of the Federal Occupational Safety and Health Act.

Location of the Plan and its Supplement for Inspection and Copying

A copy of the Wyoming Enrolled Act No. 13, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, Occupational Safety and Health Administration, Federal Office Building, Room 15010, 1961 Stout Street, Denver, Colorado 80202; Occupational Safety and Health Administration, Office of State Programs, Room N-3613, 200 Constitution Avenue N.W., Washington, D.C. 20210; the Wyoming Occupational Health and Safety Department, 200 East Eight Avenue, Cheyenne, Wyoming 82001.

Public Participation

Under § 1953.2 of this chapter, the Assistant Secretary may prescribe alternative procedures to expedite the review of changes to State plans or for any other good cause which may be consistent with applicable law. The Assistant Secretary finds that the Wyoming penalties in the amended statute are substantially identical to those contained in Section 17 of the Occupational Safety and Health Act, and that good cause is therefore shown that public comment on the supplement is not necessary.

Decision

After careful consideration, the Wyoming plan supplement outlined above is approved under Part 1953. This decision incorporates the requirements of the Act and implementing regulations applicable to State plans generally.

In accordance with this decision, Subpart BB of 29 CFR Part 1952 is amended by adding a new section as follows:

§ 1952.345 Changes to approved plans.

(a) In accordance with Subpart D of Part 1953 of this Chapter, Wyoming amended the WOHS Act by replacing certain criminal penalties with appropriate civil penalties, effective June 2, 1980. This change was approved by the Assistant Secretary on December 11, 1980.

(Sec. 18, Pub. L. 91-596, 84 Stat. 1608 (29 U.S.C. 667))

Signed at Washington, D.C. this 11th day of December 1980.

Eula Bingham,

Assistant Secretary of Labor.

[FR Doc 80-39381 Filed 12-18-80; 8:45 am]

BILLING CODE 4510-26-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 166

Defense Contracting; Reporting Procedures on Defense Related Employment

AGENCY: Office of the Secretary of Defense.

ACTION: Amendment of final rule.

SUMMARY: This rule is the fiscal year 1980 update of the section listing DoD contractors receiving negotiated contract awards of $10 million or more. The regulation is published to comply with the provisions of Section 410, Pub. L. 91-121, November 19, 1969.

EFFECTIVE DATE: September 30, 1980.

FOR FURTHER INFORMATION CONTACT: Mrs. Cynthia V. Springer, Office of the Director for Information Operations and Reports, Washington Headquarters Services, The Pentagon, Washington, DC 20301. Telephone (202) 694-5614.

SUPPLEMENTARY INFORMATION: In FR Doc. 70-15846 published in the Federal Register on November 25, 1970 (35 FR 18040), the Office of the Secretary of Defense published a final rule establishing criteria, prescribing procedures, and assigning responsibilities for monitoring the program within the Department of Defense. Subsequently, paragraphs (a) and (d) of § 166.11, which constitutes the list of DoD contractors receiving negotiated contract awards for $10 million or more, were updated for fiscal years 1971 (36 FR 18464); 1972 (37 FR 18727); 1973 (38 FR 25990); 1974 (39 FR 32985); 1975 (40 FR 44135); 1976 (41 FR 20466); 1977 (43 FR 1617); 1978 (44 FR 3049); and 1979 (44 FR 75631).

Accordingly, § 166.11 of this part is revised to read as follows:

§ 166.11 Department of Defense contractors receiving negotiated contract awards of $10 million or more.

Fiscal year 1980:

A A I Corp.
A C S Construction Co.
A M General Corp.
A S E Texas, Inc.
A T O, Inc.
Abbott Products, Inc.
Adobe Refining Co.
Advanced Technology, Inc.
Aero Corp.
Aerojet General Corp.
Aerospace Corp.
Airesearch Mfg. Co. of Arizona
Airesearch Mfg. Co. of California
Airlift International, Inc.
Alascom, Inc.
Altama Delta Corp.
American Airlines, Inc.
American Development Corp.
American Electronic Laboratories, Inc.
American Home Products Corp.
American President Lines, Ltd.
American Telephone & Telegraph Co.
American Trading Production
Amex Systems, Inc.
Amoco Oil Co.
Amron Corp.
Analysis & Technology, Inc.
Analytic Sciences Corp.
Arco Petroleum Co.
Arinc Research Corp.
Aro, Inc.
Ashland Oil, Inc.
Ashland Petroleum Co.
Atlantic Research Corp.
Atlantic Richfield Co.
Atlas Processing Co.
Automation Industries, Inc.
Avco Corp.
Avco Everett Research Laboratory
Avondale Shipyards, Inc.
Aydin Corp.
Ayer N W ABH International, Inc.
B D M Corp.
B D M Services Co.
Baltimore Gas & Electric Co.
Bates Ted & Co., Inc.
Bath Iron Works Corp.
Battelle Memorial Institute
Bauer Max Meat Packer
Beech Aerospace Services, Inc.
Beech Aircraft Corp.
Belcher Oil Co.
Bell & Howell Co.
Bendix Corp.
Bendix Field Engineering Corp.
Bethlehem Steel Co.
Blaw Knox Foundry & Mill Machinery, Inc.
Boeing Aerospace Co.
Boeing Co.
Boeing Services International, Inc.
Boeing Vertol Co.

Bolt Beranek & Newman, Inc.
Booz Allen & Hamilton, Inc.
Brantley Construction Co., Inc.
Braswell Shipyards, Inc.
Brooks & Perkins, Inc.
Brunswick Corp.
Bulova Watch Co., Inc.
Bunker Ramo Corp.
Burroughs Corp.
C D I Corp.
C Three Inc.
California, University of
Calspan Corp.
Caltex Oil Products Co.
Campbell Soup Co.
Carnation Co.
Carolina Power & Light Co.
Central Gulf Lines, Inc.
Centre Mfg. Co.
Chamberlain Mfg. Corp.
Chandler Evans Corp.
Charles Stark Draper Laboratories, Inc.
Chesapeake & Potomac Telephone Co.
Chevron U S A, Inc.
Chromalloy American Corp.
Chrysler Corp.
Chrysler Defense, Inc.
Cincinnati Electronics Corp.
Cities Service Oil Co.
Coastal Dry Dock Repair
Coastal States Marketing, Inc.
Coloney Wayne H Co., Inc.
Colt Industries, Inc.
Colt Industries Operating Corp.
Comarco, Inc.
Command Control & Communication
Communications Satellite Corp.
Computer Sciences Corp.
Comtech Telecommunications Corp.
Condec Corp.
Conoco, Inc.
Control Data Corp.
Cubic Corp.
Curtiss Wright Corp.
Cutler Hammer, Inc.
D M & S Inc.
Data Design Laboratories
Day & Zimmerman, Inc.
Dayton, University of
Delta Refining Co.
Detroit Diesel Engine Corp.
Devils Lake Sioux Mfg. Corp.
Diagnostic Retrieval Systems, Inc.
Dickman Construction Co.
Doss Aviation, Inc.
Douglas Oil Co. of California
Dubuque Packing Co.
Dynalectron Corp.
Dynamics Research Corp.
E G & G, Inc.
E S L Inc.
E Systems, Inc.
East Wind Industries, Inc.
Eastman Kodak Co.
Eaton Corp.
Edgington Oil Co.
Edo Corp.
Electrospace Systems, Inc.
Emerson Electric Co.
Energy Specialists, Inc.
Engineering Research, Inc.
Exxon Corp.
F K C Engineering Co.
F M C Corp.
F N Mfg., Inc.
Fairchild Camera & Instrument Corp.
Fairchild Industries, Inc.
Farrell Lines, Inc.
Federal Electric Corp.
Flanigan James J Shipping Corp.
Florida Power & Light Co.
Flying Tiger Line, Inc.
Ford Aerospace & Communications
Fugro National, Inc.
Fuller Oil Co.
G T E Sylvania, Inc.
Garrett Corp.
General Defense Corp.
General Dynamics Corp.
General Electric Co.
General Food Corp.
General Mills, Inc.
General Motors Corp.
General Research Corp.
Georgia Technical Research Institute
Getty Oil Co.
Getty Refining & Marketing Co.
Gibbs & Cox, Inc.
Gibraltar Fabrics, Inc.
Gladieux Refinery, Inc.
Glenn Berry Mfg. Inc.
Global Associates
Golden Eagle Refining Co., Inc.
Good Hope Refineries, Inc.
Goodrich B F Co.
Goodyear Aerospace Corp.
Gould, Inc.
Grimes Oil Co., Inc.
Grumman Aerospace Corp.
Guam Oil & Refining Co., Inc.
Gulf Apparel Corp.
Gulf Oil Corp.
Gulf Power Co.
H R B Singer, Inc.
Hamilton Technology, Inc.
Harris Corp.
Harris Frederic R, Inc.
Harsco Corp.
Hawaiian Electric Co., Ltd.
Hawaiian Independent Refinery, Inc.
Hayes International Corp.
Hazeltine Corp.
Henningston Durham Richardson
Henrys Hickory House
Hercules, Inc.
Hess Oil Virgin Island Corp.
Hewlett Packard Co.
Honeywell, Inc.
Honeywell Information Systems, Inc.
Hughes Aircraft Co.
Hunt Building Corp.
I C I Americas, Inc.
I T T Arctic Services
I T T Gilfillan, Inc.
Illinois Institute of Technology
Ingersoll Rand Co.
Institute for Defense Analysis
Intercontinental Mfg. Co.
International Business Machines Co.
International Telephone & Telegraph Corp.
Interstate Electronics Corp.
Itek Corp.
Jackson Oil Co.
Jacksonville Shipyards, Inc.
Jaycor
Jersey Central Power & Light Co.
Jets Services, Inc.
Johns Hopkins University
Kaiser Aerospace & Electronics Co.
Kaman Aerospace Corp.
Kaman Sciences Corp.
Kenco Refining, Inc.
Kentron Hawaii, Ltd.
Kings Point Mfg. Co.
Kollmorgen Corp.
Kraft Co.
Lancer Clothing Corp.
Landmark Beef Processors, Inc.
Lanson Industries, Inc.
Lear Siegler, Inc.
Libby Welding Co.
Linkabit Corp.
Litton Industries Inc.
Litton Systems, Inc.
Lockheed Corp.
Lockheed Electronics Co., Inc.
Lockheed Missiles & Space Co., Inc.
Lockheed Shipbuilding Construction
Loggins Meat Co.
Logicon, Inc.
Loral Corp.
Lykes Bros. Steamship Co., Inc.
M B Associates
Magnavox Co.
Magnavox Government & Industrial Electronics Co.
Man Tech Corp.
Management & Technical Services Co.
Marinette Marine Corp.
Marion Corp
Marquardt Co.
Martin Marietta Aluminum Sales, Inc.
Martin Marietta Corp.
Mason & Hanger Silas Mason Co.
Mason Chamberlain, Inc.
Massachusetts Institute of Technology
Mayer Oscar & Co., Inc.
McDonnell Douglas Corp.
Merck & Co., Inc.
Midland Ross Corp.
Mine Safety Appliances Co.
Minnesota Mining & Mfg. Co.
Mitre Corp.
Mobil Oil Corp.
Morrell John & Co.
Motorola, Inc.
National Steel & Shipbuilding Co.
Navajo Refining Co.
Nestle Co., Inc.
New Mexico State University
Newport News Shipbuilding & Dry Dock Co.
Norden Systems, Inc.
Norfolk Dredging Co.
Norris Industries, Inc.
North Pole Refining Co.
Northrop Corp.
Northrop Worldwide Aircraft Services Inc.
Northwest Airlines, Inc.
Norton Co.
OKC Trading Co.
ORI, Inc.
Ocean Technology, Inc.
Olin Corp.

Oshkosh Truck Corp.
P & B Services
Paccar, Inc.
Pacific Northern Oil Corp.
Page Airways, Inc.
Pan American World Airways, Inc.
Papa Mario & Sons, Inc.
Parker Hannifin Corp.
Parsons Ralph M Co., Inc.
Pennsylvania State University
Perkin Elmer Corp.
Philip Morris, Inc.
Phillips Petroleum Co.
Pioneer Refining Co.
Planning Research corp.
Pneumo Corp.
Powerine Oil Co.
Pride Refining, Inc.
Proctor & Gamble Distributing Co.
Q E D Systems, Inc.
R & D Associates
R C A Corp.
R C A Global Communications, Inc.
Rand Corp.
Raytheon Co.
Raytheon Service Co.
Reelfoot Packing Co.
Remington Arms Co.
Reynolds R J Industries, Inc.
Riedel International, Inc.
Rochester, University of
Rockwell International Corp.
Rohr Industries, Inc.
Rosenblatt M Son, Inc.
S R I International
San Francisco Welding & Steel Fabricating
Sanders Associates, Inc.
Santa Barbara Research Center
Sargent Fletcher Co.
Saxon B B Co., Inc.
Science Applications, Inc.
Sea Land Service, Inc.
Selma Apparel Corp.
Shell Oil Co.
Simmonds Precision Products
Simplex Wire & Cable Co.
Singer Co.
Sippican Corp.
Smith L H Oil Corp.
Softech, Inc.
Solar Turbines International
Southern California Edison Co.
Southern California, University of
Southern Packaging & Storage Co.
Southern Union Refining Co.
Southwest Marine, Inc.
Southwest Research Institute
Southwest Truck Body
Southwestern Refining Co., Inc.
Sparton Corp.
Spears Associates, Inc.
Sperry Corp.
Standard Mfg, Co.
Stanford University
Steinberg Bros. Inc.
Steuart Petroleum Co.
Stewart Warner Corp.
Summa Corp.
Sun Chemical Corp.
Sun Co., Inc.
Sun Shipbuilding Dry Dock
Sundstrand Corp.
Superior Welding, Inc.
Supreme Beef Co., Inc.
Swift & Co.
System Development Corp.
System Planning Corp.
Systems Consultants, Inc.
Systems Research Laboratories, Inc.
T R W Colorado Electronics, Inc.
T R W Inc.
Taylor T H, Inc.
Technology Development Corp.
Technology Service Corp.
Tektronix, Inc.
Teledyne Brown Engineering
Teledyne C A E
Teledyne Electronics
Teledyne, Inc.
Teledyne Industries, Inc.
Teledyne M E C
Teletype Corp.
Tennessee Apparel Corp.
Tesoro Alaskan Petroleum Corp.
Texas Instruments, Inc.
Texas, University of
Textron, Inc.
Thiokol Corp.
Thompson J Walter Co.
Tierney Mfg. Co.
Tiger International, Inc.
Todd Shipyards Corp.
Tonkawa Refining Co.
Total Petroleum, Inc.
Tracor, Inc.
Trans International Airlines, Inc.
Transamerica Airlines, Inc.
Transamerica Delaval, Inc.
Treadwell Corp.
Tri Par Combustion Corp.
Union Carbide Corp.
Union Oil Co. of California
Uniroyal, Inc.
United States Lines Co.
United Technologies Corp.
United Terminals, Inc.
V S E Corp.
Valmac Industries, Inc.
Vanguard Oil & Service Co.
Varian Associates
Veda, Inc.
Virginia Electric & Power Co.
Vought Corp.
Wallace & Wallace Fuel Oil, Inc.
Washington, University of
Watkins Johnson Co.
Western Electric Co., Inc.
Western Gear Corp.
Western Union International, Inc.
Western Union Telegraph Co.
Westinghouse Electric Corp.
Whittaker Corp.
Williams Research Corp.
Wilson & Co., Inc.
Woodson A P Co.
World Airways, Inc.
Wylie Corp., The
Wyoming Refining Co.
Xerox Electro Optical Systems, Inc.
Zantop International Airlines, Inc.
Zapata Marine Services, Inc.

M. S. Healy,

OSD Federal Register Liaison Officer, Washington Headquarters Services, Department of Defense.

December 16, 1980.

[FR Doc. 80-39544 Filed 12-18-80; 8:45 am]
BILLING CODE 3810-70-M

DEPARTMENT OF THE INTERIOR

Heritage Conservation and Recreation Service

36 CFR Part 1208

Historic Preservation Certifications Pursuant to the Tax Reform Act of 1976 and the Revenue Act of 1978

AGENCY: Heritage Conservation and Recreation Service, Interior.

ACTION: Final rule.

SUMMARY: This final rule amends the procedures by which owners desiring tax benefits for rehabilitations of historic buildings or desiring to demolish buildings within Registered Historic Districts, apply for certifications pursuant to the Tax Reform Act of 1976, as extended by the Tax Treatment Extension Act of 1980. This rule also incorporates the technical corrections contained in the Revenue Act of 1978.

EFFECTIVE DATE: These regulations take effect on December 19, 1980.

FOR FURTHER INFORMATION CONTACT: Sally Oldham, Supervisory Historian, Division of the National Register of Historic Places, (202) 343-6401, or H. Ward Jandl, Supervisory Historian, Technical Preservation Services Division, (202) 343-6384.

SUPPLEMENTARY INFORMATION: On October 7, 1977, final rulemaking was published in the Federal Register (42 FR 54548) to amend Chapter I Title 36 of the Code of Federal Regulations by adding a new Part 67 concerning historic preservation certifications pursuant to the Tax Reform Act of 1976 (Pub. L. 94-455, 90 Stat. 1519) made by the Secretary of the Interior (this rulemaking has since been designated and transferred to Chapter XII, Title 36 CFR Part 1208). On November 6, 1978, the Revenue Act of 1978 (Pub. L. 95-600, 92 Stat. 2828) became law, necessitating amendments to regulations. Sec. 701(f) of this act clarifies portions of Section 2124 of the Tax Reform Act of 1976, while Sec. 315 provides a new tax incentive—an investment tax credit—to encourage the rehabilitation of older buildings. Certifications of rehabilitation are required by the Secretary if an owner chooses to elect the tax credit when the structure is a "certified historic structure." The provisions of the Tax Reform Act of 1976 were extended in the Tax Treatment Extension Act of 1980.

On May 23, 1980, proposed rulemaking was published in the Federal Register 45 FR 34910 to incorporate the corrections relating to historic preservation certifications contained in the Revenue Act of 1978, to incorporate comments

received on the statute certification process, to make minor modifications to the existing certification process, and to more fully explain the process for appealing certification decisions.

To permit a public understanding of the tax-related certifications made by the Secretary of the Interior, the following general description is given of the tax provisions contained in Section 2124 of the Tax Reform Act of 1976, as amended by Sec. 701(f) of the Revenue Act of 1978:

1. Section 2124(a). (Section 191 of the Internal Revenue Code of 1954). Permits a 60-month amortization of certain rehabilitation expenses made in connection with qualified depreciable properties;

2. Section 2124(b). (Section 280B of the Internal Revenue Code of 1954). Disallows a deduction for demolition of qualified depreciable properties;

3. Section 2124(c). (Section 167(n) of the Internal Revenue Code of 1954). Generally precludes accelerated depreciation for structures built on the site of qualified depreciable properties;

4. Section 2124(d). (Section 167(o) of the Internal Revenue Code of 1954). Provides special depreciation rules for qualified rehabilitated property;

5. Section 2124(e). (Sections 170(f)(3), 2055(e)(2) and 2522(c)(2) of the Internal Revenue Code of 1954). Amends charitable contribution deductions on income, estate, and gift taxes to liberalize deductions for conservation purposes (including historic preservation).

The term "depreciable properties" as used above generally means those properties subject to the allowance for depreciation under Section 167 of the Internal Revenue Code of 1954 and generally excludes owner-occupied homes.

The following general description is given of the tax provision contained in Section 315 of the Revenue Act of 1978:

1. Section 315 (Sections 38 and 48 of the Internal Revenue Code of 1954). Permits an investment tax credit for expenses incurred in rehabilitating certain depreciable properties.

Section 2124 of the Tax Reform Act and Section 315 of the Revenue Act as briefly described above require the Secretary of the Interior to make one or more of the following classes of certifications:

a. Certified Historic Structures. All the tax provisions described above (except subsection 2124(e)) are related to so-called "Certified Historic Structures," which, generally, are defined as qualified depreciable properties of historic character which are either listed in the National Register or are located within a Registered Historic District and certified by the Secretary as contributing to the significance of the district. For purposes of the demolition provisions, any structure located in a Registered Historic District is considered a "Certified Historic Structure" unless the Secretary of the Interior has determined, prior to the demolition of the structure, that it is not of historic significance to the district.

b. Certified Rehabilitations. In order for the tax consequences relating to rehabilitation to accrue, the Secretary must determine not only that the rehabilitation was done to a certified historic structure but also that it meets certain standards with respect to the historic character of the property.

c. Certified Statutes and Certified State or Local Historic Districts. Qualified historic structures located in historic districts designated under a statute of the appropriate State or local government are subject to the tax consequences discussed above if the statute is certified by the Secretary as containing criteria which will substantially achieve the purposes of preserving and rehabilitating buildings of historic significance to the district and if the district is certified by the Secretary as meeting substantially all the requirements for the listing of districts in the National Register.

Additional Considerations

These regulations are needed in order to provide guidance to the public as well as to government employees responsible for the implementation of section 2124 of the Tax Reform Act of 1976, as amended by Section 701(f) of the Revenue Act of 1978, and Section 315 of the Revenue Act of 1978. Evaluation of the effectiveness of the regulations after issuance will be based upon comments received from offices within the Department of the Interior, the Internal Revenue Service and Treasury Department, and other government agencies, and the public. Comments upon the interim regulations governing the certification of statutes published August 10, 1977 in the Federal Register (36 CFR 67.9) were described and taken into consideration in the proposed rulemaking for all certifications published May 23, 1980 in the Federal Register.

Public Comments

Thirteen comments were received in response to the proposed regulations. One comment questions why the State Historic Preservation Officer is not compelled to sign Part 1 of the Historic Preservation Certification Application form when a property appears to meet the necessary criteria. Although the State Historic Preservation Officer is required to make a substantive judgment as to whether the property meets the appropriate criteria or standards, this provision was included in recognition that State Historic Preservation Officers have established priorities for the processing of nominations and State staffs and review boards may be unable to process nominations prompted by owners wishing to use the tax benefits within the time frame (30 months) specified under Internal Revenue Service regulations 26 CFR Part 1 and 7. After careful consideration, it was decided to leave this provision intact.

One comment was received regarding who may act as a Historic Preservation Officer for purposes of making official recommendations on historic preservation program actions such as Tax Reform Act certification review. This subject is addressed in regulations governing Criteria for Comprehensive Statewide Historic Surveys and Plans, 36 CFR Part 1201.

Regarding certifications of significance, two comments were received addressing the nature and quantity of information needed to make a professional determination. As a result § 1208.4 has been revised to detail documentation required 1) in the brief statement of significance; 2) where significant interior spaces are involved; and 3) where a structure is proposed to be or has been moved into a Registered Historic District or within such a district.

The "Standards for Evaluating Structures Within Registered Historic Districts" have been revised to more precisely define those situations where a structure is considered not to contribute to the historic significance of a district.

One comment objected to listings which are more than one structure but not designated historic districts being treated as a "certified historic structure" if the resource is under a single ownership. This provision was designed to permit greater flexibility when demolitions of secondary, nonsignificant structures were contemplated but conversely would have required certification of rehabilitation to take advantage of the Investment Tax Credit. Accordingly, this proposed revision has been modified to assume that certification and decertification of individual components of such listings will be the rule except in cases where the components are judged to have been related historically to serve an overall purpose such as a mill complex, an industrial plant or a housing complex.

Some confusion has arisen concerning the interaction of the preservation provisions of Section 2124 of the Tax Reform Act of 1976 and the Investment Tax Credit provision of the Revenue Act of 1978. In order to use the Investment Tax Credit a certification of rehabilitation is required by statute for certified historic structures (see Section 315 (g) (2) (B) (iv)), which are defined as buildings individually listed in the National Register or those located within Registered Historic Districts when the building has been certified for significance. Therefore, if a building within a Registered Historic District has not been certified for significance, a taxpayer may elect the Investment Tax Credit without having his rehabilitation plans reviewed by the Secretary. However, the taxpayer should be aware that if a non-certified rehabilitation of a building within a Registered Historic District is undertaken, he will be subject to the provisions included in Sec. 167(n) if the rehabilitation constitutes a substantial alteration of the building. A definition of substantial alteration has been added to § 1208.2 to clarify these situations. If a building is substantially altered, it may be removed from the National Register of Historic Places or certified as non-contributing within a district. The delisting or decertification is considered effective as of the date of issue and is not considered to be retroactive. In each case the Internal Revenue Service will be notified of the substantial alteration. The tax consequences regarding Sec. 38 and 48 of the code will be determined by the Secretary of Treasury.

Regarding certifications of non-significance, § 1208.5 has been revised to indicate that a condemnation order may be submitted as evidence to support such a request, but will not of itself constitute sufficient evidence to warrant certification of non-significance.

Regarding preliminary certifications of significance, a section has been added to § 1208.4 to indicate that preliminary certifications will automatically be finalized as of the date of individual listing on the National Register or the date of listing or certification of the historic district. If information included in the nomination differs substantially from that reviewed with the preliminary certification request, however, the Secretary may choose to review the preliminary action a second time with the new material to make a judgment as to whether a structure should remain designated a certified historic structure. Regarding preliminary certifications of rehabilitation, § 1208.6 has been amended to make clear that certification of significance (either preliminary or final) must be requested at the time of the request for preliminary approval of rehabilitation plans.

Section 1208.3(a) regarding who may apply for certification of significance and certified rehabilitation has been expanded to indicate that if someone other than the fee simple owner applies, the application must be accompanied by a letter from said owner indicating that he is aware of the application and has no objection to the request for certification. Clarification is included that the Secretary may undertake certifications without a request from the owner after notifying the owner and allowing a comment period.

Revisions to § 1208.6, certifications of rehabilitation, were made to provide guidance where substantive changes in the work, as approved, are contemplated and where insufficient information is received to make an evaluation of the rehabilitation.

One comment raised the possibility of a rehabilitation so destructive that it results in the loss of the historic or architectural qualities for which the historic structure was originally certified or listed. Accordingly a statement detailing the consequences of such an action has been added § 1208.6(i).

A question has arisen regarding the law's requirement that rehabilitation must be certified as being "consistent with the historic character of such property or the district in which such property is located." In situations involving a rehabilitated structure in a historic district, the Department of the Interior will review the work both as it affects the historic building and its immediate environment and make a certification decision accordingly.

Finally, a new section has been added to § 1208.9 to coordinate the determination of eligibility process with the certification of State and local districts. In most cases we anticipate that certified districts will also meet the requirements set forth in regulations governing determinations of eligibility (36 CFR Part 1204). Therefore, where possible, the Secretary will determine eligible a historic district at the time of certification. Cases where concurrent action will not be possible include districts where for local planning purposes, boundaries may include buffer zones or vacant land areas which would not be acceptable as part of the historic resource for National Register listing.

This rulemaking is developed under the authority of Section 101(a)(1) of the National Historic Preservation Act of 1966 U.S.C. 470a-1(a) (170 ed.), as amended, Section 2124 of the Tax Reform Act of 1976, 90 Stat. 1519, and sections 701(f) and 315 of the Revenue Act of 1978, 92 Stat. 2828. In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4331, et. seq.), the Heritage Conservation and Recreation Service has prepared an environmental assessment of these regulations. Based on this assessment, it is determined that implementation of the regulations is not a major Federal action that would have a significant effect on the quality of the human environment and that an environmental impact statement is not required. The assessment, on file in the office of the Associate Director for Cultural Programs, Heritage Conservation and Recreation Service, U.S. Department of the Interior, 440 G Street N.W., Washington, D.C. 20243, is available for public inspection. The Department of the Interior has determined that this document is not a significant rule and does not require a regulatory analysis under E.O. 12044 and 43 CFR Part 14.

Drafting Information

The originators of these procedures are Sally Oldham of the National Register of Historic Places (202) 343-6401 and Ward Jandl of Technical Preservation Service (202) 343-6384.

Dated: December 11, 1980.

Chris Therral Delaporte,

Director, Heritage Conservation and Recreation Service.

In consideration of the foregoing comments, 36 CFR Part 1208 is revised as follows:

PART 1208—HISTORIC PRESERVATION CERTIFICATIONS PURSUANT TO THE TAX REFORM ACT OF 1976 AND THE REVENUE ACT OF 1978

Sec.

1208.1 The Tax Reform Act of 1976 and the Revenue Act of 1978.
1208.2 Definitions.
1208.3 Introduction to certifications of significance and rehabilitation.
1208.4 Certifications of historic significance.
1208.5 Standards for evaluating structures within Registered Historic Districts.
1208.6 Certifications of rehabilitation.
1208.7 Standards for rehabilitation.
1208.8 Certifications of statutes.
1208.9 Certifications of State or local historic districts.
1208.10 Appeals.

Authority: Section 101(a)(1) of the National Historic Preservation Act of 1966 U.S.C. 470a-1(a) (170 ed.), as amended, Section 2124 of the Tax Reform Act of 1976, 90 Stat. 1519, and sections 701(f) and 315 of the Revenue Act of 1978, 92 Stat. 2828.

§ 1208.1 The Tax Reform Act of 1976 and the Revenue Act of 1978.

The Tax Reform Act of 1976, 90 Stat. 1519, and the Revenue Act of 1978, 92 Stat. 2828, require the Secretary to make certifications of historic district statutes and of State and local districts, certifications of significance, and certifications of rehabilitation in connection with certain tax incentives involving historic preservation. The provisions of the Tax Reform Act of 1976 were extended in the Tax Treatment Extension Act of 1980. The procedures for obtaining such certifications are set forth below. It is the responsibility of owners wishing certifications to provide sufficient documentation to their State Historic Preservation Officers (SHPOs) and the Heritage Conservation and Recreation Service (HCRS) to make certification decisions. The Internal Revenue Service is responsible for all procedures, legal determinations and rules and regulations concerning the tax consequences of the historic preservation provisions of the Tax Reform Act of 1976 and the Revenue Act of 1978. Any certifications made by the Secretary pursuant to this part shall not be considered as binding upon the Internal Revenue Service with respect to tax consequences or interpretations of the Internal Revenue Code of 1954. Certifications made by the Secretary do not constitute determinations that a structure is of the type subject to the allowance for depreciation under Section 167 of the Internal Revenue Code of 1954. For further information, consult Internal Revenue Service regulations 26 CFR Parts 1 and 7 (45 FR 38050).

§ 1208.2 Definitions.

As used in these procedures:

"Certified Historic Structure" means a structure which is of a character subject to the allowance for depreciation provided in Section 167 of the Internal Revenue Code of 1954 which is either (a) listed in the National Register; or (b) located in a Registered Historic District and certified by the Secretary of the Interior as being of historic significance to the district. For purposes of the demolition provisions, any structure located in a Registered Historic District is considered a "Certified Historic Structure" unless the Secretary of the Interior has determined, prior to the demolition of the structure, that it is not of historic significance to the district.

"Certified Rehabilitation" means any rehabilitation of a certified historic structure within the time frame specified by the law, which the Secretary has certified to the Secretary of the Treasury as being consistent with the historic character of such property, and, where applicable, with the district in which such property is located.

"Historic District" means a geographically definable area, urban or rural, possessing a significant concentration, linkage, or continuity of sites, buildings, structures, or objects which are united by past events or aesthetically by plan or physical development.

"Inspection" means a visit by an authorized representative of the Secretary of Interior to a certified historic structure for the purposes of reviewing and evaluating the significance of the structure and the completed rehabilitation work.

"National Register of Historic Places" means the national register of districts, sites, buildings, structures, and objects significant in American history, architecture, archeology, and culture that the Secretary is authorized to expand and maintain pursuant to Section 101(a)(1) of the National Historic Preservation Act of 1966.

"National Register Program" means the survey, planning, and registration program that has evolved under the Secretary's authority pursuant to 101(a)(1) of the National Historic Preservation Act of 1966. The procedures of the National Register program appear in 36 CFR Part 1202.

"Owner" means a person who holds a fee-simple interest in a structure; or a holder of a life estate in property; or a holder of a life estate in property with remainder to another person; or a lessee whose lease term without regard to renewal periods extends beyond the useful life of the improvements or for 30 years, whichever is greater.

"Registered Historic District" means any district listed in the National Register or any district designated under a State or local statute which has been certified by the Secretary as containing criteria which will substantially achieve the purpose of preserving and rehabilitating buildings of significance to the district and which is certified by the Secretary as meeting substantially all of the requirements for the listing of districts in the National Register.

"Rehabilitation" means the process of returning a property to a state of utility, through repair or alteration, which makes possible an efficient contemporary use while preserving those portions and features of the property which are significant to its historic, architectural and cultural values.

"Secretary" means the Secretary of the Interior or the designee authorized to carry out his responsibilities.

"Standards for Rehabilitation" mean the Secretary of the Interior's "Standards for Rehabilitation" as set forth in § 1208.7 hereof.

"State or local statute" means a law of the State or local government designating, or providing a method for the designation of, a historic district or districts.

"State Historic Preservation Officer" (SHPO) means the official within each State, designated by the Governor at the request of the Secretary of the Interior, to act as liaison for purposes of implementing historic preservation programs within the States.

"Substantial alteration" for purposes of Section 167(n) of the Internal Revenue Code means destruction of the distinguishing original qualities or character of a building, structure, or site and its environment.

§ 1208.3 Introduction to certifications of significance and rehabilitation.

(a) *Who may apply:* (1) Ordinarily, only the owner (as defined in § 1208.2 above) of the property in question may apply for the certifications described in §§ 1208.4 and 1208.6 hereof. If an application for an evaluation of significance is made by someone other than the fee simple owner, however, the application must be accompanied by a letter from said owner indicating that he is aware of the application and has no objection to the request for certification.

(2) Upon request of a SHPO, the Secretary may determine whether or not a particular structure located within a Registered Historic District qualifies as a certified historic structure. The Secretary shall do so, however, only after notifying the property owner of record of the request, informing such owner of the possible tax consequences of such a decision, and permitting the property owner a 30 day time period to submit written comments to the Secretary prior to decision.

(3) The Secretary may undertake the certifications described in §§ 1208.4 and 1208.6 after notifying the property owner and allowing a comment period as specified § 1208.3(b).

(4) Owners of structures which (i) appear to meet National Register criteria but are not yet listed in the National Register; or (ii) are located within a historic district which appears to meet National Register criteria but has not yet been listed in the National Register; or (iii) are located within a State or locally designated historic district for which a certification request has been received and adequate documentation for district certification has been submitted, may request preliminary determinations of the Secretary, as to whether such

structures may qualify as certified historic structures when and if the property or district is listed in the National Register or the State or local district is certified by the Secretary. Any such determinations are preliminary only and not binding upon the Secretary. The property will be considered by the Secretary for actual certification at the time the individual property or district is listed in the National Register or the State or local district is certified by the Secretary.

(5) The Secretary will review and evaluate rehabilitation proposals in accordance with the Secretary's "Standards for Rehabilitation," when submitted by persons other than owners, but will issue certifications of rehabilitation only to owners of "certified historic structures." Requests for these determinations shall be made in accordance with procedures set forth in § 1208.6(i) hereof.

(b) *How to apply:* (1) Requests for certifications of historic significance and/or of rehabilitation shall be made on "Historic Preservation Certification Applications" (approved OMB form No. 42R–1765). Part 1 of the application shall be used in requesting an evaluation and certification (or decertification) of historic significance or a preliminary determination of historic significance, while Part 2 shall be used in requesting an evaluation of proposed rehabilitation work or a certification of completed rehabilitation work.

(2) Application forms are supplied to the SHPOs by the Department of the Interior. Owners may obtain "Historic Preservation Certification Applications" from the appropriate SHPO.

(3) Requests for certification shall be made through the appropriate SHPO. The recommendations of the SHPO are generally accepted by the Secretary. If for some reason the review periods specified in §§ 1208.4 and 1208.6 for the SHPO have expired without recommendations being made and/or the requests forwarded to the Secretary, the owner may notify HCRS directly of this fact. HCRS in turn will consult with the SHPO to ensure that a review of the application is completed in a timely manner.

(4) The time periods specified in §§ 1208.4, 1208.6, 1208.8 and 1208.9 for review of applications will be adhered to as closely as possible. These time periods, however, are not considered to be legally binding, and the failure to complete review within the designated periods does not waive or alter any certification requirement.

(5) Although certifications of significance and rehabilitation are discussed separately below, owners are encouraged to submit Parts 1 and 2 of the "Historic Preservation Certification Application" together to the SHPO.

§ 1208.4 Certifications of historic significance.

(a) Requests for evaluation of historic significance as required by sections 2124(a), (b), (c), and (d) of the Tax Reform Act of 1976 should be made by the owner in accordance with respective procedures for the following categories of certifications: (1) That a structure is located within a Registered Historic District and is of historic significance to such district; (2) that a structure is located within a Registered Historic District and is not of historic significance to such district.

(b) If the property is individually listed in the National Register, and of a character subject to the allowance for depreciation provided in Section 167 of the Internal Revenue Code of 1954, it automatically is considered a certified historic structure.

(1) To determine whether or not a property is individually listed in the National Register, the owner should consult the listing of National Register properties in the Federal Register (found in most large libraries). If access to the Federal Register is difficult, the owner should contact the appropriate SHPO for this information.

(2) If the property is individually listed in the National Register and the owner believes it has lost the characteristics which caused it to be nominated and therefore wishes it delisted, the owner should consult the SHPO and refer to the delisting procedures outlined in 36 CFR Part 1202.

(3) Many listings in the National Register include more than one structure but are not designated historic districts. Generally the structures in such listings (if under single ownership) will be treated for purposes of certification or decertification of significance as in the case of historic district listings except in cases where the components of the listing are judged by the Secretary of the Interior to have been functionally related historically to serve an overall purpose such as a mill complex, an industrial plant or a housing complex. In such cases, if rehabilitation is planned, the listing will be certified as a whole. Any proposed demolition of components of the listing will be considered at the time that rehabilitation plans are reviewed. The provisions of 167(n) and 280B will not apply if demolition is undertaken as a part of certified rehabilitation.

(4) If it is proposed that a structure individually listed in the National Register be moved as a part of a request for certification of rehabilitation, the owner must follow the procedures outlined in 36 CFR 1202.16. Properties listed in the National Register should be moved only when there is no feasible alternative for preservation. When a property is moved, every effort should be made to reestablish its historic orientation, immediate setting, and general environment.

(c) If the property is located within the boundaries of a Registered Historic District and the owner wishes the Secretary to certify as to whether the structure is or is not of historic significance to the district, the owner must complete Part 1 of the "Historic Preservation Certification Application" and submit it to the SHPO.

The following minimum documentation is required:

(1) Name of owner;

(2) Name and address of structure;

(3) Name of historic district;

(4) Current photographs of structure; photographs of the structure prior to alteration if rehabilitation has been completed; photograph(s) showing the structure along with adjacent structures on the street; and where applicable, photographs of significant interior features and/or spaces;

(5) Brief description of appearance including alterations, distinctive features and spaces, and date(s) of construction;

(6) Brief statement of significance summarizing how the building reflects the values that give the district its distinctive historical and visual character, and explaining any significance attached to the building itself (i.e. unusual building techniques, important events that took place there, etc.).

(7) Sketch map showing structure's location within the district; and

(8) Signature of property owner requesting the evaluation.

(d) If an owner begins or completes demolition or substantial alteration of a structure in a Registered Historic District without knowledge of Section 2124 of the Tax Reform Act requirements for certification of non-significance, he may request certification that the structure was not of historic significance to the district prior to substantial alteration or demolition in the same manner as stated in (c). The owner should be aware, however, of the requirements under the Revenue Act of 1978 (92 Stat. 2900, 2903) sections 701 (f) (2) (B) (iii) and 701 (f) (5) (b) that the taxpayer must certify to the Secretary of the Treasury that, at the beginning of such demolition or substantial alteration, he in good faith was not aware of the certification

requirement by the Secretary of the Interior.

(e) If an owner wishes to obtain certified rehabilitation status for a building which has been moved (or is proposed to be moved) into a Registered Historic Distict or which is within a Registered Historic District and which has been moved (or will be moved) elsewhere in the district, he must complete Part 1 of the "Historic Preservation Certification Application" and, in addition to the minimum documentation outlined above, should submit documentation which discusses:

(1) The reasons for the move;

(2) The effect of the move on the property's appearance (any proposed demolition, proposed changes in foundations, etc.);

(3) The new setting and general environment of the proposed site;

(4) The effect of the move on the distinctive historical and visual character of the district.

Photographs showing the proposed location must be sent with the documentation. Properties included in Registered Historic Districts should be moved only when there is no feasible alternative for preservation. When a property is moved, every effort should be made to re-establish its historic orientation, immediate setting, and general environment.

(f) Structures within Registered Historic Districts will be evaluated for conformance with the Secretary's "Standards for Evaluating Structures within Registered Historic Districts" as set forth in § 1208.5.

(g) The SHPO will sign Part 1 indicating his recommendation as to the significance of the structure and forward Part 1, the photographs, and the map to the Department of the Interior within 45 days after the owner has submitted the required information.

(h) A preliminary certification of significance may be requested by the owner by filling out Part 1 of the Historic Preservation Certification Application and sending it to the SHPO. Preliminary certification requests will be reviewed by the SHPO for conformance with the National Register criteria (36 CFR 1202.6) and/or the Secretary's Standards for Evaluating Structures within Registered Historic Districts (§ 1208.5) and for the State's ability to handle the future nomination or district certification in a timely manner. The SHPO is not compelled to sign the application form even if he believes the property meets the necessary criteria. The SHPO shall forward the application with his recommendation to the Secretary for review. The Secretary shall notify the applicant and the SHPO of the preliminary certification decision. The time frames applicable to other certification of significance requests shall apply to preliminary certification requests also.

(i) In certain cases where it is difficult to make a determination of significance because it is impossible to determine the amount of remaining historic fabric (i.e. where metal screening obscures facades) or where a substantial question exists about the degree of physical deterioration and/or structural damage, but an owner wishes to attempt certified rehabilitation, it may be necessary to make a certification of significance conditional upon approval of the completed rehabilitation. A conditional certification indicates that the property appears to have the potential to meet National Register criteria for listing or to contribute to a district but will not be considered a certified historic structure until such time as the property is individually listed or, in the case of a building within a Registered Historic District, a certification of rehabilitation is issued.

(j) Once the significance of a structure located within a Registered Historic District has been determined by the Secretary, written notification will be sent to the property owner and the SHPO in the form of a certification of significance or conditional certification or as a notice that the structure does not contribute to the historic significance of the district. Written notification will be made within 30 days of receipt of Part 1 of a "Historic Preservation Certification Application," with documentation as specified above. In cases where Part 1 and Part 2 are submitted together, review of Part 1 will be completed within 30 days, but notification to the owner for both Part 1 and Part 2 will generally be made within 45 days.

(k) When a preliminary certification of significance has been made for a building proposed for individual listing in the National Register or for inclusion within a district proposed for listing or certification, the preliminary certification will automatically be finalized as of the date of individual listing on the National Register or the date of listing or certification of the historic district. If information included in the nomination or district documentation differs substantially from that reviewed with the preliminary certification request, however, the Secretary may choose to review the preliminary request a second time with the new information provided and to make a judgment as to whether a structure should remain designated a certified historic structure.

§ 1208.5 Standards for evaluating structures within Registered Historic Districts.

(a) Structures located within Registered Historic Districts are reviewed by the Secretary for conformance to the following "Standards for Evaluating Structures within Registered Historic Districts." These standards shall be used by the SHPO in making recommendations to the Secretary.

(1) A structure contributing to the historic significance of a district is one which by location, design, setting, materials, workmanship, feeling and association adds to the district's sense of time and place and historical development.

(2) A structure not contributing to the historic significance of a district is one which detracts from the district's sense of time and place and historical development; or one where the integrity of the original design or individual architectural features or spaces have been irretrievably lost; or one where physical deterioration and/or structural damage has made it not reasonably feasible to rehabilitate the building.

(3) Ordinarily structures that have been built within the past 50 years shall not be considered eligibile unless a strong justification concerning their historical or architectural merit is given or the historical attributes of the district are considered to be less than 50 years old.

(b) A condemnation order may be presented as evidence of physical deterioration of a building but will not of itself be considered sufficient evidence to warrant certification of non-significance. In certain cases it may be necessary to submit a structural engineer's report to document physical deterioration and/or structural damage.

§ 1208.6 Certifications of rehabilitation.

Property owners desirous of having rehabilitations of certified historic structures certified by the Secretary as being consistent with the historic character of the structure or district in which the structure is located, thus qualifying as "certified rehabilitations," shall comply with the following procedures:

(a) Complete Part 2 of the "Historic Preservation Certification Application" and submit it to the SHPO. The application may describe a proposed rehabilitation project, work in progress, or a completed rehabilitation. In all cases, however, photographs showing the appearance of the structure prior to

rehabilitation, both on the exterior and on the interior, must accompany the application. Other documentation, such as sketch plans and elevation drawings, may be necessary to evaluate certain rehabilitation projects. Where such documentation is not provided, review and evaluation cannot in some cases be completed. Owners who undertake rehabilitation projects without prior approval from the Secretary do so at their own risk.

(b) If the work described in Part 2 of the application form is not completed, the appropriate SHPO shall review the proposed project as to whether or not the project is likely to meet the Secretary of the Interior's "Standards for Rehabilitation" and forward the application and written recommendations to the Secretary. This shall be done within 45 days of receipt of the documentation detailed in paragraph (a) of this section.

(c) Upon receipt of the application describing the proposed project and the recommendation of the SHPO, the Secretary shall determine, normally within 45 days, if the proposed project does not meet the "Standards for Rehabilitation." If the proposed project is consistent with the "Standards for Rehabilitation," the owner shall be advised of necessary revisions to meet such standards and be encouraged to work with the SHPO to bring the project into conformance. These notifications will be made in writing.

(d) Once a project has been approved, substantive changes in the work as described in the application should be promptly brought to the attention of the Secretary by letter to insure continued conformance to the Standards; such changes do not require a new "Historic Preservation Certification Application."

(e) When the rehabilitation project has been completed, the owner shall notify the appropriate SHPO in writing of the project completion date and shall sign a statement that, in the owner's opinion, the completed rehabilitation meets the Secretary's "Standards for Rehabilitation" and is consistent with the work described in Part 2 of the "Historic Preservation Certification Application." At this time the owner will be requested to provide photographs of the completed rehabilitation project; other documentation that the SHPO believes is necessary to make a recommendation to the Secretary; and his social security or taxpayer identification number. Certifications will be issued to rehabilitations which have been carried out in accordance with proposed plans previously approved by the Secretary.

(f) The SHPO shall forward his recommendations as to certification to the Secretary within 45 days of receipt of the project completion date and documentation described in paragraph (e) of this section.

(g) The completed project may be inspected by an authorized representative of the Secretary to determine if the work meets the "Standards for Rehabilitation." The Secretary reserves the right to make inspections at any time after completion of the rehabilitation and to withdraw certification of the rehabilitation upon determining that the project does not meet or no longer meets the Secretary's "Standards for Rehabilitation" as completed.

(h) Notification as to certification shall be in writing and will normally be made by the Secretary within 15 days of receipt of the SHPO's recommendations if the proposed rehabilitation had been previously approved by the Secretary. Otherwise, notification will normally be made within 45 days.

(i) In the event that the completed rehabilitation project does not meet the "Standards for Rehabilitation," an explanatory letter will be sent to the owner. An appeal from this decision may be made by the owner pursuant to § 1208.10 herein. A rehabilitated structure not in conformance with the "Standards for Rehabilitation" and which is determined to have lost those qualities which caused it to be nominated to the National Register, will be removed from the Register in accord with U.S. Department of the Interior regulations 36 CFR 1202.17 or, if it has lost those qualities which caused it to be designated a certified historic structure, it will be certified as non-significant (see §§ 1208.4 and 1208.5). In either case, the delisting or decertification is considered effective as of the date of issue and is not considered to be retroactive.

(j) A preliminary determination that a rehabilitation project is consistent with the Secretary's "Standards for Rehabilitation" may be made for structures not yet designated certified historic structures, although issuance of a certification of rehabilitation will be made only for certified historic structures. Such a determination may be requested by the owner by completing part 1 and 2 of a "Historic Preservation Certification Application." In cases where such a determination is requested for a property which is not yet listed in the National Register or for a property located in a State or local district which has not yet been certified, see § 1208.4(h). A determination that rehabilitation of a structure not yet designated a certified historic structure meets the Secretary's "Standards for Rehabilitation" does not constitute a certification of rehabilitation but does provide an owner with guidance as to the appropriateness of the rehabilitation. It should be understood that additional research on the structure and/or the district may affect the Secretary's final determination as to whether the rehabilitation project is consistent with the Secretary's "Standards for Rehabilitation."

(k) SHPO's will be notified in writing of all rehabilitation certification decisions made by the Secretary.

§ 1208.7 Standards for rehabilitation.

(a) The following "Standards for Rehabilitation," a section of the Secretary's "Standards for Historic Preservation Projects," shall be used to determine if rehabilitation of a certified historic structure qualifies as "certified rehabilitation." The Standards shall be applied taking into consideration the economic and technical feasibility of each project; in the final analysis, however, the rehabilitation must be consistent with the historic character of the structure and/or the district in which it is located.

(1) Every reasonable effort shall be made to provide a compatible use for a property which requires minimal alterations of the building, structure, or site and its environment, or to use a property for its originally intended purpose.

(2) The distinguishing original qualities or character of a building, structure, or site and its environment, shall not be destroyed. The removal or alteration of any historic material or distinctive architectural features should be avoided when possible.

(3) All buildings, structures, and sites shall be recognized as products of their own time. Alterations that have no historical basis and which seek to create an earlier appearance shall be discouraged.

(4) Changes which may have taken place in the course of time are evidence of the history and development of a building, structure, or site and its environment. These changes may have acquired significance in their own right, and this significance shall be recognized and respected.

(5) Distinctive stylistic features or examples of skilled craftmanship which characterize a building, structure, or site shall be treated with sensitivity.

(6) Deteriorated architectural features shall be repaired rather than replaced, wherever possible. In the event replacement is necessary, the new material should match the material being replaced in composition, design,

color, texture, and other visual qualities. Repair or replacement of missing architectural features should be based on accurate duplications rather than on conjectural designs or the availability of different architectural elements from other buildings or structures.

(7) The surface cleaning of structures shall be undertaken with the gentlest means possible. Sandblasting and other cleaning methods that will damage the historic building materials shall not be undertaken.

(8) Every reasonable effort shall be made to protect and preserve archeological resources affected by, or adjacent to any rehabilitation project.

(9) Contemporary design for alterations and additions to existing properties shall not be discouraged when such alterations and additions do not destroy significant historical, architectural, or cultural material, and such design is compatible with the size, scale, color, material, and character of the property, neighborhood or environment.

(10) Wherever possible, new additions or alterations to structures shall be done in such a manner that if such additions or alterations were to be removed in the future, the essential form and integrity of the structure would be unimpaired.

(b) Guidelines and other technical information to help property owners formulate plans for the rehabilitation, preservation, and continued use of historic properties consistent with the intent of the Secretary's "Standards for Rehabilitation," are available from the Heritage Conservation and Recreation Service, U.S. Department of the Interior, 440 G Street N.W., Washington, D.C. 20243.

(c) In certain limited cases, it may be necessary to dismantle and rebuild portions or all of a certified historic structure to stabilize and repair weakened structural members and systems. In such cases, the Department of the Interior will consider such extreme interventions as part of a certified rehabilitation if (1) the necessity for dismantling is justified in supporting documentation; (2) significant architectural features are retained; and (3) adequate historic fabric is retained to maintain the architectural and historic integrity of the overall structure. Substantial alterations may be subject to the provisions of section 167(n) of the Internal Revenue Code of 1954.

(d) Prior approval of a project by other Federal, State and local agencies and organizations does not ensure certification by the Secretary for Federal tax purposes. The Secretary's Standards take precedence over other regulations and codes in determining whether the historic character of the building is preserved in the process of rehabilitation and should be certified.

§ 1208.8 Certifications of statutes.

(a) State or local statutes which will be certified by the Secretary of the Interior. For the purpose of this regulation, a State or local statute is a law of the State or local government designating, or providing a method for the designation of, a historic district or districts. This includes any by-laws or ordinances that contain information necessary for the certification of the statute. A statute must contain criteria which will substantially achieve the purpose of preserving and rehabilitating buildings of historic significance to the district. To be certified by the Secretary of the Interior, the statute generally must provide for a duly designated review body, such as a review board or commission, with power to review proposed alterations to structures within the boundaries of the district or districts designate under the statute.

(b) When the certification of State statutes will have an impact on districts in specific localities, the Department of the Interior urges State governments to notify and consult with appropriate local officials prior to submitting a request for certification of the statute.

(c) State enabling legislation which authorizes local governments to designate, or provides local governments with a method to designate, a historic district or districts will not be certified unless accompanied by local statutes that implement the purpose of the State law.

(d) Who may apply. Requests for certification of State or local statutes may be made only by the duly authorized representative of the government which enacted the statute. The applicant shall certify in writing that he or she is authorized by the appropriate State or local governing body to apply for certification.

(e) Statute certification process. Requests for certification of State or local statutes shall be made as follows:

(1) Requests for certification of statutes shall be submitted to the appropriate SHPO and shall include the following information:

(i) A request in writing from the Duly Authorized Representative certifying that he or she is authorized to apply for certification. The request should include the name or title of a person to contact for further information and his or her address and telephone number. The authorized representative is responsible for providing historic district documentation for review and certification prior to the first certification of significance in a district unless another responsible person is indicated including his or her address and telephone number.

(ii) A copy of the statute(s) for which certification is requested, including any by-laws or ordinances that contain information necessary for the certification of the statute.

(iii) Local governments shall submit a copy of the State enabling legislation, if any, authorizing the designation of historic districts.

(2) The SHPO shall review the statute(s) and assess whether the statute(s) contain criteria which will substantially achieve the purposes of preserving and rehabilitating buildings of historic significance to the district(s) based upon the standards set out above in § 1208.8(a). If the statute(s) contain such provisions and if, in the opinion of the SHPO, this and other provisions in the statute will substantially achieve the purpose of preserving and rehabilitating buildings of historic significance to the district, the SHPO should recommend that the statute be certified.

(3) The SHPO shall forward the request with the material submitted as specified in § 1208.8(c) with his or her written recommendation as to whether the statute should be certified to the Secretary.

The SHPO shall forward the request with his or her recommendation within 45 days of receipt of the request from the duly authorized representative, provided the request is submitted in accord with § 1208.8(c) above. If this period has expired without such action being taken, the Duly Authorized Representative may notify HCRS directly of this fact. HCRS in turn will consult with the SHPO to ensure that a review of the application is completed in a timely manner.

(4) The Secretary shall review the request and the recommendation of the SHPO and make a decision as to certification within 45 days of receipt of the request. If the statute(s) contain criteria which will substantially achieve the purpose of preserving and rehabilitating buildings of historic significance to the district, the Secretary will certify the statute(s).

(5) The Secretary shall provide written notification to the Duly Authorized Representative and the appropriate SHPO when certification of the statute is given or denied. If certification is denied, the notification will provide a justification for such denial.

(f) Amendment or Repeal of statute(s). State or local governments, as appropriate, must notify the Secretary of the Interior in the event that certified

statutes are repealed. If a certified statute is amended, the Duly Authorized Representative shall submit the amendment(s) to the SHPO for review in accordance with procedures outlined above. The SHPO shall forward the amendment within 45 days of receipt with his or her opinion as to whether the amended statute continues to meet the criteria outlined in § 1208.8(a) to the Secretary. Written notification of the Secretary's decision as to whether the amended statute continues to meet these criteria will be sent to the duly authorized representative within 45 days of receipt and to the SHPO.

§ 1208.9 Certifications of State or Local Historic Districts.

(a) Generally the documentation on a particular State or local historic district must be submitted to the SHPO and the district must be certified by the Secretary before the Secretary will process requests for certification of individual structures within a district or districts established under a certified statute.

(b) A State or local district will not be considered a Registered Historic District until the district itself has been certified by the Secretary. Therefore, the provisions of the Tax Reform Act will not apply to buildings within a State or local district until the district has been certified, even if the statute creating the district has been approved or certified by the Secretary.

(c) The Department of the Interior considers the Duly Authorized Representative requesting certification of a statute to be the official responsible for submitting district documentation to the SHPO for certification. If another person is to assume responsibility for the district documentation, the letter requesting statute certification shall indicate that person's name, address and telephone number. The Department of the Interior considers the authorizing statement of the Duly Authorized Representative to indicate that the jurisdiction involved wishes not only that the statute in question be certified but also wishes all historic districts designated by the statute to be certified unless otherwise indicated.

(d) The following documentation shall be submitted on each district designated under a State or local statute to the appropriate SHPO and shall include the following information:

(1) A concise description of the general physical or historical qualities which makes this a district; an explanation for the choice of boundaries for the district; descriptions of typical architectural styles and types of structures in the district.

(2) A concise statement of why the district has significance and why it substantially meets National Register criteria for listing (see 36 CFR 1202.6)

(3) A definition of what types of structures do not contribute to the significance of the district as well as an estimate of the percentage of structures within the district that do not contribute to its significance.

(4) A map showing all district structures with, if possible, identification of contributing and non-contributing structures; the map should clearly show the district's boundaries.

(5) Photographs of typical streets in the district as well as major types of contributing and non-contributing structures (all photos should be keyed to the map).

(e) The SHPO shall evaluate the district using the National Register criteria. Within 45 days of the receipt of the district documentation, the SHPO shall forward this information to the Department of the Interior along with his or her written recommendation as to whether the district meets substantially all the requirements for National Register listing. If for some reason this review period expires without a recommendation being made, the Duly Authorized Representative or another person designated as responsible for the district documentation may notify HCRS directly of this fact. HCRS in turn will consult with the SHPO to ensure that a review of the district documentation is completed in a timely manner.

(f) Districts designated by certified State or local statutes shall be evaluated using the National Register criteria (36 CFR 1202.6) within 45 days of the receipt of the required documentation by the Department of the Interior. Written notification of the Secretary's decision will be sent to the Duly Authorized Representative or to the person designated as responsible for the district documentation and the SHPO.

(g) Certificaton of such statutes under this part in no way constitutes certification of significance of individual structures within the district or of the rehabilitation by the Secretary for purposes of section 2124.

(h) In cases where local districts meeting the requirements for certification also meet the requirements for determinations of eligibility (36 CFR Part 1204), these districts will be determined eligible for listing in the National Register at the time of certification.

(i) Additional Districts. Documentation on additional districts designated under a State or local statute that has been certified by the Secretary of the Interior should be submitted to the Secretary for certification following the same procedure and including the same information outlined in the section above.

(j) Amendment or repeal of districts. State or local governments, as appropriate, should notify the Secretary of the Interior if a certified district designation is amended (including boundary changes) or repealed. If a certified district designation is amended, the Duly Authorized Representative shall submit documentation describing the change(s) and, if the district has been increased in size, information on the new areas as outlined in § 1208.9(b). A revised statement of significance for the district as a whole should also be included to reflect any changes in overall significance as a result of the addition or deletion of areas. Review procedures shall follow those outlined in § 1208.9(c) and (d).

(k) The Department of the Interior urges State and local review boards or commissions to become familiar with the standards used by the Secretary of the Interior for certifying the rehabilitation of historic structures and to consider their adoption for local design review.

§ 1208.10 Appeals.

(a) An appeal may be made from any of the certifications or denials of certification made pursuant to this part. Such appeals must be in writing and received by the Director, Heritage Conservation and Recreation Service, U.S. Department of the Interior, 440 G Street, N.W., Washington, D.C. 20243 within 30 days of receipt of the decision which is the subject of the appeal. The appellant may request the opportunity for a meeting with Director to discuss the appeal. The Director, Heritage Conservation and Recreation Service, or his designee, will review such appeals, the written record of the decision in question, and shall notify the appellant of his decision within 30 days of its receipt unless the appellant is required to submit additional information.

(b) In reviewing such appeals, the Director shall consider: (1) Errors in professional judgment; (2) additional information provided; and (3) substantial procedural errors before rendering a final decision.

(c) The decision of the Director shall be the final administrative decision on the matter. Appeals pursuant hereto should be mailed to the address noted above.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 35

[WH-FRL 1700-7]

State and Local Assistance; Grants for Construction of Treatment Works

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation is to establish the amount of construction grant funds to be allotted to each State due to the fact that the State of Ohio did not obligate $23,902,130 million dollars of its Fiscal Year 1978 funds (35.910-2(c)) and to make known the procedure by which the reallotment was determined.

It is essential that this regulation be published as section 205(b)(1) of the Clean Water Act requires that allotted amounts not obligated by the end of the initial allotment availability period "* * * shall be immediately reallotted by the Administrator in accordance with regulations promulgated by him * * *". Therefore, through this regulation, the requirements of the Act are fulfilled and the public is apprised of the additional amounts available to the States for grants for the construction of municipal wastewater treatment facilities.

EFFECTIVE DATE: December 19, 1981.

FOR FURTHER INFORMATION CONTACT: Harold P. Cahill, Jr., Director, Municipal Construction Division, Office of Water Program Operations, (202) 426-8986.

SUPPLEMENTARY INFORMATION: At the close of the fiscal year 1978 allotment availability period (September 30, 1979), all States and Territories except Ohio had fully obligated their fiscal year 1978 allotments. Because issues arose regarding the interpretation of EPA policy on the method for determining amounts which would be subject to reallotment at the close of the fiscal year, the reallotment of unobligated funds as of September 30, 1979 had to be delayed. These issues were resolved and it was determined that $23,902,130 of Ohio's fiscal year 1978 allotment was subject to reallotment.

To distribute the $23,902,130 in accordance with the requirements of sections 205(c) and 205(e) of the Clean Water Act the following procedure was used.

1. Applicable percentages (see § 35.910-8(a)) to reflect the absence of an allotment for the State of Ohio, were computed and applied to the $23,902,130.

2. Since section 205(e) of the Clean Water Act requires that no State shall receive less than one half of one percent of an allotment, .5 percent of the reallotment amount was computed ($119,511), and the 11 States whose allotment was less than this amount had their share raised to $119,511. By so doing, the reallotment total rose from $423,902,130 to $24,169,048; an increase of $1,314,621. Since a supplemental of $1,314,621 would not be provided, a recomputation was necessary so that, in raising 11 States to the .5 percent minimum, the overall total would not exceed the $23,902,130 reallotment amount. This was calculated as follows:

a. An allotment for each of the eleven States which were to receive .5 percent of reallotment amount if total is $23,902,130 instead of $24,169,048 was first determined.

$$\frac{X}{119,511} = \frac{\$23,902,130}{\$24,169,048} = .988956$$

$$X = .988956 \times \$119,511$$

$$X = \$118,190$$

b. Allotments for the 44 remaining States/Territories after each of the 11 States, originally receiving less than .5 percent, receive $118,190 was then computed in the following manner:

(1) The total allotment for the 11 States was first calculated. 11 x $118,190 or $1,300,090.

(2) The total allotment for the 44 States/Territories was calculated next. $23,902,130 less $1,300,090 or $22,602,040.

(3) The applicable percentages for 44 States/Territories were converted to 100 percent and applied to the $22,602,040.

This is a technical amendment affecting Agency procedure and will be made effective immediately upon publication.

Dated: December 9, 1980.

Douglas M. Costle,

Administrator.

Accordingly, 40 CFR Subpart E is amended by adding new § 35.910-11 to read as follows:

§ 35.910-11 Reallotment of deobligated funds of fiscal year 1978.

(a) Of the 4.5 billion appropriated by Pub. L. 95-240 for fiscal year 1978, $23,902,130 remained unobligated as of September 30, 1979 and thereby became subject to reallotment.

(b) The reallotment was computed by applying the percentages in § 35.910-8(a), adjusted to account for the absence of Ohio and readjusted to comply with the requirements of § 35.910(d) establishing a minimum allotment of .5 percent.

(c) These funds are added to the fiscal year 1980 allotments and will remain available through September 30, 1981 (see §§ 35.910-2(b) and 35.910-8).

(d) The $23,902,130 is allotted as follows:

State	Amount
Alabama	$324,543
Alaska	118,190
Arizona	196,050
Arkansas	193,839
California	2,009,389
Colorado	232,191
Connecticut	279,813
Delaware	118,190
Dist. of Columbia	118,190
Florida	969,582
Georgia	490,736
Hawaii	200,367
Idaho	125,143
Illinois	1,312,681
Indiana	699,485
Iowa	327,345
Kansas	222,434
Kentucky	368,430
Louisiana	319,073
Maine	189,428
Maryland	701,974
Massachusetts	746,591
Michigan	1,043,875
Minnesota	472,360
Mississippi	244,147
Missouri	630,710
Montana	118,190
Nebraska	139,138
Nevada	118,190
New Hampshire	222,653
New Jersey	902,590
New Mexico	118,190
New York	2,684,060
North Carolina	500,530
North Dakota	118,190
Oklahoma	234,496
Oregon	327,888
Pennsylvania	1,102,234
Rhode Island	132,719
South Carolina	297,352
South Dakota	118,190
Tennessee	391,254
Texas	1,102,708
Utah	118,190
Vermont	118,190
Virginia	435,392
Washington	447,046
West Virginia	452,433
Wisconsin	432,883
Wyoming	118,190
Guam	18,805
Puerto Rico	296,561
Virgin Islands	9,561
American Samoa	15,573
Tr. Ter. of Pac. Isls.	35,152
N. Mariana Isls.	3,460
Total	23,902,130

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BILLING CODE 6560-29-M

40 CFR Part 123

[SW FRL 1708-2]

Louisiana; Phase I Interim Authorization of State Hazardous Waste Management Program

AGENCY: Environmental Protection Agency, Region 6.

ACTION: Approval of State program.

SUMMARY: The purpose of this notice is to grant Phase I interim authorization to the State of Louisiana for its hazardous waste management program.

In the May 19, 1980, Federal Register (45 FR 33063), the Environmental Protection Agency (EPA) promulgated regulations, pursuant to Subtitle C of the Resource Conservation and Recovery Act of 1976 (RCRA), to protect human health and the environment from the improper management of hazardous wastes. Included in these regulations, which become effective 6 months after promulgation, were provisions for a transitional stage in which States could be granted interim program authorization. The interim authorization program will be implemented in two phases corresponding to the two stages in which an underlying Federal program will take effect. On September 16, 1980, the State of Louisiana applied to EPA for Phase I interim authorization of its hazardous waste management program. On September 24, 1980, EPA issued in the Federal Register (45 FR 63302) a notice of the public comment period on the State's application. An additional 30 day comment period was noticed by Region 6 in the Federal Register on October 17, 1980 (45 FR 68979) to solicit comments on additional material received in connection with the State's application. All comments received during these comment periods have been noted and considered, as discussed below.

The State of Louisiana is hereby granted interim authorization to operate the RCRA Subtitle C hazardous waste management program in accordance with section 3006(c) of RCRA and implementing regulations found in 40 CFR 123 Subpart F.

EFFECTIVE DATE: December 19, 1980.

FOR FURTHER INFORMATION CONTACT: Rena M. McClurg, Solid Waste Branch, U.S. EPA, Region 6, 1201 Elm Street, Dallas, Texas 75270, (214) 767-2645.

SUPPLEMENTARY INFORMATION: On July 3, 1980 the first draft application for Phase I interim authorization under RCRA in the nation was submitted to me by the State of Louisiana. This draft application reflected a program which was put into effect almost a year before the RCRA regulations were published in the Federal Register. In our comments to the State on the material presented in the draft application, we identified four major problem areas which had to be addressed in the State's final application. These areas were (1) whether the universe of hazardous waste covered by State regulations were substantially equivalent to the universe covered under RCRA, (2) whether the draft Memorandum of Agreement (MOA) complied with the requirements of the model MOA prepared by EPA, Region 6, (3) whether the State's interim status standards for treatment, storage and disposal facilities were substantially equivalent to RCRA standards and were enforceable against all facilities whether or not they were permitted, and (4) the lack of adequate detail in the Program Description Section of the draft application.

On September 24, 1980, I had noticed published in the Federal Register inviting the public to offer comments on the Louisiana Application for Phase I Interim Authorization of its Hazardous Waste Management Program at a public hearing to be conducted by Region 6 on October 23, 1980. This notice also invited the public to submit written comments on the Louisiana application to Region 6 by October 30, 1980. After this notice appeared in the Federal Register EPA received amendments to the application from the State. In order to provide an opportunity for the public to comment on these new materials a second notice was published in the Federal Register on October 17, 1980. This notice invited written public comment on the additional materials by November 17, 1980.

A lengthy and spirited public hearing, conducted by Region 6 was held on the evening of October 23, 1980, in Baton Rouge, Louisiana. Nineteen presentations were made at this hearing. In addition, between September 23, 1980, the beginning of the first public comment period and November 17, 1980, the close of the second public comment period, Region 6 received thirty-six written comments on the Louisiana application. All comments, if they complied with the time constraints of the Federal Register notices, whether presented at the hearing or in writing, were reviewed and considered in reaching a decision on the Louisiana Application for Interim Authorization.

Of the fifty-five public comments reviewed by Region 6 (19 at the hearing, 36 in writing) on the Louisiana Application for Phase I Interim Authorization, 27 commenters favored granting the State Phase I authorization, 22 commenters opposed granting the State Phase I authorization, 5 commenters supported granting Phase I authorization subject to specific conditions and 1 commenter neither supported nor opposed authorization. The subject matter of the comments ranged the gamut from the very general to the extremely particular, from specific procedural challenges to broad program evaluations. To simplify summary of the comments and their responses similar comments are grouped together for one response. Where one commenter addressed more than one issue the summary and response is given according to the subject matter of the issue. As a result a commenter who raised several issues should find the response to each issue he or she raised in the section covering that issue and not in a single section covering all the issues raised by him or her. The summary is presented generally in the order of subjects which received the most comment first and those receiving fewer comments presented last. However this format is adhered to loosely to permit related comments to be presented in sequence.

Comment—Nineteen commenters stated that they found Louisiana's Hazardous Waste Management Program to be substantially equivalent to the Federal Program under RCRA and the regulations published in 40 CFR Part 123, Subpart F. Based upon this finding they concluded that EPA should grant the State Phase I Interim Authorization.

Response—EPA agrees with this assessment of the standard it must apply under RCRA and 40 CFR 123 Subpart F. RCRA Section 3006(c) states "The Administrator shall, if the evidence submitted (in a State application) shows the existing State program to be substantially equivalent to the Federal program under this subtitle, grant interim authorization to the State to carry out such program in lieu of the Federal program * * *." The intent of Congress as manifested in this section was twofold: First, Congress wished to maximize State participation in the Federal hazardous waste program; Second, Congress wished to allow the States a period of time to develop a program which was equivalent and consistent with the Federal program. Consequently, it created a unique status of temporary authorization which permits a State to operate the Federal program while at the same time it is furthering the development of that program for final authorization.

Nevertheless, to receive interim authorization a State must demonstrate

the "substantial equivalence" of its program to the Federal program. Once a state has demonstrated substantial equivalence "the Administrator shall grant interim authorization", applying this standard, as elaborated in 40 CFR Part 123 Subpart F. EPA has concluded that Louisiana has met the test of substantial equivalence and should receive Phase I interim authorization.

Comment—Seventeen commenters supported authorization of the Hazardous Waste Management Program in the State of Louisiana because the burden placed upon the regulated community of functioning under a dual regulatory system was clearly not the intent of RCRA. As a corollary they asserted that if authorization were denied to the State and a double system imposed, the cost of operating dual programs would be great and would undoubtedly be passed on to the consumer.

Response—While EPA recognizes that the policy of RCRA Section 3006 favors the authorization of State programs in part to relieve a burden on the regulated community, EPA disagrees with the contention that Congress intended this to be a standard for the granting of interim authorization of a State program. If a State program cannot evidence substantial equivalence to the Federal program then, under RCRA, interim authorization cannot be granted, notwithstanding the burdens placed upon the regulated community. That is not to say, however, that eliminating the burden of a dual regulatory system should not or does not operate as an incentive for the States and EPA alike to help achieve the substantial equivalence of a State program. The incentive to operate a cost-effective national hazardous waste management program, which eliminates costly dual operations through the participation of the States, should provide and equally strong impetus for States to meet the requirements of interim authorization.

Comment—Two commenters stated they had been inspected by the State but not by the Federal Government. They felt that this illustrated the State's ability to operate a hazardous waste management program, and therefore, supported authorization.

Response—EPA agrees that Louisiana has demonstrated a capacity to operate a State program in hazardous waste management. EPA also agrees that, provided the State meets the standards for State program requirements under RCRA, the appropriate division of labor is for the State to operate the program and for EPA, through its oversight responsibilities, to supervise the State to assure compliance with the laws, regulations and policies of the Federal program.

Comment—Eleven commenters felt that the State of Louisiana lacks the commitment to responsibly operate the Federal hazardous waste program. This opinion was based on the past performance of the State in the air, water and hazardous waste programs.

Response—The basis for EPA's decision to authorize a State's hazardous waste program for Phase I is not past effectiveness but substantial equivalence with the Federal program. EPA had suggested, in its proposed regulations on approving state programs, that past performance or track record be used as a criteria for approval. That proposal was deleted from the final regulations governing the interim authorization approval process. EPA has taken the position that the approval decision must be primarily concerned that the program perform in an effective and comprehensive manner in the future.

Accordingly, whatever limitations or problems existed with Louisiana environmental programs in the past, EPA considers the following future indicators of primary importance: (1) The Department of Natural Resources (DNR) now operates under comprehensive new legislation in the hazardous waste management program; (2) Regulations and policies implementing this new legislation have been passed and are substantially equivalent to the RCRA Phase I regulations; (3) The solid and hazardous waste, air, water and nuclear environmental programs were reorganized from their respective departments into one department under one office which should improve program administration, consistency and coordination of these environmental programs. Moreover, the DNR has begun to enforce its state regulations as evidenced by commencement of some administrative permit adjudications and enforcement actions. Notwithstanding the testimony at the October 23, 1980, public hearing which questioned the adequacy of the state program in times past, EPA believes that in the overall, DNR is making progress in overcoming those alleged deficiencies to the extent that DNR should be given an opportunity to operate what is otherwise a substantially equivalent program. EPA also recognizes that Phase I authorization is a test-run which it will evaluate through its oversight role, and can withdraw if the State does not meet its commitments.

Comment—Ten commenters wanted Phase I Interim Authorization denied because the State lacked the ability to adequately enforce a hazardous waste program. Personnel, funding and equipment were cited as reasons for poor enforcement on the part of the Louisiana hazardous waste program.

Response—EPA believes that, while these comments reflect a negative view of the States track record, the State program requirements set forth in the application provide the basis for new commitment to enforce a comprehensive program. Before Act 334 of 1978 and Act 449 of 1979 were passed, Louisiana had very little authority over the disposition of hazardous waste. These statutes and their regulations provide the State of Louisiana with comprehensive authority to enforce its hazardous waste program. The reorganization of the State's environmental programs into one office under one department should improve the administration of this program and enhance its capacity to conduct a rigorous enforcement program.

The Louisiana program is now funded, in part, by fees collected for hazardous waste facility permits. This has enabled the State program to offer competitive salaries to environmental program staff and has vastly improved the quality of personnel in the State program. DNR should also be able to upgrade its equipment inventory as well under the new funding system.

EPA, through oversight responsibility must monitor the State's enforcement program. The MOA and the RCRA grant-in-aid entered into by the State and EPA, establish the procedure for oversight and the terms of the State's accountability for compliance monitoring and enforcement. These agreements enable EPA to track the State's enforcement process and determine if the State is meeting specific commitments which it agreed to accomplish. The RCRA grant-in-aid awarded to the Department of Natural Resources will function like a contract between the State and EPA. EPA agrees to pay the State if the State performs certain program activities. If through EPA's oversight and grant review it determines that the State is not meeting its commitments funding and authorization can be withdrawn. Also, under RCRA Section 3008(a)(2) EPA can commence enforcement actions for violations of RCRA in authorized States

Comment—Ten commenters opposed the granting of Phase I Interim Authorization to the State because the State program lacks funding and personnel to adequately operate the program.

Response—EPA has required a State applying for interim authorization to demonstrate the amount of funding and staff available for operation of the

program. This information is a part of the State application and is a major factor to be evaluated by EPA in reaching a decision whether or not to authorize the State program. In order to apply a uniform national standard for evaluating the adequacy of State funds committed to hazardous waste management, EPA has published in its "Guidance Manual on Interim Authorization" an estimate of the staffing requirements necessary for each state program to operate a federal program in their State. These staffing projections were based on the size of the State and the amount of waste generated in the State. They were also divided into separate projections for Phase I programs and Phase II programs.

Under EPA's criteria for adequate staffing it is estimated that Louisiana should have 24 positions to operate a Phase I program. EPA believes that the State of Louisiana has demonstrated in its application that it will have adequate funds to pay for more staff than EPA requires for Phase I program management. The Office of Environmental Affairs has allocated 32 full time positions for the hazardous waste program. Of the positions allocated, 28 positions are filled and 4 are currently vacant. In addition, the Department of Public Safety provides 12 full time positions to their hazardous waste unit which were established by this Department especially to deal with hazardous waste transportation.

The Office of Conservation and the Department of Agriculture have also designated staff to conduct their part of the hazardous waste management program. The total number of positions is in excess of EPA's staffing projections for the State program. Consequently EPA is constrained to find the program inadequately staffed for Phase I authorization. However, it will be EPA's responsibility in the exercise of its oversight role, to insure after the State is authorized that it maintains adequate funding and staff to operate the program according to the commitments set out in the application.

Comment—Five commenters opposed authorization and stated their preference for EPA to retain control of the hazardous waste management program in the State of Louisiana.

Response—EPA believes the Louisiana program is substantially equivalent to the Phase I Federal program. Without a demonstration that information supplied by the State in its application fails to meet the test of substantial equivalence, EPA has no discretion to deny Phase I authorization to the State solely because there is a preference for Federal, as opposed to State, management of the program. Consequently, EPA believes that all else being equal, if the State meets the test for authorization EPA must authorize and cannot opt to manage the program within the State itself.

Notwithstanding the granting of Interim Authorization, EPA retains a substantial degree of control. First, the MOA, which is part of interim authorization expressly reserves to EPA the right to inspect any hazardous waste management facility, generator or transporter which it believes is not in compliance with RCRA, the right to act unilaterally where it believes there is an imminent and substantial endangerment to health and the environment and other regulatory options. Also, there is statutory authority (See Sec. 3006(e), RCRA) for withdrawal of Interim Authorization where EPA finds the program is not being administered in accordance with the substantial equivalence standard.

Comment—A number of commenters stated a preference for delegation of the hazardous waste program to the State, but felt that the Federal Government should retain control of the program until the State has acquired more experience in operating environmental programs.

Response—EPA believes that it cannot withhold Phase I Authorization because of lack of experience of the State agency. One of the Congressional purposes in enacting the two stage authorization process in RCRA was to allow states, whose programs were not equivalent to the RCRA program, to begin operating a federally-sanctioned program while making necessary changes to reach equivalence with the Federal program. While the Office of Environmental Affairs is new to the State of Louisiana, comprehensive hazardous waste management programs are new or just in the process of being organized in almost all the States in the nation. Louisiana has more experience in this area than most States. Because this lack of experience is the state of the art in the nation, Congress decided that hazardous waste management experience was not to be a criteria upon which EPA could base a decision to grant or deny interim authorization.

Comment—Five commenters stated that Louisiana's small generator exemption was a burden and expense to the regulated community. They requested that Louisiana adopt a specific quantity for small generator exemptions. The State's ability to deal with exemptions on a case by case basis was questioned. The commenters felt that this process would cause a drain on the State's funds and affect the overall function of the hazardous waste program.

Response—EPA has the power to grant Phase I authorization to State hazardous waste management programs only to the extent that the State program is equivalent or substantially equivalent to the Federal program (See 40 CFR 123.121(g)(2)). Under RCRA Section 3009 a state is not preempted from exercising its authority to require standards which are more stringent than the Federal requirements. EPA does not have the authority to limit a State in its authority to mandate more stringent standards. Only the state legislative and administrative process can address issues arising out of such standards. Consequently, issues affecting small generators, who would be exempted from regulation under the federal program, but not exempt from the State program, must be addressed through appropriate State authorities.

Comment—Five commenters challenged Louisiana's use of two divergent extraction procedure toxicity tests, the Federal EP toxicity test and the state test which incorporates the Sax Manual. The commenters maintained that the use of two different test procedures was confusing and although it was designed to provide more stringent standards than the federal EP toxicity standard, in reality the requirement of both methods is repetitious, excessive, and unnecessary. In addition, the Sax Manual itself was challenged for being neither quantitative nor qualitative enough to be used as a reasonable test of hazardous toxicity.

Response—The use of the EP toxicity test to determine hazardous toxicity is an element of the Louisiana definition which is essential to the finding that the State's universe of regulated wastes is substantially equivalent to that of the Federal program. The Sax Manual is not considered substantially equivalent to the EP toxicity test. Accordingly, the two procedures may not be used in the alternative and the Sax Manual is not approved as a part of the Louisiana Phase I, Interim Authorization program. However, to the extent that use of the Sax Manual *in addition to* the EP toxicity test might allow regulation of toxic wastes not covered by the Federal program, its use is considered to provide a more stringent hazardous toxicity standard.

While EPA would not authorize the Louisiana program to include this more stringent standard (40 CFR 123.121(g)(1)), neither does EPA have the authority to limit the State in its use. (For further details on this point see discussion under previous comments).

Comment—One commenter stated that the use of two toxicity extraction procedures tests and the use of both EPA and Louisiana hazardous waste lists was inconsistent with federal program requirements. As such it was sufficient basis for disapproval of the Louisiana program. The commenter cited 40 CFR 123.128(a) and 40 CFR 123.32 as authority for his recommendation to deny authorization.

Response—(See discussion to the previous two comments for authority of the State under RCRA to establish more restrictive program requirements).

40 CFR 123.32 cited by the commenter is a requirement specific to final authorization and does not apply to the Louisiana application for Phase I authorization under consideration at this time. Regulations specifically outline interim authorization requirements for Phase I and Phase II in 40 CFR Part 123, Subpart F. 40 CFR 123.128(a) requires that a State program can be authorized only if it controls a universe of hazardous waste which is nearly identical to that of the Federal program. This requirement is established as a minimum standard at this time. Any state program requirement which exceeds a federal program requirement is determined, at this point in the state authorization process, as solely within the authority of the State to require and enforce. The commenter's point is well-taken when considering the Louisiana application for final authorization at some future time. At that time the State and EPA will have to review all State requirements not only for equivalence with their federal counterparts but also for consistency with the total federal regulatory scheme.

Comment—One commenter stated that Louisiana hazardous waste transportation regulations were not stringent enough and should forbid transportation of hazardous waste by rail, highway, or over water.

Response—An absolute prohibition against the transportation of hazardous waste over water, rail or highway is neither required by the Federal program nor required for finding that a State program is substantially equivalent to the Phase I RCRA program. In fact, such a prohibition would render it impossible to move most hazardous waste to sites where it can be properly disposed, treated, or stored.

EPA's regulatory program (and those of states having substantially equivalent schemes) is believed to strike a balance between the dangers of human health and the environment attached to the transport of hazardous waste and the dangers of not transporting the waste to appropriate, regulated facilities designed to achieve safe disposal.

Comment—Four commenters objected to the State agency's policy of constraints on public participation in the agency's enforcement process.

Response—These comments were based upon past experience by citizens who wished to intervene in agency enforcement proceedings and not with the new provisions of the State application on this subject. EPA believes that the assurances provided by the State, in its application, in compliance with 40 CFR 123.128(f)(2)(ii)(b), add important procedures to enhance the rights of the public to participate in the State enforcement process. These assurances as they are administered by the State, should meet some of the objections raised by the commenters. EPA oversight should help to assure that these program requirements are met. EPA invites the public to comment on the State's performance on this and other state program requirements, to assist in the required semi-annual state program evaluation.

Comment—The Louisiana Department of Agriculture's legal authority to regulate waste pesticides and pesticide containers and the authority of the Department of Natural Resources to delegate its authority over waste pesticides and pesticide containers were challenged. The commenter also stated that the Attorney General's explanation did not clearly demonstrate this authority.

Response—The Attorney General of Louisiana has certified to EPA in the State application that the laws of the State of Louisiana provide adequate authority to carry out the program set forth in the "Program Description." Part of the Program Description includes the detailed coordination between DNR and the Department of Agriculture as it relates to the disposal of waste pesticides. Sections 1623 A, B, C, of the Louisiana Pesticide Control Act give the Agriculture Commission extensive powers over pesticide management. Additionally, Sections 1603 and 1602(1) of the Louisiana Pesticide Law give the commissioner additional powers over the conditions and restrictions governing the use and handling of pesticides. Consequently, EPA relies on the opinion of the Attorney General of Louisiana that DNR has the authority to coordinate the regulation of waste pesticides with the Department of Agriculture as set forth in its regulations.

Comment—Three commenters objected to permits which the State might issue if the State were granted Phase I Interim Authorization.

Response—Phase I Interim Authorization does not include the issuance of RCRA permits. The State may choose to continue its permit issuance procedures for existing facilities but new facilities cannot begin operation until a RCRA permit is obtained. This will not occur until the State is authorized for Phase II; only then will they have the authority to issue RCRA permits.

Comment—One commenter made specific reference to the Agency's neglect in not following the proper regulations to provide adequate public notice of the public hearing held on October 23, 1980. The commenter cited three reasons to support the allegation of improper public notice; (1) Failure by EPA to comply with 40 CFR 25.1–25.5 in publishing the notice for the Phase I Interim Authorization Hearing, (2) Improper interpretation by EPA that 40 CFR 123 notice requirements negated 40 CFR 25 notice requirements, and (3) Failure by EPA to meet the notice requirements of 40 CFR 123.

Response—EPA believes it complied with the applicable regulations in noticing the hearing on Louisiana's application for Interim Authorization. EPA regulations (40 CFR Part 25), contain general public participation requirements for RCRA, as well as other environmental legislation. The Preamble to Part 25 defers public participation requirements for RCRA until publication of the Consolidated Permit Regulations, 40 CFR Parts 122–123. These regulations are now effective and Section 122.1(e), *Public Participation* states "This rule establishes the requirements for public participation in EPA and State permit issuance, enforcement, and related variance proceedings; *and in the approval of State RCRA,* UIC, NPDES, and 404 programs. *These requirements carry out the purposes of the public participation requirements of 40 CFR Part 25 (Public Participation), and supersede the requirements of that Part as they apply to actions covered under Parts 122, 123, and 124."* (emphasis added) (See following comment regarding proper notice of hearing for a discussion of item 3.)

Comment—Eleven commenters stated they had not received adequate or proper notice of the time, place, and purpose of the hearing. In addition, six of the nineteen commenters requested that a second hearing be held and properly noticed to allow the participants to prepare presentations for a second hearing.

Response—EPA was required to give thirty (30) days notice of the October 23, 1980, public hearing in three ways. These are (1) by publication in the

Federal Register, which was done, (2) by publication in enough of the largest newspapers in the state to attract statewide attention, which was done, and (3) by mailing to the persons on the state agency mailing list and to other persons believed to be interested.

The third requirement was complied with in the following ways. EPA mailed a timely notice of the hearing to in excess of 5,000 persons on its mailing lists, acting in the belief that a current state agency mailing list was included therein. It turns out that a small proportion of those on the most recent state list are included in the list to whom EPA sent notice.

In addition to the foregoing notices, the DNR mailed to all on the state mailing list approximately sixteen days prior to the hearing, its Hazardous Waste Bulletin which contained a notice of the Interim Authorization hearing. This notice contained the information required in the EPA regulations (40 CFR 123.135(a)).

Comment—Several commenters stated that the substance of the application was not available in a prepared summary and available for the public to use in preparation for the hearing. They stated that this placed them at a disadvantage and compromised their ability to comment on the State application.

Response—EPA's regulations governing procedures for approval of a State's application require notice of receipt of the application and the availability of it for inspection and copying (See 40 CFR 123.135(a)). There is no requirement to summarize the application. There are many good reasons for the absence of such a requirement. This could result in public comment, not on the state's application but to the summary. This would erode the purpose of the public comment process which is public involvement in the evaluation of the application.

The length and complexity of the Louisiana application would require that a summary would necessarily be subjective. While many might agree that such a summary would be reasonable, undoubtedly some would not. No attempt to summarize the application would be satisfactory to all. Therefore, EPA has concluded that it is in the best interest of the public comment process not to summarize the application.

The State of Louisiana is hereby granted interim authorization to operate the RCRA Subtitle C hazardous waste management program in accordance with section 3006(c) of RCRA and implementing regulations found in 40 CFR 123 Subpart F.

Dated: December 19, 1980.

Adlene Harrison,

Regional Administrator.

[FR Doc. 80-39481 Filed 12-18-80, 8:45 am]

BILLING CODE 6560-30-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 15

[FCC 80-706]

Stern Electronics, Inc.; Sega Enterprises, Inc.; Atari Inc.; Petitions to Stay the January 1, 1981 Date When Coin Operated Electronic Games Require Certification

AGENCY: Federal Communications Commission.

ACTION: Stay of compliance date for final rule.

SUMMARY: In response to several petitions from manufacturers of coin operated electronic games, the Commission stayed the certification for requirements for these games pending resolution of two petitions for rulemaking to reclassify these games as Class A computing devices. Coin operated games manufactured after January 1, 1981 must carry the interim label warning that they have not been tested and may cause interference to radio and TV reception.

EFFECTIVE DATE: December 4, 1980. The date when coin-operated electronic games must be certified is stayed from January 1, 1980 until October 1, 1981.

FOR FURTHER INFORMTION CONTACT: Herman Garlan or Sydney Bradfield, Office of Science and Technology (202-653-8121 or 202-653-8131).

SUPPLEMENTARY INFORMATION:

In the matter of Stern Electronics Inc., Sega Enterprises Inc., Atari Inc.: Petitions to stay the January 1, 1981 date when coin operated electronic games require certification (§ 15.834(a)).

Order Staying the January 1, 1981 Compliance Date for Coin Operated Electronic Games

Adopted: December 4, 1980

Released: December 10, 1980.

1. The Commission has before it the above mentioned petitions requesting a stay of the date for which certification is required for coin-operated electronic games.

2. Electronic games are considered Class B computing devices under the Commission's new rules in Part 15 which are designed to control the interference potential of digital electronic equipment (defined as computing devices) to radio communications. The rules were adopted on September 19, 1979 and released on October 11, 1979.[1] The effective date of the rules was changed and certain other non-technical changes were made to the rules on reconsideration. The revised rules were adopted on March 27, 1980 and released on April 11, 1980.[2]

3. Under these rules for computing devices, the Commission established two classes of computing devices, which are related to how the equipment is marketed. Equipment marketed for use in a commercial, business or industrial environment is defined as a Class A device. Equipment marketed for use in a residential environment, notwithstanding use in a business environment, is a Class B device. Separate radiated and conducted limits were adopted for each class of equipment. The rules also specify the equipment authorization procedure to be used to determine compliance. Finally, they provide a labelling procedure to make the purchaser aware of whether the device complies with our rules and the interference potential of the equipment.

4. Among other things, these rules specifically classify electronic games as Class B computing equipment (§ 15.4(p)) and require that such electronic games manufactured after January 1, 1981 be certificated by the Commission (§ 15.834(a)).[3]

The Stern Petition to Stay

5. On September 12, 1980, Stern Electronics Inc. by its attorneys, filed a *Petition for Extension of Effective Date* in § 15.834(a) from January 1, 1981 to October 1, 1981 for coin operated electronic games. It was put on public notice on September 24, 1980. Stern asks for this extension to allow time to resolve the uncertainty concerning the applicability of the computer rules to coin operated electronic games. Moreover, Stern points out that the Commission has not yet specified the measurement procedure to be used to determine compliance. In this connection neither Stern nor other manufacturers of coin operated games have had sufficient equipment or facilities to ensure compliance. Finally,

[1] First Report and Order in Docket 20780, adopted September 18, 1979, released October 11, 1979, 44 FR 59530, October 16, 1979

[2] Order Granting in Part Reconsideration in Docket 20780, adopted March 27, 1980, released April 9, 1980, 45 FR 24154, April 9, 1980.

[3] Certification is one of the procedures used in the Commission's equipment authorization program which is described in Part 2 Subparts I, J, K and L of our rules (47 CFR Part 2 Subpart I, J, K and L).

according to Stern, because there has been so little interference caused by coin operated electronic games, the requested extension poses no danger of interference in the interim.

The Sega Petition For Stay

6. Sega Enterprises Inc., on September 19, 1980, by its attorneys, filed a *Request for Stay and Petition for Waiver* requesting the Commission to stay implementation of § 15.834 as applies to coin operated video games pending judicial resolution of a *Petition for Review* of Docket 20780.[4] The Sega petition was placed on public notice on September 30, 1980. In the alternative, Sega asks the Commission to waive imposition on Sega of § 15.834 until at least October 1, 1981. Sega argues that the record in Docket 20780 does not support including coin operated electronic games as Class B computing devices. A stay according to Sega, is appropriate pending resolution of a Petition for Review of Docket 20780 [5] in that a stay will relieve manufacturers from complying with regulations which ultimately may be deemed to be inapplicable.

7. If the stay is denied, Sega asks for a waiver of the January 1, 1981 date in Section 15.834 until at least October 1, 1981 to allow for an orderly transition, which would allow the manufacture of complying games without exorbitant cost to the manufacturer and thus to the game.

The Atari Petition For Stay

8. On September 29, 1980, by its attorneys, Atari filed a *Motion for Stay* asking the Commission to stay the date January 1, 1981 in Section 15.834 until resolution of Atari's Petition for Review [6] or until the Commission reconsiders its rules for coin operated electronic games in response to rule making petitions RM-3738 and RM-3789.[7] Atari argues that coin operated electronic games are by design intended to be operated in a commercial environment—not a home or residential area. Accordingly, coin operated games are no threat to home broadcast reception.

9. Atari repeats the argument of the other petitioners that the record in 20780 does not support the imposition of Class B limits on coin-operated games. Atari claims that the imposition of the rules is arbitary and expects it to be overturned by the Ninth Circuit. However, Since the court appeal will not be decided prior to January 1, 1981, Atari alleges it will suffer severe economic injury. To bring its coin operated electronic games into compliance, Atari estimates that it will involve 80 persons at a cost in exess of $300,000—a cost and effort which will be entirely wasted if the Ninth Circuit vacates the regulation. More significantly, Atari alleges that despite intensive efforts it has not been able to find an economically feasible method to satisfy the Class B standards.

10. Noting that the Commission had placed great emphasis in interference from coin operated electronic games to police communication, Atari joined with the Oregon State Police to study this problem. The studies allegedly show that the present generation of coin operated games pose no threat of interference to police communication. Moreover, we have received a letter from the Oregon State Police which states that they are now satisfied that the present generation of electronic games will not interfere with police communications.

Comments on these petitions

11. Comments on the petitions for stay were received from the following parties: Bally Manufacturing Corp. filed a comment on September 22, 1980 supporting the Stern petition for stay. Bally joins with Stern to call attention to a number of factors currently causing uncertainty in the marketplace:

—Confusion as to the types of coin operated electronic games actually included in the Class B category.

—The pendency of the Atari court appeal which could result in the reclassification of coin operated games as Class A devices.

—The proceeding in General Docket 80-439 dealing with the exemption from certification of certain categories of electronic games.

—Williams Electornics Inc. petition RM-3738 specifically to exempt coin operated electronic games from certification.

For these reasons, Bally urges the Commission to grant the Stern petition and extend the date when certification is required to October 1, 1981.

12. A joint comment was filed on October 2, 1980 by seven parties who are manufacturers of coin operated electronic pinball and/or video games. The comment alleges that the seven commentors together with Bally, Atari and Sega [8] account for approximately 95 percent of the coin operated electronic games manufactured or sold in the United States. The commenting parties support Stern and urge the Commission to extend the date for certification of coin operated electronic games to October 1, 1981. The commenting parties indicate their willingness to label the games manufactured after January 1, 1981 to alert users that the games have not been tested for compliance and could cause interference to television reception if used in a residential environment.

13. Texas Instruments Inc. (TI) filed comments on October 17, 1980 on the petitions for stay filed by Stern and Sega. TI voices no opinion on the merits of the Stern and Sega petitions. Its concern is with the possibility that the compliance date January 1, 1981 will be extended for all equipment. TI in particular objects to the argument that a stay is warranted because the Commission has not completed the rule making in Gen. 80-284 [9] and has not yet promulgated a specific measurement procedure for computers. TI argues that Gen. 80-284 merely refines existing measurement procedures to provide for more uniformity to achieve greater repeatability of measurements. TI urges the Commission to consider carefully the Stern and Sega petitions. Whatever conclusion the Commission reaches regarding these petitions, the Commission is urged not to postpone general implementation of the Class B computing device standards.

Commission Response

14. The Commission agrees with TI that failure to complete Gen. 80-284 is not sufficient grounds for staying the compliance date in § 15.834(a). While the procedures proposed in Gen. 80-284 can be expected to yield more repeatable measurements, there are other measurement procedures that can be used.[10] Accordingly, the argument that a stay should be granted because

[4] *Atari Inc. v. FCC and USA*, No. 80-7302 (U.S. Court of Appeals for the Ninth Circuit). On October 30, 1980, upon consideration of the parties' stipulation, the Court stayed this proceeding for nine months, pending the FCC entering of a final decision on petitioner's Petition for Rule Making (RM-3789) filed October 24, 1980.

[5] Two petitions for rulemaking have been received: RM-3738 filed August 7, 1980 by Williams Electronics Inc. to exempt coin operated electronic games from certification.

RM-3789 filed October 24, 1980 by Atari Inc. to regulate coin operated electronic games as Class A computing devices.

[6] See footnote 4 above.

[7] See footnote 5 above.

[8] Bally filed comments supporting the Stern request for stay. Atari and Sega each filed their own petition for stay. Thus the coin-operated electronic games industry is unanimous in requesting the stay.

[9] General Docket 80-284: In the Matter of Amendment of Parts 2 and 15 of the Rules relating to verification and methods of measurement of computing devices. Notice of Proposed Rule Making adopted June 11, 1980 released June 20, 1980; 45 FR 42347, June 24, 1980.

[10] See FCC Laboratory Report on "Personal Computers as Restricted Radiation Devices", Project No. 62502, August 1979. See Computer and Business Equipment Manufacturers Association (CBEMA) report and comment in Docket 20780, CBEMA/ESC 5/77/29 filed June 16, 1977.

the rulemaking setting forth measurement procedures has not yet been completed, is not considered persuasive.

15. Although the measurement procedure argument is not accepted, the other arguments presented warrant favorable consideration of the several petitions for stay. The Commission is particularly persuaded by the argument that the interference potential of present day coin-operated games may have changed from 1974–75 and that it hold in abeyance the requirements pending a decision on Williams RM–3738 and Atari RM–3789 which seek a rule change that would eliminate the requirement for coin operated electronic games to be certificated. If the outcome in RM–3738 and RM–3789 results in a reclassification for coin operated electronic games from Class B to Class A, any effort expended by the petitioners to achieve compliance with the Class B standards would be an unnecessary burden. In this regard, the Commission will be particularly interested in comments on the Atari/Oregon State Police study showing that coin operated electronic games are no longer a source of interference to police communications. With this study in hand, the Commission is willing to accept petitoners' argument that granting the stay as requested poses a very low risk of interference to radio communications including television reception. The games must be labelled pursuant to § 15.805.

16. Accordingly, it is ordered that the date in § 15.834(a) when coin-operated electronic games must be certificated is stayed from January 1, 1981 until October 1, 1981. In other respects, it is ordered the subject petitions are denied. It is further ordered that, pursuant to § 1.427(b), since it relieves a regulatory restriction, this order shall become effective December 4, 1980.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 80-39435 Filed 12-18-80; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 15

[FCC 80-707]

Health Industry Manufacturers Association; Granting of Petition for Waiver of Interim Label and Notice Requirement for Medical Devices

AGENCY: Federal Communications Commission.

ACTION: Order waiving certain requirements for medical devices.

SUMMARY: The Commission has waived the interim label and user information requirements for medical products in response to an industry association petition. The label and warning information is required on all computing devices manufactured after January 1, 1981 which have not been tested for compliance. The waiver for medical devices only will continue pending an FCC study of an industry petition to exempt all medical products from the rules for computing devices.

EFFECTIVE DATE: December 4, 1980.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Herman Garlan or Sydney Bradfield, Office of Science and Technology (202–653–8121 or 202–653–8131).

SUPPLEMENTARY INFORMATION:

In the matter of Health Industry Manufacturers Association petition for waiver of interim label and notice requirement for medical devices under § 15.805; Order waiving § 15.805 for medical devices, FCC 80–707.

Adopted: December 4, 1980.

Released: December 11, 1980.

By the Commission:

1. The Health Industry Manufacturers Association (HIMA) on October 16, 1980, filed a petition asking the Commission to waive the requirements in Section 15.805 for an interim label and an instruction manual insert for medical computing devices. This petition was put on public notice on October 23, 1980. A comment on the HIMA petition was received from the General Electric Company (GE) on November 5, 1980. On November 24, 1980, a comment on the HIMA petition was received from Mr. David Segerson of the Food and Drug Administration (FDA).

2. On October 11, 1979, the Commission released rules establishing technical standards and equipment authorization procedures for computing equipment.[1] Computing equipment is defined as a device that uses RF energy for the purpose of performing data processing functions and is construed to include computing equipment used in medical applications. In response to petitions for reconsideration [2] the compliance date for computing equipment was deferred from July 1, 1980 to January 1, 1981, October 1, 1981 or October 1, 1983 depending on the type of computer and its date of initial production.[3] In addition, a provision was added requiring an interim label and an instruction manual insert after January 1, 1981 until the date the computing device is tested and found to comply with the applicable technical standards. The interim label and manual insert caution the purchaser/user that the device had not been tested for compliance and operation in a residential area is likely to cause interference.[4]

The HIMA Request for Waiver

3. HIMA asks for a stay of the interim label and notice requirement for medical computing equipment pending the filing of a more extensive request for relief which the petitioner stated will be submitted shortly. The type of relief to be sought is not elaborated on.

4. HIMA points out that the original Notice in 20780 published in April 1976 did not specifically refer to medical devices. Accordingly, manufacturers of medical devices did not believe that their devices were subject to the proposal in Docket 20780. According to HIMA, it was not until October 1979 when the First Report and Order in Docket 20780 was published, that the medical device industry generally became aware that they were subject to the Commission's computer rules. Even today, HIMA continues, many companies remain uncertain whether the products they manufacture are covered by these rules. This uncertainty was augmented by the Commission's exemption of "medical test equipment" in its order on reconsideration.[5]

5. Uncertainty as to the applicability to the Docket 20780 proceeding, according to HIMA, has left manufacturers of medical devices with insufficient time to check their equipment for compliance, let alone to bring their equipment into compliance. Secondly, HIMA argues that medical devices are already subject to detailed regulatory control under regulations of the Food and Drug Administration pursuant to the Medical Device Amendments of 1976. HIMA points out that FDA has noted its interest in electromagnetic compatibility and is preparing a suggested voluntary standard [6] which goes beyond the FCC standards. The FDA suggested voluntary

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[1] First Report and Order in Docket 20780, adopted September 18, 1979, released October 11, 1979, 44 FR 59530, October 16, 1979.

[2] Order Granting in Part Reconsideration in Docket 20780, adopted March 27, 1980, released April 9, 1980, 45 FR 24154, April 9, 1980.

[3] 47 C.F.R. 15.814, 15.834

[4] 47 C.F.R. 15.805

[5] 47 C.F.R. 15.801(c)(3). This regulation exempts medical test equipment from the technical standards and approval procedures of Part 15 Subpart J. As used in this section, medical test equipment is construed to apply only to equipment used to check the performance of a medical device—not to the medical device itself.

[6] FDA Electromagnetic Compatibility Standard for Medical Devices, MDA–201–0004 (1979).

standard covers susceptibility of the device as well as setting limits on radiated and conducted emissions from the device. HIMA argues that the FCC should rely on the FDA to regulate the interference from medical computing devices rather than imposing its own parallel regulatory requirements.

6. HIMA suggests that the interim label required by Section 15.805 may be in conflict with the requirement of the FDA that the label and advertising for a medical device provide full disclosure. It alleges that the wording required on the FCC label—"has not been tested to show compliance" when in fact the device has been tested and found not to comply, may constitute mislabelling and subject the manufacturer to penalties.

7. Moreover, it contends that the cost of interim labelling will be high and is not economically justified, since most medical computing equipment is used in hospitals and is not likely to cause interference as postulated by the Commission.

General Electric Comment

8. GE filed a comment on the HIMA petition on November 5, 1980. After summarizing HIMA's argument, GE points out that on November 5, 1980 GE filed a *Petition for Relief* asked the Commission to exempt medical diagnostic equipment used in the hospital from the provisions of Part 15 Subpart J (the computer rules) pending separate consideration of this class of equipment.[7] GE supports the HIMA argument that the interim label required by Section 15.805 is an unnecessary burden on industry. Moreover, this label appears to be out of step with the traditional type of information required by the government concerning medical devices. GE explains that FDA labels are required:

> ... to inform the user that a medical device has satisfied federal standards ... In contrast, the Commission's rules require labelling certain devices as not complying with federal standards. (GE comment, page 4, footnote 1.)

9. GE also points out that in its Petition for Relief, it shows that the same considerations that led the Commission to exempt four other categories of computing devices are equally valid for medical diagnostic equipment. According to GE, there is no record that medical diagnostic equipment has been a source of interference and GE argues that granting the requested waiver will therefore not impair the public interest. Accordingly, GE urges the Commission to grant the waiver requested by HIMA, pending a detailed study of the questions raised by the GE petition and by HIMA.[8]

FDA Comment

10. Following telephone conversations between FCC and FDA staff, Mr. David Segerson of the FDA submitted a letter to the Commission regarding the HIMA petition. The letter arrived November 24, 1980. The letter provided three specific comments that bear note. First, Mr. Segerson points out that HIMA and other trade associations have fought FDA's establishment of a voluntary electromagnetic compatibility (EMC) standard. In addition, the FDA does not anticipate promulgating a mandatory standard other than on a device-by-device basis as specific problems are identified. Second, although Mr. Segerson agrees with HIMA that the required label might force some manufacturers to make "false statements", the FDA does not anticipate enforcing the misbranding rules in these cases. Finally, Mr. Segerson states that HIMA has exaggerated the burden of compliance with FDA labelling requirements, and, in any event, the FDA would consider issuing a notice to their field inspectors to disregard the FCC-required label. This action would, in effect, result in the non-enforcement of FDA regulations with regard to the FCC required label.

AHA Comment

11. The American Hospital Association (AHA), representing 6,200 hospitals and 30,000 health professionals, strongly supports the HIMA petition and urges the Commission to grant the requested waiver. AHA alleges that the warning label is misleading when it states that the subject equipment may cause interference since AHA, through its membership in ANSI Committee MD105 as well as its own survey, has not been able to identify any interference to radio or TV caused by medical equipment. On the contrary, the interference observed was from radio and TV to medical equipment. Moreover, according to AHA, the warning label poses a threat to patient confidence in the hospital. AHA notes that many devices use TV type screens and displays making them look like TV receivers. The presense of the warning label may cause patients or their families to question whether they should permit the use of a labeled device even if the device is serving a life support function.

FCC Decision

12. The Commission agrees in part with the arguments presented by HIMA and GE. For example, even though we disagree with the arguments that manufacturers of medical equipment were not given adequate notice of the rules, it is conceivable that some of the smaller manufacturers may have learned about the rules too late to bring their equipment into compliance. Another argument which appears specious is the claim that the interim label may constitute a violation of FDA requirements subjecting manufacturers to risk or penalties. We are, however, sympathetic with the argument that the label may cause confusion among medical personnel who are required to read all labels on a medical product.

13. Considering the above and in order to provide the Commission with an opportunity to assess the level of interference arguments presented by GE in its petition for rule making and the promised petition from HIMA, the Commission is temporarily waiving the interim labelling requirement in Section 15.805 for all medical products, pending the outcome of the forthcoming rule making proceeding. The new proceeding will provide us with an opportunity to consult with FDA more fully on the labelling and other issues raised by GE and HIMA.

14. In view of the above, *it is ordered that § 15.805 be waived* with respect to medical equipment[9] using computing techniques pending a detailed study of the questions raised in the GE petition received November 5, 1980 and the HIMA petition to be received shortly. *It is further ordered* that, pursuant to Section 1.427(b), since it relieves a regulatory restriction, this order shall become effective December 4, 1980.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 80-39450 Filed 12-18-80; 8:45 am]

BILLING CODE 6712-01-M

[7] GE's *Petition for Relief* is considered a petition for rule making, assigned Rule Making Number RM-3797 and placed on public notice on November 25, 1980 (mimeo 01906). Comments are requested by December 25, 1980.

[8] In its request for waiver of Section 15.805, HIMA indicates that it is preparing a more extensive request for relief to be submitted shortly (footnote on page 1).

[9] For the purposes of this waiver, we will use the same definition for "medical devices" that FDA uses. See 21 U.S.C. 321(b).

INTERSTATE COMMERCE COMMISSION

[Ex Parte No. 395]

49 CFR Part 1128]

Feeder Railroad Development Program

AGENCY: Interstate Commerce Commission.

ACTION: Adoption of interim rules.

SUMMARY: Proposed rules for the Feeder Railroad Development Program established by section 401 of the Staggers Rail Act of 1980 were issued by the Commission on October 23, 1980, and were published in the Federal Register on November 4, 1980 (45 FR 73106). This program requires railroads to sell certain rail lines under specific circumstances to a financially responsible person who applies for the acquisition of these lines. The purpose of this program is to provide shipper groups and communities with an alternative to inadequate rail service or abandonment and with an opportunity to preserve feeder lines prior to the total downgrading of such lines. The proposed rules are being adopted as interim rules until comments on the proposed rules are received and reviewed and final rules are promulgated.

EFFECTIVE DATE: These interim rules are effective on December 19, 1980.

FOR FURTHER INFORMATION CONTACT: Richard J. Schiefelbein, (202) 275–0826; Ellen Hanson, (202) 275–7245.

SUPPLEMENTARY INFORMATION: On October 23, 1980 the Commission issued proposed rules for the Feeder Railroad Development Program in accordance with the provisions of section 401 of the Staggers Rail Act of 1980 (Act). The Act required that regulations and procedures be promulgated within 60 days, which will be December 14, 1980. The proposed rules were published in the Federal Register on November 4, 1980, 45 FR 73106, with a 30-day comment period; thus, comments were not due until December 4, 1980. It appears unlikely that the comments can be reviewed and final regulations promulgated by December 14, 1980. Therefore, in order for the program to proceed until the regulations are finalized, the proposed rules will be adopted as the interim regulations.

This decision will not significantly affect the quality of the human environment, or the conservation of energy resources.

(49 U.S.C. 10910)

Decided: December 10, 1980.

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

Agatha L. Mergenovich,

Secretary.

Appendix

Interim rules

Part 1100 of title 49 of the Code of Federal Regulations is amended by adding the following Part 1128 as interim rules:

PART 1128—FEEDER LINE DEVELOPMENT PROGRAM

Sec.

1128.1 Purpose and scope.
1128.2 Notice of intent to purchase.
1128.3 Application to purchase.
1128.4 Procedures for handling an application for a line contained in category 1 or 2 of the Owning Carrier's System Diagram Map.
1128.5 Procedures for handling an application seeking a finding of public convenience and necessity.
1128.6 Commission order.
1128.7 Acquisition cost.

Authority: 49 U.S.C. 10910.

§ 1128.1 Purpose and scope.

(a) Section 401 of the Staggers Rail Act of 1980 provides for for the purchases by a financially responsible person of certain rail lines. The requirements are that either the line appear in category 1 or 2 of the owning railroad's System Diagram Map (but the railroad has not filed an application to abandon it), or the public convenience and necessity, as specifically defined in Section 401, permit or require the sale of the line. Until October 1, 1983 the applicability of Section 401 is limited to lines that carried less than 3 million gross ton miles per mile in the preceding calendar year.

(b) Section 401 directs the Commission to prescribe within 60 days of enactment such regulations and procedures as are necessary to carry out the provisions of this Section. This part sets forth rules are required by Section 401.

§ 1128.2 Notice of intent to purchase.

(a) A financially responsible person, as defined in 49 U.S.C. 10910(a)(1), who wishes to acquire a rail line pursuant to these procedures shall, at least 90 days prior to applying to the Commission for such purpose, notify the following persons or entities of its intent to purchase a line of railroad: the Interstate Commerce Commission; the Designated State Agency in the state(s) in which the property is located; the owning railroad; and all significant users of rail services located on the lines. "Significant user" means (1) each of the 10 rail patrons who originated and/or received the largest number of carloads on the line (or each patron if there are less than 10), and (2) any other rail patron who originated and/or received 50 or more carloads on the line proposed for acquisition during the 12-month period preceding the month in which the Notice is filed.

(b) The Notice shall contain the following information: identity of the applicant, identification of the properties that the applicant wishes to purchase; the applicant's reasons for wishing to acquire the properties; and preliminary evidence of the applicant's financial responsibility. Additionally, the Notice must contain a summary of the essential terms to be contained in the application, including an estimate of the net liquidation value of the property (with appraisal, if available), and an indication that the acquiring party is prepared to offer at least that amount to the owning railroad. The Notice shall also state that any interested party may submit comments or recommendations to the Commission with respect to the Notice and application, and that other interested and financially responsible persons may also propose to acquire the property.

(c) Service of the Notice shall be made by certified mail to each party identified in subparagraph (a) above, and shall be posted in each station on the line and published in a local newspaper for 3 weeks. An affidavit shall be filed with the Notice stating that the service requirements of this subparagraph have been met. The Commission will publish a summary of the Notice in the Federal Register.

§ 1128.3 Application to purchase.

(a) Not less than 90 days after filing the Notice required in § 1128.2 of these regulations, the party wishing to acquire the line may file an application with the Commission for the purchase of the rail properties described in the Notice.

(b) The Application shall contain the following information:

(1) The name and address of the proposed purchaser.

(2) The names and addresses of its officers and directors.

(3) A description of any affiliation with any railroad.

(4) Information sufficient to establish that the applicant is a financially responsible person as defined in 49 U.S.C. 10910(a)(1). In this regard, the applicant must demonstrate its ability:

(i) To pay the higher of the net liquidation value or going concern value of the line; and

(ii) To cover expenses associated with providing service over the line such as, but not limited to, operating costs, rents, and taxes for the first three years after acquisition of the line.

With regard to item (i) above, estimates of net liquidation and going concern values, and complete descriptions of the methods by which such calculations were made, must be included. An appraisal by a qualified person of the net liquidation value of the line must also be included.

(5) A copy of the offer to purchase the line at the higher of the two estimates submitted pursuant to sub-paragraph (4).

(6) The dates for the proposed period of operation of the line covered by the application.

(7) An operating plan that identifies the proposed operator; attaches any contract that the applicant may have entered into with the proposed operator; describes in detail the service that is to be provided on the line, including all interline connections; and demonstrates that adequate transportation will be provided over the line for at least three years from the date of acquisition.

(8) The extent of the applicant's and the operator's liability insurance.

(9) Any preconditions, such as assuming a share of any subsidy payments, that will be placed on shippers in order for them to receive service, and a statement that if the application is approved, no further preconditions will be placed on shippers without Commission approval.

(10) The name and address of any person(s) that will subsidize the operation of the line.

(11) A statement that the applicant has negotiated with the owning railroad for the purchase of the properties and a report on the status of those negotiations.

(12) A statement that the applicant will seek a finding by the Commission that public convenience and necessity (PC&N) permit or require the acquisition or a statement that the line is currently in category 1 or 2 of the owning railroad's System Diagram Map. If the latter, a copy of the relevant portion of the map must be attached to the application. If the applicant seeks a finding of PC&N from the Commission, then the application must contain evidence sufficient to permit the Commission to find that:

(i) The rail carrier operating the line refused within a reasonable time to make the necessary efforts to provide adequate service to shippers who transport traffic over the line;

(ii) The transportation over the line is inadequate for the majority of shippers who transport traffic over the line;

(iii) The sale of the lines will not have a significantly adverse financial effect on the rail carrier operating the line;

(iv) The sale of the line will not have an adverse effect on the overall operational performance of the rail carrier operating the line; and

(v) The sale of the line will be likely to result in improved railroad transportation for shippers who transport traffic over the line.

With regard to item (i) above, the applicant's evidence should detail the nature of the claimed service inadequacy, the specific complaints of shippers on the line, the type of service requested, the owning railroads' responses to those requests, and the time period involved. With regard to item (ii) above, the applicant should include identification of all significant users of the line, with estimates of the tonnage and carloads shipped or received by each, and statements from a majority of the users explaining why the present service is inadequate.

(13) The extent to which the applicant intends to elect exemption from any of the provisions of Title 49, United States Code, and a statement that if the application is approved, no further exemptions will be elected.

(14) A description of any trackage rights required over the owning railroad that are needed to allow reasonable interchange or to move power equipment or empty rolling stock between noncontiguous feeder lines operated by the applicant, and an estimate of the reasonable compensation for such rights, including a full explanation of how the estimate was reached.

(15) A description of any joint rates and divisions agreements that must be established, including a list of the railroads involved.

(16) The extent to which the owning railroad's employees who normally service the line will be used.

(17) If the application is filed before October 1, 1983, information sufficient to allow the Commission to determine that the line sought to be acquired carried less than 3,000,000 gross ton miles of traffic per mile in the preceding calendar year.

(c) The Commission may, if it finds that the circumstances of the application suggest a pattern of litigation that constitutes unfair harassment of the owning railroad, issue an order requiring applicant to show cause why that application should not be summarily dismissed.

§ 1128.4 Procedures for handling an application for a line contained in category 1 or 2 of the owning carrier's System Diagram Map.

(a) Applications filed before October 1, 1983 seeking to acquire a line contained in category 1 or 2 of the owning carrier's System Diagram Map shall be subject to the following procedures:

(1) The Commission shall accept or reject an application with respect to its completeness within 15 days of its receipt.

(2) The railroad and other interested parties shall have 30 days to file comments on the application.

(3) Replies shall be filed within 15 days after comments are received.

(4) Competing applications, which must meet all the information requirements imposed on the initial applicant, shall be filed within 30 days of the application's receipt.

(5) When the Commission finds: (i) the information submited demonstrates that the traffic level on the properties sought to be acquired was less than 3 million gross ton miles of traffic in the preceding calendar year; (ii) the line has been verified as currently classified in category 1 or 2 of the owning railroad's System Diagram Map; and (iii) the applicant is a "financially responsible person" as defined in 49 U.S. C. 10910(a)(1), it shall issue an order requiring that the rail properties in the application be sold to the applicant, upon payment by the applicant of the Constitutional minimum value of the properties, established in accordance with § 1128.7 of these regulations.

(b) For applications filed after October 1, 1983, the Commission shall follow the procedure described in (a) above, except that the requirement that the line have carried less than 3 million gross ton miles per mile in the preceding calendar year shall no longer apply.

§ 1128.5 Procedures for handling an application seeking a finding of public convenience and necessity.

(a) An application filed with the Commission seeking a public convenience and necessity finding shall be subject to the following procedures:

(1) The Commission shall accept or reject an application with respect to its completeness within 30 days of its receipt.

(2) The railroad and other interested parties wishing to comment shall file within 60 days of the filing date of the application their verified statements commenting on the application.

(3) Verified reply statements shall be filed no later than the 75th day after the filing date of the application.

(4) The applicant shall bear the burden of proving the following:

(i) the rail carrier operating the line covered by the application has refused within a reasonable time to make the necessary efforts to provide adequate service to shippers who transport traffic over the line;

(ii) the transportation over the line is inadequate for the majority of shippers who transport traffic over the line;

(iii) the sale of the line will not have a significant adverse financial effect on the rail carrier operating the line;

(iv) the sale of the line will not have an adverse effect on the overall operational performance of the rail carrier operating the line; and

(v) the sale of the line will be likely to result in improved railroad transportation for shippers who transport traffic over such line.

(5) If the Commission determines that the statements and the reply statements do not contain sufficient evidence to permit a decision on the merits, the Commission will set the proceeding for further oral or written hearing.

(6) If the Commission finds that the applicant has not successfully carried the burden of proof with respect to one or more of the matters covered by (A) through (E) above, the Commission shall deny the application.

(7) If the Commission finds that the applicant has successfully carried the burden of proof with respect to each of the matters covered by (A) through (E) above, it shall order the properties covered by the application to be sold to the applicant upon payment by the applicant of the Constitutional minimum value of these properties, established in accordance with § 1128.7 of these regulations.

§ 1128.6 Commission order.

(a) In any Commission decision that orders a line to be sold, the Commission will also address any related issues raised in the application.

(b) If trackage rights are sought in the application, the Commission shall, based on the evidence of record, set the adequate compensation for such rights, if the parties have not agreed to a price.

(c) If the application requires the Commission to set joint rates or divisions, the Commission shall do so, based on the evidence of record in the proceeding. Unless specifically requested to do so by the selling carrier, the Commission will not set the rate for the selling railroad's share of the joint rate at less than the level set by section 202 of the Staggers Rail Act of 1980 (for the year in which the acquisiton is made) that limits Commission maximum ratemaking jurisdiction to rates above certain cost/price ratios.

§ 1128.7 Acquisition cost.

(a) If the applicant and the owning railroad agree between themselves on an acquisition price, that price shall be the final price and not subject to any of the requirements of this subpart.

(b) If the Commission has issued an order requiring the rail properties covered by an application to be sold to the applicant, and the owning railroad and the applicant cannot agree on a sale price, the Commission will, upon a request by the applicant, determine the value of the properties which shall not be less than the Constitutional minimum value, as that term is defined in 49 U.S.C. 10910(b)(1)(B).

(c) A request by the applicant that the Commission set the Constitutional minimum value of the properties to be sold shall be made within 60 days of the Commission's order requiring the properties to be sold, and must be accompanied by a statement by the applicant that it has attempted unsuccessfully to negotiate with the railroad during that period and describing the status of the negotiations.

(d) The Commission shall make available to the parties two separate procedures under which the Constitutional minimum value may be set. In its petition asking the Commission to set the Constitutional minimum value, the applicant must state its preferred method.

(1) If the applicant chooses to submit evidence sufficient to prove both the net liquidation value (NLV) and the going concern value (GCV) of the rail properties approved for sale, the following procedures shall apply:

(i) If this option is selected, applicant must submit information and evidence proving NLV and GCV with its petition asking the Commission to set the Constitutional minimum value.

(ii) The appraisal submitted with the application shall be a sufficient submission as to NLV, but must be broken into the constituent parts of NLV (for example, land, track, material, facilities and equipment).

(iii) Applicant shall be free to submit whatever evidence it deems persuasive of GCV, and may seek to use the Commission's discovery procedures for information that is vital to applicant's case and is exclusively in the control of the owning railroad.

(iv) The owning railroad may submit evidence within 30 days of applicant's petition regarding NLV and GCV. If it wishes to challenge applicant's evidence of NLV, the railroad must submit an appraisal by a qualified appraiser that meets the requirements of (ii) above. If it wishes to challenge applicant's evidence of GCV, the railroad shall submit whatever evidence it deems persuasive.

(v) Upon the failure of the applicant to prove the Constitutional minimum value, the Commission shall determine the acquisition cost based on the record of the proceeding, and such determination shall be final.

(vi) The applicant shall have 60 days (or whatever other period the parties agree to) from the date of the Commission's decision to consummate the sale at the price set by the Commission or, within 30 days, notify the owning railroad of its decision not to acquire the line.

(2) As an alternative to the procedure in subparagraph (1) above, the parties may choose final offer arbitration. This method, if selected, shall be binding on both parties, and the sale shall be consummated at that price, unless both agree to a withdrawal of the petition to acquire.

(i) Under this option, the applicant shall, in its petition asking the Commission to determine the Constitutional minimum value of the properties, state its preference for the arbitration option. Final selection of the arbitration option shall not occur until after the exchange of offers described in subparagraphs (iv) and (v) below.

(ii) The petition must attach a signed statement by the railroad agreeing to final offer arbitration as described in these regulations.

(iii) If the railroad does not agree to final offer arbitration, then the applicant must bear the burden of proving the Constitutional minimum value of the line in accordance with the procedures described in subparagraph (1) above.

(iv) Upon receiving such a petition, the Commission shall require the applicant and the owning railroad to exchange, within 15 days, offers for the purchase and sale of the properties.

(v) Within 15 days of the exchange, the applicant shall indicate to the Commission that it and the owning railroad have decided to accept final offer arbitration. If arbitration is not used, the procedures in § 1128.7(d)(1) above will be followed. If arbitration is used, the Commission will act as arbitrator.

(vi) As arbitrator, the Commission will require the applicant and the owning railroad to submit to it the same final offers they previously exchanged (unless they have both agreed to a modification), along with: (A) a statement by each that it believes the offer satisfies the Constitutional minimum value requirement of the Staggers Rail Act of 1980; (B) an

explanation by each of the factors to which the difference between the two offers is attributable; and (C) an explanation by each of why its figure better meets the statutory requirements.

(vii) The Commission shall select whichever of the two offers better meets the statutory requirement of Constitutional minimum value. The Commission will pick one of the two offers, and will not select a different amount.

(viii) The applicant shall have 60 days (or whatever period the parties agree to) from the date of the Commission's decision to consummate the sale at the price set by the Commission, unless both parties agree to a withdrawal of the application.

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Proposed Rules

Federal Register
Vol. 45, No. 246
Friday, December 19, 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.

FEDERAL RESERVE SYSTEM

12 CFR Part 220

[Docket No. R-0250]

Credit by Brokers and Dealers; Proposal To Delete Provision Permitting Use of Foreign Currency in a Margin Account

AGENCY: Federal Reserve Board.

ACTION: Proposed amendment.

SUMMARY: The Board proposes to amend Regulation T (12 CFR Part 220) by deleting the paragraph which permits the use of foreign currency as a credit to a margin account (§ 220.6(j)). It has been called to the Board's attention that the existing language of § 220.6(j) may permit the speculative holding of foreign currency *and* securities in a margin account. By deleting § 220.6(j), the Board will clarify that such a possibility is prohibited and that transactions in foreign currency should be effected in the Special Commodities Account or the Special Miscellaneous Account, since in either case, they would be insulated from security credit transactions. The Board specifically asks for comments on any impact the proposed amendment would have on operations of foreign branches or affiliates of United States brokers and dealers.

DATE: Comments should be received on or before February 19, 1981.

ADDRESS: Comments, which should refer to Docket No. R-0250, may be mailed to Theodore E. Allison, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, D.C. 20551, or delivered to Room B-2223 between 8:45 a.m. and 5:15 p.m. Comments received may also be inspected at Room B-1122 between 8:45 a.m. and 5:15 p.m., except as provided in section 261.6(a) of the Board's Rules Regarding Availability of Information (12 CFR 261.6(a)).

FOR FURTHER INFORMATION CONTACT: Laura Homer, Securities Credit Officer, or Bruce Brett, Securities Regulation Analyst, Securities Regulation Section, Division of Banking Supervision and Regulation, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 (202-452-2781).

SUPPLEMENTARY INFORMATION: The Board has been requested by a law firm to interpret Regulation T (12 CFR 220.6(j)) so as to permit the use of bank depository receipts for gold as cash in a margin account. Section 220.6(j) of Regulation T reads as follows:

> If foreign currency is capable of being converted without restriction into United States currency, a creditor acting in good faith may treat any such foreign currency in an account as a credit to the account in an amount determined in accordance with customary practice.

The law firm is of the view that since the South African Krugerrand is legally "currency" and, therefore, eligible for use as credit to an account, bank depository receipts for gold, being similar in nature to the Kruggerand, should also be eligible for use as a cash credit in a margin account under Regulation T.

The Board rejected this argument, pointing out that since § 220.6(j) of Regulation T was written in 1938, when United States citizens were prohibited from owning or trading gold, it was thus clear that § 220.6(j) was never intended to allow gold to be used in a margin account. Furthermore, the Board pointed out, the law firm's request should be denied as a matter of policy, because the use of volatile foreign currency and commodities such as gold in a margin account could result in the speculative holding of both such currency or commodity *and* securities in one account. In this connection, the Board noted that since December 31, 1974, when the ban on private ownership of gold was ended, the price of gold has widely fluctuated in value from $42.22 to $875.00 Similarly, the volatility of foreign exchange rates has increased since the fixed exchange rate system was abandoned in 1978. Today the values of most major currencies are "floating" in response to market forces. The Board, therefore, believes that § 220.6(j) should be deleted since it may be interpreted to permit speculative activity in foreign exchange.

Since both gold and foreign exchange futures are presently traded on commodity exchanges, the Board believes that the Special Commodity Account (§ 220.4(e)) would be the appropriate account to transact business in both. The Special Miscellaneous Account (§ 220.4(f)(7)) may also be used to effect and carry customer transactions in foreign exchange. In either the Special Commodities Account or the Special Miscellaneous Account, the gold or foreign exchange transactions would be insulated from security credit transactions.

Accordingly, pursuant to Sections 7 and 23 of the Securities Exchange Act of 1934, as amended (15 U.S.C. 78g, 78w), the Board proposes to adopt the following amendments to § 220.6 of Regulation T:

§ 220.6 [Amended]

Paragraph (j) of § 220.6 is removed in its entirety and paragraphs (k) and (l) are redesignated as paragraphs (j) and (k), respectively.

By order of the Board of Governors, December 12, 1980.

Theodore Allison,

Secretary of the Board.

[FR Doc. 80-39515 Filed 12-18-80; 8:45 am]

BILLING CODE 6210-01-M

CIVIL AERONAUTICS BOARD

14 CFR Parts 233 and 302

[EDR-387C; PDR-68C; Docket 36497; Dated: December 11, 1980]

Establishment of Service Mail Rate Zones for Air Transportation

AGENCY: Civil Aeronautics Board.

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: This notice further explains the CAB's proposed procedures for the establishment of service mail rates by contract between the United States Postal Service and air carriers, based upon the setting of zones for each category of mail. Within these zones all contract rates would be deemed to be fair and reasonable. The notice makes clear that under the proposal carriers may petition the Board to increase the minimum rate at which the Postal Service can compel service. The notice also proposes alternate zone structures that would provide greater flexibility for contracts.

DATES: Comments by: February 17, 1981.

Comments and other relevant information received after this date will

be considered by the Board only to the extent practicable.

ADDRESSES: Twenty copies of comments should be sent to Docket 36497, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428. Individuals may submit their views as consumers without filing multiple copies. Copies may be examined in Room 711, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C., as soon as they are received.

FOR FURTHER INFORMATION CONTACT: Barry Molar, Bureau of Domestic Aviation, 202–673–5371 or Joseph Brooks (673–5442) or Larry Myers (673–5205), office of the General Counsel, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428.

SUPPLEMENTARY INFORMATION: By notice of proposed rulemaking EDR–387/PDR–68, 44 FR 52246, September 7, 1979, the Board proposed a major modification in mail ratemaking procedures. The current system of setting specific industry rate levels through evidentiary hearings or show-cause orders would be replaced by a system of contracts negotiated within a zone of reasonable rates established by the Board for each category of mail. The upper and lower limits of the zone would set boundaries within which the U.S. Postal Service and air carriers could freely agree on contract rates without specific Board review or approval. Contract rates agreed to outside the zone would have to be filed with the Board for review.

In addition, the upper limit would serve another major function. The Postal Service would be able to compel service, as it can now, but it could not pay less than the highest rate found fair and reasonably by the Board, which would coincide with the upper limit of the zone. This would ensure that rates not set by the Board would not be imposed on carriers, but it would allow carriers to negotiate lower rates if they wanted to for competitive reasons. This supplemental notice clarifies the explanation of compelled service in the preamble of EDR–387, asks for further comment on the economic impact of the proposal, and presents alternate zone structures that provide for greater upward contracting flexibility in meeting unusually high-cost situations.

Clarification of Postal Service Ability to Compel Service

Almost all persons commenting on the Board's proposed mail rate zone misunderstood an important aspect of the proposal concerning the Postal Service's ability to compel service. These commenters read the proposal as permitting the Postal Service to compel service at the upper limit of the zone without regard to costs, and without recourse for the carriers. This does not take into account the entire proposal. Since the zone's upper limit would be set at essentially the existing rates, as adjusted for subsequent cost increases, its purpose in regard to compelled service would be to prevent carriers from being forced to carry mail at less than rates that have been found fair and reasonable following evidentiary procedures under section 406 of the Act. Under the proposal, a carrier unsatisfied with the rate, but being compelled to carry mail at that rate, would still have recourse to petition the Board. This procedure, found in proposed § 233.2(e), was designed to provide an incentive to all parties to be reasonable and reach mutually satisfactory agreements, without litigation.

In their comments, the carriers made two economic arguments on the issue of compelled service. First, they argued that as long as the Postal Service can compel mail carriage at a rate set at current "average" rates, the carriers must of necessity lose money in some circumstances. Second, they argued that the proposal would not result in a true test of competition, because the Postal Service would not be compelled to compete on a price basis with alternative buyers, commercial freight shippers. The validity of these arguments, however, depends largely on the extent to which the parties can and do obtain Board approval of rates outside the proposed zone. If the Postal Service can succeed in paying no more than the zone's upper limit, it is true that there is a danger of uneconomic carrier operations in cases where costs exceed that upper limit. A carrier could not be expected to offset these shortfalls by reducing the level of discounts it offered on other lower-cost service, because its competitors, which might not need to make up losses from high-cost operations, could offer a lower discount. Under the proposal, however, carriers would have the ability to seek rates above existing rates for compelled service by petitioning the Board to change the definition of the zone by enlarging it on a market, area, or other basis. The Board would act on these petitions using expedited procedures such as show cause proceedings. The carriers would thus have the opportunity to cover costs when they exceed the existing upward boundary of the existing zone and the rate for compelled service.

The Board therefore intends that the upper boundary of the review-free contract zone would be the lowest level at which the Postal Service could compel service. As discussed in EDR–387, the Board's concern is to ensure that carriers are not deprived of property without just compensation. The proposal explicitly provides for procedures by which contracts outside the zone could be negotiated and put into effect (proposed § 233.2(d)). Since there might be instances in which even the zone ceiling rate might be unreasonably low, these procedures, combined with petitions to change the zone, provide a means by which carriers could be fairly compensated. The proposal does not permit the Postal Service to insist on paying the ceiling rate in disregard of the economics of the compelled service, without recourse for the carriers.

Increase In Upward Flexibility

Although the proposal thus contained procedures for Board approval, and, if necessary, the establishment of rates above the zone, the Board now tentatively believes that the zone's current upper limit may nevertheless be set too low. Even using expedited procedures, the cost of processing proposed rates above the zone, if done frequently, will indirectly increase the costs of mail air transportation as a whole. The mere existence of a filing and review requirement may discourage some negotiating above the established zone. Therefore, some adjustment of the upper limit to the review-free zone may well be justified on economic grounds. While it is possible that the current average rates are too high, we cannot exclude the possibility that in some significant number of markets the current price is below cost. Since the Board premises its proposal on pro-competitive policy, there seems little reason not to broaden the zone and allow the marketplace to operate. In a three- or four-carrier market, with prospect for open entry, competitive forces should prevent price gouging by carriers that insist on the ceiling rate when their costs justify a lower rate. The forces operating in a single-carrier market are more difficult to recognize. New entrants would probably not be attracted merely by mail rates a monopoly carrier was able to negotiate with the Postal Service. While the Postal Service might therefore be disadvantaged by the monopolist's power in such instances, it will retain its right to refuse to pay higher rates, seek to compel carriage at existing rates, and appear before the Board should the carrier seek redress under proposed § 233.2(e).

In their comments, various parties have proposed alternatives to increasing

the upper boundary of the review-free contract zone. These alternatives range from the elimination of any requirement that contracts be filed for review to an exemption from the statutory duty to carry mail. Each of these alternatives involves substantial legal risk. For example, elimination of the statutory duty to carry mail involves advancing the determination of mail rates by contract ahead of the sunset schedule in the Airline Deregulation Act, which does not provide for carriage of mail negotiated through private contracts until 1985. Also, the proposal to eliminate any review of negotiated rates could be considered to be beyond even a liberal interpretation of section 406 of the Act, as discussed in the staff legal memorandum placed in the docket. Section 406 requires the Board to set fair and reasonable rates, at which the Postal Service may compel service. An upper limit for a rate zone must therefore establish a boundary for what the Board believes are fair and reasonable rates. Under the guiding court decision, an agency governed by a statutory rate provision such as section 406 cannot rely exclusively on market forces to determine rates for carriage of that commodity. *FPC v. Texaco, Inc.* 417 U.S. 380 (1974).

Some commenters have also suggested the use of an existing general commercial freight rate as the upper limit. This alternative has several disadvantages. At least domestically, the rate zone would be totally in the hands of the carriers, since domestic freight rates are no longer regulated. Even internationally, carriers propose rates first and then submit them to the Board for approval. There are also practical problems. Any general industry freight rate would be uncertain, and vary as individual carriers made their own pricing decisions. In domestic transportation, this would create an opportunity for abuse, especially since tariffs have been eliminated. Carriers would have an incentive to increase nominal freight rates dramatically for purposes of increasing the mail rate zone, and then give rebates to commercial shippers. In competitive markets, this problem would be somewhat less, since rival carriers could submit bids below the inflated zone.

Although each of these alternatives is consistent with the Board's intention to leave more of the regulation of mail transportation to the marketplace, their practical and legal problems make them unusable at this time. Upward pricing flexibility through zone adjustments appears to be the most reasonable alternative. It is difficult, however, to select a precise range as the best in all circumstances. As a general proposition, the Board tentatively believes that the zone should be as wide as possible, at least in the more competitive markets. Given the differences between current mail rates and commercial freight rates, 50 percent or more, a wider zone increases the opportunity for carriers to bargain with the Postal Service for rates that match prices paid by commercial shippers. Since the Postal Service is a shipper of freight, economic mail rates, at least in some situations, could approximate those paid by other shippers. At the same time competition should ensure that an increased upper zone limit does not result in prices that are unrelated to costs.

Proposed Alternatives

No Upward Flexibility

This alternative represents the Board's original porposal. As discussed in the first part of this notice, the carriers and the Posatal Service interpreted the original proposal as allowing compelled mail service at the upper limit of the zone even if that rate was below carrier costs, without recourse for the carriers. As further explained in this notice and stated explicitly in the proposal, carriers may petition the Board to determine compelled service rates outside of the current proposed zone, with the Board taking action using expedited procedures. And, to that extent that the carriers and the Postal Service are willing to negotiate rates beyond the compelled service rate in good faith when higher rates are justified, the zone boundary will not prevent the Postal Service from competing in price with other buyers of cargo service. The ability of carriers to seek redress from the Board should protect them from insistence by the Postal Service on paying unreasonably low rates. Under this alternative, the proposals in EDR-387 would not be changed.

Upward Flexibility in General

Before discussing specific proposals to expand the upward flexibility of the zone, we wish to clarify the difference between the dual-purpose upper zone limit proposed in EDR-387 and one with more expansive upward flexibility. Under EDR-387, the Postal Service could normally compel service at the upper limit of the rate zone. These are the highest rates that have been found just and reasonable following a factual investigation under section 406. The alternatives set forth below all have zone limits above those rates, but only for the purpose of enlarging the opportunity for contract agreements not subject to filing and Board review. It is in this sense that we propose upward flexibility in the contract zone concept. We do not intend under any of those alternatives that carriers would necessarily be paid for compulsory service at the top of this broader negotiated rate zone. Rather, most carriers would be paid for compulsory service at existing rates, as adjusted for cost changes. However, under each of the alternatives described below, the increased upward flexibility would give carriers and the Postal Service more room to bargain by permitting contracts to be freely negotiated above existing rates as well as below.

Upward Flexibility Based on Current Mail/Cargo Rate Differentials

Numerous commenters proposed upward flexibility based on prevailing freight rates. Although these proposals would provide the greatest degree of competition between mail and freight in demand for capacity, they do not allow the Board enough control over the zone, and would be too uncertain. Instead we are asking for comment on basing the upward range of the review-free contract zone on the ratio between present freight and mail rates. Because mail and freight are in some respects interchangeable from a carrier's point of view, we would not expect significant changes in the cost relationship between the two over time. A review-free zone based on existing rate differentials will thus provide certainty and not be subject to manipulation by carriers.

In considering this alternative the Board did a comparative study of freight and mail rates in selected markets. The results of that study and the methodology used for setting the zones are set out in the Appendix to this notice. Precise data on freight rates actually charged as well as the distribution of freight among rate categories are not available, so the figures arrived at for the zones are necessarily estimates. These zone boundaries, however, are not intended to be precise rates, but only boundries of a zone within which exact rates would be set by private parties by contract.

For domestic markets, the study showed that bulk general commodity freight rates are above loose mail rates in almost all markets, although the spread between them declines as weight increases. The average of these rate differentials, as shown in the Appendix, is approximately 50 percent. The rates used to calculate this average differential do not include rates for containerized mail or freight. The survey

showed that over similar weight ranges, container freight rates are lower than noncontainer mail rates and range from above mail container rates at lower weights to below such rates at higher weights. This suggests that there need be no upward flexibility above existing rates for containerized mail. We ask for comment on two alternatives to accommodate these results. First, we propose a single average review-free contract zone of 25 percent above current rates for all categories of domestic mail, representing a rounded average of the 50 percent upward flexibility for sack mail and zero upward flexibility for containerized mail. In the alternative, we propose a separate upward flexibility zone of 50 percent above current rates for loose mail, but with no upward flexibility for containerized mail, which would remain at existing rates.

International rates showed a similar pattern in that bulk general commodity freight rates were generally above the highest-rated (loose) mail. There were instances in which such rates dropped below mail rates, however, and the international differential was on the average less than the domestic one (19.8 percent when calculated as outlined in Appendix A). Containerized freight rates are below these mail rates, and there are no corresponding containerized mail rates. Moreover, our study did not include cargo traffic carried at generally lower specific commodity rates. As with the domestic calculation, some downward adjustment from the differential figure is needed. In this case, as for domestic flexibility, we are proposing to cut the percentage differential in half, resulting in a rounded figure of 10 percent. In our view, this figure will provide the carriers and Postal Service adequate flexibility to negotiate, while avoiding overstatement of the mail-freight differential. As noted above, compulsory service would still be provided at existing rates, as adjusted for cost increases, subject to the carriers' right to seek Board review. The upward flexibility limit would apply to negotiated rates.

Therefore, under this alternative, the Board is asking for comment on whether an expanded review-free contract zone should have an upper limit for domestic mail, based on the differential between general commodity rates and loose mail rates, of 25 percent above existing rates. Another alternative proposal would set the limit at 50 percent upward for loose mail and keep it at existing rates for container mail. For international mail, the upward flexibility limit would be set at 10 percent over existing rates, based on the same standard.

Separate Treatment For Less-Competitive Markets

Less-competitive markets raise problems diffesrent from those of highly competitive ones. In less-competitive markets, in order to meet its statutory responsibility to ensure fair and reasonable mail rates, the Board must rely more on the structure of the zone to assure such rates. It may therefore be necessary to have a zone with less upward flexibility for negotiated rates than in competitive markets. The Board proposes as an alternative that the upper limit of the review-free contract zone be set at existing rates, as proposed in EDR-387 for compelled service, in less-competitive markets, regardless of what adjustment is made for competitive markets.

The Board is not proposing to specify the basis used to determine whether a market is competitive at this time. In the case of passenger fare flexibility, the Board has used as the cirterion the number of carriers holding certificate authority, on the grounds that excess profits from passenger operations by the carrier serving the market would attract authorized carriers to begin operations. In the case of passenger fares, potential competition is an effective control over unreasonable fares. To the extent that mail service is a by-product of the carrier serving the market excessive mail profits alone may not induce new entry. If that is the case, the Board may rely on the existence of actual competition to restrain carriers from raising mail rates above reasonable levels. The Board is therefore asking for comment on two alternatives for definition of a competitive market: (1) those markets having at least two certificated carriers conducting operations, or (2) those markets having at least four carriers having certificate authority in the market, but not necessarily all operating. The Board also asks for comments on the meed for this alternative in view of the current low barriers to entry, and on the definition of these markets. In international markets, the definition of such less-competitive markets will include only U.S. carriers, since the Postal Service must pay foreign carriers rates set by the Universal Postal Union, which are substantially above the upward flexibility zones proposed here.

Request for Comments

In view of the Board's original proposal and the wide range of alternatives developed from the comments, the Board asks for specific comments on the alternatives presented by this notice and any changes commenters would like to make in their original comments. Comments on the alternatives should be specific and detailed. The Board would particularly like comments about whether any change should be made in the original proposed rule in view of the clarification in this notice.

To summarize, this supplemental notice asks the following questions:

1. Should EDR-387 be adopted substantially as proposed with existing rates used as the upward limit of the negotiated rate zone and as the minimum at which the Postal Service could compel service, subject to petitions to the Board by carriers for higher rates in specific markets?

2. Should the upward flexibility of the negotiated rate zone be expanded, and if so, should it be based on the following standards:

The ratio between general commodity rates and loose mail rates, resulting in an upward flexibility fo 25 percent for all categories of domestic mail (or in the alternative, 50 percent for loose mail and existing rates for container mail), and 10 percent for all internal mail?

3. If the negotiated rate zone is expanded should there be separate zones for less-competitive markets, with the upper limit set at existing rates and if there are separate zones, how should "competitive market" be defined?

(Secs. 204, 401, 403, 405, 406, 416, and 1002. Pub. L. 85-726, as amended, 72 Stat. 743, 754, 758, 760, 763, 771, 788; 49 U.S.C. 1324, 1371, 1373, 1375, 1376, 1386, 1482)

By the Civil Aeronautics Board.

Phyllis T. Kaylor,

Secretary.

Appendix A

As explained in the supplemental rule, the Board has decided that one of the alternative ceilings for upward flexibility should be based on the difference between existing freight and mail rates. To facilitate this, the staff surveyed six domestic and three international markets. The results of these surveys are detailed in the attached tables (Exhibit 1).

Domestically, a consistent pattern has emerged. Non-container mail rates are constant without regard to weight while freight rates decrease as weight increases up to 3000 pounds. Accordingly, the differential between mail and freight also decreases as weight increases. The rate of freight rate decrease is substantial between 20 and 100 pounds and becomes much more gradual at weights above 100 pounds.

The staff therefore proceeded as follows:

(1) For each city pair, the staff determined the midpoint in the range of percentage differentials for sack mail and standard general community rates between 100 and 3000 pounds,[1] and

(2) The staff summed these midpoints and took the average which was 51.3 percent. This figure served as a preliminary ceiling.

At this point the staff made some effort to adjust for containerization. A comparison of container rates showed that freight container rates were below non-container mail rates. Further, freight container rates ranged from above mail container rates at lower weights to below mail rates at higher weights. This suggested that if container rates were considered exclusively, no upward flexibility would be required to approximate the relationship between mail and freight.

A survey of data on handling of containerized mail [2] indicated that a substantial portion of mail is carried in containers. We have therefore settled on two alternatives. The first is to have a single ceiling of upward flexibility for container and non-container mail at approximately one half the level of the ceiling of upward flexibility computed in the two step process above or 25 percent. The second alternative is to maintain separate ceilings for containerized and non-containerized mail. The former based on the figure computed above would be 50 percent, while the latter would be existing rates.

The comparison of international rates showed a similar pattern. Mail rates are constant while freight rates decline as weight increases. The decline is most dramatic below 220 pounds. Above 220 pounds, however, the spread between freight and mail is narrower in the international markets than it is domestically, and in the case of Los Angeles-Singapore, freight rates actually drop below mail rates. Moreover container rates are consistently below Priority Mail, and Military Ordinary Mail rates, and in some cases approach within 15 percent above Space Available rates.

The two step calculation described above [3] would produce an average differential of 19.8 percent between standard general commodity rates and PM–MOM mail. Some downward adjustment is necessary to account for container freight and the use of specific commodity rates. The Board does not have sufficient data to determine precisely what proportion of carriers total freight volume is carried at these lower rates nor what proportion is subject to diversion by mail, and hence what the precise downward adjustment should be. We propose for comment a 10 percent ceiling which represents approximately a halving of the differential computed above.

[1] *e.g.* In the Chicago-Los Angeles market freight is 75.5 percent above mail at 100 pounds and 39.3 percent above at 3000 pounds. The mid point is 57.4 percent.

[2] Data submitted by Postal Service on top domestic mail markets a copy of which is attached plus data available from schedules P. 2, T.2 a and T.3 a of form 41 reports.

[3] The range of 220 pounds to 1100 pounds was used because freight rate declines were more substantial below 220 pounds while there appeared to be no appreciable decline above 1100 pounds.

Exhibit 1.—*Comparison of Freight and Mail Rates in Selected Markets*

Chicago-Los Angeles[1]

Rate category	20 lbs.	50 lbs.	100 lbs.	561 lbs.	1,000 lbs.	1,750 lbs.	1,950 lbs.	3,000 lbs.	3,500 lbs.
Rate in cents per pound:									
Priority Express Freight	211	121	92		71			65	
Standard General Commodity Rate (Std-GCR)	162	93	63		54			50	
LD-3 Container STD-GCR(LD.-3)				63	35				10
Sack Mail	35.9	35.9	35.9	35.9	35.9	35.9	35.9	35.9	35.9
Parcel Airlift Mail (Pal)	25.5	25.5	25.5	25.5	25.5	25.5	25.5	25.5	25.5
LD-3 Standard Mail						23			22
LD-3 Daylight Mail							20		19
Freight rates as percent of mail rates:									
Std. GCR/Sack	451.3	259.1	175.5		150.4			139.3	
LD-3/LD-3 Mail									45.5

[1] Freight rates based on average of individual carrier rates.

Chicago-New York City[1]

Rate category	20 lbs.	50 lbs.	100 lbs.	413 lbs.	523 lbs.	1,000 lbs.	3,000 lbs.	3,500 lbs.
Rates in cents per pound:								
Priority Express Freight	167	96	59.7			47.9	41.6	
Standard General Commodity Rate (Std-GCR)	129.75	74	46.0			41.2	35.9	
LD-3 Container Std. GCR L.D.-3					46			6.00
LD-3 Daylight GCR (LD-3D)				46				5.40
Sack Mail	23.5	23.5	23.5	23.5	23.5	23.5	23.5	23.5
Parcel Airlift Mail	18.4	18.4	18.4	18.4	18.4	18.4	18.4	18.4
LD-3 Standard Mail	13.8	13.8	13.8	13.8	13.8	13.8	13.8	13.8
LD-3 Daylight Mail	11.1	11.1	11.1	11.1	11.1	11.1	11.1	11.1
Freight rates as percent of mail rates:								
Std. GCR/Sack	521.1	314.9	195.7			175.5	152.3	
SD-3/LD-3					333.3			49.7
LD-3D/LD-3 Daylight Mail				414.4				40.0

[1] Freight rates based on average of individual carrier rates.

Los Angeles-New York City[1]

Rate category	20 lbs.	50 lbs.	100 lbs.	500 lbs.	716 lbs.	1,000 lbs.	1,750 lbs.	1,950 lbs.	2,000 lbs.	3,000 lbs.	3,500 lbs.
Rates in cents per pound:											
Priority Express	211.0	121	94			84				83	
Standard General Commodity Rate (STD-GCR)	163.0	93	72			65				64	
LD-3 STD GCR (LD-3)					72	52			26	17	15

Los Angeles-New York City [1]—Continued

Rate category	20 lbs.	50 lbs.	100 lbs.	500 lbs.	716 lbs.	1,000 lbs.	1,750 lbs.	1,950 lbs.	2,000 lbs.	3,000 lbs.	3,500 lbs.
Rate in cents per pound:—Continued											
LD-3 Monthly Contract (LD-3MCG)				72		30			15	10	8.57
Sack Mail	45	45	45	45	45	45	45	45	45	45	45
Parcel Airlift Mail	30.6	30.6	30.6	30.6	30.6	30.6	30.6	30.6	30.6	30.6	30.6
LD-3 Standard Mail (LD-3 Mail)							30.3				28.8
LD-3 Daylight Mail (LD-3 Mail D)								25.6			24.3
Freight rates as percent of mail rates:											
Std GCR/Sack	362.2	206.7	160.0			144.4				142.2	
LD-3/LD-3 Mail											52.1
LD-3 MCG/LD-3 Mail D											61.7

[1] Freight rates based on average of individual carrier rates.

Atlanta-Chicago [1]

Rate category	100 lbs.	1,000 lbs.	1,750 lbs.	1,950 lbs.	3,000 lbs.	3,500 lbs.[2]
Rates in cents per pound:						
Std General Commodity Rate (Std GCR)	22.5	19.8			15.6	
LD-3 container GCR (LD-3)			8.4	7.8		4.7
Sack Mail	21.8	21.8	21.8	21.8	21.8	21.8
Parcel Airlift Mail	17.5	17.5	17.5	17.5	17.5	17.5
LD-3 Standard Mail (LD-3M)			12.5			11.0
LD-3 Standard Daylight Mail (LD-3MD)						
Freight rates as percent of mail rates:						
Std GCR/Sack	107.1	90.6			71.3	
LD-3/LD-3M			67.2			42.7
LD-3/LD-3D				66.7		47.0

[1] Following the staff's survey of three domestic markets, it was concluded that data on priority express freight rates, and on weights below 100 pounds were unnecessary. Freight rates are averages of individual carrier rates.

[2] Mail container rates are gross, including weight of container. In this market freight container weights are net, and maximum weights are below 3,500 pounds. For comparison purposes, maximum freight container weights were included in this column despite the discrepancy.

Los Angeles-San Francisco [1]

Rate category	100 lbs.	1,000 lbs.	1,750 lbs.	1,950 lbs.	3,000 lbs.	3,500 lbs.[2]
Standard General Commodity Rate (St. GCR)	32.6	30.0			26.9	
LD-3 General Commodity Rate (DD-3)			10.9	9.9		6.0
Sack Mail	18.5	18.5	18.5	18.5	18.5	18.5
Parcel Airlift Mail	15.6	15.6	15.6	15.6	15.6	15.6
LD-3 Standard Mail (LD-3M)			9.9			8.5
LD-3 Daylight Mail (LD-3MD)				9.3		8.0
Freight rates as percent of mail rates:						
Std GCR/Sack	176.2	162.0			145.5	
LD-3/LD-3M			110.1	106.5		75.0
LD-3/LD-3MD						

[1] Following a survey of three domestic markets it was concluded that data on priority express freight rates and weights below 100 pounds were unnecessary. Freight rates are averages of individual carrier rates.

[2] Mail container rates are calculated on gross basis including the weight of the container with a maximum of 3,500 pounds. Freight container weights are computed net and maximum weights are less than 3,500 pounds. For comparison purposes maximum freight weights were included in this column.

New York-San Francisco [1]

Rate category	100 lbs.	1,000 lbs.	1,750 lbs.	1,950 lbs.	3,000 lbs.	3,500 lbs.[2]
Rates in cents per pound:						
Standard General Commodity Rate (S-GCR)	81.7	72.0			71.3	
LD-3 General Commodity Rate (LD-3)			24.5	22.3		13.6
LD-3 Daylight General Commodity Rate (LD-3D)				15.3		9.2
Sack Mail	46.4	46.4	46.4	46.4	46.4	46.4
Parcel Airlift Mail	15.6	15.6	15.6	15.6	15.6	15.6
LD-3 Std. Mail (LD-3M)			31.3			29.8
LD-3 Daylight Mail (LD-3MD)				26.4		25.1
Freight Rates as percent of mail rates:						
Std. GCR/Sack	176.1	155.2			153.7	
LD-3/LD-3M			78.3			45.6
LD-3D/LD-3DM				59.0		36.7

[1] Following a survey of three domestic markets it was concluded that data on priority express freight rates and weights under 100 pounds were unnecessary. Freight rates are average of individual carrier rates.

[2] Mail container rates are calculated on gross basis, including the weight of the container with a maximum of 3,500 pounds. Freight rates are calculated net, and maximum weights are less than 3,500 pounds. For comparison purposes, maximum freight weights were included in this column despite the discrepancy.

Dallas-New York [1]

Rate category	100 lbs.	1,000 lbs.	1,750 lbs.	1,950 lbs.	3,000 lbs.	3,500 lbs.[2]
Rates in cents per pound:						
Standard General Commodity Rate (Std. GCR)	52.9	45.4			43.5	
LD-3 General Commodity Rate (LD-3)			40.5			34.2
LD-3 Daylight GCR (LD-3D)				27.5		16.5
Sack Mail	31.6	31.6	31.6	31.6	31.6	31.6
Parcel Airlift	23.0	23.0	23.0	23.0	23.0	23.0
LD-3 Standard Mail (LD-3M)			20.0			18.5
LD-3 Daylight Mail (LD-3MD)				16.3		16.0

Dallas-New York [1]—Continued

Rate category	100 lbs.	1,000 lbs.	1,750 lbs.	1,950 lbs.	3,000 lbs.	3,500 lbs.[2]
Freight rates as percent of mail rates:						
Std GCR/Sack	167.4	143.6			137.6	
LD-3/LD-3M			202.5			184.9
LD-3D/LD-3MD				168.7		103.1

[1]Following staff review of three domestic markets, it was concluded that data on priority express freight rates and on weights below 100 pounds were unnecessary. Freight rates are averages of individual carrier rates.

[2]Mail container rates are calculated on gross basis, including the weight of the container with maximum at 3,500 pounds. Freight container rates are computed net, and maximum weights are less than 3,500 pounds. For comparison purposes, maximum container rates were included in this column, despite the discrepancy.

New York City-London

Rate category	20 lbs.	50 lbs.	100 lbs.	220 lbs.	660 lbs.	1,110 lbs.	1,336 lbs.	1,430 lbs.	3,130 lbs.
Rates in cents per pound:									
Standard General Commodity Rates (Std GCR)	280		219	113	91	87			
LD-3 Container General Commodity Rate (LD-3)							87	82	75
Priority Mail (PM)-Military Ordinary Mail (MOM)	83	83	83	83	83	83	83	83	83
Space Available Mail (SAM)	59	59	59	59	59	59	59	59	59
Freight rates as percent of mail rates:									
Std. GCR/PM-MOM	337.3		263.9	136.1	109.6	104.8			
LD-3/PM-MOM							104.8	98.9	90.4
LD-3/SAM							147.5	139.0	127.1

Los Angeles-Singapore

Rate category	20 lbs.	44 lbs.	100 lbs.	220 lbs.	440 lbs.	660 lbs.	880 lbs.	1,100 lbs.	1,444 lbs.	1,672 lbs.	3,250 lbs.
Rates in cents per pound:											
Standard General Commodity Rate (Std. GCR)	274	274	208	203	185	162	160	147			
Container Rates									147	126.9	120.6
Priority Mail (PM)—Military Ordinary Mail (MOM)	184	184	184	184	184	184	184	184	184	184	184
Space Available Mail (SAM)	117	117	117	117	117	117	117	117	117	117	117
Freight rates as percent of mail rates:											
Standard GCR/PM-MOM	148.9	148.9	113.0	110.3	100.5	88.0	87.0	79.9			
Container/PM-MOM									79.9	69.0	65.6
Container/SAM									125.6	107.7	103.1

Seattle-Tokyo

Rate category	20 lbs.	44 lbs.	100 lbs.	220 lbs.	660 lbs.	1,100 lbs.	1,448 lbs.	1,804 lbs.	3,253 lbs.
Rates in cents per pound:									
Standard General Commodity Rate (Std. GCR)	283	283	211	185	139	124			
LD-3 Container General Commodity Rate (LD-3)							124	99.5	79.7
Priority Mail (PM)—Military Ordinary Mail (MOM)	107.4	107.4	107.4	107.4	107.4	107.4	107.4	107.4	107.4
Space Available Mail (SAM)	70.2	70.2	70.2	70.2	70.2	70.2	70.2	70.2	70.2
Freight rates as percent of mail rates:									
Std. GCR/PM-MOM	263.5	263.5	196.5	172.2	129.4	115.4			
LD-3/PM/MOM							115.4	92.6	74.2
LD-3/SAM							176.6	141.3	113.6

Exhibit 2.—*Comparison of Containerized and Noncontainerized Mail by Selected City Pairs: Fiscal Year 1979*

City pair	Container mail (tons)	Loose sack mail (tons)	Total (tons)	Container as percent of total (percent)
Los Angeles-San Francisco	9,212.5	6,809	16,021.5	57.5
Los Angeles-New York (JFK)	7,783	2,930	10,713	72.6
New York(JFK)-Chicago	5,786	2,709	8,495	68.1
New York(JFK)-San Francisco	5,344	1,992.5	7,336.5	72.8
New York(JFK)-San Juan	1,704	2,368.5	4,072.5	41.8

Source: U.S. Postal Service.

Comparison of Containerized and Non-Containerized Mail By Carrier: Calendar Year 1979

Carrier	Priority mail (tons)	Nonpriority mail (tons)	Containerized mail (tons)	Total mail (tons)	Container as percent of nonpriority (percent)	Container as percent of total (percent)
Airlift	138.88	22.85	0	161.73	0	0
Air Midwest	92.69	0	0	92.69		0
Air New England	691.27	0	0	691.27		0
Hughes Airwest	6,837.89	5.27	0	6,843.16	0	0
Alaska Airlines	4,347.82	704.74	0	5,052.61	0	0
U.S.Air	44,008.07	0	0	44,008.07		0
Aloha	2,064.84	1,923.37	0	3,988.21	0	0
American	83,111.23	40,809.47	39,738.98	123,920.70	97.4	32.1
Braniff	58,796.12	0.05	529.32	58,796.17	(1)	0.9
Continental	24,704.74	1,977.31	1,977.31	26,682.05	100.0	7.4
Delta	151,470.60	0	1,791.12	151,470.60	(1)	1.2
Eastern	100,060.16	9,317.98	9,823	103,378.14	(1)	8.9
Flying Tiger	9,660.02	4,751.18	3,262	14,411.20	(1)	22.6
Frontier	15,944.99	0	0	15,944.99		0
Golden West	141.61	0	0	141.61		0
Hawaiian	2,237.53	1,372.11	0	3,609.64	0	0
Kodiak-Western	860.78	0	0	860.78		0
MunzNorthern	96.78	0	0	96.78		0
National	13,231.63	1,440.81	1,440.81	14,672.44	100.0	9.8
North Central [2]	9,216.64	0.55	0	9,217.19	0	0
Northwest	38,652.23	22,275.48	19,053.45	60,927.71	85.5	31.2
Ozark	9,377.90	16.02	0	9,393.92	0	0
Pan American	8,099.01	1,222.13	1,071.84	9,321.14	(1)	11.5
Piedmont	11,228.44	0	0	11,228.44		0
Reeve Aleutian	2,768.14	0	0	2,768.14		0
Republic [2]	13,085.30	1.75	0	13,087.05	0	0
Seaboard	3,529.70	0	0	3,529.70		0
Southern [2]	3,368.36	0	0	3,368.36		0
Texas International	6,582.86	0	0	6,582.86		0
TWA	61,461.73	27,672.14	27,448.50	89,133.87	99.2	30.7
United	109,643.60	30,715.85	29,071	140,359.45	94.7	20.7
Western	27,408.69	13,947.43	12,951.62	41,356.12	92.9	31.3
Wien	20,857.35	8,449.36	0	29,306.71		

[1] Although carriers are required to report only non-priority mail carried in containers, figures indicate that these carriers reported all mail carried in containers. Therefore no comparison was made.

[2] North Central and Southern merged into Republic in the middle of the year. Figures represent 6 months operations of each carrier.

Source: Form 41 reports, Schedule T-3(a) and Supplement to Schedule P-12.

[FR Doc. 80-39214 Filed 12-18-80; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 210, 239, 270, and 274

[Release Nos. 33-6272; IC-11490; File No. S7-865]

Standardization of Financial Statement Requirements in Management Investment Company Registration Statements and Reports to Shareholders

AGENCY: Securities and Exchange Commission.

ACTION: Proposed amendments to forms and proposed rulemaking.

SUMMARY: The Commission is proposing uniform requirements governing the content of and periods to be covered by financial statements included in shareholder reports and in prospectuses (or annual updates) of management investment company registration statements. The proposals would amend the general regulation governing the form and content of and requirements for financial statements by including special provisions for management investment companies. The majority of financial statement instructions would be removed from the registration statement forms and the rule governing shareholder reports. The uniform set of financial statement instructions specified by the general regulation governing financial statements would be made applicable to prospectuses, annual registration statement updates, and shareholder reports. As a result, management investment companies would be able to prepare annually a single set of uniform, updated financial statements that could be used in both the prospectus (or annual update of the registration statement) and the annual report to shareholders. In addition, open-end management investment companies would be permitted, at their option, either to incorporate by reference financial statements included in any shareholder report into the prospectus or to transmit a currently effective prospectus as the equivalent of any report to shareholders. These provisions would eliminate the necessity for open-end management investment companies to print and mail the same financial statements in two different documents. The Commission is proposing these amendments to reduce the costs incurred in preparing and transmitting essentially duplicative financial information and to provide an opportunity for open-end management investment companies to reduce the length of their prospectuses.

DATE: Comments must be received on or before February 16, 1981.

ADDRESSES: Comments should be submitted in triplicate to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Comment letters should refer to File No. S7-865. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 1100 L Street, NW., Washington, D.C. 20549.

FOR FURTHER INFORMATION CONTACT: Dianne E. O'Donnell, Special Counsel (202) 272-2115, Lawrence A. Friend, Senior Accountant (202) 272-2095, or Thomas P. Lemke, Esq. (202) 272-2033, Division of Investment Management, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The Commission is today proposing: (1) Amendments to Regulation S-X [17 CFR 210], the Commission's general regulation regarding the form and content of and requirements for

financial statements filed under, *inter alia*, the Securities Act of 1933 ("1933 Act") [15 U.S.C. 77a et seq.] and the Investment Company Act of 1940 ("1940 Act") [15 U.S.C. 80a-1 et seq.]; (2) amendments to Form N-1 [17 CFR 239.15, 17 CFR 274.11] and Form N-2 [17 CFR 239.14, 17 CFR 274.11a-1], the registration statement forms for, respectively, open-end and closed-end management investment companies under both the 1933 Act and the 1940 Act; and (3) a new rule 30d-1 [17 CFR 270.30d-1], regarding reports to shareholders under section 30(d) of the 1940 Act [15 U.S.C. 80a-29(d)]. The proposed amendments would reconcile the differences in the financial statement requirements of prospectuses and shareholder reports by amending the uniform financial statement requirements and instructions of Regulation S-X to include special provisions for management investment companies. In turn, these instructions, with certain modifications, would be made applicable to prospectuses and to annual updates of the 1940 Act registration statement by amendments to the registration statement forms. Finally, new rule 30d-1, which would replace the current rule, would adopt the financial statement requirements of the prospectus for shareholder reports, and would extend the current mailing period requirement for such reports from forty-five days after the close of the period for which the report is made to sixty days after such date. In addition, proposed amendments to Form N-1 and new rule 30d-1 would provide open-end management investment companies two new options for transmitting disclosure documents containing financial information to shareholders and prospective investors. Such companies would be permitted either to incorporate by reference financial statements from shareholder reports into the prospectus, or to transmit a currently effective prospectus as the equivalent of any annual or semiannual report to shareholders, provided that certain conditions are satisfied. These proposals are optional, so that companies could, if they chose, continue both to include financial statements in prospectuses and to transmit separate shareholder reports.

The proposals to reconcile the financial statement requirements are intended to reduce the costs, imposed by current disclosure requirements, of preparing and transmitting various disclosure documents containing financial statements that are substantively identical but not interchangeable. The proposals with respect to transmission of financial information are intended to provide open-end companies with opportunities for further reductions in costs by using their prospectuses as a substitute for shareholder reports or, in the alternative, reducing the length of their prospectuses.

Background

Section 30(d) of the 1940 Act and rule 30d-1 thereunder require management investment companies to transmit a report to shareholders at least semiannually. These reports are required to contain certain financial statements and other information covering either the first six months of the company's fiscal year (the "semiannual report"), or, in the report made as of the end of the fiscal year (the "annual report"), the entire fiscal year. The financial statements required by the statute and the rule are complemented by the requirements of generally accepted accounting principles ("GAAP"), as described in the *Industry Audit Guide: Audits of Investment Companies* (1973). The financial statements in the company's annual report are required to be audited, and consist of the following:

(1) A balance sheet or statement of assets and liabilities as of the close of the most recent fiscal year;

(2) A schedule of investments as of the date of the balance sheet or the date of the statement of assets and liabilities;

(3) An income statement for the most recent fiscal year;[1] and

(4) Statements of changes in net assets for the two most recent fiscal years.[2]

In addition, in order to conform to GAAP, the annual report must contain condensed financial information in the form of a table of per share income and capital changes for the five most recent fiscal years, with at least the most recent year audited ("condensed financial information" or "per share table"). Many annual reports exceed the GAAP standard and provide condensed financial information either for the ten most recent fiscal years, with the five latest years audited, or the five most recent fiscal years, with all five years audited. Section 30(d)(5) of the 1940 Act and rule 30d-1 thereunder also require a statement of the aggregate remuneration paid during the period of the report to all directors of the company (as regular and special compensation), to all officers, and to each person of whom any officer or director of the company is an affiliated person.

The above financial statements and other financial information comprise the only requirements for the annual report to shareholders [3] under section 30(d) and rule 30d-1 thereunder. Although not required by the statute, many investment companies, on a voluntary basis, include narrative material about such topics as general economic conditions, the company's performance, and the services provided to shareholders. Like the financial statements, any narrative material is subject to the prohibition in section 30(d) that it "not be misleading in any material respect in light of the reports required to be filed pursuant to subsections (a) and (b) [of section 30]" (those reports are, respectively, Form N-1R [17 CFR 274.101], the annual report to the Commission, and Form N-1Q [17 CFR 274.106], the quarterly report to the Commission, for management investment companies). Section 34(b) of the 1940 Act [15 U.S.C. 80a-33(b)], which makes it unlawful for any person "to make any untrue statement of a material fact" in any document "filed or transmitted" pursuant to the 1940 Act, also applies to reports made under section 30(d) and rule 30d-1 thereunder.[4]

In addition to the semiannual and annual reports required by section 30(d), open-end management investment companies engaged in a continuous offering of their shares to the public (the type commonly known as "mutual funds") must bring their prospectuses up to date on an annual basis, pursuant to section 10(a)(3) of the 1933 Act [15 U.S.C. 77j(a)(3)] and section 24(e)(3) of the 1940 Act [15 U.S.C. 80a-24e)(3)].[5] Those management investment

[1] Rule 30d-1(a) requires an income statement for the period for which the report is made, which is the same as that reported pursuant to GAAP.

[2] Rule 30d-1(d)(2) requires a statement of changes in net assets only for the period for which the report is made, but pursuant to GAAP registrants supply this information for two years in the annual report.

[3] Semiannual reports are required to include the same financial statements and other information (unaudited) as annual reports, except that, to conform to GAAP, companies present the financial statements only for the period of the report (*i.e.*, the fiscal half-year) and the most recent preceding fiscal year, and condensed financial information only for the period of the report and the five most recent preceding fiscal years.

[4] The annual report under section 30(d) satisfies the requirements of rules 14a-3 and 14c-3 [17 CFR 240.14a-3, 14c-3] under the Securities Exchange Act of 1934 ("1934 Act") [15 U.S.C. 78a et seq.] for the annual report to securityholders.

[5] The requirement to update the prospectus on an annual basis arises from section 10(a)(3), which states that, "when a prospectus is used more than nine months after the effective date of the registration statement, the information contained therein shall be as of a date not more than 16 months prior to such use." Section 24(e)(3) requires any prospectus relating to a redeemable security issued by an investment company that is updated to meet the requirements of section 10(a)(3) to be filed as a post-effective amendment to the issuer's registration statement.

companies that file Form N–1R (the annual report of certain information to the Commission)[6] must also bring their 1940 Act registration statements up to date annually, pursuant to rule 8b–16 under the 1940 Act [17 CFR 270.8b–16] (the "annual update").[7] Like section 30(d) reports, the prospectus (and the annual update) is required to contain specified financial statements, which must be audited, and the form and content of which are governed by Regulation S–X. The financial statements required consist of the following:

(1) A balance sheet or statement of assets and liabilities as of the close of the most recent fiscal year;

(2) A schedule of investments as of the date of the balance sheet or the date of the statement of assets and liabilities;

(3) Income statements for the three most recent fiscal years;[8] and

(4) Statements of changes in net assets for the three most recent fiscal years.

In addition, the prospectus (but not the annual update) is required to contain condensed financial information in the form of a table of per share income and capital changes for the ten most recent fiscal years of the registrant, with at least the five most recent years audited.

It is clear from the foregoing discussion that current financial statement requirements result in the preparation by investment companies of largely similar information in their prospectuses and annual reports to shareholders. Moreover, there is considerable overlap in the readership of the two documents. Although the prospectus and the annual report are intended for different purposes—the prospectus, of course, is the principal selling document for potential investors, while the annual report is intended to provide information to existing shareholders—many investment companies use their annual reports as sales literature in attracting new investors, and many investment companies send a current prospectus to existing shareholders as a matter of course.

Nevertheless, under current requirements certain differences prevent the financial statements in the prospectus and the annual report from being interchangeable. First, the time periods within which the two documents must be transmitted are different. Although the two sets of financial statements are usually prepared at about the same time, *i.e.*, shortly after the close of the fiscal year, the annual report must be sent to shareholders within forty-five days after the close of the fiscal year,[9] while the prospectus must become effective (and the annual update made) within 120 days of the close of the fiscal year. Second, the financial statements in the prospectus are governed by Regulation S–X, but those in the annual report under section 30(d) are not. As a result, the schedule of investments in the prospectus presents the individual investments at cost as well as at current value, while the comparable schedule in the annual report omits the cost column. Third, the time periods to be covered by certain financial statements vary. A statement of income is presented for one year and statements of changes in net assets are presented for two years in the annual report; each is presented for three years in the registration statement. The per share table is given for five years (with at least the latest year audited) in the annual report, and ten years (with at least the five most recent years audited) in the prospectus. Last, there are several minor differences in the contents of the financial statements as between the annual report and the prospectus, with the statements in the prospectus containing somewhat more information. The ratio of investment company operating expenses to investment income appears in the income statement in the prospectus, but not in the comparable statement in the annual report; per share dividends and distributions to stockholders are included in the statement of changes in net assets in the prospectus but not in the comparable statement in the annual report (although this information appears in the per share tables of both documents); a specimen price-make-up sheet must appear in the prospectus (usually as a continuation of the balance sheet or statement of assets and liabilities) but not in the annual report; and section 30(d)(5) of the 1940 Act requires disclosure of management remuneration in annual reports that is more extensive than the comparable requirement of Regulation S–X concerning prospectuses.

These differences in financial statements required in prospectuses and annual reports are not related to the different purposes for which the documents are intended, but are rather the result of the fact that prospectuses and annual reports evolved at different times from different statutory bases. It appears to the Commission that no useful purpose is served by maintaining the vast majority of differences between prospectus and annual report financial statement requirements. Indeed, it could be argued that minor discrepancies between the two documents may be confusing to the investor who receives both sets of financial statements without an explanation of the differences. The proposed amendments announced today would result in a uniform set of financial statement requirements for both prospectuses and annual reports.

The Commission believes that adoption of uniform financial statement requirements for prospectuses and shareholder reports would benefit both investors and management investment companies. Investors would benefit by receiving disclosure documents containing financial statements prepared according to uniform instructions. Similarly, management investment companies would benefit from the reduction in their costs that would result from elimination of the need to prepare, at the close of the fiscal year, two different sets of financial statements.

Mutual funds would be afforded further opportunities to reduce costs associated with the transmission of financial information with two provisions intended to eliminate the need to print the same financial statements as part of two documents. Registrants, at their option, could incorporate financial statements by reference from a shareholder report into the prospectus, so long as persons receiving the prospectus also receive a copy of the shareholder report containing the incorporated financial statements, or in the alternative registrants could transmit a currently effective prospectus as the equivalent of any shareholder report. These options should further reduce costs for, respectively, funds that use shareholder reports as sales literature, and those that send a current prospectus to shareholders every year in addition to the shareholder report. Moreover, funds that choose to incorporate financial statements by reference into the

[6] Form N–1R is required to be filed by all registered management investment companies except those that issue periodic payment plan certificates and small business investment companies.

[7] Mutual funds generally make one filing annually on Form N–1 in satsifaction of the requirements to update the prospectus and the 1940 Act registration statement, while closed-end companies, which do not engage in a continuous offering make an annual filing on Form N–2 to satisfy rule 8b–16. For mutual funds, the financial statements filed as part of an updated prospectus also satisfy the requirements of rule 8b–16.

[8] A registration statement is required to include income statements for the three most recent fiscal years of the registrant, but only the most recent year is required to be included in the prospectus.

[9] This period is extended by present rule 30d–1(a) [17 CFR 270.30d–1(a)] to sixty days for nondiversified companies having one or more majority-owned subsidiaries that are not investment companies.

prospectus should be able to shorten their prospectuses with no decrease in the information disclosed to investors, because the shareholder report containing the financial statements would also be furnished. Alternatively, mutual funds would still be free to prepare and send the financial statements separately in both the shareholder report and in the prospectus, as they do now.

These proposals would have no impact on the requirements of the applicable securities laws as to filing and transmitting disclosure documents; except to offer alternative methods for open-end companies to satisfy these requirements. For example, the requirements that an investment company annually update its prospectus (and 1940 Act registration statement), and that prospective investors be furnished with a currently effective prospectus, would not be affected by these proposals. Rather, the provision providing for incorporation by reference would permit an open-end company to satisfy these requirements by filing with the Commission, and supplying potential investors, with both a prospectus that incorporates financial statements from a shareholder report and a copy of that report. Similarly, current shareholders would still have to be furnished with a semiannual and an annual report, but the provision permitting transmission of a currently effective prospectus as the equivalent of a shareholder report would provide open-end companies with another method of satisfying the shareholder report requirements.

It should be noted that, in reconciling the financial statement requirements for prospectuses and shareholder reports, the proposed amendments do not make any substantive increase in those requirements. In the relatively few instances where one set of existing requirements is substantively more burdensome than the other, the Commission is proposing either to adopt the less burdensome requirement as the common standard, or to permit registrants to continue preparing different sets of financial statements for shareholder reports and prospectuses, in accordance with existing standards.

Uniform Financial Statement Requirements

To eliminate the differences in financial information provided through prospectuses and annual reports to shareholders, the Commission is proposing amendments to: (1) Regulation S-X, the Commission's general regulation on the form and content of and requirements for financial statements in disclosure documents under the federal securities laws; (2) Forms N-1 and N-2, the registration statement forms under the 1933 and 1940 Acts for, respectively, open-end and closed-end management investment companies; and (3) rule 30d-1 under the 1940 Act governing reports to shareholders.[10] New rule 3-18 of Regulation S-X [17 CFR 210.3-18] would supplement the centralized set of financial statement instructions in Article 3 of Regulation S-X by providing special instructions for management investment companies.[11] In turn, the amendments to the financial statement items of the registration statement forms (Item 18 of Form N-1 [12] and Item 20 of Form N-2) would remove most of the specific instructions from the forms and would make proposed rule 3-18, with minor modifications, applicable to the financial statements required to appear in prospectuses and annual updates, and to the financial statements required in shareholder reports under section 30(d) and rule 30d-1 thereunder. Finally, new rule 30d-1 would make clear that financial statements in shareholder reports would have to follow the instructions in the registration statement forms, to the extent those instructions modify the requirements of rule 3-18 of Regulation S-X. As a result of these amendments, both the annual report to shareholders and the current prospectus (or, in the case of a closed-end company, the annual update) of a management investment company would be required to contain the following audited financial statements:

(1) A balance sheet or statement of assets and liabilities as of the close of the most recent fiscal year;

(2) A schedule of investments as of the date of balance sheet or the date of the statement of assets and liabilities;

(3) An income statement for the most recent fiscal year; and

(4) Statements of changes in net assets for the two most recent fiscal years.

The proposals would reconcile all current differences between financial statement requirements for prospectuses and shareholder reports, with three exceptions. The first exception arises with respect to condensed financial information. The annual report of all management investment companies would still be required to include a per share table for the five most recent fiscal years, with at least the latest year audited,[13] and the current prospectus of open-end companies [14] would still be required to include such information for the ten most recent fiscal years, with at least the five latest years audited. In those situations where an open-end company, pursuant to the proposed optional provisions, elects either to incorporate by reference or to transmit a currently effective prospectus as the equivalent of a shareholder report, however, the shareholder report from which the information is incorporated, or the prospectus transmitted as a shareholder report, would be required to contain condensed financial information for the ten most recent fiscal years, with at least the five latest years audited. These are the periods prescribed for condensed financial information in a prospectus by Item 3(a) of the registration statement forms, and the requirements of that item would have to be met where the document transmitted to a shareholder or prospective investor is a prospectus, or part of a prospectus. A second exception would arise concerning management remuneration disclosure in financial statements. Where an open-end company elects either of the options, such company would have to provide, in the single set of financial statements prepared, management remuneration disclosures that satisfies both the prospectus requirement and the shareholder report requirement.

A third exception would arise concerning disclosure of the cost of individual securities. Such information is now required to appear in the schedule of investments in prospectuses, pursuant to Article 12 of Regulation S-X, but it does not appear in the comparable schedule in shareholder reports. For purposes of this proposal, the Commission has determined to maintain the requirement of cost information in the schedule of investments in the prospectus, but not to add it to shareholder reports. Accordingly, an open-end company electing either option

[10] The amendment to rule 30d-1 would replace the current rule altogether.

[11] Proposed rule 3-18 thus follows the approach taken for other disclosure documents under the federal securities laws by removing most of the instructions as to financial statements from specific forms and centralizing the instructions in Article 3 of Regulation S-X. *See Uniform Instructions as to Financial Statements—Regulation S-X*, Securities Act Release No. 6234 (Sept. 2, 1980) [45 FR 63682 (Sept. 25, 1980)].

[12] The financial statement item of Form N-1, formerly Item 17, was renumbered Item 18 by Securities Act Release No. 6243 (Sept. 30, 1980) [45 FR 67079 (Oct. 9, 1980)].

[13] Registrants would still be free to continue providing condensed financial information in the annual report for a longer period, such as the ten latest fiscal years, if they chose.

[14] The condensed financial information would not be required in closed-end companies' annual updates because, under Item 3(a) of both forms, it is required only for the prospectus. However, some closed-end companies provide this information now, and they could continue to do so in the future.

for transmission of financial information would have to provide disclosure of the cost of individual securities in the schedule of investments that is part of the single set of financial statements. The Commission specifically requests comment on whether cost disclosure is useful to investors and thus should be retained as a requirement of the prospectus.

The appendix to this release consists of a table designed to enable the reader to trace current financial statement requirements for prospectuses and shareholder reports to the proposed requirements. The sources for the present and proposed requirements are also provided. The discussions in the succeeding sections of this release provide detailed explanations of each proposed change.

The Commission anticipates that most of the benefits to be derived from the reconciliation of financial statement requirements between shareholder reports and prospectuses will accrue to open-end management investment companies, which will be able to use a single set of financial statements for both the annual report to shareholders and the updated prospectus, and, at their option, to send a prospectus in satisfaction of shareholder report requirements or to incorporate financial statements by reference from shareholder reports into the prospectus. Closed-end management investment companies should also benefit, however, by being able to prepare a single set of financial statements for both the annual report to shareholders and the annual update of the registration statement under the 1940 Act. A similar benefit would also accrue to any open-end companies that choose to update their 1933 Act and 1940 Act registration statements through separate filings. Closed-end companies also would be able to incorporate financial statements from the annual report by reference into the annual update of the 1940 Act registration statement.

The reconciliation of financial statement requirements would have the most effect with respect to the prospectus (or the annual update) and the annual report to shareholders, rather than the semiannual report. As noted above, both the prospectus and the annual report are prepared shortly after the close of the fiscal year, and under the proposed amendments the form, content, and time periods for the two sets of financial statements would be identical. The proposed requirements as to form and content of financial statements would also apply to semiannual reports under section 30(d), but those financial statements would be supplied only for the period of the report and for the latest preceding fiscal year, and would not be required to be audited. Thus, such financial statements would, for the most part, appear only in semiannual reports, not in prospectuses as well, because such financial statements would not satisfy the periods required for financial statements in prospectuses. The Commission is aware, however, that some investment companies now update their prospectuses after the close of the fiscal half-year rather than the close of the fiscal year. If the proposed amendments are adopted, such companies would be able to use the same financial statements for the updated prospectus and the semiannual report. Such companies could incorporate financial statements from semiannual reports into prospectuses, or transmit prospectuses in place of semiannual reports, provided that the required financial statements and condensed financial information covered not only the fiscal semiannual period just completed (which need not be audited), but also the periods specified by Regulation S-X for a prospectus (which must be audited).

Proposed Amendments to Regulation S-X

Uniform financial statement requirements have previously been adopted for most registration forms filed by companies other than investment companies under the 1933 or 1934 Acts and for periodic reports to shareholders pursuant to the 1934 Act.[15] The purpose of the proposed amendments to Article 3 of Regulation S-X is to adopt these uniform financial statement requirements, as modified for management investment companies, for the prospectus (or annual update) and reports to shareholders of such companies.

If the Commission were to apply the uniform financial statement requirements in Article 3 to management investment companies, without modifications, the following statements would be required in the prospectus and annual report to shareholders: (1) A balance sheet or statements of assets and liabilities as of the close of each of the two most recent fiscal years (rule 3-01); (2) statements of income for each of the three fiscal years preceding the date of the most recent audited balance sheet or statement of assets and liabilities being filed (rule 3-02); and (3) statements of changes in net assets for each of the three fiscal years preceding the date of the most recent audited balance sheet or statement of assets and liabilities being filed (rule 3-02). Requiring management investment companies to prepare financial statements for these periods, however, not only would be a significant expansion of present requirements, but would also cause such companies to report more financial information than is reasonably necessary for an adequate evaluation of the financial condition of an investment company. To avoid this result, the Commission proposes to amend Article 3 of Regulation S-X. These modifications are found in proposed rule 3-18, "Additions to and omission of certain financial information for management investment companies."

Under paragraph (a) of rule 3-18, management investment companies would be required to furnish a balance sheet or statement of assets and liabilities, as specified by rules 3-01 and 3-12, only for the most recent fiscal year, rather than the two most recent fiscal years prescribed by those rules. This one year requirement is in accord with the present requirements of the prospectus and annual report.

Paragraph (b) of the rule is intended to make clear that, in the case of management investment companies, the statements of income required by rule 3-02 are comprised of the statements of income and expense, statements of realized gain or loss on investments, and statements of unrealized appreciation or depreciation of investments specified by rules 6-04, 6-05, and 6-06 of Regulation S-X [17 CFR 210.6-04, 6-05, and 6-06]. This paragraph makes no changes from present requirements.

Paragraph (c) of the rule would reduce the requirements for statements of income and statements of changes in net assets from the three most recent fiscal years prescribed by rule 3-02.[16] The statement of income would be required for only the most recent fiscal year, while the statement of changes in net assets would be required for the two most recent fiscal years, both in accord with GAAP. Presently, statements of income and statements of changes in net assets are required in a registration statement, pursuant to instruction 16 of Item 18 (instruction 16 of Item 20), for the three latest fiscal years; for statements of income, only the most recent year is required in the prospectus, while the two preceding years may be

[15] *See Uniform Instructions as to Financial Statements—Regulation S-X*, Securities Act Release No. 6234 (Sept. 2, 1980) [45 FR 63602 (Sept. 25, 1980)].

[16] Rule 3-02 of Regulation S-X refers to "statements of changes in financial position," a term which, for investment company purposes, is synonymous with "statements of changes in net assets."

filed in Part II of the registration statement. The Commission believes that presenting a statement of income for the most recent fiscal year and statements of changes in net assets for the two most recent fiscal years would provide sufficient information to shareholders and prospective investors. In addition, as part of the reconciliation of the financial statement requirements, paragraph (c) omits the requirement of the current financial statement items that the ratio of operating expenses to income appear in the income statements of a prospectus. This requirement does not appear to serve any useful purpose.

Paragraph (d) of proposed rule 3–18 would make clear that the interim financial information requirements of rules 3–01 and 3–12 do not apply to management investment companies. Thise requirements were recently revised[17] to recognize quarterly reporting requirements under the 1934 Act and to insure that financial information provided in registration statements under the 1933 Act is at least as current as the data already filed by the company under the 1934 Act. Because management investment companies do not file financial information on a quarterly basis under the 1934 Act, these provisions should not apply to such companies. No change in existing requirements for management investment companies as to reporting interim financial information would result from this amendment.

The Commission also proposes to amend Aritcle 1 of Regulation S–X. Paragraph (a)(4) of rule 1–01 would be amended to provide that Regulation S–X states the requirements as to form and content for financial statements in management investment company registration statements and shareholder reports, except as otherwise provided by the registration statement forms. This amendment would make clear that, where the specific forms conflict with the requirements of Regulation S–X, the requirements of the forms prevail. This amendment is necessary because the registration statement forms, as explained below, modify the requirements of Regulation S–X for management investment company prospectuses and shareholder reports.

Proposed Amendments to Registration Statement Forms

The proposed changes to the financial statement items of the registration statement forms, Item 18 of Form N–1 and Item 20 of Form N–2, would acomplish three purposes:

(1) Eliminating most of the instructions to financial statements from the forms and replacing them with a reference to the uniform financial statement requirements of Regulation S–X;

(2) Including in the registration statement forms those modifications to financial statements required in Forms N–1 and N–2 and shareholder reports that are not of general applicability and therefore not appropriate for inclusion in Regulation S–X; and

(3) Specifying the financial statement requirements for all reports to shareholders under rule 30d-1.

The amended financial statement items would require a prospectus (or part I of the annual update) to include the financial statements prescribed by Regulation S–X. New instruction A would adopt the financial statement requirements of Regulation S–X, including proposed rule 3–18, for management investment company registration statements. This reference to Regulation S–X makes no substantive changes in the form and content of financial statements now included in prospectuses, other than those changes with respect to the time periods to be covered by certain statements discussed above with reference to proposed rule 3–18. It should be noted that the reference to Regulation S–X results in the deletion of most instructions from the financial statement items of the registration statement forms.

Instruction A to Form N–1 also repeats a current financial statement instruction applicable only to open-end investment companies, that the specimen price-make-up sheet required by Item 16(a)(7) of Form N–1 (General Information as to Plan of Distribution) may be furnished as a continuation of the balance sheet or statement of assets and liabilities.[18]

Instruction B of the proposed financial statement items specifies two groups of financial statements and schedules which, at the registrant's option, may be omitted from the prospectus (Part I of the annual update) and included in Part II of the registration statement. This instruction does not change present requirements.[19]

Instruction C of the proposed financial statement items retains the current requirement of instruction 16.a. of the financial statement items that, if the registrant has not previously had an effective registration statement under the 1933 Act and the balance sheet or statement of assets and liabilities in its initial registration statement under the 1933 Act is as of a date more than ninety days prior to the date of filing, the prospectus must include a corresponding balance sheet or statement of assets and liabilities as of a date within ninety days prior to the date of filings, in addition to related financial statements from the close of the fiscal year up to the date of the more recent balance sheet. This instruction would supersede, for such management investment companies, the rules as to age of financial statements in Article 3 of Regulation S–X[20] but would make no changes in present requirements.

The next two instructions of the proposed financial statement items would adopt the uniform set of financial statement instructions of Regulation S–X, as modified by the registration statement forms, for reports to shareholders under section 30(d). Instruction D(1) would require the annual report to contain the financial statements specified by Regulation S–X, as modified by instruction B, for the periods specified by Regulation S–X, except that the cost of individual securities may be omitted from the schedule of investments. Instruction D(2) would require annual reports to contain the condensed financial information required by Item 3(a) of the forms for the five most recent fiscal years, with at least the most recent fiscal year audited.[21] These two instructions would make no substantive changes from present requirements, other than those discussed above regarding time periods for financial statements as prescribed by proposed rule 3–18. One technical change in the statement of changes in net assets required in shareholder reports would result from the reference of shareholder

[17] Securities Act Release No. 6234 (Sept. 2, 1980) [45 FR 63682 (Sept. 25, 1980)].

[18] This instruction is not aplicable to closed-end companies and therefore is not included in Item 20 of Form N–2.

[19] Currently, the registration statement forms provided that the income statements for the two fiscal years preceding the most recent fiscal year may be omitted from the prospectus and filed in Part II of the Registration Statement. No comparable statement is included in proposed instruction B because of the change in proposed rule 3–18(c) as to income statements, discussed above.

[20] Rules 3–01 and 3–12 [17 CFR 210.3–01, 3–12] require the inclusion in registration statements of interim financial information that is no less current that the interim data required for noninvestment company registrants on Form 10–Q [17 CFR 249.308a], the quarterly report to the Commission under the 1934 Act. To extend the interim financial information requirement to management investment companies, which do not file interim financial information on a quarterly basis, would appear unnecessarily burdensome.

[21] The Commission is specifically excluding from annual reports, and all other section 30(d) reports, the requirement of including the condensed financial information as to senior securities required by Item 3(b) of the forms, because this information appears to be of little usefulness to shareholders.

report financial statement requirements to Regulation S–X. This reference would add to shareholder reports the requirement of rule 6–08(b)(8) of Regulation S–X [17 CFR 210.6–08(b)(8)], that the statement of changes in net assets also include, by footnote or otherwise, the aggregate amount per share of dividends and distributions to stockholders. Since this information already is provided in shareholder reports as part of the per share table, registrants can satisfy this requirement for shareholder reports, as most already do for prospectuses, merely by reference in footnote or otherwise to the per share table.

Instruction D(3) would require disclosure in the annual report of aggregate remuneration paid by the company to specified groups, unless this disclosure is shown elsewhere in the report as part of the financial statements. This requirement makes no changes in current annual report requirements, as it is identical to the disclosure now required by section 30(d)(5) of the 1940 Act and rule 30d–1 thereunder. The introductory clause to instruction D(3) was included in recognition of the current practice of a number of companies to disclose information sufficient to satisfy section 30(d)(5) by footnote to their income statements in response to rule 6–04(b)(2) of Regulation S–X [17 CFR 210.6–04(b)(2)]. To the extent that registrants include disclosure sufficient to satisfy instruction D(3) in a footnote to the income statements (or elsewhere in the annual report), separate disclosure of aggregate remuneration would not be required. Registrants that do not choose to include such disclosure by footnote to the financial statements would have to include such disclosure separately in the annual report, as is required now. Finally, the last sentence of instruction D would make the rules in Regulation S–X for the age of financial statements inapplicable to annual reports of management investment companies.

Instruction E(1) of the proposed financial statement items would require all reports to shareholders except the annual report (i.e., primarily the semiannual report),[22] to contain the financial statement specified by Regulation S–X, as modified by instruction B, for the period commencing either with the beginning of the company's fiscal year or a date not later than the date after the close of the period included in the last report under section 30(d),[23] and for the most recent preceding fiscal year, except that the cost of individual securities may be omitted from the schedule of investments. Instruction E(2) would require such reports to contain the condensed financial information specified by Item 3(a) of the forms for the period of the report and for the five most recent fiscal years. These two instructions would make no substantive changes from present requirements. In addition, instruction E(3) would, as discussed above with reference to instruction D(3), preserve the requirement of section 30(d)(5) of the 1940 Act for disclosure in the semiannual report of aggregate remuneration paid by the company. The last sentence of instruction E would make the rules in Regulation S–X as to age of financial statements inapplicable to semiannual reports. Instruction F of Item 18 refers open-end management investment companies to General Instruction E of Form N–1, which contains the provisions for incorporation by reference of financial statements from shareholder reports into the prospectus, as is discussed in detail below.[24]

Proposed Rule 30d–1

New rule 30d–1 would adopt the financial statement requirements in the registration statement forms, as those forms modify Regulation S–X, for annual and semiannual reports to shareholders. As a result, financial statements in both prospectuses and annual reports to shareholders would be prepared pursuant to the uniform instructions for financial statements in Regulation S–X, as modified for management investment companies by proposed rule 3–18 and the forms. All instructions to financial statements have been eliminated from proposed rule 30d–1. Only paragraph (a) of the proposed rule is relevant to the standardization of financial statements and is discussed here. The remaining provisions of the rule refer only to open-end companies and are discussed below.

Paragraph (a) of proposed rule 30d–1, like the current rule, would require every management investment company, at least semiannually, to transmit a report to shareholders. The proposed rule, however, would refer to the financial statement items of the company's registration statement form under the 1940 Act for the content of and periods to be covered by the financial statements in such reports, rather than the present reference to clauses (1) through (6) of section 30(d). This amendment makes no substantive changes, but merely eliminates references to outdated terminology contained in section 30(d). The proposed requirements for shareholder reports are found in instructions D and E of Item 18 of Form N–1 and Item 20 of Form N–2, as discussed above. In addition, proposed rule 30d–1(a) requires the initial report to shareholders of an investment company which is newly registered under the 1940 Act to be made as of the close of the fiscal year or half-year first occurring on or after the date upon which the company has filed its notification of registration under the 1940 Act. This is the same as current requirements.

Transmission of Financial Information

Reconciliation of the different requirements for financial statements in prospectuses (or annual updates) and in annual reports to shareholders under section 30(d) of the 1940 Act would make it possible for management investment companies to prepare a single set of financial statements for use in both documents. This step, by itself, should eliminate some of the costs of preparation of disclosure documents. In addition, because there is considerable overlap in the readership of annual reports and prospectuses, the Commission is proposing two optional provisions with respect to the way open-end management companies transmit financial information to shareholders and prospective investors. These provisions are designed to permit such companies to eliminate duplicative printing and mailing costs.[25] First, a mutual fund could incorporate financial statements from its shareholder reports by reference into its prospectus, provided that the shareholder report was also furnished to persons receiving the prospectus.[26] Second, a fund could elect instead to send a currently effective prospectus (containing

[22] The language of instruction E covers not only semiannual reports to shareholders, but also the initial report of a newly registered management investment company. It is modeled upon current rule 30d–1(a) and makes no change to current requirements.

[23] This is the same period now required by rule 30d–1(a).

[24] This instruction is not applicable to closed-end companies and therefore is not included in Item 20 of Form N–2.

[25] These proposals would apply only to open-end investment companies because they must update their prospectuses annually (*see* note 5 *supra*), as well as prepare reports to shareholders. Closed-end companies file financial statements as part of their 1940 Act registration statement updates but these are only filed with the Commission; they are not sent to shareholders or prospective investors. Closed-end companies would, however, gain the benefit of the savings to be derived from having to prepare only a single set of financial statements.

[26] This approach is similar to new Form S–15 under the 1933 Act [17 CFR 239.29] for certain business combination transactions. *See* Securities Act Release No. 6232 (Sept. 2, 1980) [45 FR 33647 (Sept. 25, 1980)].

financial statements) in satisfaction of any shareholder report requirement.[27]

It should be noted that with both options the single set of financial statements that is prepared must satisfy the requirements of two types of disclosure documents: shareholder reports (annual or semiannual) and prospectuses. The requirements of these two documents would vary in three respects so that registrants, in order to use either of the proposed options, would have to prepare one set of financial statements satisfying both sets of requirements. First, condensed financial information is required in a prospectus for the ten most recent fiscal years, with at least the five most recent years audited, but this information is provided in annual (and semiannual) reports for a shorter period. Thus, any registrant wishing to transmit a prospectus as the equivalent of a shareholder report, or to incorporate by reference from a shareholder report into a prospectus, would have to provide condensed financial information in the single set of financial statements for the longer periods required in a prospectus.

Second, financial statement disclosure of the remuneration paid by an investment company is required in a prospectus as part of the income statements in the format prescribed by rule 6-04(b)(2) of Regulation S-X [17 CFR 210.6-04(b)(2)], but in shareholder reports the format is prescribed by section 30(d)(5) of the 1940 Act, as embodied in instructions D and E of the proposed financial statement items to the registration statement forms. While the formats for this disclosure are somewhat similar, they are not interchangeable. Thus, any registrant wishing to use either option would have to provide disclosure of remuneration sufficient to satisfy the requirements of both rule 6-04(b)(2) of Regulation S-X and section 30(d)(5) of the 1940 Act.

Third, the cost of individual securities in the schedule of investments is required in a prospectus pursuant to Regulation S-X, but it does not appear in the comparable schedule in shareholder reports under GAAP. Thus, any registrant wishing to tranmsit a prospectus as the equivalent of a shareholder report, or to incorporate by reference from a shareholder report into a prospectus, would have to provide disclosure of the cost of individual securities in the schedule of investments that is part of the single set of financial statements.

These proposed provisions for transmission of financial information would be alternative methods to satisfy current requirements. They are intended to eliminate the need for funds to print and mail the same financial statements in two different documents. Of course, mutual funds may continue to transmit prospectuses and annual reports separately.

Incorporation by Reference

The Commission is proposing to permit open-end management investment companies to incorporate by reference into their prospectuses the financial statements contained in any report to shareholders, semiannaul or annual, required by section 30(d) and rule 30d-1 thereunder. This proposal would provide open-end companies with the opportunity to reduce the costs associated with preparing and transmitting different disclosure documents, *i.e.*, the prospectus and reports to shareholders, containing identical financial information. Incorporation by reference would be permitted by two amendments to Form N-1: to General Instruction E, "Incorporation by Reference," and to Item 10 of Part II, "Undertakings."[28]

Amendments to General Instruction E would permit an open-end company to incorporate by reference condensed financial information, financial statements, or both, contained in a semiannual or annual report, provided three conditions are satisfied: first, the financial information incorporated by reference must be prepared in accordance with and cover at least the periods specified by Form N-1 for a prospectus; second, the registrant must furnish the undertaking prescribed by proposed Item 10(c) of Part II of Form N-1 regarding delivery to all persons to whom the prospectus is furnished of the report to shareholders from which financial information is incorporated; and third, the registrant must include a statement identifying the financial information incorporated by reference at each place in the prospectus where the financial information would have otherwise appeared.

The first condition, that the incorporated financial statements be prepared in accordance with the requirements of Form N-1 for a prospectus, is necessary to ensure that the financial statements incorporated by reference from a report to shareholders, particularly if such report is a semiannual report, are prepared in accordance with, and cover the periods specified by, Form N-1. Thus, any registrant choosing to incorporate by reference from its semiannual report would have to include in such report financial statements that satisfy the requirements both of a shareholder report and a prospectus.[29] This condition also makes a change with respect to condensed financial information disclosure, remuneration disclosure, and cost of securities disclosure, as noted above. Condensed financial information, if incorporated by reference into a prospectus, would have to be presented in the shareholder report for the period required in a prospectus (the ten most recent fiscal years, with at least the five most recent years audited) rather than the period prescribed by GAAP for either an annual report (the five most recent fiscal years, with at least the latest year audited) or a semiannual report (the period of the report plus the most recent preceding fiscal year). Remuneration disclosure would have to be presented in the shareholder report in a form sufficient to satisfy both rule 6-04(b)(2) of Regulation S-X and section 30(d)(5) of the 1940 Act (as embodied in the proposed financial statement items to the forms). To the extent that registrants, in the course of satisfying the disclosure requirement of Regulation S-X, also satisfy the requirement of section 30(d)(5) of the 1940 Act, the information called for by that section would not have to be restated separately. Finally, the cost of individual securities would have to be included in the schedule of investments.

Statements	*Periods*
Balance sheets or statements of assets and liabilities	As of the close of the most recent fiscal year (audited) and as of the close of the period covered by the semiannual report (unaudited)

[27] It might be noted that the Commission staff has previously indicated that it is considering whether to recommend that the Commission propose amendments that would require investment companies to provide disclosure about changing prices in their registration statements and post-effective amendments thereto. The instant proposals are not meant to suggest any determination by the Commission or its staff regarding that matter.

[28] A potential barrier to incorporation by reference, based on practical considerations, is the requirement of present rule 30d-1(a) that open-end companies transmit their reports to shareholders within forty-five days of the close of the period for which the report is being made. The Commission proposes to extend this period to sixty days, as discussed *infra*. This extension should also provide sufficient time for preparation of financial statements to be incorporated by reference.

[29] Accordingly, a registrant choosing to incorporate by reference, or to transmit a prospectus as the equivalent of its semiannual report, would have to include the following financial statements in its semiannual report for the following periods:

Statements	*Periods*
Schedules of investments	As of the date of the balance sheet or statement of assets and liabilities (audited) and as of the date of the semiannual report (unaudited)
Income statements	The most recent fiscal year (audited) and for the period covered by the semiannual report (unaudited)
Statements of changes in net assets	The two most recent fiscal years (audited) and for the period covered by the semiannual report (unaudited)
Condensed financial information	The ten most recent fiscal years (audited) and for the period covered by the semiannual report (unaudited)

The second condition regarding compliance with the undertaking of Item 10 or Part II is included to help ensure that registrants will fulfill their duty to provide investors with the document containing the incorporated financial statements. Item 10 would require registrants which incorporate by reference to assure that a copy of the shareholder report containing the incorporated financial statements accompanies the prospectus, unless the person receiving the prospectus is a current shareholder who has already been provided with a copy of that shareholder report. This undertaking recognizes that existing shareholders will already have received a copy of the shareholder report containing the incorporated financial statements, and it would be unnecessarily burdensome to require investment companies to send them another. To accommodate shareholders who have not kept the report, the registraint would further be required to undertake to send a copy of the shareholder report, without charge, to any person requesting one, and to provide the name, address, and telephone number of the person to whom such a request should be directed.[30]

In order to alert readers of a prospectus without financial statements that those statements are located in another document (which either accompanies the prospectus or, in the case of current shareholders, may have been previously furnished), the third condition to General Instruction E would require the registrant to include a statement, at each place in the prospectus where the condensed financial information, financial statements, or both, would otherwise appear,[31] identifying the information in a report to shareholders that is incorporated by reference into the prospectus. The registrant would be responsible for the information incorporated by reference as if it had been set forth in the prospectus.

The proposed amendment to General Instruction E provides further that the registrant, at its option, may specifically describe those portions of its report to shareholders which are not incorporated by reference into the prospectus. If the registrant includes this description, it must be included in the prospectus (along with the description of that information which is incorporated by reference) and may also be included in Part II of the registration statement.

Transmission of a Prospectus as a Report to Shareholders

Paragraph (c) of proposed rule 30d–1 would permit an open-end management investment company to transmit to existing shareholders a copy of its currently effective prospectus under the 1933 Act as the equivalent of any report to shareholders, annual or semiannual, required by section 30(d) and rule 30d–1 thereunder, provided that such prospectus includes specified additional information. This proposal would provide open-end companies with another opportunity to reduce costs associated with preparing and transmitting disclosure documents containing identical financial information. At the same time, shareholders might benefit by being provided with a document containing all of the information that would have been included in a shareholder report plus the additional disclosure contained in a prospectus.

In the case of both the semiannual and annual reports, proposed rule 30d–1(c) would require the prospectus serving as a semiannual or annual report to contain: (1) condensed financial information for the time period required in a prospectus (the ten most recent fiscal years, with at least the five most recent years audited) rather than the shorter periods prescribed for a semiannual or annual report, and (2) remuneration disclosure to satisfy the requirements both of rule 6–04(b)(2) of Regulation S–X and section 30(d)(5) of the 1940 Act. Finally, rule 30d–1(c) would require financial statements and condensed financial information to be provided in the semiannual report not only for the periods required for a prospectus, but also for the additional fiscal half-year period required in a semiannual report.[32]

To take advantage of the provision, it would be necessary, pursuant to proposed rule 30d–1(c), for an open-end company to have its updated prospectus become effective and transmitted to shareholders within sixty days after the close of the period for which the report is being made. This sixty-day period is an extension of the forty-five day period for mailing shareholder reports now specified by rule 30d–1(a). The Commission believes this extension is necessary in order to provide sufficient time for open-end companies to take advantage of this provision and the incorporation by reference provision.[33]

The sixty-day period represents a shorter time than the period usually allowed for open-end companies to make the annual update of their prospectus by post-effective amendment.[34] Nevertheless, a period of sixty days for preparation and transmission of a prospectus should be sufficient for companies which are not making any material changes in their prospectus other than the annual update of financial information, since post-effective amendments filed by such companies can become effective automatically, either upon filing or on a date within twenty days of filing, pursuant to rule 465 under the 1933 Act (17 CFR 230.465). In addition, the time spent in preparation of a traditional report to shareholders would be eliminated for open-end companies electing this provision.

[30] This portion of the proposed amendment to Item 10 is modeled after a similar undertaking in Form S–8 under the 1933 Act [17 CFR 239.16b].

[31] Attention is directed to General Instruction G(2) of Form N–1, which provides that the condensed financial information should not be further back in the prospectus than the fifth page thereof and should not be preceded by any other chart or table. Accordingly, if condensed financial information in a report to shareholders is incorporated by reference into the prospectus, the statement required by General Instruction E would have to appear within the first five pages of the prospectus and would not be preceded by any other chart or table. Likewise, if financial statements in any report to shareholders are incorporated by reference in satisfaction of the requirements of Item 18 of Form N–1, the statement required by General Instruction E would be placed in a separate section following the responses to the previous items in Form N–1, in accordance with the instruction to Item 18.

[32] Note 29 *supra* sets forth a table specifying the financial statements and periods to be covered in a prospectus serving as the equivalent of a semiannual report.

[33] Because of the standardization of the mailing period at sixty days, the special provisions for nondiversified companies in present rule 30d–1(a) would no longer be necessary and would be eliminated. Additionally, paragraph (d) of the new rule contains a provision for seeking extension of the mailing period that is identical to current requirements.

[34] Pursuant to section 10(a)(3) of the 1933 Act and section 24(e)(3) of the 1940 Act, most investment companies must have an updating post-effective amendment become effective within four months of the end of the fiscal year, *i.e.*, 120 days. *See* note 5 *supra*.

A company that must file its annual updating amendment under rule 465(a), because of a material change requiring disclosure in the prospectus that has occurred since the effective date of the registrant's most recent registration statement or post-effective amendment thereto containing a prospectus, would have to follow special procedures in order to be able to transmit its currently effective prospectus as the equivalent of a shareholder report. Specifically, the registrant would have to update its prospectus through two post-effective filings, rather than one.

The first post-effective amendment would be filed under rule 465(a), disclosing in the narative part of the prospectus the material changes that make the amendment ineligible for immediate effectiveness under rule 465(b), and would be filed before the end of the registrant's fiscal year. As a result of its timing, this amendment would not contain updated financial statements, but rather the same financial statements as the prospectus in effect at the time the amendment was filed. The amendment would then normally become effective on the sixtieth day after filing pursuant to rule 465(a). After the end of the fiscal year, the registrant would file a second post-effective amendment, containing the financial statements for the recently ended fiscal year as well as the new narrative disclosure that had recently become effective. Provided, of course, that no material events had occurred since the effective date of the first post-effective amendment, the second amendment could be filed pursuant to rule 465(b), and thus could become effective upon filing or within twenty days thereafter. Thus, this second amendment, if timely filed, could become effective within the period for transmitting shareholder reports (i.e., sixty days after the close of the period for which the report is made) so that the prospectus filed as part of the second post-effective amendment could be used as a shareholder report.

Several points should be noted about this procedure. First, the procedure can be used only if the material events which cause the registrant to file under rule 465(a) are of such a nature that adequate disclosure about them can be made solely in the narrative part of the prospectus, without an attendant change in the financial statements. Second, the first post-effective filing should be made before the close of the registrant's fiscal year and at a time such that the sixty-day waiting period of rule 465(a) will expire before the sixtieth day after the end of registrant's fiscal year. Third, the second post-effective amendment could not be filed before the first filing had become effective; otherwise, as a post-effective amendment containing a prospectus, under rule 465(c) it would prevent the first filing from becoming effective automatically.[35]

The Commission recognizes that the procedure described above would be less convenient than updating a prospectus by means of a single filing. That procedure, however, would need be followed only by companies whose post-effective amendments were ineligible for immediate effectiveness in a particular year, but which nevertheless wished to use their prospectus as the equivalent of a shareholder report. Moreover, the only other way to make this option available to such companies would be to make the time for furnishing shareholder reports considerably longer than the extension to 60 days being proposed herein. The Commission is not prepared to propose such a greater extenstion in view of the requirement of section 30(d) of the 1940 Act that information in reports to shareholders be "as of a reasonably current date."

The registration statement forms make no provison in the prospectus for inclusion of narrative material, such as a letter to shareholders, that is typically included (but not required by rule 30d-1) in most reports to shareholders. Nevertheless, registrants electing to transmit a prospectus as the equivalent of a shareholder report would still be free to include such a narrative with the prospectus, with the understanding that any such narrative might be considered part of the prospectus and thus subject to prospectus liability. This, however, will not have a marked effect upon registrants' existing duties with respect to such narratives. Although the narative portion of a report to shareholders is not specifically required as part of a shareholder report, it is already subject to section 30(d) of the 1940 Act, which provides that a report to shareholders "shall not be misleading in any material respect" in light of reports filed with the Commission on Forms N-1R and N-1Q. It is also subject to section 34(b) of the 1940 Act, which makes unlawful "any untrue statement of a material fact in any * * * report * * * filed or transmitted pursuant to this title," as well as to the various other anti-fraud provisions of the federal securities laws, depending upon the facts and circumstances surrounding the use of such report.

[35] For example, a company with a December 31st fiscal year end, which had experienced a material event since its last post-effective amendment became effective, would file a post-effective amendment on December 20, 1980. This amendment would contain new narrative disclosure, but the financial statements would be as of December 31, 1979. The amendment would become effective automatically on February 18, 1981. The second post-effective amendment, which contained financial statements as of December 31, *1980*, would have to be filed after February 18, but on or before March 1, 1981, and designate an effective date enabling the registrant to transmit it as a shareholder report on or before March 1, 1981, the end of the sixty days after the end of the fiscal year specified by proposed rule 30d-1(c).

Text of Proposed Amendments and Proposed Rules

It is proposed to amend Chapter II of Title 17 of the Code of Federal Regulations as follows:

PART 210—FORM AND CONTENT OF AND REQUIREMENTS FOR FINANCIAL STATEMENTS, SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934, PUBLIC UTILITY HOLDING COMPANY ACT OF 1935, INVESTMENT COMPANY ACT OF 1940, AND ENERGY POLICY AND CONSERVATION ACT OF 1975

1. By amending paragraphs (a) and (a)(4) of § 210.1-01 to read as follows:

§ 210.1-01 Application of Regulation S-X (17 CFR Part 210).

(a) This part (together with the Accounting Series Releases [Part 211 of this chapter]) states the requirements applicable to the form and content of all financial statements required to be filed as a part of—

* * * * *

(4) Registration statements and shareholder reports under the Investment Company Act of 1940 [Part 274 of this chapter], except as otherwise specifically provided in the forms which are to be used for registration under this Act.

2. By adding a new § 210.3-18 to read as follows:

§ 210.3-18 Additions to and omission of certain financial information for management investment companies.

(a) Notwithstanding the requirements of §§ 210.3-01 and 210.3-12 above, the registrant should file a balance sheet or statement of assets and liabilities only as of the close of the most recent fiscal year; such balance sheet or statement of assets and liabilities for the immediately preceding fiscal year may be omitted.

(b) The statements of income required by § 210.3-02 shall be comprised of the statements of income and expense, statements of realized gain or loss on investments, and statements of unrealized appreciation or depreciation of investments specified by §§ 210.6-04, 210.6-05, and 210.6-06, respectively.

(c) Notwithstanding the requirements of § 210.3-02, the registrant should file a statement of income only for the most recent fiscal year and statements of changes in net assets for the two most recent fiscal years preceding the date of the balance sheet or statement of assets and liabilities requried by paragraph (a) of this section.

(d) Notwithstanding the requirements of §§ 210.3-01 and 210.3-02, any registration statement that contains financial statements for the interim period between the end of the most recent fiscal year and the date of the most recent balance sheet or statement of assets and liabilities need not also contain financial statements for the corresponding interim period of the preceding fiscal year. Although such interim financial statements may be unaudited, they shall be presented in as much detail as is required by this Regulation S-X.

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

1. By amending General Instruction E of Form N-1 by adding the following paragraph to the existing text of the Instruction:

§ 239.15 Form N-1 for open-end management investment companies registered on Form N-8A.

§ 274.11 Form N-1, registration statement of open-end management investment companies.

* * * * *

Subject to the above rules, a registrant may incorporate by reference, in response to Item 3(a), "Condensed Financial Information," Item 18, "Financial Statements," or to both Items, the information contained in any report to shareholders meeting the requirements of section 30(d) of the 1940 Act and rule 30d-1 thereunder, provided the following additional conditions are satisfied:

1. The material that is incorporated by reference is prepared in accordance with, and covers the periods specified by, this Form;

2. The registrant furnishes the undertaking specified in Item 10(c) of Part II of this Form regarding delivery of the report to shareholders from which information is incorporated by reference into the prospectus; and

3. The registrant includes a statement, at each place in the prospectus where the information required by Item 3(a), Item 18, or both, would otherwise appear, that the information is incorporated by reference from a report to shareholders. The registrant, at its option, may also specifically describe, in either the prospectus or both the prospectus and Part II of the Registration Statement (in response to Item 1(a)), those portions of the report to shareholders that are not incorporated by reference and are not a part of the Registration Statement.

2. By amending Item 18 of Part I of Form N-1 to read as follows:

Item 18. *Financial Statements*

Instructions:

A. A Registration Statement on Part I of this Form shall contain, in separate section following the responses to the foregoing Items, the financial statements and schedules required by Regulation S-X [17 CFR Part 210]. The specimen price-make-up sheet required by Item 16.a. of this Form may be furnished as a continuation of the balance sheet or statement of assets and liabilities specified by Regulation S-X [17 CFR 210.6-01].

B. Notwithstanding the requirements of Instruction A above, the following statements and schedules required by Regulation S-X may be omitted from the *prospectus* part of the Registration Statement and included in Part II of such Registration Statement:

(1) The statements of any subsidiary which is not a majority-owned subsidiary; and

(2) All schedules in support of the most recent balance sheet or statement of assets and liabilities, except the following: (a) Schedule I [17 CFR 210.12-12]; (b) columns A, E, and G of Schedule II [17 CFR 210.12-13]; and (c) columns A, B, and D of Schedule III [17 CFR 210.12-14], omitting the information called for by paragraph (b) of footnote 1 to column A.

C. In addition to the requirements of rule 3-18 of Regulation S-X [17 CFR 210.3-18], any company registered under the 1940 Act which has not previously had an effective Registration Statement under the 1933 Act shall include in its initial Registration Statement under the 1933 Act such additional financial statements and condensed financial information (which need not be audited) as is necessary to make the financial statements and condensed financial information included in the registration statement as of a date within 90 days prior to the date of filing.

D. Every annual report to shareholders required pursuant to section 30(d) of the 1940 Act and rule 30d-1 thereunder [17 CFR 270.30d-1] shall contain the following information:

(1) The financial statements (audited) required by Regulation S-X, as modified by Instruction B above, for the periods specified by Regulation S-X, except that the following information required by Regulation S-X may be omitted from any annual report:

(a) Column C of Schedule I [17 CFR 210.12-12];

(b) Column F of Schedule II [17 CFR 210.12-13]; and

(c) Column C of Schedule III [17 CFR 210.12-14];

(2) The condensed financial information required by Item 3(a) of this Form, for the five most recent fiscal years, with at least the most recent year audited; and

(3) Unless shown elsewhere in the report as part of the financial statements required by (1) above, the aggregate remuneration paid by the company during the period covered by the report (a) to all directors and to all members of any advisory board for regular compensation; (b) to each director and to each member of an advisory board for special compensation; (c) to all officers; and (d) to each person of whom any officer or director of the company is an affiliated person.

Notwithstanding the requirements of rules 3-01 and 3-12 of Regulation S-X [17 CFR 210.3-01 and 3-12], interim financial statements other than those required by this Instruction shall not be included.

E. Every report to shareholders required by section 30(d) of the 1940 Act and rule 30d-1 thereunder [17 CFR 270.30d-1], except the annual report, shall contain the following information (which need not be audited):

(1) The financial statements required by Regulation S-X, as modified by Instruction B above, for the period commencing either with (a) the beginning of the company's fiscal year (or date of organization, if newly organized) or (b) a date not later than the date after the close of the period included in the last report conforming with the requirements of rule 30d-1, and the most recent preceding fiscal year, except that the following information required by Regulation S-X may be omitted from any report to shareholders:

(a) Column C of Schedule I [17 CFR 210.12-12];

(b) Column F of Schedule II [17 CFR 210.12-13]; and

(c) Column C of Schedule III [17 CFR 210.12-14];

(2) The condensed financial information required by Item 3(a) of this Form, for the period of the report as specified by (1) above, and the most recent preceding fiscal year; and

(3) Unless shown elsewhere in the report as part of the financial statements required by (1) above, the aggregate remuneration paid by the company during the period covered by the report (a) to all directors and to all members of any advisory board for regular compensation; (b) to each director and to each member of an advisory board for special compensation; (c) to all officers; and (d) to each person of whom any officer or director of the company is an affiliated person.

Notwithstanding the requirements of rules 3-01 and 3-12 of Regulation S-X [17 CFR 210.3-01 and 3-12], interim financial statements other than those required by this Instruction shall not be included.

F. Reference is made to General Instruction E regarding incorporation by reference.

3. By amending Item 10 of Part II of Form N-1 by adding the following paragraph to the existing text of the Item:

Furnish the following undertaking in substantially the following form in all Registration Statements which incorporate by reference the condensed financial information or financial statements contained in a report to shareholders required pursuant to section 30(d) of the 1940 Act and rule 30d-1 thereunder:

(c) An undertaking to deliver or cause to be delivered with the prospectus, to each person to whom the prospectus is sent or given, a copy of the Registrant's report to shareholders furnished pursuant to and meeting the requirements of rule 30d-1 from

which the specified information is incorporated by reference, unless such person currently holds securities of the Registrant and otherwise has received a copy of such report, in which case the Registrant shall state in the prospectus that it will furnish, without charge, a copy of such report on request, and the name, address, and telephone number of the person to whom such a request should be directed.

4. By amending Item 20 of Part I of Form N–2 to read as follows:

§ 239.14 Form N–2 for closed-end management investment companies registered on Form N–8A.

§ 274.11a–1 Form N–2, registration statement of closed-end management investment companies.

* * * * *

Item 20. *Financial Statements*

Instructions:

A. A Registration Statement on Part I of this Form shall contain, in a separate section following the responses to the forgoing Items, the financial statements and schedules required by Regulations S–X [17 CFR Part 210].

B. Notwithstanding the requirements of Instruction A above, the following statements and schedules required by Regulation S–X may be omitted from the *prospectus* part of the Registration Statement and included in Part II of such Registration Statement:

(1) The statements of any subsidiary which is not a majority-owned subsidiary; and

(2) All schedules in support of the most recent balance sheet or statement of assets and liabilities, except the following: (a) Schedule I [17 CFR 210.12–12]; (b) columns A, E, and G of Schedule II [17 CFR 210.12–13]; and (c) columns A, B, and D of Schedule III [17 CFR 210.12–14], omitting the information called for by paragraph (b) of footnote 1 to column A.

C. In addition to the requirements of rule 3–18 of Regulation S–X [17 CFR 210.3–18], any company registered under the 1940 Act which has not previously had an effective Registration Statement under the 1933 Act shall include in its initial Registration Statement under the 1933 Act such additional financial statements and condensed financial information (which need not be audited) as is necessary to make the financial statements and condensed financial information including in the registration statement as of a date within 90 days prior to the date of filing.

D. Every annual report to shareholders required pursuant to section 30(d) of the 1940 Act and rule 30d–1 thereunder [17 CFR 270.30d–1] shall contain the following information:

(1) The financial statements (audited) required by Regulation S–X, as modified by Instruction B above, for the periods specified by Regulation S–X, except that the following information required by Regulation S–X may be omitted from any annual report:

(a) Column C of Schedule I [17 CFR 210.12–12];

(b) Column F of Schedule II [17 CFR 210.12–13]; and (c) Column C of Schedule III [17 CFR 210.12–14];

(2) The condensed financial information required by Item 3(a) of this Form, for the five most recent fiscal years, with at least the most recent year audited; and

(3) Unless shown elsewhere in the report as part of the financial statements required by (1) above, the aggregate remuneration paid by the company during the period covered by the report (a) to all directors and to all members of any advisory board for regular compensation; (b) to each director and to each member of an advisory board for special compensation; (c) to all officers; and (d) to each person of whom any officer or director of the company is an affiliated person.

Notwithstanding the requirements of sections 3–01 and 3–12 of Regulation S–X [17 CFR 210.3–01 and 3–12], interim financial statements other than those required by this instruction shall not be included.

E. Every report to shareholders required by section 30(d) of the 1940 Act and rule 30d–1 thereunder [17 CFR 270.30d–1] except the annual report, shall contain the following information (which need not be audited):

(1) The financial statements required by Regulation S–X, as modified by Instruction B above, for the period commencing either with (a) the beginning of the company's fiscal year (or date of organization, if newly organized) or (b) a date not later than the date after the close of the period included in the last report conforming with the requirements of rule 30d–1 and the most recent preceding fiscal year, except that the following information required by Regulation S–X may be omitted from any report to shareholders: (a) Column C of Schedule I [17 CFR 210.12–12]; (b) Column F of Schedule II [17 CFR 210.12–13]; and (c) Column C of Schedule III [17 CFR 210.12–14];

(2) The condensed financial information required by Item 3(a) of this Form, for the period of the report, as specified by (1) above, and the most recent preceding fiscal year; and

(3) Unless shown elsewhere in the report as part of the financial statements required by (1) above, the aggregate remuneration paid by the company during the period covered by the report (a) to all directors and to all members of any advisory board for regular compensation; (b) to each director and to each member of an advisory board for special compensation; (c) to all officers; and (d) to each person of whom any officer or director of the company is an affiliated person. Notwithstanding the requirements of sections 3–01 and 3–12 of Regulation S–X [17 CFR 210.3–01 and 3–12], interim financial statements other than those required by this instruction shall not be included.

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

1. By revising § 270.30d–1 to read as follows:

§ 270.30d–1 Reports to stockholders of management companies.

(a) Every registered management company shall transmit to each stockholder of record, at least semiannually, a report containing the financial statements required to be included in such reports by the company's registration statement form under the 1940 Act (instructions D and E of Item 18 of Form N–1 or Item 20 of Form N–2) except that the initial report of a newly registered company shall be made as of a date not later than the close of the fiscal year or half-year first occurring on or after the date on which the company's notification of registration under the 1940 Act is filed with the Commission.

(b) Each report shall be mailed within 60 days after the close of the period for which such report is being made.

(c) As the equivalent of any report required to be transmitted to shareholders by this rule, an open-end company may transmit a copy of its currently effective prospectus under the Securities Act, provided such prospectus includes the following additional information: (1) In the case of the prospectus serving as an annual or semiannual report, the remuneration disclosure required by section 30(d)(5) of the 1940 Act for the period for which the prospectus is serving as a report; (2) in the case of the prospectus serving as a semiannual report, financial statements and condensed financial information for the fiscal half-year period of the report. Such prospectus shall be mailed within 60 days after the close of the period for which the report is being made.

(d) The period of time within which any report prescribed by this rule shall be mailed may be extended by the Commission upon written request showing good cause therefor. Section 270.0–5 shall not apply to such requests.

(Sections 7, 8, and 19(a) of the Securities Act of 1933 [15 U.S.C. 77g, 77h, and 77s(a)] and sections 8, 30(d), 31(c), and 38(a) of the Investment Company Act of 1940 [15 U.S.C. 80a–8, 80a–29(d), 80a–30(c), and 80a–37(a)]).

By the Commission.

George A. Fitzsimmons,

Secretary.

December 15, 1980.

Appendix—*Comparison of Current and Proposed Financial Statement Requirements*

Item	Current prospectus requirement	Current annual report requirement	Proposed uniform requirement
Regulation S-X	Governs form and content of financial statements.	Not applicable	Would govern form and content of financial statements in both documents, as modified by registration statement forms.
Balance sheet or statement of assets and liabilities.	1 year (instruction 16.c.(i) of forms).	1 year (rule 30d-1(a))	1 year (rule 3-18(a)).
Specimen price-make-up sheet	Yes—may be furnished as continuation of balance sheet or statement of assets and liabilities (instruction 16.c.(i) of Form N-1).	Not required	Continue current requirements (item 18(a) of Form N-1). A registrant using either optional provision would have to provide this information in the single set of financial statements prepared.
Schedule of investments	Yes (instruction 16.c.(i) of forms).	Yes (rule 30d-1(c)	Yes (rule 3-18(a)).
Cost of securities in schedule of investments.	Yes (Regulation S-X)	No	Continue current requirements. A registrant using either optional provision would have to provide this information in the schedule of investments that is part of the single set of financial statements.
Income statements	3 years (instruction 16.c.(ii) of the forms).	1 year (rule 30d-1(a) and GAAP).	1 year (rule 3-18(c)).
Ratio of investment company operating expenses to investment income as part of the income statements.	Yes (instruction 16.c.(ii) of the forms).	No	No.
Statement of changes in net assets.	3 years (instructions 16.c.(ii) of the forms).	2 years (rule 30d-1(d)(2) and GAAP).	2 years (rule 3-18(c)).
Per share dividends and distributions to stockholders.	Yes, as part of statements of changes in net assets (rule 6-08(b)(8) of Regulation S-X), and as part of per share table (items 3(a)(4) and 3(a)(6) of registration statement forms).	Not required as part of statements of changes in net assets, but provided as part of per share table (GAAP).	Adoption of Regulation S-X for shareholder reports adds the statements of changes in net assets requirement for shareholder reports, but this requirement could be satisfied by footnote incorporating by reference the comparable disclosure of the per share table.
Condensed financial information	10 years, at least 5 most recent audited (item 3(a) of forms).	5 years, at least latest year audited (GAAP).	Continue current requirements. A registrant using either optional provision would have to provide condensed financial information not only for periods of the prospectus, but also, in the case of a semiannual report, for the period of the report.
Disclosure of aggregate management remuneration.	Yes (rule 6-04(b)(2) of Regulation S-X).	Yes (section 30(d)(5) of the 1940 Act and rule 30d-1).	Continue current requirements. A registrant using either optional provision would have to provide disclosure in the single set of financial statements prepared, sufficient to satisfy both requirements.

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DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

[Notice No. 362; Ref: Notice No. 313]

27 CFR Parts 4, 5, and 7

Labeling and Advertising Regulations. Under the Federal Alcohol Administration Act

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

ACTION: Notice of proposed rulemaking.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms (ATF) is proposing to issue regulations concerning the labeling and advertising of wine, distilled spirits, and malt beverages. This notice is three-fold in purpose: (1) to prescribe new regulations; (2) to amend and update current regulations; and (3) to incorporate, where appropriate, prior ATF decisions on advertising and labeling matters issued as rulings and industry circulars into regulations. ATF believes these proposed regulations will result in deregulation in some areas and will provide a single comprehensive source of rules and guidelines for industry. Also the regulations will provide the consumer with protection against false or misleading labeling and advertising.

DATE: Comments must be received on or before March 19, 1981.

ADDRESS: Before adopting these proposed regulations, ATF will consider any written data, comments or suggestions which are submitted to: Chief, Regulations and Procedures Division, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 385, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: James A. Hunt or Roger L. Bowling, Research and Regulations Branch, 202-566-7626; or David W. Brokaw, Commodity Classification Branch, 202-566-7401, Bureau of Alcohol, Tobacco and Firearms, Washington, DC 20226.

SUPPLEMENTARY INFORMATION:

Background

The Federal Alcohol Administration Act (FAA Act) provides for regulation of labeling and advertising practices in sections 5 (e) and (f), 27 U.S.C. 205 (e) and (f). The two major objectives of these sections are: (1) to require certain mandatory information relating to the labeled and advertised product; and (2) to prohibit false or misleading labeling and advertising practices.

Within certain jurisdictional limits the FAA Act requires that any alcoholic beverage advertisement and label must be in conformity with the prescribed regulations (27 CFR Part 4; Part 5; and Part 7). These regulations specifically state what mandatory information is required to appear on a label or in an advertisement, and specify what is prohibited from appearing in advertising statements. ATF and its predecessor agencies have utilized rulings and industry circulars for expressing interpretations of these prohibitive regulations. Conformity to the advertising regulations has been maintained by agency review of advertisement material submitted voluntarily by industry members before release in the media and by the Bureau's monitoring and inspection programs in the post-review phase.

In addition to complying with regulations developed by the government, some industry members through their respective trade associations have also developed and adhered to voluntary codes of advertising. In many cases, these voluntary codes have set strict standards for advertising as one way of preventing abuses of alchohol, particularly by youth. The Treasury Department recognizes the important role that these voluntary codes have played in the past and urges industry to continue to reevaulate the impact that particular advertising practices can have and, as appropriate, to take additional voluntary steps to prevent abuses.

Need for New or Revised Advertising Regulations

Reasons for a review of regulations implementing the advertising provisions of the FAA Act are as follows:

(a) The advertising provisions of Parts 4, 5, and 7 are based in part on testimony given during hearings held in the mid-1930's. Some of the regulations adopted at that time may now be out of date due to advancements made in advertising techniques and practices and to changes in consumer awareness and understanding.

(b) Some sections of Parts 4, 5, and 7 may be too broad and undefined for consistent application by industry members. For example, ATF's view of the prohibition on all "disparaging advertising" has been subject to reconsideration in recent years, particularly with the increased practice of comparative advertising. ATF desires deregulation of some advertising regulations to encourage competition among industry members.

(c) ATF has identified several rulings and industry circulars issued since the enactment of the FAA Act which contain interpretations of the Act. Both ATF and industry members depend upon these rulings and circulars for guidance. ATF feels these rulings and circulars can and should be incorporated, where appropriate, into the regulations providing a single comprehensive source of information and guidance for all concerned.

(d) Unnecessary regulations, rulings, and industry circulars should be eliminated.

The following revenue and ATF rulings will either be incorporated into the proposed regulations, or their provisions will become obsolete at the time these proposed regulations become effective: Revenue Rulings 54-163, 1954-1 CB 342; 54-294, 1954-2 CB 571; 54-325, 1954-2 CB 590; 54-326, 1954-2 CB 591; 54-341, 1954-2 CB 592; 54-512, 1954-2 CB 592; 54-513, 1954-2 CB 593; 54-577, 1954-2 CB 592; 55-43, 1955-1 CB 617; 58-431, 1958-2 CB 1004; and ATF Ruling 80-3, QB 1980-2, 13.

Advance Notice of Proposed Rulemaking

In order to obtain input from industry members and the general public concerning advertising provisions of the FAA Act, ATF issued an advance notice of proposed rulemaking [Notice No. 313, 43 FR 54266, November 21, 1978]. The advance notice suggested specific topics within 27 CFR Parts 4, 5, and 7 which ATF was considering changing; such as, defining "conspicuous and readily" as it relates to printed mandatory statements, changing the total prohibition of the use of the terms "pure", "double distilled", and "triple distilled", providing a concise definition of "obscene and indecent", establishing boundaries for "curative and therapeutic" phrases, re-examining the prohibition of athletes in advertisements, clarifying ATF's position on comparative advertising, providing a distinction between "advertising puffery" and "false or misleading statements", determining if "advertising" should have an all-inclusive regulatory definition, and examining other current advertising

practices not presently covered by regulations.

The comment period on the advance notice was originally to have closed January 22, 1979, however, to allow for further participation, an extension was granted until March 23, 1979 [Notice No. 313, 44 FR 2603, January 12, 1979]. ATF received 4,810 letters and 140 petitions containing 4,236 signatures for a total of 9,046 separate comments. Comments were submitted by the general public, members of the alcoholic beverage industry and trade associations, members of the advertising industry and media, attorneys, Federal governmental agencies, State and local government agencies, educational institutions, and public service organizations.

Over 99 percent of the comments received by ATF expressed personal opinions or religious beliefs concerning alcoholic beverages and did not specifically address the issues raised in the advance notice. Generally, these respondents favored a total ban of all alcoholic beverage advertisements. Since this would require legislative action, it is outside the scope of the advance notice. Other respondents favored stricter controls on advertisements carried on electronic media.

Of all comments received, 89 addressed the advertising issues and these were more closely analyzed for input. The analyses of these comments are discussed under the pertinent areas in the following section. These 89 respondents also expressed ideas on other current advertising practices which should be covered by new regulations. Following are these suggestions:

(1) Advertising should not be youth-oriented (26);

(2) Advertisements should not be success-oriented or depict consumption as being socially acceptable (16);

(3) Advertisements should not imply excessive consumption (10);

(4) Advertisements should not depict the operations of any machinery (4);

(5) No advertising should be allowed in youth magazines, periodicals, or shown on television during primetime hours (12);

(6) ATF should provide a regulatory definition of, and guidelines for the use of, the word "light" (1);

(7) The word "natural" should be prohibited (1);

(8) A large number of commenters expressed a desire for warning labels and such statements in advertisements (29);

(9) Advertising costs should not be a tax deductible expense and industry should be required to spend an equal amount on alcohol education and abuse programs as they do for advertisements (1);

(10) The alcohol content of beverages should be stated by percent by volume in all cases (1); and

(11) The use of subliminal techniques and practices should be prohibited (5).

Regulation Proposals in This Notice

Light

One comment received during the comment period on our advance notice proposed that ATF provide a regulatory definition of the term "light." Previously, in regard to an industry circular released by the Bureau, one industry member commented that prior to 1975 "light" had two generally understood meanings in reference to beer. One meaning referred to the color of the beer as "light" as opposed to "dark" beer. The other meaning referred to taste. Only one beer, prior to 1975, used the term "light" to refer to its taste characteristic as a reduced calorie beer. However, since 1975, many beers with reduced calories have emerged in the market, all advertised as "light."

ATF believes consumers now associate the word "light" on a label or in an advertisement with reduced caloric content. In an effort to preclude consumer deception, the Bureau is providing a regulatory standard for the use of the word "light" and references to caloric and carbohydrate content on all alcoholic beverages. These regulations provide tolerances for labeling with respect to average analysis statements.

To provide uniformity in regard to determining caloric and carbohydrate contents, ATF is proposing to incorporate by reference the appropriate analysis methods. The method for wine is set forth in the *Official Methods of Analysis of the Association of Official Analytical Chemists,* Thirteenth Edition, 1980, Chapter 11, except the formula for calculating the caloric content of wine is set forth in the *Association of Official Analytical Chemists Journal,* Vol. 62, No. 2, March 1979. The method for malt beverages is set forth in the *Official Methods of Analysis of the Association of Official Analytical Chemists,* Thirteenth Edition, 1980, Chapter 10. No method has been proposed for determining the caloric and carbohydrate contents of distilled spirits. ATF requests specific comments on which analysis method should be adopted for distilled spirits.

With respect to type size requirements for average analysis statements, the Bureau realizes the current requirements of two millimeters on large containers and one millimeter on small containers could pose problems with placement of such statements on labels. Therefore, the Bureau is proposing type size requirements for average analysis statements on labels of large containers of at least one millimeter. On small containers, the average analysis statement must appear in size of at least one-half millimeter. These type size requirements are the same as for the ingredient list and the optional ingredient statement. However, the Bureau is open for suggestions and revisions.

Natural

One commenter stated that a regulatory definition should be provided to set standards for the use of the term "natural."

Due to the ever-increasing use of the term "natural", the Bureau believes that regulatory standards should be formulated to prevent consumer deception. During our research, the Bureau consulted the Federal Trade Commission (FTC) which is still considering this issue. The FTC staff found that "the record clearly demonstrates that consumers are confused by claims that foods are 'natural' and that this confusion, which was created and is now exploited by advertisers, often may lead to deception." (Staff Recommendations, Food Advertising TRR, Feb. 19, 1980). The Bureau believes consumers could likewise be confused or unclear about use of the term "natural" when applied to alcoholic beverages. The Bureau believes uniform standards could dispel the confusion and preclude consumer deception arising from misuse of the term. In attempting to develop standards for the word natural, ATF considered both the method used to manufacture a product and the actual ingredient used. It is ATF's belief that the public assumes that the word "natural" implies that the product has only been minimally processed and that it contains no artificial ingredients or artificial additives.

The Bureau proposes that any process other than fermentation constitutes more than minimal processing. However, the blending of wines will not constitute more than minimal processing. Under this definition, distilled spirits could not be natural nor could a wine product to which distilled spirits have been added.

Defining artificial ingredients is more difficult. There are three possible definitions the Bureau considered applying. Using the definitions in the partial ingredient labeling regulations (27 CFR Parts 4, 5, and 7) ATF could allow the term natural to be used for

those products which are minimally processed and which:

1. Is made from essential components and/or incidental additives, but no other additives. For example, a beer which is made from malt, barley, water, yeast, bentonite, and tannic acid could be called natural if the bentonite and tannic acid do not remain in the final product.

2. Is made from only essential components. For example, a beer which is made from malt, barley, water, and yeast could be called natural.

3. Is made from essential components, no additives, and only those incidental additives which are natural products added to adjust natural deficiencies (using the same definition as number 3 of incidental additives in 27 CFR Parts 4 and 7). For example, a wine which is made from grapes, yeast, water, and fructose (sugar) added to adjust natural deficiencies could be called natural.

After considering the possibilities, the Bureau is proposing the third alternative. However, the Bureau recognizes that additional comments are needed on this issue and would urge interested parties to comment on all three alternatives as well as offer different approaches that may be appropriate.

The Bureau is also interested in comments on whether it is appropriate to allow previously approved brand names to continue to be used when those brand names would not meet the proposed standards for natural so long as there is disclosure of all the ingredients on the label and in advertisements.

Pure

The use of the word "pure" was raised in the advance notice. Fourteen commenters were equally divided on whether to allow the term "pure" to be used or not. Two other commenters favored its use on straight whiskeys only, while one commenter favored deleting the particular section prohibiting its use (§ 5.65(a)(8)) and prohibiting its use under false or misleading statements (§ 5.65(a)(1)). Three commenters stated that alcoholic beverages were not pure, and that its use as applied to alcoholic beverages was misleading. Regulatory definitions for "pure" submitted by commenters were too broad or vague to be of any assistance.

Historically, the Bureau has prohibited the use of pure when it refers to a distilled spirits product. However, with current consumer awareness and understanding, the Bureau believes that its present restrictive position is unnecessary when such terms used are truthful and not misleading. Therefore, the Bureau is proposing to lift the total restriction against the use of the term "pure." For example, the Bureau will allow its use when referring to the water used in producing the distilled spirits. However, the Bureau is particularly interested in comments on this issue.

Double Distilled, Triple Distilled

Commenters generally favored lifting the restriction on these terms when they represented factual or truthful statements. The Bureau agrees with these comments. However, the term "double distilled" will be prohibited on labels and in advertisements for distilled spirits produced by the redistillation method. These terms indicate steps taken which are not necessary to produce a finished product. Since the second distillation step is necessary in some products, the Bureau feels the use of double distilled in such cases would be misleading.

Curative and Therapeutic

The Bureau raised specific questions on the boundaries of curative and therapeutic words and phrases, the whether consumers interpreted such words as "relaxing", "refreshing", and "thirst-quenching" as being curative and therapeutic claims when referenced directly to an alcoholic beverage.

Comments supporting the use of these words stated that curative and therapeutic words or phrases should be prohibited only when referring to the cure or treatment of diseases. Since words like "relax" and "refresh" do not imply this, some commenters thought they should be allowed in any context. Comments were also received opposing any use of words such as "relax" and "refresh." These commenters stated that these words imply a physical or psychological sensation, and therefore, by their appearance on labels and in advertisements imply a therapeutic or curative effect.

The Bureau has had a long-standing policy to permit the word "refreshing" to describe in advertisements and on labels alcoholic beverages normally served cold or chilled. Concerning alcoholic beverages not customarily served cold or chilled, the word "refreshing" is permitted when the phrase "serve chilled" or other similar phrases also appear on the label or in the advertisement. The Bureau also has allowed such phrases as "relax and have a: followed by the product name", whereas phrases such as "relax with a: followed by the product name", and "have a: followed by the product name, it will relax you and ease your tensions" are not permitted.

The Bureau gave serious consideration to banning the use of the words "relax" and "refresh". However, inherent in advertising is the practice of presenting the product in a positive light and we believe now to ban them would be arbitrary and ineffective. At the same time, in the case of alcoholic beverages, sometimes these presentations can go too far and thus be misleading. Therefore, the Bureau proposes that these words or phrases will not be banned but will be considered on a case-by-case basis to determine whether they are used in a false or misleading way, *i.e.*, imply that an alcoholic beverage has curative or therapeutic effects. An example of a misleading use of the term "relaxing" is: "Relax with a: followed by the product name, it will cure what ails you."

The Bureau recognizes the importance of this issue and is open to suggestions and revisions, if necessary. One alternative considered, but not proposed, is requiring the use of disclaimers on those labels and advertisements that use these phrases. Such a disclaimer might state that caution should be exercised when using this product.

In addition to this issue, one wine industry member's comment stated that words such as "tingly" and "sprightly" should be allowed on all alcoholic beverage labels and advertisements. The Bureau presently allows such words on labels and in advertisements of effervescent beverages. These words connote "bubbles" which are commonly associated with carbonated and effervescent products. Section 240.535 refers to the penalties in 26 U.S.C. 5662 (a fine of not more than $1,000 or imprisonment for not more than 1 year, or both) for any person who by manner of packaging or advertising represents a still wine to be an effervescent wine, or a substitute for an effervescent wine. Although this specific comment was considered, due to the statutory prohibition, no action could be taken.

Athletes and Athletic Events

Currently, Revenue Ruling 54-513 prohibits the use of prominent athletes in advertisements for alcoholic beverages as it is a misleading representation. Comments received on this issue supported the Bureau's present position by more than a four to one ratio. Furthermore, many commenters believed celebrities other than athletes should also be prohibited from appearing in advertisements for alcoholic beverages. The Bureau is proposing regulations which prohibit active athletes from appearing in advertisements for alcoholic beverages

or representations of these athletes on labels of alcoholic beverages. The Bureau believes that the presence of an active athlete, whether or not depicted in the customary uniform or setting which the public normally associates with the athlete, conveys the erroneous impression that the use of the advertised product is conducive to the development of athletic skill or physical prowess. Furthermore, such athletes are the objects of hero-worship, and depicting an athlete in connection with alcoholic beverages misleads or is likely to mislead young consumers by conveying the erroneous impression that use of the advertised product is conducive to the development of athletic skill or physical powess.

The Bureau solicits comments as to whether an outright ban is necessary to preclude this erroneous impression or whether this concern could be answered through other means, such as a disclaimer by the athlete that drinking is not the way to become a good athlete. One comment submitted from a professional athlete association stated that it is an athlete's right to exploit his name by product endorsements, and a restriction of this proprietary right must be justified by the Government agency making this restriction. The commenter cited numerous occasions whereby the courts have upheld a celebrity's right and opportunity to commercially exploit his name. The commenter further stated that if there is a valid concern about implied connection between alcoholic beverages and athletic prowess, this concern could be answered by restricting alcoholic beverage advertisements by active athletes which overtly state or imply a positive connection with the athlete's ability and physical prowess and the consumption of an alcoholic beverage.

Revenue Ruling 54–326 prohibits advertising portraying athletic events in connection with the advertised product, such as a handball player shown drinking or preparing to drink the advertised product. The Bureau believes depiction of an athletic event where participants are shown consuming alcoholic beverages before or during the athletic event conveys the erroneous impression that the use of the product is conducive to athletic skill or physical prowess. The Bureau believes this erroneous impression is not conveyed by the depiction of an athletic event where the participants are shown consuming alcoholic beverages after such athletic event.

Comparative Advertising

It was evident by the comments received on comparative advertising that the Bureau's position is unclear. Comparative advertising (*i.e.*, product comparisons) has been allowed. A revenue ruling issued in 1954 concerning malt beverages prohibited comparative taste tests. Comments received concerning taste tests generally supported their allowance. The major reasons stated for allowing this type of advertising were that it has been utilized for years by other industries and will provide freer competition among industry members. Three wine industry members' comments favored allowing taste tests, however, they expressed the desire that the competitors' products not be identified in any manner. Commenters also expressed a desire for the Bureau to initiate guidelines for industry to follow when conducting taste tests, and a requirement that all supporting documentation be retained for review to determine the validity of the test, if necessary.

Taste tests, as a form of comparative advertising, will be allowed and deemed not to be disparaging as long as they are not false or misleading with regard to the comparisons. Furthermore, material facts concerning the product or test must not be omitted. When taste test comparisons are used, the test measurements, analyses, and reporting shall be valid, reliable, and germane to the product category involved. The results of such tests shall be reported in the advertisement in such a way as will not be false or misleading.

The Bureau has proposed general guidelines for the preparation and conduct of such taste tests which it believes, if followed, would not mislead or be likely to mislead consumers. The Bureau also believes other procedures may be used if they are equivalent and are scientifically acceptable. The Bureau is particularly interested in comments and suggestions on this issue.

Definition of False, Disparagement

Because the Bureau is clarifying its position on comparative advertising, it is also clarifying its positions on the definitions of "false" and "disparagement." These two terms have a close interrelationship with comparative advertisements, and for this reason, the Bureau believes it should clarify "false" and provide a regulatory definition of "disparagement."

For regulatory purposes, "false" shall mean any representation, expressed or implied, which is untrue. An example of a false and misleading advertising claim is the depiction of the operation of a mechanical device, such as a car or boat, which conveys the erroneous impression that consumption of alcoholic beverages enhances the ability to operate the mechanical device or does not impair a person's faculties.

Disparagement of a competitor's product occurs when advertising claims or statements about a competitor's product are false or mislead consumers. Disparagement will not include "puffery" made on one's own product, nor will it prohibit truthful non-misleading comparative advertising claims which may or may not place a compared product in an unfavorable light.

Subliminals

Due to increasing consumer concern over the use of subliminal techniques in advertising, the Bureau believes that it should state its position on these techniques. Five commenters expressed concern over subliminals and desire a prohibition against their use in alcoholic beverage advertisements.

Subliminal techniques can take many and varied forms in advertisements. These include placing a frame in a film which appears at such a speed that the observer cannot consciously perceive its presence, but subconsciously, the word or scene is registered and can have an effect on purchases, or whatever the advertiser wishes to convey to the observer. A more prevalent form of subliminals is the insertion of words or body forms (imbeds), by the use of shadows or shading, or the substitution of forms and shapes generally associated with the human body.

Strong precedence for regulating subliminal advertising has been set in this country and abroad. The Federal Communication Commission (FCC) has declared the practice to be contrary to the public interest because it is clearly intended to be deceptive. It is significant that the FCC saw no need to distinguish between subliminal advertising and subliminal program content. The Federal Trade Commission (FTC) has prohibited the use of subliminal techniques by regulatory action. The National Association of Broadcasters and the radio and television code both have specific prohibitions against the use of subliminal techniques.

On the international scene, England and Canada have prohibited the use of subliminals, and international bodies such as the United Nations and the Council of Europe have condemned the practice.

The Bureau is, therefore, proposing regulations prohibiting advertisements using any device or technique that conveys a message by placing in advertisements images or sounds that cannot be heard or seen at levels of normal awareness. However, the Bureau

is open for suggestions and revisions on this issue, if necessary.

Modifications to Proposed Regulations

Although this notice proposes the specific terms and substance of the amendments to the regulations, we invite comments as to any modifications which should be made prior to final adoption. The final regulations may differ in terms of the proposed regulations after consideration is made of all comments received pursuant to this notice.

Disclosure of Comments

Comments on this notice may be inspected in the ATF Reading Room, Office of Public Affairs and Disclosure, Room 4407, 12th and Pennsylvania Avenue, NW, Washington, DC, during normal business hours.

The Bureau will not recognize any material and comments as confidential. Comments may be disclosed to the public. Any material which the commenter considers to be confidential or inappropriate for disclosure to the public should not be included in the comments. The name of the person submitting comments is not exempt from disclosure.

Any interested person who desires an opportunity to comment orally at a public hearing on the proposed regulations should submit his or her request, in writing, to the Director within the 90-day comment period. The Director, however, reserves the right to determine, in light of all circumstances, whether a public hearing should be held.

Drafting Information

The principal authors of this document are Thomas B. Busey and Roger L. Bowling of the Regulations and Procedures Division of the Office of Regulatory Enforcement, Bureau of Alcohol, Tobacco and Firearms. However, personnel from other offices of the Bureau of Alcohol, Tobacco and Firearms and the Office of the Secretary participated in developing the regulations, both on matters of substance and style.

Authority Citation

Accordingly, under the authority contained in Section 5 of the Federal Alcohol Administration Act (49 Stat. 981, as amended; 27 U.S.C. 205), 27 CFR Parts 4, 5, and 7 are proposed to be amended as follows:

PART 4—LABELING AND ADVERTISING OF WINE

Par. 1. The table of sections in 27 CFR Part 4, Subpart D is amended to include two additional sections as follows:

Subpart D—Labeling Requirements for Wine

Sec.

* * * * *

4.39a Use of the term "light" and caloric and carbohydrate statements.

4.39b Tolerances.

* * * * *

Par. 2. The table of sections in 27 CFR Part 4, Subpart G is amended to change the titles of §§ 4.63 and 4.64 and to include four additional sections as follows:

Subpart G—Advertising of Wine

Sec.

* * * * * *

4.63 Legibility of mandatory information.

4.64 Prohibited practices.

4.65 Comparative advertising.

4.66 Taste test procedures.

4.67 Use of the term "light" and caloric and carbohydrate statements.

4.68 Deceptive advertising techniques.

* * * * *

Par. 3. Section 4.10 is amended to add, in alphabetical order, the terms "disparaging" and "false." The added definitions read as follows:

§ 4.10 Meaning of terms.

* * * * *

Disparaging. Labeling or advertising claims or statements that are false or mislead the consumer as to a competitor's product.

* * * * *

False. Any representation, either expressed or implied, which is untrue.

* * * * *

Subpart C—Standards of Identity for Wine

§ 4.21 [Amended].

Par. 4. Section 4.21 is amended to delete completely the last sentence of paragraphs (a)(1)(iii); (d)(1)(iii); (e)(1)(iii); and (f)(1)(iii), deleting the definition of "natural."

Subpart D—Labeling Requirements for Wine

Par. 5. Section 4.38, is amended to include references to new sections in paragraphs (a), (c), (f), and (g); and to include a reference to average analysis statements in paragraphs (b)(1) and (b)(2) and to add new paragraphs (b)(1)(iii) and (b)(2)(iii). As amended, § 4.38 reads as follows:

§ 4.38 General requirements.

(a) *Legibility.* All labels shall be so designed that all the statements thereon required by §§ 4.30–4.39b are readily legible under ordinary conditions, and all such statements shall be on a contrasting background.

(b) *Size of type.* (1) Containers of more than 187 milliliters.

(i) All mandatory information required on labels by this part, except the alcoholic content statement, the ingredient list, and the average analysis statement, shall be in script, type, or printing not smaller than 2 millimeters; except that if contained among other descriptive or explanatory information, the script, type, or printing of the mandatory information shall be a size substantially more conspicuous than that of the descriptive or explanatory information.

(ii) * * *

(iii) The average analysis statement shall be in script, type, or printing not smaller than 1 millimeter.

(2) Containers of 187 milliliters or less.

(i) All mandatory information required on labels by this part, except the alcoholic content statement, the ingredient list, and the average analysis statement, shall not be smaller than 1 millimeter, except that if contained among other descriptive or explanatory information, the script, type, or printing of the mandatory information shall be of a size substantially more conspicuous than that of the descriptive or explanatory information.

(ii) * * *

(iii) The average analysis statement shall be in script, type, or printing not smaller than one-half millimeter.

* * * * *

(c) *English language.* * * * Additional statements in foreign languages may be made on labels, if they do not in any way conflict with, or contradict the requirements of §§ 4.30–4.39b.

* * * * *

(f) *Additional information on labels.* Labels may contain information other than the mandatory label information required by §§ 4.30–4.39b, if such information complies with the requirements of such sections and does not conflict with, nor in any manner qualify statements required by this part.

* * *

(g) *Representations as to materials.* If any representation (other than representations or information required by §§ 4.30–4.39b or percentage statements required or permitted by this part) is made as to the presence, excellence, or other characteristic of any ingredient in any wine, or used in its production, the label containing such representation shall state, in print, type, or script, substantially as conspicuous as such representation, the name and amount in percent by volume of each such ingredient.

* * * * *

Par. 6. Section 4.38a is amended to include a reference to new sections in paragraph (a).

§ 4.38a Bottle cartons, booklets and leaflets.

(a) *General.* An individual covering, carton, or other container of the bottle used for sale at retail (other than a shipping container), or any written, printed, graphic, or other matter accompanying the bottle to the consumer buyer shall not contain any statement, design, device, or graphic, pictorial, or emblematic representation that is prohibited by §§ 4.30–4.39b on labels.

* * * * *

Par. 7. Section 4.39, Prohibited practices, is amended to revise paragraphs (a)(4) and (a)(7); to clarify the prohibition in paragraph (h); and to add two new paragraphs, (m) and (n).

§ 4.39 Prohibited practices.

(a) *Statement on labels.* * * *

* * * * *

(4) Any statement, design, device, or representation of or relating to analyses or manufacturing processes, standards, or tests, irrespective of falsity, which the Director finds to be likely to mislead the consumer.

* * * * *

(7) Any statement, design, device, or representation (other than a statement of alcoholic content in conformity with § 4.36), which tends to create the impression that a wine:

(i) Contains distileed spirits; or

(ii) Is comparable to a distilled spirit; or

(iii) Has intoxicating qualities.

However, if a statement of composition is required to appear as the designation of a product not defined in these regulations, such statement of composition may include a reference to the type of distilled spirits contained therein. This paragraph shall not apply to the list of ingredients required by § 4.37a.

* * * * *

(h) *Curative and therapeutic claims.* The label shall not contain any statement, design, representation, pictorial representation, or device representing that the use of wine has curative or therapeutic effects if such statement is untrue in any particular or tends to create a misleading impression. Such claims shall be determined on a case-by-case basis. In any case, labeling of the vitamin content is prohibited.

* * * * *

(m) *Use of athletes and athletic activities.* The depiction of an active athlete or an athletic event where the participants are shown consuming wine before or during the athletic event in connection with the labeling of wine is prohibited since labels portraying such athletes or athletic activities in connection with the wine product are misleading in that they convey the erroneous impression that the use of the product is conducive to the development of athletic skill or physical prowess.

(n) *Natural claims.* Labels shall not represent or claim the a wine is natural if:

(1) The product has undergone more than minimal processing. Any processing other than fermentation or blending constitutes more than minimal processing.

(2) The product contains added distilled spirits.

(3) The product contains any additives or incidental additives, except incidental additives which are added to adjust for natural deficiencies as defined in § 4.10 "incidental additive" (3).

Par. 8. A new section, § 4.39a, has been added, immediately following § 4.39, to read as follows:

§ 4.39a Use of the term "light" and caloric and carbohydrate statements.

(a) The word "light" (or lite) may be used as part of the brand or product name on a wine label only when accompanied by a statement of average analysis; except that when the word "light" is used only as specifically authorized or required under § 4.21 or § 4.36, no statement of average analysis is required.

(b) The word "light" may be used as an adjective to denote color or taste provided that it is:

(1) Not placed so as to be confused with the class and type designation required by § 4.34 or statements of alcoholic content required by § 4.36.

(2) Not substantially more prominent than any word it may modify such as "taste" or "flavor."

(3) Not used in a manner emphasizing caloric or carbohydrate content.

(c) Whenever references are made on labels to caloric or carbohydrate content, a statement of average analysis must also appear on the labels. An average serving of 100 ml shall be used as the basis for statements of average analysis for wine.

For example, an average analysis may read:

Average Analysis Per 100 ML

Calories—75
Carbohydrates—2.0 grams
Protein—0.1 grams
Fat—0.0 grams

(d) In addition to, but not in lieu of, the statement of average analysis on labels, statements of caloric or carbohydrate content are permitted in substantially the following form, "contains 75 calories per 100 ml" or "contains 2.0 grams carbohydrates per 100 ml." The serving size, "per 100 ml", shall be specified for any such caloric or carbohydrate content statements.

Par. 9 A new section, § 4.39b, has been added, immediately following § 4.39a, to read as follows:

§ 4.39b Tolerances.

(a) Tolerance ranges are required with respect to labeled statements of caloric, carbohydrate, protein, and fat contents for wines.

(b) The statement of caloric content on labels for wines shall be acceptable as long as the caloric content is within the tolerance plus (+) 5 and minus (−) 10 calories of the labeled caloric content. For example, a label showing 75 calories shall be acceptable if the ATF analysis of the product shows a caloric content between 65 and 80 calories.

(c) The statements of carbohydrate and fat contents on labels for wines shall be acceptable as long as the carbohydrate and fat contents are within a reasonable range below the labeled amount, but, in no case, more than 20 percent above the labeled amount. For example, a label showing 2.0 grams carbohydrates shall be acceptable if the ATF analysis of the product shows a carbohydrate content which is under 2.0 grams (within good manufacturing practice limitations) but not more than 2.4 grams.

(d) The statement of protein content on labels for wines shall be acceptable as long as the protein content is within a reasonable range above the labeled amount but, in no case, less than 80 percent of the labeled amount. For example, a label showing 1.0 gram protein shall be acceptable if the ATF analysis of the product shows a protein content which is more than 1.0 gram (within good manufacturing practice limitations) but not less than 0.8 gram.

(e) The ATF analysis, as stated in paragraphs (b), (c), and (d) will be performed, as circumstances dictate, on a post-review basis. This method for the ATF analysis is set forth in the *Official Methods of Analysis of the Association of Official Analytical Chemists,* Thirteenth Edition, 1980, Chapter 11.

The formula for calculating the caloric content is set forth in the *Association of Official Analytical Chemists Journal,* Vol. 62, No. 2, March 1979, and is incorporated by reference. This material is incorporated as it exists on the date of approval and a notice of any change in the method will be published in the Federal Register.

Subpart G—Advertising of Wine

Par. 10. Section 4.60 is revised to incorporate a reference to television broadcast and to include references to new sections. As revised, § 4.60 reads as follows:

§ 4.60 Application.

No person engaged in the business as a producer, rectifier, blender, importer, or wholesaler of wine, directly or indirectly or through an affiliate, shall publish or disseminate or cause to be published or disseminated by radio or television broadcast, or in any newspaper, periodical, or any publication, by any sign or outdoor advertisement, or any other printed or graphic matter, any advertisement of wine, if such advertising is in, or is calculated to induce sales in, interstate or foreign commerce, or is disseminated by mail, unless such advertisement is in conformity with §§ 4.60–4.68. Provided, that such sections shall not apply to outdoor advertising in place on (effective date of the Treasury decision), but shall apply upon replacement, restoration, or renovation of any such advertising; and provided further, that such sections shall not apply to the publisher of any newspaper, periodical, or other publication, or radio or television broadcast, unless such publisher or radio or television broadcaster is engaged in business as a producer, rectifier, blender, importer, wholesaler of wine, directly or indirectly, or through an affiliate.

Par. 11. Section 4.61 is revised to incorporate prior revenue rulings into the regulations; to include references to new sections; and to include matter accompanying the container under the definition of advertising. As revised, § 4.61 reads as follows:

§ 4.61 Definitions.

As used in §§ 4.60–4.68 the term "advertisement" includes any written or verbal statement, illustration, or depiction which is in, or calculated to induce sales in, interstate or foreign commerce, or is disseminated by mail, whether it appears in a newspaper, magazine, trade booklet, menu, wine card, leaflet, circular, mailer, book insert, catalog, promotional material, sales pamphlet, or any written, printed, graphic, or other matter accompanying the container, billboard, sign, or other outdoor display, public transit card, other periodical literature, publication, or in a radio or television broadcast, or in any other media; except that such term shall not include:

(a) Any label affixed to any container of wine, or any individual covering, carton, or other wrapper of such container which constitutes a part of the labeling under §§ 4.30–4.39b.

(b) Any editorial or other reading material (*i.e.*, news release) in any periodical or publication or newspaper for the publication of which no money or valuable consideration is paid or promised, directly or indirectly, by any permittee.

Par. 12. Section 4.62 is amended to include a new paragraph (c).

§ 4.62 Mandatory statements.

* * * * *

(c) *Exceptions.* If an advertisement refers to a general wine line or all of the wine products of one company, whether referred to by the company name or by the brand name common to all the wine in the line, the only mandatory information necessary is the name and address of the responsible advertiser. This exception does not apply where only one type of wine is marketed under the specific brand name advertised.

Par. 13. Section 4.63 is revised to change the name of the section, to include references to new sections, and designate the Note as paragraphs (b), (c), (d), (e), and (f). As revised, § 4.63 reads as follows:

§ 4.63 Legibility of mandatory information.

(a) Statements required under §§ 4.60–4.68 to appear in any written, printed, or graphic advertisement shall be in lettering or type size sufficient to be conspicuous and readily legible from a distance at which the advertisement is intended to be, and is customarily read or viewed. The size of type shall be increased proportionately with the size of the advertisement.

(b) In the case of signs, billboards, and displays the name and address of the permittee responsible for the advertisement may appear in smaller lettering, provided such information can be ascertained upon closer examination of the sign or billboard.

(c) Mandatory information shall be so stated as to be clearly a part of the advertisement and shall not be separated in any manner from the remainder of the advertisement.

(d) Mandatory information for two or more products shall not be stated in direct conjunction unless clearly distinguished.

(e) Mandatory information shall not be buried or concealed by including it in unrequired descriptive matter.

(f) In every case mandatory information shall be so stated in both the print and audio-visual media that it will come to the attention of the persons viewing the advertisements.

Par. 14. Section 4.64 is amended to change the name of the section; to amend paragraph (a)(1); include in paragraph (a)(5) a reference to money-back guarantees; in paragraph (a)(8) to include a reference to wine labels displayed in advertising media; in paragraph (i) to change the heading title and clarify the prohibition; and to include two new paragraphs (k) and (l).

§ 4.64 Prohibited practices.

(a) *Restrictions.* * * *

(1) Any statement that is false or untrue in any particular, or that, irrespective of falsity, directly, or by ambiguity, omission, or inference, or by the addition of irrelevant scientific, or technical matter, tends to create a misleading impression.

* * * * *

(5) Any statement, design, device, or representation of or relating to any guarantee, irrespective of falsity, which the Director finds to be likely to mislead the consumer. Enforceable money-back guarantees are not prohibited.

* * * * *

(8) Any statement, design, device, or representation which relates to alcoholic content or which tends to create the impression that a wine:

(i) Contains distilled spirits; or

(ii) Is comparable to a distilled spirit; or

(iii) Has intoxicating qualities.

However, if a statement of composition is required to appear as a designation of a product not defined in these regulations, such statement of composition may include a reference to the type of distilled spirits employed therein. Further, an approved wine label, which bears the statement of alcoholic content may be depicted in any advertising media, or an actual wine bottle showing the approved label bearing the statement of alcoholic content may be displayed in any advertising media. This paragraph shall not apply to the list of ingredients required by § 4.37a.

* * * * *

(i) *Curative and therapeutic claims.* The advertisement shall not contain any statement, design, representation, pictorial representation, or device representing that the use of wine has curative or therapeutic effects if such statement is untrue in any particular or tends to create a misleading impression. Such claims shall be determined on a case-by-case basis. In any case, advertising of the vitamin content is prohibited.

* * * * *

(k) *Use of athletes and athletic activities.* The depiction of an active

athlete or an athletic event where the participants are shown consuming wine before or during the athletic event in connection with the advertisement of wine is prohibited since illustrations portraying such athletes or athletic activities in connection with the advertised product are misleading in that they convey the erroneous impression that the use of the product is conducive to the development of athletic skill or physical prowess.

(l) *Natural claims.* Advertising shall not represent or claim that a wine is natural if:

(1) The product has undergone more than minimal processing. Any processing other than fermentation or blending constitutes more than minimal processing.

(2) The product contains added distilled spirits.

(3) The product contains any additives or incidental additives, except incidental additives which are added to adjust for natural deficiencies as defined in § 4.10 "incidental additive" (3).

Par. 15. A new section, § 4.65, has been added, in numerical sequence, to read as follows:

§ 4.65 Comparative advertising.

(a) Comparative advertising may not be disparaging of a competitor's product. In addition, comparative advertising claims must be fully substantiated by factual data.

(b) Taste tests. Taste test results may be used in advertisements comparing competitors' products unless they are disparaging, deceptive, or likely to mislead the consumer. The taste test procedures used must meet scientifically accepted procedures, such as those set forth in § 4.66.

(c) Specific caloric or carbohydrate comparisions may be made in advertising for a wine labeled in accordance with § 4.39a and an equal volume of a competitor's product labeled in accordance with § 4.39a. These comparisons may not be misleading or disparaging of a competitor's product. Examples of allowable comparisons are: "75 calories per 100 ml—50 calories (or 1/3) fewer than *competitor's name* LIght Wine"; "2.0 grams carbohydrates per 100 ml—1.4 grams (or 1/3) fewer than *competitor's name* Light Wine"; *"Brand name* contains 75 calories per 100 ml while *competitor's name* Light Wine contains 110 calories per 100 ml"; *"Brand name* contains 2.0 grams carbohydrates per 100 ml while *competitor's name* Light Wine contains 3.0 grams per 100 ml."

Par. 16. A new section, § 4.66, has been added, in numerical sequence, to read as follows:

§ 4.66 Taste test procedures.

(a) The following testing criteria or other scientifically accepted procedures must be met before the results may be presented in a comparative advertising format:

(1) The test instructions do not alert the test participant as to the sponsor of the research, nor the purpose of the test. Testing administrators are not alerted as to the use of these tests.

(2) Testing instructions and testing activities are presented in a consistent and like manner to all test participants.

(3) Independent research contractors supervise the tests and gather the test data.

(4) The brands being tested are concealed from the test administrators and the participants.

(5) Product labeling utilizes neutral categories (for example, numbers, letters).

(6) The order of exposure of the products to the test participants is random.

(7) Test participants are isolated during the process of the actual taste testing as opposed to a group testing approach.

(8) Repetition of the test(s) are performed on each of the test participants as opposed to a single test administration.

(9) A maximum of three different products are compared in a single test competition.

(10) Test(s) must evaluate only those factors under investigation. Therefore, all test brands msut be chosen in a standardized manner similar to the way in which the consumer would encounter them, i.e., if purchased in a store. For example, wine products being tested must be of about equal price and type.

(b) Measurement of the test participant responses, analyses of the test data, and the reporting of the test results shall be valid, reliable, and germane to the product category being tested. There shall be substantiation within the product test community as to the validity and reliability of the scoring system used. In addition, the validity and reliability of the scoring system used shall be generally accepted within the scientific community. The advertised results shall be reported so as not to be likely to mislead the consumer or omit material facts.

Par. 17. A new section, § 4.67, is added, in numerical sequence, to read as follows:

§ 4.67 Use of the term "light" and caloric or carbohydrate statements.

(a) The word "light" (or lite) may be used as part of the brand or product name in the advertisement only when accompanied by a statement of average analysis; except that when the word "light" is used only as specifically authorized or required under § 4.62(b), no statement of average analysis is required.

(b) The word "light" may be used as an adjective to denote color or taste provided that it is:

(1) Not placed so as to be confused with the class and type designation required by § 4.62(b).

(2) Not substantially more prominent than any word it may modify such as "taste" or "flavor."

(3) Not used in a manner emphasizing caloric or carbohydrate content.

(c) An average analysis statement is optional in advertising.

(d) Statements of caloric or carbohydrate content are permitted in substantially the following form, "contains 75 calories per 100 ml" or "contains 2.0 grams carbohydrates per 100 ml." The serving size, "per 100 ml", shall be specified for any such caloric or carbohydrate content statements.

Par. 18. A new section, § 4.68, is added, in numerical sequence, to read as follows:

§ 4.68 Deceptive advertising techniques.

Subliminal or similar techniques in advertising are prohibited. In this section "subliminal or similar techniques" refers to any device or technique that is used to convey or attempts to convey a message to a person by means of images or sounds of a very brief nature that cannot be perceived at a normal level of awareness.

PART 5—LABELING AND ADVERTISING OF DISTILLED SPIRITS

Par. 19. The table of sections in 27 CFR Part 5, Subpart D is amended to include two additional sections as follows:

Subpart D—Labeling Requirements for Distilled Spirits

Sec.

* * * * *

5.43 Use of the term "light" and caloric and carbohydrate statements.

5.44 Tolerances.

* * * * *

Par. 20. The table of sections in 27 CFR Part 5, Subpart H is amended to change the titles of §§ 5.64 and 5.65 and to include four additional sections as follows:

Subpart H—Advertising of Distilled Spirits

Sec.

* * * * *

5.64 Legibility of mandatory information.
5.65 Prohibited practices.
5.66 Comparative advertising.
5.67 Taste test procedures.
5.68 Use of the term "light" and caloric and carbohydrate statements.
5.69 Deceptive advertising techniques.

* * * * *

Par. 21. Section 5.11 is amended to add, in alphabetical order, the terms "disparaging" and "false." The added definitions read as follows:

§ 5.11 Meaning of terms.

* * * * *

Director. * * *

Disparaging. Labeling or advertising claims or statements that are false or mislead the consumer as to a competitor's product.

* * * * *

False. Any representation, either expressed or implied, which is untrue.

* * * * *

Subpart D—Labeling Requirements For Distilled Spirits

Par. 22. Section 5.31 is amended to include a reference to a new section in paragraph (a).

§ 5.31 General.

(a) *Application.* No person engaged in business as a distiller, rectifier, importer, wholesaler, or warehouseman and bottler, directly or indirectly, or through an affiliate, shall sell or ship or deliver for sale or shipment or otherwise introduce in interstate or foreign commerce, or receive therein, or remove from customs custody, any distilled spirits in bottles, unless such bottles are marked, branded, labeled, or packaged, in conformity with §§ 5.31–5.44.

* * * * *

Par. 23. Section 5.33 is amended to include an exception to the average analysis statement in paragraphs (b)(1), (b)(4), and (b)(5).

§ 5.33 Additional requirements.

* * * * *

(b) *Location of statements and size of type.* (1) Statements required by this subpart (except brand names, the ingredient list or the option statement and the address where ingredient information is available, and the average analysis statement) shall appear generally parallel to the base on which the bottle rests as it is designed to be displayed or shall be otherwise equally conspicuous.

(2) * * *

(3) * * *

(4) Statements required by this subpart (except brand names, the ingredient list, and the average analysis statement) shall be in script, type, or printing not smaller than 2 millimeters (or 8-point gothic until January 1, 1983) except that, in the case of labels on bottles of 200 milliliters or less capacity, such script, type, or printing shall not be smaller than 1 millimeter (or 6-point gothic until January 1, 1983).

(5) The list of ingredients and the average analysis statement shall be legible and conspicuous and in lettering not smaller than 1 millimeter (or 6-point gothic until January 1, 1983), except that, in the case of labels on bottles of 200 milliliter capacity or less the script, type, or printing shall not be smaller than one-half millimeter (or 4-point gothic until January 1, 1983).

* * * * *

Par. 24. Section § 5.41 is amended to include a reference to new sections in paragraph (a).

5.41 Bottle cartons, booklets and leaflets.

(a) *General.* An individual covering, carton, or other container of the bottle used for sale at retail (other than a shipping container), or any written, printed, graphic, or other matter accompanying the bottle to the consumer buyer shall not contain any statement, design, device, or graphic, pictorial, or emblematic representation that is prohibited by §§ 5.31–5.44 on labels.

* * * * *

Par. 25. Section 5.42 is amended to revise paragraph (a)(4), to delete paragraph (b)(5) in its entirety, to revise paragraph (b)(6) and redesignate it as paragraph (b)(5), to redesignate paragraph (b)(7) as paragraph (b)(6), to clarify the prohibition in paragraph (b)(8) and redesignate it as paragraph (b)(7), and to include two new paragraphs, (b)(8) and (b)(9). As amended, § 5.42 reads as follows:

§ 5.42 Prohibited practices.

(a) *Statements on labels.* * * *

* * * * *

(4) Any statement, design, device, or representation of or relating to analyses or manufacturing processes, standards, or tests, irrespective of falsity, which the Director finds to be likely to mislead the consumer.

* * * * *

(b)Miscellaneous. * * *

* * * * *

(5) Distilled spirits shall not be labeled as "double distilled" or "triple distilled" or any similar term unless it is a truthful statement of fact; except that "double distilled" shall not be permitted on labels of distilled spirits manufactured by the redistillatin method since this is a necessary distillation step for its production.

* * * * *

(7) Curative and therapeutic claims. The label shall not contain any statement, design, representation, pictorial representation, or device representing that the use of distilled spirits has curative or therapeutic effects if such statement is untrue in any particular or tends to create a misleading impression. Such claims shall be determined on a case-by-case basis. In any case, labeling of the vitamin content is prohibited.

(8) Use of athletes and athletic activities. The depiction of an active athlete or an athletic event where the participants are shown consuming distilled spirits before or during the athletic event in connection with the labeling of distilled spirits is prohibited since labels portraying such athletes or athletic activities in connection with the distilled spirits product are misleading in that they convey the erroneous impresson that the use of the product is conducive to the development of athletic skill or physical prowess.

(9) Natural claims. Labels shall not represent or claim that a distilled spirit is natural.

Par. 26. A new section, § 5.43, has been added, in numerical sequence, to read as follows:

§ 5.43. Use of the term "light" and caloric and carbohydrate statements.

(a) The word "light" (or lite) may be used as part of the brand or product name on a distilled spirits label only when accompanied by a statement of average analysis; except that when the word "light" is used only as specifically authorized or required under § 5.22(b)(3) or § 5.35, no statement of average analysis is required.

(b) The word "light" (or lite) may be used as an adjective to denote color or taste provided that it is:

(1) Not placed so as to be confused with the class and type designation required by § 5.35.

(2) Not substantially more prominent than any word that it may modify such as "taste" or "flavor."

(3) Not used in a manner emphasizing caloric or carbohydrate content.

(c) Whenever references are made on labels to caloric or carbohydrate content, a statement of average analysis must also appear on the labels. An average serving of 200 ml shall be used as the basis for statements of average analysis for distilled spirits.

For example, an average analysis may read:

Average anaylsis per 200 ML
Calories—125
Carbohydrates—4.0 grams
Protein—1.0 grams
Fat—0.0 grams

(d) In addition to, but not in lieu of, the statement of average analysis on labels, statements of caloric or carbohydrate content are permitted in substantially the following form, "contains 125 calories per 200 ml" or "contains 4.0 grams carbohydrates per 200 ml." The serving size, "per 200 ml", shall be specified for any such caloric or carbohydrate content statements.

Par. 27 A new section, § 5.44, has been added, immediately following § 5.43, to read as follows:

§ 5.44 Tolerances.

(a) Tolerance ranges are required with respect to labeled statements of caloric, carbohydrate, protein, and fat contents for distilled spirits.

(b) The statement of caloric content on labels for distilled spirits shall be acceptable as long as the caloric content is within the tolerance plus (+) 5 and minus (−) 10 calories of the labeled caloric content. For example, a label showing 125 calories shall be acceptable if the ATF analysis of the product shows a caloric content between 115 and 130 calories.

(c) The statements of carbohydrate and fat contents on labels for distilled spirits shall be acceptable as long as the carbohydrate and fat contents are within a reasonable range below the labeled amount, but, in no case, more than 20 percent above the labeled amount. For example, a label showing 4.0 grams carbohydrates shall be acceptable if the ATF analysis of the product shows a carbohydrate content which is under 4.0 grams (within good manufacturing practice limitations) but not more than 4.8 grams.

(d) The statement of protein content on labels for distilled spirits shall be acceptable as long as the protein content is within a reasonable range above the labeled amount but, in no case, less than 80 percent of the labeled amount. For example, a label showing 1.0 gram protein shall be acceptable if the ATF analysis of the product shows a protein content which is more than 1.0 gram (within good manufacturing practice limitations) but not less than 0.8 gram.

(e) The ATF analysis, as stated in paragraphs (b), (c), and (d) will be performed, as circumstances dictate; on a post-review basis.

Subpart H—Advertising of Distilled Spirits

Par. 28 Section 5.61 is revised to incorporate a reference to television broadcast and to include references to new sections. As revised, § 5.61 reads as follows:

§ 5.61 Application.

No person engaged in busines as a distiller, rectifier, importer, wholesaler, or warehouseman and bottler of distilled spirits, directly or indirectly or through an affiliate, shall publish or disseminate or cause to be published or disseminated by radio or television broadcast, or in any newspaper, periodical, or any publication, by any sign or outdoor advertisement, or any other printed or graphic matter any advertisement of distilled spirits, if such advertising is in, or is caclulated to induce sales in, interstate or foreign commerce, or is disseminated by mail, unless such advertisement is in conformity with §§ 5.61–5.69. Provided, that such sections shall not apply to outdoor advertising in place on (effective date of the Treasury decision), but shall apply upon replacement, restoration, or renovation of any such advertising; and provided further, that such sections shall not apply to the publisher of any newspaper, periodical, or other publication, or radio or television broadcast, unless such publisher or radio or television broadcaster is engaged in business as a distiller, rectifier, importer, wholesaler, or warehouseman and bottler of distilled spirits, directly or indirectly, or through an affiliate.

Par. 29. Section 5.62 is revised to incorporate prior revenue filings into the regulations; to include references to new sections; and to include matter accompanying the bottle under the definition of advertising. As revised, § 5.62 reads af follows:

§ 5.62 Definition.

As used in §§ 5.61–5.69 the term "advertisement" includes any written or verbal statement, illustration, or depiction which is in, or calculated to induce sales in, interstate or foreign commerce, or is disseminated by mail, whether it appears in a newspaper, magazine, trade booklet, menu, wine card, leaflet, circular, mailer, book insert, catalog, promotional material, sales pamphlet, or any written, printed, graphic, or other matter accompanying the bottle, billboard, sign, other outdoor display, public transit card, other periodical literature, publication, or in a radio or television broadcast, or in any other media; except that such term shall not include:

(a) Any label affixed to any bottle of distilled spirits; or any individual covering carton, or other container of the bottle which constitutes a part of the labeling under §§ 5.31–5.44.

(b) Any editorial or other reading material (*i.e.*, news release) in any periodical or publication or newspaper for the publication of which no money or valuable consideration is paid or promised, directly or indirectly, by any permittee.

Par. 30. Section 5.63 is amended to include a new paragraph (e). As amended, § 5.63 reads as follows:

§ 5.63 Mandatory statements.

* * * * *

(e) *Exceptions.* If an advertisement refers to a general distilled spirits line or all of the distilled spirits products of one company, whether referred to by the company name or by the brand name common to all the distilled spirits in the line, the only mandatory information necessary is the name and address of the responsible advertiser. This exception does not apply where only one type of distilled spirits is marketed under the specific brand name advertised.

Par. 31. Section 5.64 is revised to change the name of the section, to include references to new sections, and designate the Note contained in 27 CFR 4.63 as paragraphs (b), (c), (d), (e), and (f). As revised, § 5.64 reads as follows:

§ 5.64 Legibility of mandatory information.

(a) Statements required under §§ 5.61–5.69 that appear in any written, printed, or graphic advertisement shall be in lettering or type size sufficient to be conspicuous and readily legible from a distance at which the advertisement is intended to be, and is customarily read or viewed. The size of type shall be increased proportionately with the size of the advertisement.

(b) in the case of signs, billboards, and displays the name and address of the permittee responsible for the advertisement may appear in smaller lettering, provided such information can be ascertained upon closer examination of the sign or billboard.

(c) Mandatory information shall be so stated as to be clearly a part of the advertisement and shall not be separated in any manner from the remainder of the advertisement.

(d) Mandatory information for two or more products shall not be stated in direct conjunction unless clearly distinguished.

(e) Mandatory information shall not be buried or concealed by including it in unrequired descriptive matter.

(f) In every case mandatory information shall be so stated in both the print and audio-visual media that it will come to the attention of the persons viewing the advertisements.

Par. 32. Section 5.65 is amended to change the name of the section; to delete paragraph (a)(8) in its entirety; to revise paragraph (a)(9) and redesignate it as paragraph (a)(8); in paragraph (c) to add a reference to new sections; in paragraph (d) to change the heading title and clarify the prohibition; and to include two new paragraphs, (h) and (i).

§ 5.65 Prohibited practices.

(a) *Restrictions.* * * *

* * * * *

(8) The words "double distilled" or "triple distilled" or any similar term unless it is a truthful statement of fact; except that "double distilled" shall not be permitted in advertisements of distilled spirits manufactured by the redistillation method since this is a necessary distillation step for its production.

* * * * *

(c) *Statement of age.* The advertisement shall not contain any statement, design, or device directly or by implication concerning age or maturity of any brand or lot of distilled spirits unless a statement of age appears on the label of the advertised product. When any such statement, design, or device concerning age or maturity is contained in any advertisement, it shall include (in direct conjunction therewith and with substantially equal conspicuousness) all parts of the statement, if any, concerning age and percentages required to be made on the label under the provisions of §§ 5.31–5.44. * * *

(d) *Curative and therapeutic claims.* The advertisement shall not contain any statement, design, representation, pictorial representation, or device representing that the use of distilled spirits has curative or therapeutic effects if such statement is untrue in any particular or tends to create a misleading impression. Such claims shall be determined on a case-by-case basis. In any case, advertising of the vitamin content is prohibited.

* * * * *

(h) *Use of athletes and athletic activities.* The depiction of an active athlete or an athletic event where the participants are shown consuming distilled spirits before or during the athletic event in connection with the advertisement of distilled spirits is prohibited since illustrations protraying such athletes or athletic activities in connection with the advertised product are misleading in that they convey the erroneous impression that the use of the product is conducive to the development of athletic skill or physical prowess.

(i) *Natural claims.* Advertising shall not represent or claim that a distilled spirits is natural.

Par. 33. A new section, § 5.66, has been added, in numerical sequence, to read as follows:

§ 5.66 Comparative advertising.

(a) Comparative advertising may not be disparaging of a competitor's product. In addition, comparative advertising claims must be fully substantiated by factual data.

(b) Taste tests. Taste test results may be used in advertisements comparing competitors' products unless they are disparaging, deceptive, or likely to mislead the consumer. The taste test procedures used must meet scientifically accepted procedures, such as those set forth in § 5.67.

(c) Specific caloric or carbohydrate comparisons may be made in advertising for a distilled spirit labeled in accordance with § 5.43 and an equal volume of a competitor's product labeled in accordance with § 5.43. These comparisons may not be misleading or disparaging of a competitor's product. Examples of allowable comparisons are: "125 calories per 200 ml—50 calories (or ⅓) fewer than *competitor's name* Light Whiskey"; "3.0 grams carbohydrates per 200 ml—1.4 grams (or ⅓) fewer than *competitor's name* Light Whiskey"; "*Brand name* contains 125 calories per 200 ml while *competitor's name* Light Wine contains 160 calories per 200 ml"; "*Brand name* contains 3.0 grams carbohydrates per 200 ml while *competitor's name* Light Whiskey contains 4.6 grams per 200 ml."

Par. 34. A new section, § 5.67, has been added, in numerical sequence, to read as follows:

§ 5.67 Taste test procedures.

(a) The following testing criteria or other scientifically accepted procedures must be met before the results may be presented in a comparative advertising format:

(1) The test instructions do not alert the test participant as to the sponsor of the research, nor the purpose of the test. Testing administrators are not alerted as to the use of these tests.

(2) Testing instructions and testing activities are presented in a consistent and like manner to all test participants.

(3) Independent research contractors supervise the tests and gather the test data.

(4) The brands being tested are concealed from the test administrators and the participants.

(5) Product labeling utilizes neutral categories (for example, numbers, letters).

(6) The order of exposure of the products to the test participants is random.

(7) Test participants are isolated during the process of the actual taste testing as opposed to a group testing approach.

(8) Repetition of the test(s) are performed on each of the test participants as opposed to a single test administration.

(9) A maximum of three different products are compared in a single test competition.

(10) Test(s) must evaluate only those factors under investigation. Therefore, all test brands must be chosen in a standardized manner similar to the way in which the consumer would encounter them, *i.e.*, if purchased in a store. For example, distilled spirits products being tested must be of about equal price and type.

(b) Measurement of the test participant responses, analyses of the test data, and the reporting of the test results shall be valid, reliable, and germane to the product category being tested. There shall be substantiation within the product test community as to the validity and reliability of the scoring system used. In addition, the validity and reliability of the scoring system used shall be generally accepted within the scientific community. The advertised results shall be reported so as not to be likely to mislead the consumer or omit material facts.

Par. 35. A new section, § 5.68, is added, in numerical sequence, to read as follows:

§ 5.68 Use of the term "light" and caloric and carbohydrate statements.

(a) The word "light" (or lite) may be used as part of the brand or product name in the advertisement only when accompanied by a statement of average analysis; except that when the word "light" is used only as specifically authorized or required under § 5.63(b), no statement of average analysis is required.

(b) The word "light" (or lite) may be used as an adjective to denote color or taste provided that it is:

(1) Not placed so as to be confused with the class and type designation required by § 5.63(b);

(2) Not substantially more prominent than any word that it may modify, such as "taste" or "flavor."

(3) Not used in a manner emphasizing caloric or carbohydrate content.

(c) An average analysis statement is optional in advertising.

(d) Statements of caloric or carbohydrate content are permitted in substantially the following form, "contains 125 calories per 200 ml" or "contains 3.0 grams carbohydrates per 200 ml." The serving size, "per 200 ml", shall be specified for any such caloric or carbohydrate content statements.

Par. 36. A new section, § 5.69, is added, in numerical sequence, to read as follows:

§ 5.69 Deceptive advertising techniques.

Subliminal or similar techniques in advertising are prohibited. In this section "subliminal or similar techniques" refers to any device or technique that is used to convey or attempts to convey a message to a person by means of images or sounds of a very brief nature that cannot be perceived at a normal level of awareness.

PART 7—LABELING AND ADVERTISING OF MALT BEVERAGES

Par. 37. The table of sections in 27 CFR Part 7, Subpart C is amended to include two additional sections as follows:

Subpart C—Labeling Requirements for Malt Beverages

Sec.

* * * * *

7.29a Use of the term "light" and caloric and carbohydrate statements.
7.29b Tolerances.

* * * * *

Par. 38. The table of sections in 27 CFR Part 7, Subpart F is amended to change the titles of §§ 7.53 and 7.54 and to include four additional sections as follows:

Subpart F—Advertising of Malt Beverages

Sec.

* * * * *

7.53 Legibility of mandatory information.
7.54 Prohibited practices.
7.55 Comparative advertising.
7.56 Taste test procedures.
7.57 Use of the term "light" and caloric and carbohydrate statements.
7.58 Deceptive advertising techniques.

* * * * *

Par. 39. Section 7.10 is amended to add, in alphabetical order, the terms "disparaging" and "false." The added definitions read as follows:

§ 7.10 Meaning of terms.

* * * * *

Disparaging. Labeling or advertising claims or statements that are false or mislead the consumer as to a competitor's product.

* * * * *

False. Any representation, either expressed or implied, which is untrue.

* * * * *

Subpart C—Labeling Requirements For Malt Beverages

Par. 40. Section 7.21 is amended to include in paragraphs (a) and (b) references to new sections. As amended, § 7.21 reads as follows:

§ 7.21 Misbranding. * * *

(a) If the container fails to bear on it a brand label (or a brand label and other permitted labels) containing the mandatory label information as required by §§ 7.20–7.29b and conforming to the general requirements specified in this part.

(b) If the container, cap, or any label on the container, or any carton, case, or other covering of the container used for sale at retail, or any written, printed, graphic, or other matter accompanying the container to the consumer buyer contains any statement, design, device, or graphic, pictorial, or emblematic representation that is prohibited by §§ 7.20–7.29b.

* * * * *

Par. 41. Section 7.28 is amended to include a reference to average analysis statements in paragraphs (b)(1) and (b)(2) and add new paragraphs (b)(1)(iv) and (b)(2)(iv). As amended, § 7.28 reads as follows:

§ 7.28 General requirements.

* * * * *

(b) *Size of type.* (1) Containers of more than one-half pint.

(i) All mandatory information required on labels by this part, except alcoholic content statements, the list of ingredients, and the average analysis statement, shall be in script, type, or printing not smaller than 2 millimeters (or 8-point gothic until January 1, 1983); except that if contained among other descriptive or explanatory information, the script, type, or printing of all mandatory information shall be of a size substantially more conspicuous than that of the descriptive or explanatory information.

(ii) * * *

(iii) * * *

(iv) The average analysis statement shall be in script, type, or printing not smaller than 1 millimeter (or 6-point gothic until January 1, 1983).

(2) Containers of one-half pint or less.

(i) All mandatory information required on labels by this part, except alcoholic content statements, the list of ingredients, and the average analysis statement, shall be in script, type, or printing not smaller than 1 millimeter (or 6-point gothic until January 1, 1983); except that if contained among other descriptive or explanatory information, the script, type, or printing of all mandatory information shall be of a size substantially more conspicuous than that of the descriptive or explanatory information.

(ii) * * *

(iii) * * *

(iv) The average analysis statement shall be in script, type, or printing not smaller than one-half millimeter (or 4-point gothic until January 1, 1983).

* * * * *

Par. 42. Section 7.29 is amended to revise paragraph (a)(4); to include a reference to money-back guarantees in paragraph (a)(5); to revise paragraph (e); and to add two new paragraphs, (i) and (j). As amended, § 7.29 reads as follows:

§ 7.29 Prohibited practices.

(a) *Statement on labels.* * * *

* * * * *

(4) Any statement, design, device, or representation of or relating to analyses or manufacturing processes, standards, or tests, irrespective of falsity, which the Director finds to be likely to mislead the consumer.

(5) Any statement, design, device, or representation of or relating to any guarantee, irrespective of falsity, which the Director finds to be likely to mislead the consumer. Enforceable money-back guarantees are not prohibited.

* * * * *

(e) *Curative and therapeutic claims.* The label shall not contain statement, design, representation, pictorial representation, or device representing that the use of malt beverages has curative or therapeutic effects if such statement is untrue in any particular or tends to create a misleading impression. Such claims shall be determined on a case-by-case basis. In any case, labeling of the vitamin content is prohibited.

* * * * *

(i) *Use of athletes and athletic activities.* The depiction of an active athlete or an athletic event where the participants are shown consuming malt beverages before or during the athletic event in connection with the labeling of malt beverage is prohibited since labels portraying such athletes or athletic activities in connection with the malt beverage product are misleading in that they convey the erroneous impression that the use of the product is conducive

to the development of athletic skill or physical prowess.

(j) *Natural claims.* Labels shall not represent or claim that a malt beverage is natural if:

(1) The product has undergone more than minimal processing. Any processing other than fermentation constitutes more than minimal processing.

(2) The product contains any additives (adjuncts) or incidental additives (adjuncts), except incidental additives (adjuncts) which are added to adjust for natural deficiencies as defined in § 7.10 "incidental additive (incidental adjunct)" (3).

Par. 43. A new section, § 7.29a, has been added, immediately following § 7.29, to read as follows:

§ 7.29a Use of the term "light" and caloric and carbohydrate statements.

(a) The word "light" (or lite) may be used as part of the brand or product name of the malt beverage labeled only when accompanied by a statement of average analysis.

(b) The word "light" may be used as an adjective to denote color or taste provided that it is:

(1) Not substantially more prominent than any word that it may modify such as "taste" or "flavor."

(2) Not used in a manner emphasizing caloric or carbohydrate content.

(c) Whenever references are made on labels of caloric or carbohydrate content, a statement of average analysis must also appear on the labels. The average analysis shall be stated per container size if the container is less than 12 fluid ounces. For example, the average analysis for a 7 fluid ounce container may read:

Per 7 Fl. Oz.—Average Analysis

Calories—56
Carbohydrates—1.6 grams
Protein—0.5 grams
Fat—0.0 grams

For containers of 12 fluid ounces or more, except kegs, the analyzed amount shall be stated per container size or serving size, e.g., 12 fl. oz. For example, the average analysis for a quart container may read:

Per 12 Fl. Oz.—Average Analysis

Calories—96
Carbohydrates—2.8 grams
Protein—0.9 grams
Fat—0.0 grams

All statements of average analysis shall include the container size or the serving size, whichever is applicable. No average analysis is required to appear on kegs.

(d) In addition to, but not in lieu of, the statement of average analysis on labels, statements of caloric or carbohydrate content are permitted in substantially the following form, "contains 96 calories per 12 fl. oz." The serving size shall be specified for any such caloric or carbohydrate content statements.

(e) Comparisons of calories or carbohydrates in a malt beverage a brewer has labeled, in accordance with this section, may be made to an equal volume of the same brewer's regular beer. Examples of allowable comparisons are: "90 calories per 12 ozs.—45 calories (or ⅓) fewer than our regular beer", "2.6 grams carbohydrates per 12 ozs.—1.3 grams (or ½) fewer than our regular beer."

Par. 44. A new section, § 7.29b, has been added, immediately following § 7.29a, to read as follows:

§ 7.29b Tolerances.

(a) Tolerance ranges are required with respect to labeled statements of caloric, carbohydrate, protein, and fat contents for malt beverages.

(b) The statement of caloric content on labels for malt beverages shall be acceptable as long as the caloric content is within the tolerance plus (+) 5 and minus (−) 10 calories of the labeled caloric content. For example, a label showing 96 calories shall be acceptable if the ATF analysis of the product shows a caloric content between 86 and 101 calories.

(c) The statements of carbohydrate and fat contents on labels for malt beverages shall be acceptable as long as the carbohydrate and fat contents, are within a reasonable range below the labeled amount, but, in no case, more than 20 percent above the labeled amount. For example, a label showing a 4.0 grams carbohydrates shall be acceptable if the ATF analysis of the product shows a carbohydrate content which is under 4.0 grams (within good manufacturing practice limitations) but not more than 4.8 grams.

(d) The statement of protein content on labels for malt beverages shall be acceptable as long as the protein content is within a reasonable range above the labeled amount but, in no case, less than 80 percent of the labeled amount. For example, a label showing 1.0 gram protein shall be acceptable if the ATF analysis of the product shows a protein content which is more than 1.0 gram (within good manufacturing practice limitations) but no less than 0.8 gram.

(e) The ATF analysis, as stated in paragraphs (b), (c), and (d) will be performed, as circumstances dictate, on a post-review basis. This method for the ATF analysis is set forth in the *Official Methods of Analysis of the Association of Official Analytical Chemists,* Thirteenth Edition, 1980, Chapter 10, and is incorporated by reference. This material can be reviewed at any technical library. The method is incorporated as it exists on the date of approval and a notice of any change in the method will be published in the Federal Register.

Subpart D—Requirements for Withdrawal of Imported Malt Beverages from Customs Custody

Par. 45. Section 7.30 is revised to include a reference to new sections. As revised, § 7.30 reads as follows:

§ 7.30 Application.

Sections 7.30 and 7.31 shall apply to withdrawals of malt beverages from customs custody only in the event that the laws or regulations of the State in which such malt beverages are withdrawn for consumption require that all malt beverages sold or otherwise disposed of in such State be labeled in conformity with the requirements of §§ 7.20–7.29b.

Subpart E—Requirements for Approval of Labels of Malt Beverages Domestically Bottled or Packed

Par. 46. Section 7.40 is revised to include a reference to new sections. As revised, § 7.40 reads as follows:

§ 7.40 Application.

Sections 7.40–7.42 shall apply only to persons bottling or packing malt beverages (other than malt beverages in customs custody) for shipment, or delivery for sale or shipment, into a State, the laws or regulations of which require that all malt beverages sold or otherwise disposed of in such State be labeled in conformity with the requirements of §§ 7.20–7.29b.

Subpart F—Advertising of Malt Beverages

Par. 47. Section 7.50 is revised to incorporate a reference to television broadcast and to include references to new sections. As revised, § 7.50 reads as follows:

§ 7.50 Application.

No person engaged in business as a brewer, wholesaler, or importer, of malt beverages directly or indirectly or through an affiliate, shall publish or disseminate or cause to be published or disseminated by radio or television broadcast, or in any newspaper, periodical, or any publication, by any sign or outdoor advertisement, or any other printed or graphic matter any advertisement of malt beverages, if such

advertising is in, or is calculated to induce sales in, interstate or foreign commerce, or is disseminated by mail, unless such advertisement is in conformity with §§ 7.50–7.58. Provided, that such sections shall not apply to outdoor advertising in place on (effective date of the Treasury decision), but shall apply upon replacement, restoration, or renovation of any such advertising; and provided further, that §§ 7.50–7.58 shall apply to advertisements of malt beverages intended to be sold or shipped or delivered for shipment, or otherwise introduced into or received in any State from any place outside thereof, only to the extent that the laws of such State impose similar requirements with respect to advertisements of malt beverages manufactured and sold or otherwise disposed of in such State. And provided further that such sections shall not apply to the publisher of any newspaper, periodical, or other publication, or radio or television broadcast, unless such publisher or radio or television broadcaster is engaged in business as a brewer, wholesaler, bottler, or importer of malt beverages directly or indirectly, or through an affiliate.

Par. 48. Section 7.51 is revised to incorporate prior revenue rulings into the regulations; to include references to new sections; and to include matter accompanying the container under the definition of advertising. As revised, § 7.51 reads as follows:

§ 7.51 Definitions.

As used in §§ 7.50–7.58 the term "advertisement" includes any written or verbal statement, illustration, or depiction which is in, or calculated to induce sales in, interstate or foreign commerce, or is disseminated by mail, whether it appears in a newspaper, magazine, trade booklet, menu, wine card, leaflet, circular, mailer, book insert, catalog, promotional material, sales pamphlet, or any written, printed, graphic, or other matter accompanying the container, billboard, sign, or other outdoor advertisement, public transit card, other periodical literature, publication, or in a radio or television broadcast, or in any other media; except that such term shall not include:

(a) Any label affixed to any container of malt beverages; or any coverings, cartons or cases of containers of malt beverages used for sale at retail which consititutes a part of the labeling under §§ 7.20–29b.

(b) Any editorial or other reading material (*i.e.*, news release) in any periodical or publication or newspaper for the publication of which no money or valuable consideration is paid or promised, directly or indirectly, by any permittee.

Par. 49. Section 7.52 is amended to include a new paragraph (c).

§ 7.52 Mandatory statements.

* * * * *

(c) *Exceptions.* If an advertisement refers to a general malt beverage line or all of the malt beverage products of one company, whether referred to by the company name or by the brand name common to all the malt beverages in the line, the only mandatory information necessary is the name and address of the responsible advertiser. This exception does not apply where only one type of malt beverage is marketed under the specific brand name advertised.

Par. 50. Section 7.53 is revised to change the name of the section, to include references to new sections, and designate the Note contained in 27 CFR 4.63 as paragraphs (b), (c), (d), (e), and (f). As revised, § 7.53 reads as follows:

§ 7.53 Legibility of mandatory information.

(a) Statements required under §§ 7.50–7.58 that appear in any written, printed, or graphic advertisement shall be in lettering or type size sufficient to be conspicuous and readily legible from a distance at which the advertisement is intended to be, and is customarily read or viewed. The size of type shall be increased proportionately with the size of the advertisement.

(b) In the case of signs, billboards, and displays the name and address of the permittee responsible for the advertisement may appear in smaller lettering, provided such information can be ascertained upon closer examination of the sign or billboard.

(c) Mandatory information shall be so stated as to be clearly a part of the advertisement and shall not be separated in any manner from the remainder of the advertisement.

(d) Mandatory information for two or more products shall not be stated in direct conjunction unless clearly distinguished.

(e) Mandatory information shall not be buried or concealed by including it in unrequired descriptive matter.

(f) In every case mandatory information shall be so stated in both the print and audio-visual media that it will come to the attention of the persons viewing the advertisements.

Par. 51. Section 7.54 is amended to change the name of the section; to amend paragraph (a)(1); to include in paragraph (a)(5) a reference to money-back guarantees; to amend paragraph (c); in paragraph (e) to change the heading title and clarify the prohibition; and to include two new paragraphs, (h) and (i).

§ 7.54 Prohibited practices.

(a) *General prohibitions.* * * *

(1) Any statement that is false or untrue in any particular, or that, irrespective of falsity, directly, or by ambiguity, omission, or inference, or by the addition of irrelevant scientific, or technical matter, tends to create a misleading impression.

* * * * *

(5) Any statement, design, device, or representation of or relating to any guarantee, irrespective of falsity, which the Director finds to be likely to mislead the consumer. Enforceable money-back guarantees are not prohibited.

* * * * *

(c) *Alcoholic content.* The advertisement shall not contain the words "strong", "full strength", "extra strength", "high test", "high proof", "full alcoholic strength", or any other statement of alcoholic content, or any statement of the percentage and quantity of the original extract, or any numerals, letters, characters, or figures, or similar words or statements, likely to be considered as statements of alcoholic content, except where required by State law.

* * * * *

(e) *Curative and therapeutic claims.* The advertisement shall not contain any statement, design, representation, pictorial representation, or device representing that the use of malt beverages has curative or therapeutic effects if such statement is untrue in any particular or tends to create a misleading impression. Such claims shall be determined on a case-by-case basis. In any case, advertising of the vitamin content is prohibited.

* * * * *

(h) *Use of athletes and athletic activities.* The depiction of an active athlete or an athletic event where the participants are shown consuming malt beverages before or during the athletic event in connection with the advertisement of malt beverages is prohibited since illustrations portraying such athletes or athletic activities in connection with the advertised product are misleading in that they convey the erroneous impression that the use of the product is conducive to the development of athletic skill or physical prowess.

(i) *Natural claims.* Advertising shall not represent or claim that a malt beverage is natural if:

(1) The product has undergone more than minimal processing. Any

processing other than fermentation constitutes more than minimal processing.

(2) The product contains any additives (adjuncts) or incidental additives (adjuncts), except incidental additives (adjuncts) which are added to adjust for natural deficienceis as defined in § 7.10 "incidental additive (incidental adjunct)" (3).

Par. 52. A new section, § 7.55, has been added, in numerical sequence, to read as follows:

§ 7.55 Comparative advertising.

(a) Comparative advertising may not be disparaging of a competitor's product. In addition, comparative advertising claims must be fully substantiated by factual data.

(b) Taste tests. Taste test results may be used in advertisements comparing competitors' products unless they are disparaging, deceptive, or likely to mislead the consumer. The taste test procedures used must meet scientifically accepted procedures, such as those set forth in § 7.56.

(c) Specific caloric or carbohydrate comparisons may be made in advertising for a malt beverage labeled in accordance with § 7.29a and an equal volume of a competitor's product labeled in accordance with § 7.29a. These comparisons may not be misleading or disparaging of a competitor's product. Examples of allowable comparisons are: "96 calories per 12 ozs.—48 calories (or ⅓) fewer than *competitor's name* Light Beer"; "2.8 grams carbohydrates per 12 ozs.—1.4 grams (or ⅓) fewer than *competitor's name* Light Beer"; "*Brand name* contains 96 calories per 12 ozs. while *competitor's name* Light Beer contains 106 calories per 12 ozs."; "*Brand name* contains 2.6 grams carbohydrates per 12 ozs. while *competitor's name* Light Beer contains 3.0 grams carbohydrates per 12 ozs."

(d) Comparisons between the caloric or carbohydrate contents of a malt beverage a brewer has labeled in accordance with § 7.29a may be made to an equal volume of the same brewer's regular beer. Examples of allowable comparisons are: "90 calories per 12 ozs.—45 calories (or ⅓) fewer than our regular beer", "2.6 grams carbohydrates per 12 ozs.—1.3 grams (or ⅓) fewer than our regular beer."

Par. 53. A new section, § 7.56, has been added, in numerical sequence, to read as follows:

§ 7.56 Taste test procedures.

(a) The following testing criteria or other scientifically accepted procedures must be met before the results may be presented in a comparative advertising format;

(1) The test instructions do not alert the test participant as to the sponsor of the research, nor the purpose of the test. Testing administrators are not alerted as to the use of these tests.

(2) Testing instructions and testing activities are presented in a consistent and like manner to all test participants.

(3) Independent research contractors supervise the tests and gather the test data.

(4) The brands being tested are concealed from the test administrators and the participants.

(5) Product labeling utilizes neutral categories (for example, numbers, letters).

(6) The order of exposure of the products to the test participants is random.

(7) Test participants are isolated during the process of the actual taste testing as opposed to a group testing approach.

(8) Repetition of the test(s) are performed on each of the test participants as opposed to a single test administration.

(9) A maximum of three different product are compared in a single test competiton.

(10) Test(s) must evaluate only those factors under investigation. Therefore, all test brands must be chosen in a standardized manner similar to the way in which the consumer would encounter them, *i.e.*, if purchased in a store. For example, malt beverage products being tested must be of about equal price and type.

(b) Measurement of the test praticipant responses, analyses of the test data, and the reporting of the test results shall be valid, reliable, and germane to the product category being tested. There shall be substantiation within the product test community as to the validity and reliability of the scoring system used. In addition, the validity and reliability of the scoring system used shall be generally accepted within the scientific community. The advertised results shall be reported so as not to be likely to mislead the consumer or omit material facts.

Par. 54. A new section, § 7.57, is added, in numerical sequence, to read as follows:

§ 7.57 Use of the term "light" and caloric and carbohydrate statements.

(a) The word "light" (or lite) may be used as part of the brand or product name in the advertisement only when accompanied by a statement of average analysis.

(b) The word "light" may be used as an adjective to denote color or taste provided that it is:

(1) Not substantially more prominent than any word that it may modify such as "beer", "taste", or "flavor."

(2) Not used in any manner emphasizing caloric or carbohydrate content.

(c) An average analysis statement is optional in advertising.

(d) Statements of caloric or carbohydrate content are permitted in substantially the following form, "contains 96 calories per 12 ozs." the serving size shall be specified for any such caloric or carbohydrate content statements.

Par. 55. A new section, § 7.58, is added, in numerical sequence, to read as follows:

§ 7.58 Deceptive advertising techniques.

Subliminal or similar techniques in advertising are prohibited. In this section "subliminal or similar techniques" refers to any device or technique that is used to convey or attempts to convey a message to a person by means of images or sounds of a very brief nature that cannot be preceived at a normal level of awareness.

Signed: December 12, 1980.

G. R. Dickerson,

Director.

Approved: December 12, 1980.

Richard J. Davis

Assistant Secretary (Enforcement and Operations).

FR Doc. 80-39432 Filed 12-18-80; 8:45 am]

BILLING CODE 4810-31-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 948

Public Hearing and Public Comment Period on the Resubmitted West Virginia Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed Rule: Notice of receipt of permanent program resubmission from West Virginia.

SUMMARY: OSM is announcing procedures for the public comment period and hearing on the substantive adequacy of those portions of the proposed West Virginia regulatory program under the Surface Mining

Control and Reclamation Act of 1977 (SMCRA) which have not been approved by the Secretary of the Interior and which have been resubmitted by the State.

This notice sets forth the times and locations that the West Virginia program is available for public inspection; the date when and location where OSM will hold a public hearing on the resubmission; the comment period during which interested persons may submit written comments and data on the proposed program and other information relevant to public participation during the comment period and public hearing.

DATES: A public hearing to review the substance of those portions of the West Virginia program not previously approved by the Secretary of the Interior will be held at 5:30 p.m. on January 5, 1981, at the address listed below. Written comments, data, or other relevant information may be submitted to supplement, or in lieu of, an oral presentation at the hearing. Comments from members of the public may be submitted at any time prior to 4:00 p.m. on January 6, 1981. Comments must be received by this time in order to be considered in the Secretary's decision on those elements of the proposed West Virginia program which were not approved in the initial decision on the proposed program.

ADDRESSES: The public hearing will be held at the Capitol Complex Conference Center, Rooms A and B, 1900 Washington Street, East, Charleston, West Virginia. Written comments should be sent to: Office of Surface Mining, Attention: West Virginia Administrative Record, 603 Morris Street, Charleston, West Virginia 25301, or may be hand delivered to the above address.

Copies of the full text of the proposed program, a listing of scheduled public meetings and copies of all written comments are available for review and copying at the OSM Region I Office and the office of the State Regulatory Authority listed below, Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding holidays:

Office of Surface Mining, Region I, 603 Morris Street, Charleston, West Virginia 25301, Phone: (304) 342–8125

Department of Natural Resources, Division of Reclamation, Room 322, 1800 Washington Street, East, Charleston, West Virginia 25305, Phone (304) 348–3267.

Copies of the full text of the proposed program are available for inspection during regular business hours at the following locations:

Office of Surface Mining; Beckley District Office; 19 Mallard Court; Beckley, WV 25801; Phone: (304) 225–5265

Office of Surface Mining; Clarksburg Field Office; 501 West Main Street; DeSales Hall, Room 214; Clarksburg, WV 26301; Phone: (304) 623–2913

Division of Reclamation; Morgantown Street; Bruceton Mills, WV 26525; Phone: (304) 379–2671

Department of Natural Resources; Elkins Operations Center; Elkins, WV 26241; Phone: (304) 639–1767

Department of Natural Resources; 1304 Goose Run Road; Fairmont, WV 26554; Phone: (304) 366–5880

Division of Reclamation; Chalet Village; Mount Gay, WV 25637; Phone: (304) 752–6839

Division of Reclamation; 1180 Broad Street; Summersville, WV 26651; Phone: (304) 872–5616

Office of Surface Mining; Morgantown Field Office; New Federal Building, 2nd Floor; 75 High Street; P.O. Box 886; Morgantown, WV 26505; Phone: (304) 291–5821

Office of Surface Mining; Pineville Field Office; 17 Main Street; Pineville, WV 24874; Phone: (304) 732–8850

Department of Natural Resources; Rt. 16; MacArthur, WV 25873; Phone: (304) 255–0401

Department of Natural Resources; 312 Main Street; Nitro, WV 25143; Phone: (304) 755–9141

Division of Reclamation; 117 South Main Street; Philippi, WV 26416; Phone: (304) 457–3219

Division of Reclamation; Hicks Building; Welch, WV 24801; Phone: (304) 436–4507.

FOR FURTHER INFORMATION CONTACT: Richard Leonard, Public Affairs Officer, Office of Surface Mining Reclamation and Enforcement, 603 Morris Street, Charleston, West Virginia 25301, Phone (304) 342–8125.

SUPPLEMENTARY INFORMATION: On March 3, 1980, the State of West Virginia submitted to OSM a proposed State regulatory program. Pursuant to the provisions of 30 CFR Part 732 (44 FR 15326–15328), the Regional Director published notification of receipt of the program submission in the March 10, 1980 Federal Register (45 FR 15190–15192) and in newspapers of general circulation within the State. In accordance with that announcement, public comments were solicited and a public meeting was held on April 9, 1980, on the issue of the program's completeness.

On April 28, 1980, the Regional Director published notice in the Federal Register (45 FR 28164–28165) as required by 30 CFR 731.14(c) announcing that he had determined the program to be incomplete.

Public Hearings on the West Virginia submission were held by the Regional Director on July 14 and 15, 1980, in Morgantown and Charleston, West Virginia, respectively, after due notice on June 20, 1980 in the Federal Register (45 FR 41654–41656) and in newspapers of general circulation within the State. The public comment period ended July 21, 1980.

Throughout the period beginning with the submission of the program, OSM had frequent contact with the staff of the West Virginia Department of Natural Resources. Minutes or notes of the discussions were placed in the Administrative Record and made available for public review and comment. The full chronology of the events leading to the Secretary's initial decision is contained in the Federal Register notice of the partial approval by the Secretary (45 FR 69249–69271), published on October 20, 1980.

That notice also contained the Secretary's findings, detailed explanations of those findings and the Secretary's decision, which approved and disapproved specific parts of the West Virginia program. The approved parts of the West Virginia program have not been the subject of discussions that might have influenced the decision to approve after the close of the public comment period. Discussions relating to parts of the program that were disapproved are in the Administrative Record and will be subject to public comment during the public comment period announced herein.

In accordance with the procedures set forth in 30 CFR 732.13(f), the State of West Virginia had 60 days from the date of publication of the Secretary's partial approval decision in which to submit a revised program for consideration. The State submitted its revised program for consideration on December 19, 1980.

The comment period announced today is relatively brief, ending at 4:00 p.m. on January 6, 1981. This relatively brief comment period is necessary to enable the Secretary to make his final decision on the West Virginia permanent regulatory program as close as possible under applicable regulations to the January 3, 1981, statutory deadline of Sections 503 and 504a of SMCRA, as amended by litigation in the U.S. District Court for the District of Columbia. In keeping with the public participation mandate of SMCRA, 30 CFR 732.13(f) requires a minimum of 15 days for public review and comment. The Secretary has extended the comment period beyond January 3rd to allow the 15 days for

public review. Also, during the comment period, the Secretary is soliciting comments from the Administrator of the Environmental Protection Agency, the Secretary of Agriculture, and the heads of other federal agencies.

Because of the brevity of the public comment period and the difficulty of keeping the public abreast of supplements to State's resubmission, OSM will keep a list of those wishing to be contacted if the State modifies the resubmission during the public comment period and will telephone these people to inform them of any supplements to the resubmission.

Subsequent to the public hearing and review of all comments the Regional Director will transmit to the Director, a recommended decision along with a record composed of the hearing transcript, written presentations, exhibits, and copies of all public comments.

Upon receipt of the Regional Director's recommendation, the Director will consider all relevant information in the record and will recommend to the Secretary that those portions of the program that were not approved in the Secretary's initial decision now be approved or disapproved or conditionally approved. The recommendation will specify the reasons for the decision. The procedures for the recommended decisions of the Regional Director and the Director to the Secretary are established in 30 CFR 732.12(d) and (e) (44 FR 15326–15327). For further details, refer to 30 CFR 732.12 and 732.13 of the permanent regulatory program (44 FR 15326–15327) and corresponding sections of the preamble (44 FR 14959–14961).

The Secretary's decision on the program as resubmitted will constitute the final decision by the Department. If the revised program is approved, the State of West Virginia will have primary jurisdiction for the regulation of coal mining and reclamation and coal exploration on non-federal lands in West Virginia. If the revised program is approved, the Secretary and the Governor may also enter into a cooperative agreement governing regulation of these activities on federal lands in West Virginia. Such an agreement would be the subject of a separate rulemaking and Federal Register notice. If the revised program is dispproved, a federal program will be implemented and OSM will have primary jurisdiction for the regulation of the above activities in West Virginia. To codify decisions on state programs, federal programs, and other matters affecting individual states, OSM has established Subchapter T of 30 CFR, Chapter VII. Subchapter T will consist of Parts 900 through 950. Provisions relating to West Virginia will be found in 30 CFR Part 948 after West Virginia's resubmission has been approved or disapproved.

At the public hearing, parties wishing to comment on the proposed program will be asked to register for placement on the speaker's agenda. In addition, due to the extremely short review time provided to the Department it would be greatly appreciated if written copies of all presentations could be provided at the hearing.

The Regional Director has prescribed the following hearing format and rules of procedure in accordance with 30 CFR 732.12(b)(1) (44 FR 15326):

1. The hearing shall be informal and follow legislative procedures.

2. Based on the number in attendance, each participant may be limited to 10 minutes.

3. Participants will be called in the order in which they register.

Public participation in the review of state programs is a vital component in fulfilling the purposes of SMCRA. On September 19, 1979, OSM published guidelines in the Federal Register (44 FR 54444–54445) governing contacts between the Department of the Interior and both state officials and members of the public. It is hoped that issuance of these guidelines will encourage full cooperation by all affected persons with the procedures being implemented.

Interested members of the public are encouraged to read the Secretary's partial approval of the initial West Virginia program submission published in the Federal Register on October 20, 1980 (45 FR 69242–69271). That document contains detailed findings and explanations relating to the parts of the initial submission which were specifically approved and disapproved. Unless a change has been made to a part of the program previously approved, the Secretary will only consider comments relating to those portions previously disapproved or to any portions appearing in the program for the first time.

Set forth below is a summary of the contents of the resubmission:

1. State Regulations.

2. Other Related State Laws.

3. Legal Opinion of the State Attorney General.

4. Structural Organization—Staffing Functions.

5. Narrative Description for:

a. Issuing Exploration and Mining Permits.

b. Bonding—Insurance.

c. Inspecting and Monitoring.

d. Enforcing the Administrative, Civil and Criminal Sanctions.

e. Administering and Enforcing Permanent Program Standards.

f. Assessing and Collecting Civil Penalties.

g. Designating Lands Unsuitable for Mining.

h. Providing for Public Participation.

i. Providing Administrative and Judicial Review.

6. Statistical Information.

7. Summary of Staff with Titles, Functions, Job Experience and Training.

8. Description of Staffing Adequacy.

9. Budget Information.

No Environmental Impact Statement is being prepared in connection with the process leading to the approval or disapproval of the proposed West Virginia program. Under Section 702(d) of SMCRA [30 U.S.C. Section 1292(d)] approval does not constitute a major action within the meaning of Section 102(2)(c) of the National Environmental Policy Act of 1979 (42 U.S.C. 4332).

Patrick B. Boggs,

Regional Director.

[FR Doc. 80-39469 Filed 12-18-80; 8:45 am]

BILLING CODE 4310-05-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A8 FRL 1708.4]

Approval and Promulgation of State Implementation Plans; Colorado

AGENCY: Environmental Protection Agency.

ACTION: Proposed rulemaking.

SUMMARY: The propose of this notice is to propose approval of revision to the Colorado State Implementation Plan (SIP) for alternative emission reduction or "bubble" for Coors Container Company's Paper Packaging Facility printing presses located in Boulder.

DATE: Comments are due by January 19, 1981.

ADDRESSES: Copies of the SIP revision and any comments received are available at the following addresses for inspection:

Environmental Protection Agency, Air Programs, Branch, Region VIII, Suite 200, 1860 Lincoln Street, Denver, Colorado 80295

Environmental Protection Agency, Public Information Reference Unit, Room 2922 (EPA Library), Mail Code PM-213, 401 M Street, S.W., Washington, D.C. 20460

Written comments should be sent to: Robert R. DeSpain, Chief, Air Programs,

Branch, Region VIII, 1860 Lincoln Street, Denver, Colorado 80295, (303) 837–3471

FOR FURTHER INFORMATION CONTACT:
Eliot Cooper, Air Programs, Branch, Environment Protection Agency, 1860 Lincoln Street, Denver, Colorado 80295, (303) 837–3711

SUPPLEMENTARY INFORMATION:

Background

On May 13, 1980, the Colorado Air Quality Hearings Board conducted a public hearing to consider a request of Coors Container Company to revise the SIP to exempt two printing presses operated by Coors at its Boulder paper packaging facility from the daily emission limitation for volatile organic compounds (VOC) contained in the Air Quality Control Commission Regulation No. 7, Section VII.B.2.c., and instead to subject the two presses to a single total daily emission limitation, "bubble," not involving an increase in total emissions allowed from the printing operation.

In accordance with evidence presented during the hearing, the Board made the following *Findings of Fact* to support its decision:

1. Coors owns and operates two printing presses at its Boulder, Colorado, paper packaging facility. The facility is located in a designated non-attainment area for the National Ambient Air Quality Standards for ozone. The smaller of the two printing presses, the twenty-six-inch press, is operated to print labels for Coors' products, and the larger forty-four-inch press is operated to print cartons for its products.

2. The two presses print with materials which emit VOC's into the atomosphere as defined in Air Quality Control Commission Common Regulation No. 7, section VII.A.1. The potential emission rate for each press when operated at maximum operating capacity could exceed 3,000 pounds of VOC per day. However, Coors limits the operations of the two presses as a measure to insure that emissions of VOC do not exceed the applicable emission limitations contained in Regulation No. 7, section VII, B.2.c., of 450 pounds per hour and 3000 pounds per day individually.

3. Sampling tests of the Coors presses demonstrate that emissions of VOC from the presses are directly proporational to the amount and type of materials printed. An accurate and acceptable method of determining actual emissions from the subject presses are the following equations based on the quantity of materials printed and the emission rate (stated in terms of pounds of VOC per thousand units of printed materials) for a specific printed product. Emission rates for the following products are calculated to be:

	Emission rate [1] [2]
Banquet Can Wrap, 6-up	0.31
Banquet 12-pack, 3-up	.87
Banquet Bottle Carrier, 2-up	.13
Light Can Wrap:	
4-up	1.55
6-up	1.55
Light Bottle Carrier:	
2-up Lacquered	2.02
Non-lacquered [3]	.95
Banquet Bottle Labels, 56-up	.03
Light Bottle Labels, 42-up	.14

[1] Pounds of Volatile organic compounds based on total hydrocarbons expressed as hexane.
[2] Pounds VOC/thousand units of product.
[3] Non-lacquered requires use of no-varnish silver ink.

To determine actual total emissions from production records utilizing the above data: multiply total production per hour or per day by the appropriate emissions rate.

4. If the requested SIP revision were not granted, Coors advises, that, by 1982, meeting projected product demand would cause emissions to increase to 3000 pounds of VOC per day per unit as a result of increased operation of the presses to the maximum rates allowed under Regulation No. 7, Section VII.B.2.c. If granted, average actual emissions may increase in the interim above what they would be were the revision denied; however, such increased emissions would never exceed total allowable emissions.

5. The Air Pollution Control Division is authorized by C.R.S. 1973, 25–7–711(2)(c) to inspect and copy the records of Coors relating to emissions of air pollutants, including those relating to the two subject printing presses which show their operation rates, operating times, product per.footage rates, emission rates and other data required to determine their daily VOC emissions and compliance with this decision.

Upon formal motion and by majority vote, the Board ordered the application of Coors for a revision to the SIP providing for an alternate means for Coors' two printing presses at its Boulder, Colorado paper packaging facility to comply with Air Quality Control Commission Regulation No. 7, Section VII.B.2.c., be granted and the "Revision of Limited Applicability to Colorado Air Quality Control Commission Regulation No. 7," which was made a part of the decision and order, adopted. The applicability to the two subject printing presses of the hourly emission limitations contained in Regulation No. 7, Section VII.B.2.c., was not modified.

The Hearings Board modified Regulation No. 7 as follows:

Revision of Limited Applicability to Colorado Air Quality Control Commission Regulation No. 7

Air Quality Control Commission Regulation No. 7, Section VII.B.2.c., is hereby modified as follows:

In lieu of meeting the daily emission limitations of Section VII.B.2.c. of Air Quality Control Commission Regulation No. 7, Coors Container Company may elect to simultaneously operate the 26-inch printing press and the 44-inch printing press which it owns and operates at its Boulder, Colorado, paper packing facility so as to comply with the emission limitations which satisfy the following equation:

$E26 + E44 \leq 6000$ pounds per day

where E26 is the emission limitation (pounds of VOC per day) for the 26-inch printing press and E44 is the emission limitation (pounds of VOC per day) for the 44-inch printing press; PROVIDED THAT Coors shall be required to maintain accurate records of the amounts of products printed on each press, the types of inks used for such printings, the operation rate of each press for such printings, and the time period for which each press was operated for such printings. Such records shall be kept current and shall be retained for a period of one year after the date of printing shown by the record. The maximum emission from either press shall not exceed 5000 pounds/day of VOC emissions.

On August 25, 1980, the Governor of Colorado submitted a site specific revision to the SIP for Coors for alternative emission reduction, "bubble," for their printing presses.

EPA

EPA requests comments and is proposing to approve this SIP revision since it has met the conditions of our December 11, 1979, "bubble" policy statement (44 FR 71780) as follows:

1. Eligibilty, Demonstration of Attainment by Statutory Deadlines: Coors is located in Boulder, which is in the Denver ozone nonattainment area. Ordinarily, the bubble policy would not be applicable in this situtation. However, with attainment projected by December 31, 1987, the statutory deadline. While Regulation 7.VII.B.2.c. is not an emission limit equivalent to that contained in EPA's Group II Control Techniques Guidelines (CTG) for graphic arts—rotogravure: Coors' presses will be subject to these new emissions requirements in early 1981. Therefore, this "bubble" is an interim emission limit between the current "Rule 66" type regulation and the rotogravure emission limit requirements. The new requirements will probably void the provisions of this SIP revision since it requires high solids technology or control equipment to comply.

2. Effect of Compliance Status—Coors is currently in compliance with the Regulation 7.VII.B.2.c.

3. Conditions for Using Alternative Approach, Air Quality Considerations: All emissions under the alternative approach must be quantifiable, and trades among them must be even—Sampling tests of the Coors presses demonstrate that emissions of VOC from the presses are directly proportional to the amount and type of materials printed. The method for determining actual emissions from the subject presses are equations based on the quality of materials printed and the emission rate for a specific printed product. (See 3 under *Findings of Fact.)*

4. The pollutants under the alternate proposal must be comparable—VOC's are being traded and which none of these specifically pose significant health hazards.

5. Enforcement Considerations, specific enforceable control requirements are mandatory—The "bubble" contains enforceable, specific emission limits, which are equally as enforceable as the existing requirements.

6. Existing SIP provisions submitted under section 110 must not be replaced—This alternative control strategy is in addition to the SIP, not a replacement, and therefore is consistent with EPA's guidance regarding continuity.

7. Summary of Comments, Actual versus SIP allowable emission limits—Although the 24-inch press is emitting a lesser amount of pollutants than the Regulation 7.VII.B.2.c allows, Coors has stated that if the requested SIP revision were not granted, meeting projected product demand would cause emissions to increase to 3000 pounds of VOC per day per unit by 1982 as a result of increased operation of the presses to the maximum rates allowed under Regulation No. 7, Section VII.B.2.c. If granted, average actual emissions may increase in the interim above what they would be were the revision denied; however, such increased emissions would never exceed total allowable emissions. The Colorado SIP emission inventory is based on allowable emissions. Therefore, EPA feels that even though this alternative approach would allow an increase to 6000 pounds of VOC per day, this interim increase would not interfere with reasonable further progress towards attainment in Boulder or in the Denver metropolitan area.

Note.—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 lables these other regulations "specialized." I have reviewed this regulation and determined that it is a specialized regulation not subject to the procedural requirements of Executive Order 12044.

This notice of proposed rulemaking is issued under the authority of Section 110 of the Clean Air Act as amended (42 USC 7410).

Dated: November 25, 1980.

Roger L. Williams,

Regional Administrator.

[FR Doc. 80-39483 Filed 12-18-80; 8:45 am]

BILLING CODE 6560-26-M

DEPARTMENT OF LABOR

41 CFR Part 29-1

Public Contracts, Property Management; Small and Disadvantaged Business Program

AGENCY: Department of Labor.

ACTION: Proposed rule.

SUMMARY: The purpose of this proposed revision to the Department of Labor Procurement Regulations (DOLPR) is to establish current regulations regarding the Department's small and disadvantaged business program, consistent with the new law (Pub. L. 95-507) and its implementation by The Office of Federal Procurement Policy (OFPP), and to establish policies and procedures for the Department's minority business enterprise program. It proposes to formally assign to the Office of Small and Disadvantaged Business Utilization, under the Office of the Under Secretary, responsibility for administering and managing the programs under Section 8(a) and 15 of the Small Business Act, as amended, and the minority business program; changes the names of the small business program to small and disadvantaged business program; updates procedures for carrying out the goals of the programs and sets out the duties of official personnel to be involved in the programs.

The Department of Labor has determined that the proposal in this document is not a major regulation that requires the preparation of a regulatory analysis; within the meaning of Executive Order 12044 and the Department's guidelines published at 44 FR 5570.

DATE: Written comments concerning these proposed regulations are invited and must be received on or before February 17, 1981.

ADDRESS: All comments shall be submitted in writing to Walter C. Terry, Director, Office of Small and Disadvantaged Business Utilization, U.S. Department of Labor, Room S-1325, 200 Constitution Avenue, NW., Washington, D.C. 20210.

FOR FURTHER INFORMATION CONTACT:

Mr. Walter C. Terry (202) 523-9148 or Mrs. Katherine M. Lee (202) 523-9151.

Accordingly, it is proposed to amend Part 29-1 of Title 41 of the Code of Federal Regulations by removing Subpart 29-1.7 in its entirety and by substituting it with a new Subpart 29-1.7; and to add two new entries, Subparts 29-1.8 and 29-1.13, to read as follows:

PART 29-1—GENERAL

* * * * *

Subpart 29-1.7—Small and Disadvantaged Business Concerns

Sec.

29-1.700 General.
29-1.701 Definitions.
29-1.701-1 Disadvantaged business concerns.
29-1.702-50 General policy.
29-1.704 Agency program direction and operation.
29-1.704-1 DOL headquarters.
29-1.704-2 DOL agency heads.
29-1.704-3 DOL procuring activities.
29-1.704-4 Small and disadvantaged business specialists.
29-1.704-5 Responsibilities of the procurement office.
29-1.704-6 Responsibilities of the program office.
29-1.704-50 Goals.
29-1.705 Cooperation with the Small Business Administration.
29-1.706 Procurement set-asides for small business.
29-1.706-1 General.
29-1.706-3 Withdrawal or modification of set-asides.
29-1.706-50 Procurement set-asides for small business when an SBA representative is not available.
29-1.706-51 General.
29-1.706-52 Review of set-aside recommendations initiated by small and disadvantaged business specialists.
29-1.706-54 Small business set-asides for proposed procurements.
29-1.708 Certificate of competency program.
29-1.708-2 Applicability and procedures.
29-1.710 Subcontracting with small and disadvantaged business concerns.
29-1.710-1 General.
29-1.710-3 Required clauses.
29-1.713 Contracts with the Small Business Administration.
29-1.713-1 Authority.
29-1.713-2 Policy.
29-1.713-50 Procurement of technical requirements.
29-1.750 Business opportunity conferences.

Subpart 29-1.8—Labor-Surplus Area Concerns

29-1.802 Labor-surplus area policy.
29-1.802-1 General policy.
29-1.802-50 Specific policies.

Sec.
29–1.805 Subcontracting with labor-surplus area concerns.
* * * * *

Subpart 29–1.13—Minority Business Enterprise

29–1.1300 Scope of subpart.
29–1.1302 Agency programs.
29–1.1302–50 DOL implementation.

Authority: 63 Stat. 389 (40 U.S.C. 486(c)); 80 Stat. 379 (5 U.S.C. 301); sec. 202, Pub. L. 95.507, 92 Stat. 1761 (15 U.S.C. 637(a)); sec. 221, Pub. L. 95.507, 92 Stat. 1770 (15 U.S.C. 644).

* * * * *

Subpart 29–1.7—Small and Disadvantaged Business Concerns

§ 29–1.700 General.

This subpart sets forth the policies for the establishment of a Small and Disadvantaged Business Utilization Program (SDBU) including labor-surplus areas, within the Department of Labor.

§ 29–1.701 Definitions.

The definitions of small business concerns are promulgated by the Small Business Administration. when an Agency is in doubt as to the specific small business definition that should apply to a particular acquisition, advice from the Small Business Administration office having jurisdiction over the geographical area in which the contracting officer is located shall be requested to assist in making a determination.

§ 29–1.701–1 Disadvantaged business concerns.

(a) As used throughout this part, a disadvantaged business concern means a business concern which is at least 51 percent owned by one or more socially and economically disadvantaged individuals; or, in the case of any publicly owned business, at least 51 percent of the stock is owned by one or more socially and economically disadvantaged individuals and whose management and daily business operations are controlled by one or more of such individuals.

(b) Socially disadvantaged individuals are those who have been subjected to racial or ethnic prejudice or cultural bias because of their indentity as a member of a group without regard to their individual qualities.

(c) Economically disadvantaged individuals are those socially disadvantaged individuals whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same business area who are not socially disadvantaged. In detemining the degree of diminished credit and capital opportunities, the SBA shall consider, but not be limited to, the assets and net worth of such socially disadvantaged individuals.

§ 29–1.702–50 General policy.

The Department of Labor (DOL) fully supports the Government's Small and Disadvantaged Business Utilization program for placing a fair proportion of its private sector purchases and contracts for supplies, research and development, and services (including contracts for maintenance, repairs, and construction) with small and disadvantaged business concerns. Every effort should be made to encourage participation by such concerns in the acquisition of equipment, supplies, and services that are within their capabilities.

§ 29–1.704 Agency program direction and operation.

§ 29–1.704–1 DOL headquarters.

(a) The Office of Small and Disadvantaged Business Utilization (OSDBU), Office of the Under Secretary, is responsible for the overall management and direction of the DOL Small and Disadvantaged Business Utilization Program. Any changes made in the program will originate in and be the responsibility of this office. All comments or inquiries concerning the program should be directed to the Director, OSDBU.

(b) The responsibilities of the Director, OSDBU, include, but are not limited to, developing standards, procedures and operating guidelines for effective administration of the program; developing, in coordination with agency heads and the Small Business Administration (SBA), departmental goals; reviewing and evaluating agency objectives, procedures, and accomplishments, and recommending changes or corrective actions where appropriate; exercising functional authority over SDB specialists in matters relating to small and disadvantaged business; advising the Under Secretary and other DOL officials on matters relating to the program; and representing DOL before other Government agencies on matters primarily affecting small, disadvantaged, and labor-surplus area business concerns.

(c) The Director, OSDBU, reserves the right to screen and/or endorse all procurement requests at his discretion to determine the feasibility of small, disadvantaged, and labor-surplus area concerns procurement action.

§ 29–1.704–2 DOL agency heads.

Each agency head within the Department of Labor is responsible for insuring that all policies, procedures and regulations pertaining to the Department's small and disadvantaged business utilization program are effectively implemented at all operational levels under his/her jurisdiction; for insuring the establishment of realistic and obtainable SDB goals; for timely transmission of all communications related to the Department's SDBU program to the heads of procuring activities; and for fully endorsing and supporting recommended departmental seminars, conferences, and special forums relating to the SDBU program.

§ 29–1.704–3 DOL procuring activities.

(a) The head of each procuring activity, including regional administrators and staff office directors whose programs generate contracts, is responsible for the effective implementation and success of the Department's SDBU program within his/her respective activity. Such individual shall assure that contracting personnel, as well as program personnel, utilizing their services, take maximum action to increase the level of participation by small, disadvantaged, and labor surplus area business concerns in DOL procurement activity.

(b) The head of each procuring activity, in consultation with the Director, OSDBU, shall appoint by name and in writing, qualified, senior level SDB specialists to perform the duties set forth in § 29–1.704–4 of this part. Such S/DB specialists shall be directly responsible to the appointing official in matters relating to small and disadvantaged business, and not subject to the direction of contracting or technical personnel. Appointments shall be made on full or part-time basis, depending on the volume of work. However, where the appointees duties as SDB specialists are to be on a part-time basis, the appointment shall clearly indicate that the part-time nature of the duty shall in no way relieve the individual from full responsibility for effectively accomplishing the objectives of the SDBU program. Only individuals possessing the necessary business acumen, knowledge of DOL procurement policies and procedures, and program background to effectively accomplish the objectives of the SDBU program shall be considered for the appointment. A copy of each appointment and termination of appointment of all such specialists shall be forwarded to the Office of Small and Disadvantaged Business Utilization.

(c) The mission and function statement of each organization having procurement authority shall be revised to include the responsibility for coordinating with the Office of Small and Disadvantaged Business Utilization in implementing Sections 8 and 15 of the Small Business Act.

(d) The position description for each S/DB specialist shall reflect those duties and functions assigned in accordance with policies, standards, technical guidance, goals and objectives set by the Office of Small and Disadvantaged Business Utilization for implementing the Department's SDBU programs.

§ 29-1.704-4 Small and disadvantaged business specialists.

(a) The small and disadvantaged business specialist, appointed pursuant to § 29-1.704-3, shall serve as S/DB coordinator for his/her respective activity to provide a central point of contact to which small and disadvantaged, and labor-surplus area business concerns may direct inquiries concerning participation in the procurement program. In addition to performing the functions specifically directed by this subpart, the SDB specialist shall perform any additional functions required to implement the SDBU program.

(b) Small and disadvantaged business specialists shall perform the following duties as are appropriate for his/her activity:

(1) Maintain a program designed to locate capable small, disadvantaged, and labor-surplus area business sources for current and future procurements, through SBA or other sources, including the establishment and maintenance of a listing of such firms, utilization of SBA's PASS system, and the National Minority Purchasing Council's Vendor Information Services;

(2) Participate in goal setting procedures and planning activities as described in § 29-1.704-50 of this chapter;

(3) Coordinate inquiries and requests for advice from small and disadvantaged business concerns on procurement matters;

(4) Prior to issuance of solicitations, review each proposed procurement action expected to exceed $10,000, including modifications and/or amendments, which have not been reserved for small business set aside to determine that small and disadvantaged business concerns will receive adequate consideration, including initiation of set-asides or 8(a) contracting procedures where appropriate, in accordance with § 1-1.705-3 of this title, and/or possible set-aside for LSA acquisitions. Subsequent to each review, advise contracting officer in writing of all recommendations citing rationale for same;

(5) Review proposed requirements for possible breakout of items suitable for procurement from small and disadvantaged business concerns;

(6) When requested, advise small and disadvantaged business concerns of financial, management, and technical assistance available under existing laws and regulations, from Federal agencies and small business development organizations;

(7) Participate in determinations concerning responsibility and eligibility of small and disadvantaged business concerns;

(8) Participate in the evaluation of prime contractors' small and disadvantaged subcontracting programs (see Federal Register Notices, April 20, 1979 (44 FR 23610) and its amendment on June 18, 1979 (44 FR 35068);

(9) Assure that participation of small and disadvantaged business concerns is accurately reported (see § 1-1.709 of this title and § 29-1.709 of this part;

(10) Make available to SBA copies of solicitations when so requested;

(11) Act as a liaison between the contracting officer, the OSDBU, and SBA offices in connection with set-asides, Certificates of Competency, and other matters in which the SDBU program may be involved. Procurements estimated to cost $100,000 or more, in which Certificates of Competency are requested, shall be reported to the Director, OSDBU. The report shall contain a description of the requirement, a list of the bidders or proposers, the contract prices specified in the bids or proposals submitted, and the reason for the proposed rejection of an otherwise acceptable small business bid or proposal;

(12) In cooperation with the contracting officer and program personnel, seek and develop information on the technical competence of small business concerns for research and development contracts. Regularly bring to the attention of the contracting officer and technical personnel descriptive data, brochures, and other information as to small business concerns that are apparently competent to perform research and development work in fields in which the DOL principal operating component is interested;

(13) Participate, where appropriate, on Contractor Procurement Systems Reviews to review disadvantaged business concern's performance. Review and maintain copies of such reports on major DOL prime contracts;

(14) Insure that requirements which have an anticipated value of less than $10,000 and which are subject to small purchase procedures be reserved exclusively for small and disadvantaged business concerns unless the contracting officer is unable to obtain offers or quotations from two or more small and/or disadvantaged business concerns that are competitive with market prices and in terms of quantity and delivery of the goods and services being purchased;

(15) Assure that the subcontracting clause entitled "Utilization of Small Business Concerns and Small Business Concerns Owned and Controlled by Socially and Economically Disadvantaged Business Concern's" as prescribed by the Temporary Regulation 50, Supplement 2, (45 FR 35809, May 28, 1980), is included in applicable solicitations;

(16) Assist contracting officers in establishing criteria for and determining acceptability of small business and small disadvantaged business concerns subcontracting plans submitted by prime contractors;

(17) Provide upon request, small and disadvantaged business concerns with a source list of firms solicited for any proposed procurements which contains the subcontracting clause entitled "Utilization of Small Business Concerns and Small Business Concerns Owned and Controlled by Socially and Economically Disadvantaged Individuals;

(18) Assure that the organization maintains a list of products and services which have been placed as repetitive small business set-asides;

(19) Participate in government-industry conferences and meetings to assist small and disadvantaged business concerns, including Business Opportunity/Federal Procurement Conferences, Minority Business Enterprises Procurement Seminars, and Minority Business Opportunity Committee meetings;

(20) Brief the head of the procuring activity no less than quarterly, concerning the status of the activity's small and disadvantaged business utilization program in relation to goals and objectives established; and

(21) Advise and assist contracting officers in discharging their responsibilities by:

(i) monitoring and reviewing contractor performance to determine compliance with small and disadvantaged business subcontracting plans;

(ii) developing and maintaining records and reports that reflect such compliance or non-compliance.

§ 29–1.704–5 Responsibilities of the procurement office.

(a) Each procurement office shall take positive action to identify equipments, products and services where a potential exists for increasing the small and disadvantaged business concern's share of contract awards. Each procurement office shall, to the maximum extent feasible, arrange for the making of unilateral small business set-asides on all contracting actions which qualify. The procurement office shall take appropriate action to provide maximum advance and current information, assistance and counseling of such nature and extent as to enable small business concerns to take full advantage of available DOL business opportunities and to compete for contracts.

(b) In accordance with 41 CFR 1–2.205, each procurement office shall maintain a bidder's mailing list. Each office shall insure that bidder's mailing lists identify small and disadvantaged business concerns and that all solicitations state the applicable small business size standard and product classification.

(c) The responsibilities set forth in paragraph (c) of this section are intended to complement the responsibilities of the small and disadvantaged business specialists.

§ 29–1.704–6 Responsibilities of the program offices.

Program offices, whose activity generates requirements for contract actions, have a major responsibility in the actual implementation and success of the Department's SDBU program. Such program directors are responsible, in cooperation with the appropriate contracting officer, to actively seek out and identify qualified small and disadvantaged sources and to structure and tailor requirements to permit their participation.

§ 29–1.704–50 Goals.

Each agency head, in cooperation with the Director, OSDBU, is required to establish fiscal year goals for small and disadvantaged business concerns to participate in DOL procurement activity within their respective agency. Final goals shall be approved by the Director, Office of Small and Disadvantaged Business Utilization. Agency heads and staff directors whose programs generate contract requirements shall submit to the Director, OSDBU, the following data no later than September 15 of each fiscal year.

(a) An estimate of the total dollar amount of all prime contracts having a value of $10,000 or more to be awarded by the close of the next fiscal year;

(b) An estimate for prime contract awards valued at $10,000 or more to be made to small business concerns during the next fiscal year expressed as a percentage of the estimated total dollar amount of prime contracts to be awarded by the close of the current fiscal year;

(c) An estimate for prime contract awards having a value of $10,000 or more to be made to the Small Business Administration under the authority of Section 8(a) of the Small Business Act as amended by Pub. L. 95–507 expressed as a percentage of awards to be made to small business in paragraph (b) of this section;

(d) An estimate for prime contract awards having a value of $10,000 or more to be made to small business concerns owned and controlled by disadvantaged individuals under authority other than Section 8(a) of the Small Business Act expressed as a percentage of awards to be made to small business in paragraph (b) of this section;

(e) The combined goals for prime contract awards in paragraphs (c) and (d) of this section expressed as a percentage of the estimated total dollar amount of prime contracts having a value of $10,000 or more to be awarded by the close of the current fiscal year;

(f) A goal for prime contract awards having a value of $10,000 or more to be made to firms located in labor-surplus areas in accordance with the labor-surplus area set-aside procedures expressed as a percentage of the estimated total dollar amount of prime contracts to be awarded by the close of the current fiscal year;

(g) An estimate of the total dollar amount of the prime contracts to be awarded during the current fiscal year which will require the prime contractor to establish goals for subcontract awards to small business and to small businesses owned and controlled by individuals who are socially and economically disadvantaged;

(h) An estimate for subcontracts to be awarded by prime contractors to small business in order to meet contractually established goals expressed as a percentage of paragraph (g) of this section; and

(i) An estimate for subcontracts to be awarded by prime contractors to small businesses owned and controlled by socially and economically disadvantaged individuals in order to meet contractually established goals expressed as a percentage of paragraph (g) of this section.

§ 29–1.705 Cooperation with the Small Business Administration.

All DOL procurement activities are responsible for consulting and cooperating with SBA in carrying out the purposes of the Small Business Act as amended by Pub. L. 95–507.

§ 29–1.706 Procurement set-asides for small business.

§ 29–1.706–1 General.

(a) Department of Labor procurements which are set aside completely are identified in § 29–1.706–54 of this part.

(b) *Implementation.* (1) An individual procurement or class of procurements shall be set aside entirely for small business labor-surplus area concerns or small business concerns or labor-surplus area concerns when the contracting officer is able to identify two or more qualified sources, and there is reasonable expectation that responses will be received from small business labor-surplus area concerns, or small business concerns, or labor-surplus area concerns to ensure adequate competition. In the event a total set-aside is inappropriate, a partial set-aside shall be considered, in which case the same criteria for a total set-aside shall be applied by the contracting officer.

(2) Determinations for set-asides shall be made by the small and disadvantaged business specialists and the contracting officer, using Form DOL 653.

§ 29–1.706–3 Withdrawal or modification of set-asides.

Withdrawal or modification of an individual or class set-aside which was originally established upon the recommendation of the SDB specialist may be proposed by the contracting officer by giving notice, containing the reason for the proposed withdrawal or modification, to the SDB specialist. If the SDB specialist does not agree to a withdrawal or modification, he or she may appeal to the head of the procuring activity, whose decision, in writing, shall be final. Notification regarding all set-aside withdrawals shall be furnished to the Director, Office of Small and Disadvantaged Business Utilization. The director, OSDBU, may appeal to the Secretary.

§ 29–1.706–50 Procurement set-asides for small business when an SBA representative is not available.

§ 29–1.706–51 General.

If no SBA representative is available, the SDB specialist shall initiate recommendations to the contracting officer for small business set-asides with

respect to individual procurements or classes of procurements or portions thereof. The S/DB specialist set-aside recommendations shall be entered on Form DOL 653, with the reasons for the type of set-aside recommended or the reasons for recommending against a set-aside. The form shall ultimately be placed in the contract file.

§ 29-1.706-52 Review of set-aside recommendations initiated by small and disadvantaged business specialists.

(a) When a small and disadvantaged business specialist has recommended that all, or a portion, of an individual procurement or class of procurements be set aside for small business, the contracting officer shall promptly either (1) approve the recommendation, or (2) disapprove the recommendation, stating in writing the reasons for disapproval. If the contracting officer disapproves the S/DB specialist's affirmative recommendation, the SDB specialist may appeal in writing, to the head of the procuring activity for a final decision. A memorandum of the decision by the head of the procuring activity shall be attached to the review form and placed in the contract file.

(b) After receipt of the final decision by the head of the procuring activity, and if the decision approves the action of the contracting officer, the SDB specialist shall forward for information and management purposes complete documentation of the case to the Director, Office of Small and Disadvantaged Business Utilization.

§ 29-1.706-54 Small business set-asides for proposed procurements.

(a) All procurements under $10,000, awarded through small purchase procedures (except for mandatory sources), shall be set aside for small business.

(b) Each proposed procurement for construction estimated to cost between $10,000 and $5 million shall be set aside for exclusive small business participation. Such set-asides shall be considered to be unilateral small business set-asides, and shall be withdrawn, in accordance with the procedures of 1-1.706-3 of this title and § 29-1.706-3, only if found not to serve the best interest of the Government.

(c) Small business set-aside preferences for construction procurements in excess of $5 million shall be considered on a case-by-case basis.

(d) In addition to paragraphs (a) and (b) of this section, Contracting Officers are authorized to seek set-asides for all susceptible procurements including research, development, and evaluation.

§ 29-1.708 Certificate of competency program.

§ 29-1.708-1 General.

The Small Business Administration has statutory authority (15 U.S.C. 637(b)(7)(A)) to certify the competency of any small business concern as to all elements of responsibility, including, but not limited to, capability, competency, capacity, credit, integrity, perseverance, and tenacity to receive and perform a specific Government contract.

§ 29-1.708-2 Applicability and procedures.

§ 29-1.710 Subcontracting with small and disadvantaged business concerns.

§ 29-1.710-1 General.

(a) It is the Department of Labor's policy to support the Federal Government's effort to enable small business concerns and Small Disadvantaged Business concerns to be treated fairly as subcontractors performing work or rendering services to prime contractors or subcontractors under DOL contracts, and to assure that prime contractors and subcontractors carry out this policy.

(b) Procuring activities shall maintain lists of active prime contracts containing the clause entitled "Subcontracting Plan for Small Business and Small Business Concerns Owned and Controlled by Socially and Economically Disadvantaged Individuals."

(c) Small Disadvantaged Business specialists shall monitor prime contractor's subcontracting programs and shall, insofar as practicable, participate in on-site small and disadvantaged business subcontracting reviews. In the event deficiencies are noted, SDB specialists shall recommend remedial action to the cognizant Contracting Officer. In addition, SDB specialists shall notify SBA and OSDBU of the award of contracts, amendments and/or modifications that contain subcontracting plans.

(c) The OSDBU shall be provided an opportunity to review all solicitations that meet the $500,000 threshold prior to release to the public. In addition, prior to execution of any negotiated contractual document requiring a subcontracting plan, the OSDBU shall be provided an opportunity to review the total procurement package, including the proposed subcontracting plan.

§ 29-1.710-3 Required clauses.

The clauses set forth by Temporary Regulation 50, Supplement 2, shall be used in solicitations and contracts which exceed the sepcified amounts, in accordance with the prescribed procedures.

§ 29-1.713 Contracts with Small Business Administration.

§ 29-1.713-1 Authority.

This section sets forth provisiosn for contracting with the Small Business Administration under section 8(a) of the Small Business Act. The "8(a)" contract program is a socioeconomic, Congressionally-mandated and presidentially-sponsored program aimed at opening the doors of Government contracting opportunities to disadvantaged businesses unable or unlikely to compete successfully for a contract.

§ 29-1.713-2 Policy.

(a) It is the policy of DOL to give full consideration to contracting with SBA in order to foster and assist in the establishment and growth of 8(a) firms to the maximum extent practicable so that these firms may be self-sustaining, viable, competitive business entities within a reasonable period of time.

(b) To promote the policy in paragraph (a) of this section, DOL procurement activites are to enter into contracts with the Small Business Administration (SBA), and SBA may subcontract with 8(a) firms. The authority to negotiate these subcontracts may be delegated to DOL by SBA. In addition, DOL procurement activity shall take the necessary steps to:

(1) Invite approprite SBA field representatives to identify needs for 8(a) contracts and to provide for cooperation and assistance on the part of DOL in verifying the availability or nonavailability of requirements, funding, and other pertinent factors; and

(2) Propose any requirement which appears to offer potential opportunity for contracting with SBA under authority of Section 8(a) of the Small Business Act, for consideration by appropriate SBA field representatives.

(c) The basis for entering into an 8(a) contract will be SBA's certification to DOL that SBA, through the 8(a) firm, is competent to perform a specific DOL requirement. The signing of the contract document may be accepted as SBA's certification.

(d) As is true of small businesses in general, 8(a) firms have varying degrees of experience in the business world, and some may not have knowledge of the complexity of Government procedures and obligations the procedures impose on the contractor. Prior to initiating formal negotiations with an 8(a) firm, contracting personnel and Minority Business Enterprise Coordinators (MBEC) should make a special effort to ascertain whether the prospective

contractor needs assistance in understanding Government procurement procedures. Whenever possible, assistance should be provided promptly, and the prospective contractor should be advised that additional management and technical assistance is available from the Small Business Administration.

§ 29-1.713-50 Procurement of technical requirements.

(a) *Source selection.* The section 8(a) program is a business development program, and the policy expressed in § 1-3.101(d) of this title does not apply. Additionally, SBA has ultimate responsibility for nomination of an 8(a) subcontractor for a proposed 8(a) requirement and may elect to deviate from the usual source nomination procedures.

(b) *Debriefing.* A debriefing, when requested in writing, shall be provided by the contracting officer to an 8(a) firm that has been unsuccessful in an 8(a) competition.

(c) *Liaison with the Small Business Administration.* Procuring activities will maintain a continuous liaison with the Office of Business Development, SBA, to ensure that the overall goals of each activity are achieved. In the event of a dispute between a procuring activity and an SBA representative regarding any aspects of 8(a) contracting, the procuring activity must promptly notify the OSDBU.

(1) Each 8(a) firm or group of firms nominated for a specific 8(a) requirement must be approved by SBA for that particular 8(a) requirement prior to any discussions with the firm(s).

(2) The business development responsibility of SBA requires them to assist in and monitor the growth and development of all 8(a) firms. It is incumbent upon DOL to assist SBA in this effort by utilizing the nomination process in a manner that would make use of the largest possible number of 8(a) firms.

(d) *Contract termination.* The OSDBU and SBA are to be notified prior to initiating final action to terminate an 8(a) contract. (See paragraph (c) of special 8(a) contract conditions prescribed by § 1-1.713-3(d) of this title.)

§ 29-1.750 Business opportunity conferences.

The Department of Commerce is responsible for coordinating the participation of Federal civilian agencies in a continuing series of conferences which are generally sponsored by local Chambers of Commerce. The objectives of these conferences are:

(1) Location of additional procurement sources to broaden the procurement base of Federal buying agencies;

(2) Stimulation of local, regional, and national economic growth, national security, and cost reduction;

(3) Location of underutilized production capacity;

(4) Prevention or elimination of pockets of underemployment; and

(5) Assistance of small business concerns.

As notified by the OSDBU, DOL procurement activities shall provide appropriate small business specialists or procurement personnel to participate in person-to-person counseling at such conferences. Ordinarily, participation by procurement activities will be restricted to conferences held within the geographical areas adjacent to their procurement offices.

Subpart 29-1.8—Labor-Surplus Area Concerns

§ 29-1.802 Labor-surplus area policy.

§ 29-1.802-1 General policy.

It is the policy of the Department of Labor to award contracts with eligible labor-surplus area concerns. All procuring activities shall take positive action to award contracts to concerns that will perform substantially in labor-surplus areas. Heads of procuring activities shall assign SDB specialists to serve as liaison officer and responsibility to administer the program within his/her area.

§ 29-1.802-50 Specific policies.

Small business specialists shall assist contracting officers in developing and maintaining source lists of small business and other concerns in labor-surplus areas.

§ 29-1.805 Subcontracting with labor-surplus area concerns.

(a) Procuring activities shall encourage prime contractors to plan to award subcontracts with labor-surplus area concerns. Procuring activities shall maintain lists of prime contracts of $500,000 or more which contain the labor-surplus area subcontracting program clause in FPR 1-1.805-3(b) of this title. Lists shall contain:

(1) The title, address, and telephone number of the prime contractor's liaison office;

(2) Contract estimated value;

(3) Period of performance;

(4) Nature of the work to be performed; and

(5) Contract number.

* * * * *

Subpart 29-1.13—Minority Business Enterprise

§ 29-1.1300 Scope of subpart.

This subpart prescribes Department of Labor policies, procedures and contract clauses which establish a minority business enterprise program pursuant to the provisions of Subpart 1-1.13 of this title. This subpart is in addition to the policies and procedures for contracts (with the Small Business Administration pursuant to Section 8(a) of the Small Business Act) as prescribed under Subpart 1-1.7 of this title and Subpart 29-1.7 of this part and as otherwise prescribed by law.

§ 29-1.1302 Agency programs.

§ 29-1.1302-50 DOL implementation.

(a) In accordance with provisions of Executive Order 11625, it is the policy of DOL to foster and assist in the establishment and growth of minority-owned and controlled business concerns to the maximum practicable extent in order that the concerns may become selfsustaining, viable, and competitive enterprises.

(b) The Office of Small and Disadvantaged Business Utilization (OSDBU) is responsible for the general supervision of the Department's minority business enterprise program. This office is specifically responsible for:

(1) Managing the DOL Minority Business Enterprise Program;

(2) providing staff guidance to activities of the Department;

(3) establishing effective working relations with the minority business community nationwide;

(4) representing DOL before other Government agencies on matters primarily affecting minority business affairs;

(5) providing data and information relating to the minority business program to the Secretary and all sources internal and external to DOL; and

(6) serving as the Department's monitoring and coordinating point for all matters concerning the Department's minority business enterprise program.

(c) The policies and procedures of § 29-1.704 of this part are applicable to the Minority Business Enterprise program.

(d) Procuring activities may establish internal operating procedures which implement the requirements of the regulations as set forth in this chapter, to include assignments of additional SDB specialists as needed. A copy of the procedures is to be submitted to the Director, OSDBU for review prior to issuance.

(e) Procuring activities shall submit to the Office of Small and Disadvantaged Business Utilization a report on the goals established for minority business enterprise contract and subcontract awards within the procuring activity during the Fiscal Year, no later than July 1, of each new fiscal year. Goals shall be submitted on the Department of Commerce Minority Business Enterprise Program Data Form, MBE-91. After reviewing the goals, the Director, OSDBU will notify the appropriate office of his approval or disapproval. Consolidated goal reports will be prepared by the OSDBU and submitted to the Minority Business Development Agency, Department of Commerce (DOC).

(f) Each procurement activity shall submit to the Office of Small and Disadvantaged Business Utilization a quarterly progress report on the actual contract and subcontract awards made to minority business enterprises during the preceding quarter, no later than thirty days (30) after the end of the fiscal year quarter. The progress report shall be submitted on the DOC Minority Business Enterprise Data Form MBE-91. The numbers and amounts of awards shall be reported on a cumulative basis for the preceding quarter. The following additional information shall also be submitted:

(1) For each contract awarded to the SBA under Section 8(a) of the Small Business Act, list the name of the 8(a) contractor, the date requirement was offered to SBA, the dollar amount of the contract, the date of contract award, SBA office, a brief description of work required under the contract, and the performance of the 8(a) contractor to date (e.g., satisfactory/unsatisfactory).

(2) For each procurement requirement offered to SBA under Section 8(a) of the Small Business Act and rejected by SBA, list the description of the work required under the procurement, the date the requirement was offered to SBA, the estimated dollar amount of the requirement, location of the SBA office, and the name of representative (if known), date of the SBA rejection, and reason(s) given by SBA for the rejection.

(3) For each contract awarded to a minority business enterprise, excluding Section 8(a) contracts with SBA, list the name of the contractor, a description of the work under the contract, the dollar amount of the contract and the date of contract award.

(4) For each contract awarded which contain the subcontracting clause as prescribed by OFPP (44 FR 23610), April 20, 1979 and amended June 18, 1979 (44 FR 25068), submit an optional Form 61 report which summarizes the number and dollar amounts of subcontract awards made to minority business enterprises. The head of each procuring activity shall insure that an ample supply of the optional Form 61 is on hand at each procurement office and that they are made available to contractors for their completion and quarterly submission to the contracting officer as required.

(5) In the event a procuring activity fails to meet its established goals, an explanation shall be provided on the last quarterly report for the fiscal year including specific recommendations for meeting future MBE goals.

Signed at Washington, D.C. on this 15th day of December 1980.

Alfred M. Zuck,

Assistant Secretary for Administration and Management.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Part 51c

Projects Grants for Community Health Services; Proposed Rulemaking

AGENCY: Public Health Service, HHS.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Assistant Secretary for Health with the approval of the Secretary of Health and Human Services proposes to revise the regulations governing the Community Health Centers grant program. The Health Services and Centers Amendments of 1978 made a number of changes in the statutory requirements governing the operation of the centers. The Amendments, among other things, change pharmacy services from supplemental to primary health services, establish priority for certain supplemental health services, provide an incentive for maximized collecton of fees, permit converson of certain centers from fee for service to prepaid operations, and change the governing board requirements for public centers. The proposed revisions are intended to revise the present regulations consistent with the revised statutory provisions.

DATE: Comments must be received by February 17, 1981.

ADDRESS: Written comments and recommendations should be submitted to the Director, Division of Policy Development, Bureau of Community Health Services, Health Services Administration, Room 6-40, 5600 Fishers Lane, Rockville, Maryland 20857. All comments received in timely response to this Notice will be considered and will be available for public inspection in the above-named office on weekdays between the hours of 8:30 a.m. and 5:00 p.m., Federal holidays excepted.

FOR FURTHER INFORMATION CONTACT: Margaret H. Jordan, R.N., M.P.N. Associate Bureau Director, Office for Community Health Centers, Bureau of Community Health Services, Room 7A-55, 5600 Fishers Lane, Rockville, Maryland 20857 (301 443-2260).

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Health, with the approval of the Secretary of Health and Human Services, proposes to revise 42 CFR Part 51c to implement amendment to section 330 of the PHS Act (42 U.S.C. 254c), pertaining to the Community Health Services grant program. These amendments were enacted by Title I of Pub. L. 95-626, the "Health Services and Centers Amendments of 1978." The amendments made a number of changes in statutory requirements, and changes in the present regulations (42 CFR Part 51c) are necessary in order to make the regulations compatible with the new statutory requirements.

There are three statutory changes in the definition of "supplemental health services" that are self-executing and the Department proposes to implement the statutory language simply by amending the regulations, where appropriate, to reflect these changes, as follows: (1) Deleting the words "(including nutrition education and social services)" from "public health services" and inserting "(including, for the social and other nonmedical needs which affect health status, counseling, referral for assistance, and followup services);" (2) adding to "health education services" "including nutrition education;" and (3) substituting "appropriate personnel" for "outreach workers" in the description of facilitating services which appears in the definition of "supplemental health services." *See,* proposed § 51c.102.

Following is a summary of the major changes proposed to be made in the regulations:

1. Five categories of health services (including primary health services) must be provided by community health centers. Several of the services need be provided only if they are appropriate for the particular center, and under the existing regulations the Secretary must determine that those services are appropriate before their provision is mandatory. The new legislation provides that centers themselves are authorized to make this determination

with respect to environmental health services. *See,* section 330(a)(4). While the intent of this amendment is to provide increased flexibility to centers in determining which environmental health services, if any, to provide in their catchment areas, the Secretary proposes that all centers should, in making this determination, consider at least: (a) The number of individuals requiring environmental health services; (b) the projected utilization of these services; (c) other community resources available to address the problem; and (d) a determination by the governing board of the need for these services in the project's catchment area. This information is required in the proposed regulation at § 51c.302(c)(2).

2. The statute was amended to shift pharmaceutical services from a supplemental health service to a primary health service, and the proposed regulation reflects this change in the definition of "primary health services." *See,* proposed § 51c.102. Pharmaceutical services, however, are required only "as appropriate for particular centers," and the statute does not require the hiring of a pharmacist or the provision of the service onsite. The determination of whether and what pharmaceutical services are "appropriately" provided by a center is proposed to be made, as in the case of most other specified services, by the Secretary in order to ensure that needed services are provided despite the additional cost. It should be noted that there is only one instance in which the statute specifically states that the centers should determine for themselves whether a specific service (environmental health) is appropriate. *See,* section 330(a)(4). The Department proposes that the Secretary make the determination of when it is appropriate for a center to provide pharmaceutical services by using the same general criteria used to determine whether it is appropriate for a center to provide any other service listed in the statute, i.e., where there is a need for the service and it is determined to be feasible to provide the service taking into account the center's projected revenue, other resources, and grant support. *See,* proposed definition of "primary health services" at paragraph (g) (§ 51c.102). With respect to pharmaceutical services, the proposed regulation is general in coverage and would provide the basis for guidelines to specify appropriate methods of providing pharmacy services.

3. Another amendment to section 330 provides that up to 5 percent of appropriations for operations may be used for grants to enable centers to plan and develop the provision of services on a prepaid basis if: (a) The center has received operating grants for at least 2 consecutive years preceding the year for which this grant is sought; (b) the governing board requests that the center provide health services on a prepaid basis to some or all of the population the center serves; and (c) the Secretary is assured that provision of services on a prepaid basis will not diminish health services to the population previously served. *See,* section 330(d)(1)(C).

The proposed regulations would require that an application give the reason for seeking to provide health services on a prepaid basis and include assurances satisfactory to the Secretary that: (1) Providing services on a prepaid basis will not result in a diminution of the health services previously provided; and (2) the center will continue to make services available to all residents of the catchment area regardless of method of payment or health status.

The Department proposes to require that centers develop a plan which: (a) Describes the proposed services to be provided on a prepaid basis and the marketing plan; (b) if not proposing to become a qualified Health Maintenance Organization, gives the reasons why; and (c) describes the population to whom the center proposes to provide services on a prepaid basis. *See,* proposed Subpart E.

4. Section 330(d)(4)(A), as amended, provides that the amount of a grant (except for grants under section 330 (d)(1)(C)) may not exceed the difference between costs of operation and the amount of income reasonably expected to be received from: (a) State, local, and other funds, and (b) fees, premiums and third-party reimbursements. The proposed regulations state that in determining projected income for the purpose of determining the amount of a grant or determining the amount of income which may be retained by a center, the Secretary shall shall take into consideration: (a) previous collections by the center; (b) previous billing levels; (c) any changes in reimbursement program policy by a State or local government affecting center collections; (d) patient utilization; and (e) demographic characteristics of the catchment area, including the number of persons eligible for services under Titles XVIII and XIX of the Social Security Act. *See,* proposed § 51c.106(a).

5. An incentive provision has been added which permits centers and projects to retain at least half of the amount by which actual income (from fees, premiums and third-party reimbursements) exceeds costs and projected income. These funds must be used for the following five statutory purposes: (a) Improvement of services; (b) expansion of services; (c) an increase in the number of persons served; (d) construction and modernization of facilities; and (e) establishment of financial reserves for conversion to a prepaid basis. Without the approval of the Secretary, however, not more than one-half of the retained sum may be used for construction and modernization of center facilities. *See,* section 330(d)(4)(B).

The Secretary proposes to establish criteria to be used in determining whether a center or project may be permitted to retain more than one-half of excess income and, if so, how much more. In making this determination, the Secretary proposes to consider: (a) The center's or project's past performance in administration, management, and provision of services; (b) the center's or project's past collection efforts; (c) the need for increased services in the catchment area; (d) the use of funds proposed in the governing board request; and (e) State and local levels of support for the center or project. *See,* proposed § 51c.107(b).

6. An application for a grant must, under the amendments to section 330, contain a description of the need for environmental health services, and must also contain a description of the need for home health services, dental services, health education services, and services which promote and facilitate optimal use of primary health services. If funds for these services are not requested, the reasons for not requesting them must be given. *See,* section 330(e)(2).

The proposed regulations at § 51c.302 (c) through (e) would require that the need for these services be described in the application in terms of various factors such as the number of individuals requiring the services, the projected utilization of the services, and the availability of other community resources to meet the need for these services. If the applicant requests funds for support of any of these services, the proposed regulations would require the Secretary to provide funds for this purpose (in an amount determined by the Secretary) or provide the applicant with a written finding that the service is not needed. *See,* proposed § 51c.106(a)(2).

7. The Secretary, by a written finding of need to the grantee, may require the grantee to provide any health service listed in the statute for which the Secretary finds there is a specific need in the catchment area (section 330(e)(2)). It is proposed to implement this

requirement in a broad manner. Thus, it is proposed that if the Secretary makes a finding that a particular service (e.g., neonatal care, immunizations) is needed in the catchment areas of all centers, a notice to this effect would be published in the Federal Register with copies to all grantees. Each center would be required to provide assurances to the Secretary that those services will be provided. The Secretary may also require an individual center to provide a particular service. *See,* proposed §§ 51c.302(g); 51c.303(b); 51c.402(c); 51c.403(b).

8. Section 330c(e)(5), as amended, authorizes improvements to private property to be supported with section 330 funds if necessary to alleviate a hazard to the health of those residing on or otherwise using the property and of other persons in the catchment area, but only (1) upon specific prior authorization by the Secretary; (2) in the amount approved by the Secretary; (3) with the property owner's written consent; and (4) where the Secretary has determined that funds for the improvement are not available from any other source.

The qualifying language of the amendment and the legislative history make it clear that Congress intended this provision to be implemented in a very limited manner. Therefore, consistent with the legislative requirements, prior approval of the Secretary to expend funds on such improvements will be required and proposed criteria have been developed to determine the necessity for expending funds on improvements to private property. The Department proposes to require that applicants for such funds: (1) Describe the health hazard, including the number of individuals in the catchment area affected by the health hazard; (2) describe the relationship between the proposed improvement and the health hazard; (3) describe the proposed improvement and its estimated cost; (4) identify the Federal, State, and local enforcement and environmental programs contacted in seeking resolution of the health hazard and include a copy of the response made by each of the programs and agencies contacted; (5) include a copy of the document showing the property owner's written consent; (6) identify the amount of funds in the center's approved budget available for making the proposed improvements; and (7) identify the amount of any additional funds requested for making the proposed improvement to private property. *See,* proposed § 51c.302(f).

9. Section 330(e)(3)(K) requires a community health center to develop an ongoing referral relationship with one or more hospitals. The proposed regulation would require that this relationship include: (a) Admitting privileges for center physicans; (b) consultation with specialists on the hospital staff for center patients; (c) use of laboratory and radiological services; (d) access to hospital-based prenatal and obstetrical care for center patients; (3) admission to the hospital emergency room when the center is not open; and (f) appropriate transfer of records between the hospital and center. *See,* proposed § 51c.303(r).

10. Section 330(e)(G) provides that community health centers operated by a public agency, including public benefit corporations (referred to as "public centers"), may be exempted from the requirement that their governing boards set general policies (except for public centers funded prior to October 1, 1978). The proposed regulations would exempt governing boards of public centers from performing the following functions which the Department believes are policy-setting in nature: (1) Establishing personnel policies and procedures, salary and benefit scales, employee grievance procedures and equal opportunity practices; (2) adopting policy for financial management practices including a system to insure accountability for center resources; (3) establishing center priorities and eligibility for services; and (4) selecting the location for the provision of services and quality-of-care audit procedures. *See,* proposed § 51c.304(d)(3)(vi)-(ix).

11. Program experience has revealed that there is some confusion in the interpretation of who is eligible to serve on the governing board of a center, and the phrase "or who will be served by the center" has been broadly interpreted in some instances to include anyone in the catchment area. In order to preserve the intent of the legislation to ensure that *users* of the centers participate on these boards, the Secretary proposes to modify the wording of § 51c.304(b)(1) to indicate that a majority of the board members should be composed of actual users of the center, and likely users only in the case of a new center.

Because of some confusion arising from varying interpretations of what constitutes an appropriate selection process for governing board members, proposed § 51c.304(c) would require that the process specified in the bylaws of the center for selecting board members assure that there is an opportunity for broad participation in the selection process by the residents of the catchment area. This proposed revision is consistent with legislative intent that governing boards be representative of the population to be served.

12. The existing regulations provide that a governing board member may be reimbursed for wages lost by reason of participation in the activities of such board if the member is from a family with an annual income below $10,000 or if the member is a single person with an annual income below $7,000. The Secretary proposes to eliminate the fixed dollar amount and use the more flexible "CSA Income Poverty Guidelines" as the basis for determining a governing board member's eligibility to be reimbursed for lost wages. *See,* proposed § 51c.108(b)(4).

13. In response to public comment (42 FR 6046), 42 CFR 56.303(c)(2)(i) (the migrant health center regulations) was revised to permit peer review to be conducted by health professionals who are peers of the health providers who provide the service. The Secretary is proposing an indentical change at § 51c.303(d)(2)(i).

14. The Department proposes to amend existing Subpart E, Acquisition and Modernization of Existing Buildings, to delete those elements which duplicate certain portions of 45 CFR Part 74, Administration of Grants. *See,* proposed Subpart G.

15. The Department is seeking a deviation from OMB Circulars A-102 and A-110 in order to retain the requirements for annual audits of centers' financial management systems, unless waived for good cause by the Secretary. *See,* proposed § 51c.303(e).

16. In addition to the above, several minor technical and editorial changes are proposed.

It is proposed to revise Part 51c of Title 42, Code of Federal Regulations, to read as set forth below.

Dated: August 4, 1980.

Julius B. Richmond,

Assistant Secretary for Health.

Approved: December 8, 1980.

Patricia Roberts Harris,

Secretary.

PART 51c—GRANTS FOR COMMUNITY HEALTH SERVICES

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Authority: Sec. 330, Public Health Service Act, (42 U.S.C. 254c).

Subpart A—General Provisions

§ 51c.101 To what programs do the regulations of this subpart apply?

The regulations of this subpart apply to all project grants authorized by section 330 of the Public Health Service Act (42 U.S.C. 254c).

§ 51c.102 Definitions.

As used in this part:

"Act" means the Public Health Service Act (42 U.S.C. 201 et seq.), as amended.

"Catchment area" means the area served by a project funded under section 330 of the Act.

"Community health center" or "center" means an entity which, through its staff and supporting resources or through contracts or cooperative arrangements with other public or private entities, provides for all residents of its catchment area:

(a) Primary health services;

(b) As determined by the Secretary to be appropriate for particular centers, supplemental health services necessary for the adequate support of primary health services;

(c) Referral to providers of supplemental health services and payment, as determined by the Secretary to be appropriate and feasible, for their provision of these services;

(d) Environmental health services, as determined by each center to be appropriate for itself; and

(e) Information on the availability and proper use of health services.

For purposes of this definition, the provision of a given service by a center will be determined by the Secretary to be appropriate where the Secretary finds that there is a need for the provision of the service in the catchment area and that the provision of the service by the center is feasible, taking into consideration the center's projected revenues, other resources, and grant support under this part.

"Environmental health services" means the detection and alleviation of unhealthful conditions of the environment of the catchment area, such as problems associated with water supply, sewage treatment, solid waste disposal, rodent and parasite infestation, field sanitation, housing, and treatment of medical conditions arising from these types of problems. For purposes of this part, the detection and alleviation of unhealthful conditions of the environment includes notifying and making arrangements with appropriate Federal, State, or local authorities responsible for correcting these conditions.

"Health professionals" means professionals (such as physicians, dentists, nurses, podiatrists, optometrists, and physician extenders) who are engaged in the delivery of health services and who meet all applicable Federal and State requirements to provide their professional services.

"Medically underserved populations" means the population of an urban or rural area designated by the Secretary as an area with a shortage of personal health services or a particular population group designated by the Secretary as having a shortage of these services. In designating urban and rural areas for purposes of this definition, the Secretary will take into account the following factors:

(a) Unusual local conditions which are barriers to access or to the availability of personal health services;

(b) Available health resources in relation to the size of the area and its population, including appropriate ratios of primary care physicians in general or family practice, internal medicine, pediatrics, or obstetrics and gynecology to the population;

(c) Health indices for the population of the area, such as the infant mortality rate;

(d) Economic factors affecting the population's access to health services, such as percentage of the population with incomes below the poverty level; and

(e) Demographic factors affecting the population's need and demand for health services, such as percentage of the population age 65 and over.

A list of urban and rural areas designated by the Secretary for the purposes of this definition will be published in the Federal Register from time to time.

"Nonprofit," as applied to any private agency, institution, or organization,

means one which is a corporation or association, or is owned and operated by one or more corporations or associations, no part of the net earnings of which benefits, or may lawfully benefit, any private shareholder or individual.

"Physician" means a licensed doctor of medicine or doctor of osteopathy.

"Primary health services" means:

(a) Diagnostic, treatment, consultative, referral, and other services rendered by physicians, and, where feasible, by physician extenders, such as physicians' assistants, nurse clinicians, and nurse practitioners;

(b) Diagnostic laboratory services and diagnostic radiologic services;

(c) Preventive health services, including medical social services, nutritional assessment and referral, preventive health education, children's eye and ear examinations, prenatal and post-partum care, perinatal services, well child care (including periodic screening), immunizations, and voluntary family planning services;

(d) Emergency medical services, including provision, through clearly defined arrangements, for access of users of the center to health care for medical emergencies during and after the center's regularly scheduled hours;

(e) Transportation services as needed for adequate patient care, sufficient so that residents of the catchment area served by the center with special difficulties of access to services provided by the center receive these services;

(f) Preventive dental services provided by a licensed dentist or other qualified personnel, including:

(1) Oral hygiene instruction;

(2) Oral prophylaxis, as necessary; and

(3) Topical application of fluorides, and the prescription of fluorides for systemic use when not available in the community water supply; and

(g) Pharmaceutical services, including the provision of prescription drugs, as determined by the Secretary to be appropriate for particular centers. For the purposes of this definition, the provision of pharmaceutical services by a center will be determined by the Secretary to be appropriate where the Secretary finds that there is a need for the provision of pharmaceutical services in the catchment area and that the provision of these services is feasible, taking into account the center's projected revenues, grant support, and other available resources in the catchment area.

"Public center" means a community health center funded on or after October 1, 1978, through a grant under section 330(d)(1)(A) of the Act to a public agency, including hospitals which are publicly owned and operated.

"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.

"Supplemental health services" means health services which are not included as primary health services and which are:

(a) Inpatient and outpatient hospital services;

(b) Home health services;

(c) Extended care facility services;

(d) Rehabilitative services (including physical and occupational therapy) and long-term physical medicine;

(e) Mental health services, including services of psychiatrists, psychologists, and other appropriate mental health professionals;

(f) Dental services other than those provided as primary health services;

(g) Vision services, including routine eye and vision examinations and provision of eyeglasses, as appropriate and feasible;

(h) Allied health services;

(i) Therapeutic radiologic services;

(j) Public health services (including, for the social and other nonmedical needs which affect health status, counseling, referral for assistance, and followup services);

(k) Ambulatory surgical services;

(l) Health education services, including nutrition education; and

(m) Services which promote and facilitate optimal use of primary health services and services referred to in the preceding subparagraphs of this definition, including the services of outreach workers, and if a substantial number of individuals in the population served by the center are of limited English-speaking ability, the services of appropriate personnel fluent in the language or languages spoken by a predominant number of these individuals.

§ 51.103 Who is eligible to apply for a community health services grant?

Any public or nonprofit private entity is eligible to apply for a grant under this part.

§ 51.104 How is an application made for a community health services grant?

(a) The application must contain a budget and a narrative plan of the manner in which the applicant intends to conduct the project and carry out the requirements of this part. The application must describe how and the extent to which the project has met, or plans to meet, each of the requirements in Subpart B (relating to grants for planning and developing community health centers), Subpart C (relating to grants for the operation of community health centers), Subpart D (relating to grants for the operation of community health projects), Subpart E (relating to grants for planning and developing the provision of services on a prepaid basis), or Subpart F (relating to grants for technical assistance), as applicable. In addition, applications, except for applications for grants under Subparts E and F, must include:

(1) A statement of specific, measurable objectives and the methods to be used to assess the achievement of the objectives in specified time periods of not more than 12 months.

(2) The precise boundaries of the catchment area to be served by the applicant, including an identification of the medically underserved population or populations within the catchment area. In addition, the application must include information sufficient to enable the Secretary to determine that the applicant's catchment area meets the following criteria:

(i) The size of the area is such that the services to be provided through the center are available and accessible to the residents of the area promptly and as appropriate;

(ii) The boundaries of the area conform, to the extent practical, to relevant boundaries of political subdivisions, school districts, and areas served by Federal and State health and social service programs; and

(iii) The boundaries of the area eliminate, to the extent practical, barriers to access to the services of the center resulting from the area's physical characteristics, its residential patterns, its economic and social groupings, and available transportation.

(3) The results of an assessment of the need that the population served has for the services to be provided by the project (or, in the case of applications for planning and development grants under Subpart B of this part, the methods to be used in assessing this need), considering at least the factors set forth in the definition of "medically underserved population" in § 51c.102.

(4) Position descriptions for key personnel who will be used in carrying out the activities of the project, a statement indicating the need for the positions to be supported with grant funds to accomplish the objectives of the project, and assurances satisfactory to the Secretary that all project services will be provided by appropriate health professionals.

(5) Except for applications for planning and development grants under Subpart B or this part, letters and other forms of evidence showing that efforts have been made to secure financial and professional assistance and support for the project within the proposed catchment area and the continuing involvement of the community in the development and operation of the project.

(6) A list of all services proposed to be provided by the project.

(7) A list of services which are to be provided directly by the project through its own staff and resources and a description of any contractual or other arrangements (including copies of documents, where available) entered into or planned for the provision of services.

(8) The proposed schedule of fees and schedule of discounts for services provided or to be provided by the project.

(b) The application must be executed by an individual authorized to act for the applicant and to assume on behalf of the applicant the obligations imposed by the statute, the applicable regulations of this part, and any additional conditions of the grant.

§ 51c.105 How will the Secretary determine which applicants for grants under this part to fund?

(a) *Funding criteria—General.* Within the limits of funds determined by the Secretary to be available for this purpose, the Secretary may award grants under this part to applicants which will, in the Secretary's judgment, best promote the purposes section 330 of the Act and applicable regulations of this part, taking into account:

(1) The degree to which the proposed project satisfactorily provides for the elements set forth in § 51c.203 (relating to grants for planning and developing community health centers), § 51c.303 (relating to grants for the operation of community health centers), § 51c.403 (relating to grants for the operation of community health projects), or § 51c.504 (relating to grants for planning and developing the provision of services on a prepaid basis), depending on which type of grant is sought;

(2) The extent to which the proposed project would serve "medically underserved populations" as defined in § 51c.102;

(3) The relative need of the population to be served for the services to be provided;

(4) The administrative and management capability of the applicant;

(5) The potential of the project for development of new and effective methods for health services delivery and management;

(6) The soundness of the fiscal plan for assuring effective use of grant funds and maximizing non-grant revenue;

(7) The extent to which community resources will be used in the project;

(8) Whether the project's catchment area is exclusive of the areas served by existing community health centers; and

(9) The degree to which the applicant intends to integrate services supported by a grant under this part with health services provided under other federally assisted health service or reimbursement programs or projects.

(b) *Funding criteria—Specific.* The Secretary will take into account:

(1) With respect to applicants for grants under Subpart C (relating to grants for the operation of community health centers), the number of users of the center and the level of utilization of services in previous operational periods, if any;

(2) With respect to applicants for grants under Subpart C (relating to grants for the operation of community health centers), or Subpart D (relating to grants for the operation of community health projects), the extent to which the center or project will provide preventive health services so as to maintain and improve the health status of the population served; and

(3) With respect to applicants for grants under Subpart D (relating to grants for the operation of community health projects), the extent to which the project would provide the services described in the definition of "community health center" in § 51c.102 and the feasibility of its providing all of these servics by the end of the period of support under that subpart.

(c) *Limitations.* The Secretary may:

(1) Make grants under Subparts B (relating to grants for planning and developing community health centers), D (relating to grants for the operation of community health projects) and E (relating to grants for planning and developing the provision of services on a prepaid basis) for no more than two 12-month periods for the same project, except that the Secretary may approve, for good cause shown;

(i) Extensions without additional funding, and

(ii) Extensions for closeout purposes;

(2) Make a grant under Subpart B to an entity which has been awarded a grant under Subparts C or D relating to grants for the operation of community health centers or community health projects, respectively) only if the grant under Subpart B is for a new project; and

(3) Not make a grant under Subpart D to an entity which, for the same project, has been awarded a grant;

(i) Under Subpart B for more than one 12-month period, or

(ii) Under Subpart C.

§ 51c.106 How will the amount of each grant be determined?

The Secretary will determine the amount of any grant under this part, subject to the following limitations:

(a) With respect to grants under Subpart C (relating to operating community health centers) and Subpart D (relating to operating community health projects),

(1) The amount of any grant in any fiscal year may not exceed the amount by which the costs of operation of the center or project in that fiscal year exceed the total of the State, local and other funds, and the fees, premiums, and third-party reimbursements which the center or project may reasonably be expected to receive for its operations in that fiscal year. In determining the projected income that the center or project may reasonably be expected to receive for a particular fiscal year, the Secretary will consider the following factors, as appropriate:

(i) The income received by the center or project in previous fiscal years;

(ii) The center's or project's billing level in previous fiscal years;

(iii) Any changes in reimbursement program policy by State or local governments which have affected the center's or project's collections;

(iv) The patient utilization and penetration rate; and

(v) Demographic characteristics of the catchment area, including the number of persons eligible for services under Titles XVIII and XIX of the Social Security Act; and

(2) If the application requests funds for providing

(i) Environmental health services (excluding funds requested for improvement of private property).

(ii) Home health services,

(iii) Dental services,

(iv) Health education services, or

(v) Facilitating services (as described in the definition of "supplemental health services" in § 51c.102),

the Secretary will include funds for these services in whatever amount the Secretary determines is appropriate, within the limits of available funds, unless the Secretary makes a written finding that the service is not needed. The Secretary will provide a copy of any such finding to the applicant.

(b) With respect to grants under this part that support the provision of health services on a prepaid basis, the amount

of the grant will be based upon the amount of premiums enrolled individuals cannot afford to pay, within the limits of available funds.

§ 51c.107 What incentives are provided for improved collection performance by community health centers (Subpart C) and community health projects (Subpart D)?

(a) If in any fiscal year the sum of the total of the amounts described in § 51c.106(a)(1) received by a center or project and the amount of the grant to the center or project in that fiscal year exceeds its costs of operation in that year because the amount received by the center or project from fees, premiums, and third-party reimbursements was greater than expected, the amount of the grant will be adjusted for the next fiscal year in a manner which permits the center to retain at least one-half of the excess amount. The amount retained by the center or project must be used for one or more of the following purposes:

(1) To expand or improve its services;

(2) To increase the number of eligible persons it is able to serve;

(3) To construct and modernize its facilities, except that, without the approval of the Secretary, not more than one-half of the retained sum may be used for this purpose;

(4) To improve the administration of its services program; and

(5) To establish the financial reserve as may be required for the furnishing of services on a prepaid basis.

(b) The Secretary may, upon written request from the governing board, permit the center or project to retain more than one-half of the amount by which actual income exceeds projected income from fees, premiums, and third-party reimbursements. The Secretary will consider the following factors in determining whether to permit the grantee to retain more than one-half of that amount and, if so, how much more:

(1) The center's or project's past performance in administration, management, and provision of services;

(2) The center's or project's past collection efforts;

(3) The need for increased services in the catchment area;

(4) The use of funds proposed in the governing board's request; and

(5) State and local levels of support for the center or project.

§ 51c.108 For what purposes may grant funds be used?

(a) A grantee shall only spend funds it receives under this part according to the approved application and budget, the authorizing legislation, terms and conditions of the grant award, applicable cost principles specified in Subpart Q of 45 CFR Part 74, and the regulations of this part.

(b) The purposes for which funds granted under this part may be expended include the following:

(1) The costs of acquiring and modernizing existing buildings (including the costs of amortizing the principal of, and paying interest on, loans), but only as approved in the grant award;

(2) The costs of obtaining technical assistance to develop and improve the management or service capability of the project, but only as approved by the Secretary;

(3) To reimburse members of the grantee's governing board, if any, for reasonable expenses incurred by reason of their participation in board activities;

(4) To reimburse governing board members for wages lost by reason of participation in the activities of the board, if the individual's annual income is at or below those levels set forth in the most recent "CSA Income Poverty Guidelines" (45 CFR 1060.2) issued by the Community Services Administration;

(5) The cost of delivering health services (including services rendered on a prepaid basis) to residents of the project's catchment area, within the following limitations: Grant funds may be used to pay the full cost of project services to individuals and families with annual incomes at or below those set forth in the most recent "CSA Income Poverty Guidelines" (45 CFR 1060.2) issued by the Community Services Administration, and to pay the uncompensated portion of the cost of services to all other patients. However;

(i) Charges must be made to these individuals and families in accordance with § 51c.303(g); and

(ii) Reasonable efforts must be made to collect these charges under a billing and collections system;

(6) The cost of insurance for medical emergency and out-of-area coverage;

(7) The cost of providing to the project staff training related to the provision of health services provided by the project, and, to the staff and governing board, if any, training related to the management of community health centers or projects, consistent with the applicable requirements of 45 CFR Part 74;

(8) The cost of developing and maintaining a reserve fund where required by State law for prepaid health are plans, but only as approved by the Secretary; and

(9) The improvement of private property when the conditions set forth in § 51c.302(f) have been met and the Secretary has determined that funds for the improvement are not available from any other source. The Secretary will specify the amount of grant funds which may be used for this purposes.

§ 51c.109 What confidentiality requirements apply to community health services grants?

(a) Except as set forth in paragraph (b) of this section, each recipient of a grant under this part must hold confidential all information obtained by its personnel about participants in the project related to their examination and care and may not divulge it without the individual's authorization, unless it is required by law or is necessary to provide service to the individual or in compelling circumstances to protect the health or safety of an individual.

(b) Information may be disclosed in summary, statistical, or other form which does not identify particular individuals. Information may be disclosed, whether or not authorized by the participants, to the Secretary or the Comptroller General if it is necessary for the performance of their duties under the Act. Records pertaining to project participants may be disclosed, whether or not authorized by the participants, to qualified personnel for the purpose of conducting scientific research, but these personnel may not identify, directly or indirectly, any individual participant in any report of the research or otherwise disclose participant identities in any manner.

§ 51c.110 What other regulations apply to community health services grants?

Several other regulations apply to grants under this part. These include, but are not limited to:

42 CFR Part 2—Confidentiality of alcohol and drug abuse patient records;

42 CFR Part 50, Subpart D—PHS grant appeals process;

42 CFR Part 50, Subpart E—Maximum allowable costs for drugs;

42 CFR Part 122, Subpart E—Health systems agency reviews of certain proposed uses of Federal health funds;

45 CFR Part 16—Department grant appeals process;

45CFR Part 19—Limitations on payment or reimbursement for drugs;

45CFR Part 74—Administration of grants;

45CFR Part 75—Informal grant appeals procedures (indirect cost rates, and other cost allocations);

45CFR Part 80—Nondiscrimination under programs receiving Federal assistance through the Department of Health, Education, and Welfare's implementation of Title VI of the Civil Rights Act of 1964;

45CFR Part 81—Practice and procedure for hearings under Part 80;

45CFR Part 84—Nondiscrimination on the basis of handicap in programs and activities receiving or benefiting from Federal financial assistance; and

45CFR Part 90—Nondiscrimination on the basis of age in programs or activities receiving Federal financial assistance.

§ 51c.111 When may the Secretary impose additional conditions on community health services grants?

The Secretary may with respect to any grant award impose additional conditions prior to or at the time of any award when additional conditions are necessary to assure or protect advancement of the approved program, the interest of public health, or the conservation of grant funds.

§ 51c.112 For what length of time may a grantee expect to receive grant support?

(a) The notice of grant award specifies how long the Secretary intends to support the project without requiring the project to recompete for funds. This period, called the project period, will usually be for 3–5 years, subject to the limitations set forth in § 51c.105(c).

(b) Generally, the grant will initially be for 1 year and subsequent continuation awards will also be for 1 year at a time. A grantee must submit a separate application to have the support continued for each subsequent year. Decisions regarding continuation awards and the funding level of those awards will be made after consideration of such factors as the grantee's progress and management practices, and the availability of funds. In all cases, continuation awards require a determination by the Secretary that continued funding is in the best interests of the Government.

(c) Neither the approval of any application nor the award of any grant commits or obligates the Federal Government in any way to make any additional, supplemental, continuation, or other award with respect to any approved application or portion of an approved application.

Subpart B—Grants for Planning and Developing Community Health Centers

§ 51c.201 To what programs do the regulations of this subpart apply?

The regulations of this subpart, in addition to the regulations of Subpart A of this part, apply to grants awarded under section 330(c) of the Act for projects to plan and develop community health centers which will serve medically underserved populations.

§ 51c.202 What additional information must an application for a grant under this subpart contain?

To be approved by the Secretary under this subpart, an application for a grant must, in addition to meeting the requirements of § 51c.104, contain information sufficient to enable the Secretary to determine that the project for which the grant is sought will meet the requirements of § 51c.203.

§ 51c.203 What requirements must projects supported under this subpart meet?

A project for planning and developing a community health center must accomplish the following:

(a) Prepare an assessment of the need of the population proposed to be served by the community health center for the services to be provided through the proposed center. This assessment must, at a minimum, consider the factors listed in the definition of "medically underserved population" in § 51c.102.

(b) Design a community health center program for this population, based on the assessment prepared under the preceding paragraph, which indicates in detail how the proposed center will fulfill the needs identified in the assessment and how it will meet the requirements of Subpart C of this part.

(c) Develop a plan for the implementation of the program designed under paragraph (b) of this section. The plan must provide for the time-phased recruitment and training of the personnel essential for the operation of a community health center and the gradual assumption of operational status of the project so that the project will, in the judgment of the Secretary, meet the requirements of Subpart C of this part by the end of the period of support under this subpart.

(d) Submit the plan developed in accordance with paragraph (c) of this section to the Secretary for approval. The plan may be implemented only after the Secretary has determined that the project will meet the requirements of Subpart C of this part.

(e) Make efforts to secure within the proposed catchment area of the center, to the extent practical, financial and professional assistance and support for the project.

(f) Initiate and encourage continuing community involvement in the development and operation of the project.

(g) Establish standards and qualifications for personnel (including the project director).

(h) Use, to the maximum extent feasible, other Federal, State, local, and private resources available for support of the project, prior to use of funds granted under this subpart.

Subpart C—Grants for Operating Community Health Centers

§ 51c.301 To what programs do the regulations of this subpart apply?

The regulations of this subpart, in addition to the regulations of Subpart A of this part, apply to grants under section 330(d)(1)(A) of the Act for the costs of operation of community health centers which serve medically underserved populations.

§ 51c.302 What additional information must an application for a grant under this subpart contain?

To be approved by the Secretary under this subpart, an application for a grant must, in addition to meeting the requirements of § 51c.104, meet the following requirements:

(a) Be submitted by an entity (which may be a co-applicant) which the Secretary determines is a community health center. For purposes of this paragraph, a co-applicant is a public or nonprofit private entity which has negotiated an agreement with another public or nonprofit private entity to share the functions and responsibilities of operating a community health center.

(b) Contain information sufficient to enable the Secretary to determine that the center will meet the requirements of § 51c.303.

(c) (1) Contain a description of the need in the center's catchment area for the following services:

(i) Environmental health services,

(ii) Home health services,

(iii) Dental services,

(iv) Health education services, and

(v) Facilitating services, as described in the definition of "supplemental health services" in § 51c.102;

(2) The description of need for each of these services must include the following information:

(i) The number of individuals who require the service;

(ii) The projected use of the service;

(iii) The availability of other community resources to meet the need; and

(iv) A summary of the discussion by the governing board, at a meeting open to the public for which at least 2 weeks advance notice is given to users of the center, of the need for the service.

(d) If the applicant determines that one or more of the services referred to in paragraph (c)(1) of this section is not needed, explain the reason for that decision, taking into account the factors listed in paragraph (c)(2) of this section.

(e) If a center determines that a particular service is needed but that a

request for funds for providing that service will not be made, an explanation for that determination.

(f) An applicant seeking funds for the improvement of private property must:

(1) Describe the health hazard, including the number of individuals in the catchment area affected by the health hazard;

(2) Describe the relationship between the proposed improvement and the health hazard;

(3) Describe the proposed improvement and its estimated cost;

(4) Identify the Federal, State, and local enforcement and environmental programs contacted in seeking resolution of the health hazard and include a copy of the response made by each of the programs and agencies contacted;

(5) Include a copy of the document showing the property owner's written consent;

(6) Identify the amount of funds in the center's approved budget available for making the proposed improvement; and

(7) Identify the amount of any additional funds requested for making the proposed improvement to private property.

(g) If the Secretary determines, pursuant to § 51c.303(b), that as a condition of approving the application a particular service must be provided, assurance that this service will be provided.

(h) If the applicant is a public center and the application is for a second or subsequent grant under this subpart, evidence that the governing board has approved the application; or, if the governing board has not approved the application, evidence that the failure of the governing board to approve the application was unreasonable.

§ 303.51 What requirements must a project supported under this subpart meet?

A community health center supported under this subpart must:

(a) Provide the health services of the center so that those services are available and accessible promptly, as appropriate, and in a manner which will assure continuity of service to the residents of the center's catchment area.

(b) Provide any health service described in the definition of "community health center" (§ 51c.102) for which the Secretary specifically finds there is a need in the center's catchment area.

(c) Implement a system for maintaining the confidentiality of patient records in accordance with the requirements of § 51c.109.

(d) Have an ongoing quality assurance program which provides for the following:

(1) Organizational arrangements, including a focus of responsibility, to support the quality assurance program and the provision of high quality patient care; and

(2) Periodic assessment of the appropriatness and the quality of services provided or proposed to be provided to individuals served by the center. These assessments must:

(i) Be conducted by appropriate health professionals who are peers of the health professionals who provided the services;

(ii) Be based on the systematic collection and evaluation of patient records; and

(iii) Identify and document the necessity for change in the provision of services by the center and result in the institution of change where indicated.

(e) Develop management and control systems which are in accord with sound financial management procedures and the standards contained in 45 CFR Part 74, including the provision for an audit on an annual basis (unless waived for good cause by the Secretary).

(f) Where the cost of care and services furnished by or through the center is to be reimbursed under Title XIX or Title XX of the Social Security Act, obtain or make every reasonable effort to obtain a written agreement with the Title XIX or Title XX State agency for reimbursement.

(g) Have prepared a schedule of fees or payments for the provision of its services designed to cover its reasonable costs of operation and a corresponding schedule of discounts adjusted on the basis of the patient's ability to pay. This schedule of discounts must provide for a full discount to individuals and families with annual incomes at or below those set forth in the most recent "CSA Income Poverty Guidelines" (45 CFR 1060.2) and for no discount to individuals and families with annual incomes greater than twice those set forth in the Guidelines. However, nominal fees for services may be collected from individuals with annual incomes at or below the levels set forth in the Guidelines where imposition of those fees is consistent with project goals.

(h) Make every reasonable effort, including the establishment of systems for eligibility determination, billing, and collection, to:

(1) Collect reimbursement for its costs in providing health services to persons who are entitled to insurance benefits under Title XVIII of the Social Security Act, to medical assistance under a State plan approved under Title XIX of that Act, to social services and family planning services under Title XX of that Act, or to assistance for medical expenses under any other public assistance program, grant program, or private health insurance or benefit program, on the basis of the schedule of fees required by paragraph (g) of this section without application of any discounts; and

(2) Secure from patients payments for services in accordance with the schedule of fees and discounts required by paragraph (g) of this section.

(i) Have a governing board which meets the requirements of § 51c.304.

(j) Have developed an overall plan and budget for the center that:

(1) Provides for an annual operating budget and a 3-year financial management plan which includes all anticipated income and expenses related to items which would, under generally accepted accounting principles, be considered income and expense items;

(2) Provides for a capital expenditures plan for at least a 3-year period (including the year to which the operating budget described in paragraph (j)(1) of this section applies). The plan must identify in detail the anticipated sources of financing for, and the objective of, each anticipated expenditure in excess of $100,000 related to the acquisition of land, the improvement of land, buildings, and equipment, and the replacement, modernization and expansion of buildings and equipment which would, under generally accepted accounting principles, be considered capital items;

(3) Provides for plan review and updating at least annually; and,

(4) Is prepared under the direction of the governing board of the center, by a committee consisting of representatives of the governing board, the administrative staff, and the medical staff, if any, of the center.

(k) Establish basic statistical data, cost accounting, management information, and reporting or monitoring systems which will enable the center to provide statistics and other information that the Secretary may reasonably require relating to the center's costs of operation, patterns of utilization of services, availability, accessibility, and acceptability of services, and expenditures made from any amount the center was permitted to retain under § 51c.107.

(l) Review its catchment area annually to insure that the criteria set out in § 51c.104(b)(2) are met and, where these criteria are not met, revise its catchment

area, with the approval of the Secretary, to conform to these criteria to the extent feasible.

(m) In the case of a center which serves a population including a substantial proportion of individuals of limited English-speaking ability, have developed a plan and made arrangements responsive to the needs of this population for providing services to the extent feasible in the language and cultural context most appropriate to these individuals. The center must also have an identified individual on its staff who is fluent in both that language and in English and whose responsibilities include providing guidance to these individuals and to appropriate staff members with respect to cultural sensitivities and bridging linguistic and cultural differences.

(n) Be operated in a manner calculated to preserve human dignity and to maximize acceptability and effective use of services.

(o) To the extent feasible, coordinate and integrate project activities with the activities of other federally funded, as well as State and local, health services delivery projects and programs serving the same population.

(p) Establish a means for evaluating progress toward the achievement of the specific objectives of the project.

(q) Provide sufficient staff, qualified by training and experience, to carry out the activities of the center.

(r) Develop an ongoing referral relationship with one or more hospitals. A referral relationship must, at a minimum, provide the following:

(1) Admitting privileges for community health center physicians;

(2) Consultations for community health center patients with specialists on the hospital's medical staff;

(3) Use of laboratory and radiology services;

(4) Access to hospital-based prenatal and obstetric care;

(5) Use of the hospital emergency room when the community health center is not open; and

(6) Appropriate transfers of records.

(s) Assure that facilities used in the performance of the project meet applicable fire and life safety codes.

(t) Use, to the maximum extent feasible, other Federal, State, local, and private resources available for support of the project, before using project funds under this part.

(u) Provide for community participation through, for example, contributions of cash or services, loans of full-time or part-time staff, equipment, space, materials, or facilities.

(v) Where the center will provide services through contract or other cooperative arrangements with other providers of services, the center must:

(1) Enter into the contract or arrangement only if the provider of services will provide the services in a timely manner and make the services accessible and acceptable to the population to be served;

(2) Make payment for services so provided only under written agreements with the providers in accordance with a schedule of rates and payment procedures established and maintained by the center. The center must be prepared to substantiate that these rates are reasonable and necessary;

(3) Enter into contracts or other arrangements for the provision of primary health services only if alternative resources are available to provide these services in the event of termination of those arrangements.

(w) Operate so that no person is denied services because of inability to pay for those services. However, the center must charge for the provision of services to the extent that a third party (including a Government agency) is authorized or is under legal obligation to pay these charges.

(x) In addition to the above, projects which are supported with grant funds for the operation of a prepaid health care plan also must provide:

(1) A marketing and enrollment plan, including market analysis, marketing strategy, and enrollment growth projections;

(2) A plan that provides for funding of services on a capitation basis for that portion of the residents of the catchment area of the center, as approved by the Secretary; and

(3) An assurance that services will be available to all residents of the catchment area without regard to method of payment or health status.

§ 51c.304 What requirements must a community health center's governing board meet?

The governing board of the center must meet the following requirements:

(a) *Size.* The board must consist of at least 9 but not more than 25 members, except that the Secretary may waive this limitation for good cause shown.

(b) *Composition.* (1) A majority of the board members must be individuals who are served by the center and who, as a group, represent the individuals being served or to be served in terms of demographic factors such as race, ethnicity, and sex. In the case of a newly operational center, these individuals must be likely users of the center.

(2) No more than one-half of the remaining members of the board may be individuals who derive more than 10 percent of their annual income from the health care industry.

(3) The remaining members of the board must be representative of the community in which the center's catchment area is located and must be selected for their expertise in relevant subject areas, such as community affairs, local government, finance and banking, legal affairs, trade unions, and other commercial and industrial concerns, or social services within the community.

(4) No member of the board may be an employee of the center or the spouse, child, parent, or brother or sister by blood or marriage of such an employee.

(5) The project director or chief executive officer may be a nonvoting, ex-officio member of the board. Proposals by the governing board to include other individuals as ex-officio members must be approved by the Secretary.

(c) *Selection of members.* The method of selection of all governing board members must be prescribed in the bylaws or other internal governing rules of the center and is subject to approval by the Secretary. The method of selection of the members who represent the population served or to be served by the center must insure that these members, as a group, are representative of that population, and the method must assure that there is the opportunity for broad participation in the selection process by the residents of the catchment area.

(d) *Functions and responsibilities.* (1) Except in the case of a public center, the governing board for the center must have authority for the establishment of general policies for the center.

(2) The governing board must hold regularly scheduled meetings, at least once each month, for which minutes must be kept.

(3) The governing board must develop bylaws which give the governing board specific responsibility for:

(i) Approval of the selection and dismissal of the project director or chief executive officer of the center;

(ii) Approval of the center's annual budget;

(iii) Selecting the services to be provided, and scheduling the hours during which services will be provided;

(iv) Evaluating center activities, including services utilization patterns, productivity of the center, patient satisfaction, achievement of center objectives and development of a process for hearing and resolving patient grievances;

(v) Assuring that the center is operated in compliance with applicable

Federal, State, and local laws and regulations;

(vi) Except in the case of public centers, establishing personnel policies and procedures, including selection and dismissal procedures, salary and benefit scales, employee grievance procedures, and equal opportunity practices;

(vii) Except in the case of public centers, adopting policy for financial management practices, including a system to assure accountability for center resources;

(viii) Except in the case of public centers, establishing center priorities, eligibility for services including criteria for partial payment schedules, and long-range financial planning;

(ix) Except in the case of public centers, selecting the location for the provision of services and quality-of-care audit procedures; and

(x) In the case of public centers, approving or disapproving any second or subsequent application for a grant under this subpart.

Subpart D—Grants for Operating Community Health Projects

§ 51c.401 To what programs do the regulations of this subpart apply?

The regulations of this subpart, in addition to the regulations of Subpart A of this part, apply to grants awarded under section 330(d)(1)(B) of the Act for the costs of operation of community health projects which provide health services to medically underserved populations.

§ 51c.402 What additional information must an application for a grant under this subpart contain?

To be approved by the Secretary under this subpart, an application for a grant must, in addition to meeting the requirements of § 51c.104:

(a) Contain information sufficient to enable the Secretary to determine that the project for which the grant is sought will meet the requirements of § 51c.403;

(b) Provide the Secretary with the design of a community health center program based on the assessment of need required by § 51c.104(b)(3);

(c) If the Secretary determines, pursuant to § 51c.403(b), that as a condition of approving the application a particular service must be provided, contain assurances that this service will be provided; and

(d) Provide assurance satisfactory to the Secretary that it will establish a governing board meeting the requirements of § 51c.304 by the end of the period of support under this subpart.

§ 51c.403 What requirements must projects supported under this subpart meet?

A community health project supported under this subpart must:

(a) Meet all of the requirements of § 51c.303 except for paragraph (i) of that section.

(b) Provide any health service described in the definition of "community health center" (§ 51c.102) for which the Secretary specifically finds there is a need in the project's catchment area. Such a finding must be in writing with a copy to the grantee.

(c) Establish a governing board which meets the requirements of § 51c.304 by the end of the period of support under this subpart.

Subpart E—Grants to Community Health Centers for Planning and Developing the Provision of Services on a Prepaid Basis

§ 51c.501 To what programs do the regulations of this subpart apply?

The regulations of this subpart, in addition to the regulations of Subpart A, apply to grants under section 330(d)(1)(C) to community health centers to enable them to plan and develop the provision of health services on a prepaid basis to some or all of the individuals served by these centers.

§ 51c.502 Which community health centers are eligible to apply for a grant under this subpart?

To be eligible for a grant under this subpart, a center must have received grants under Subpart C of this part for at least 2 consecutive years preceding the year for which the grant under this subpart is sought.

§ 51c.503 How does a center apply for a grant under this subpart?

To be approved by the Secretary under this subpart, an application for a grant must, in addition to meeting the requirements of § 51c.104:

(a) Contain information sufficient to enable the Secretary to determine that the project for which the grant is sought will meet the requirements of § 51c.504.

(b) Contain evidence that the governing board of the center has requested that the center provide health services on a prepaid basis to some or all of the residents of the catchment area.

(c) Contain assurances satisfactory to the Secretary that:

(1) The provision of services on a prepaid basis will not result in the diminution of health services provided by the center to the population served prior to the award of a grant under this subpart; and

(2) The services of the center will continue to be available to all residents of the catchment area regardless of the method of payment or health status.

(d) Describe the reasons for seeking to offer health services on a prepaid basis to some or all of the population in the catchment area.

§ 51c.504 What requirements must projects supported under this subpart meet?

A project for planning and developing the provision of health services on a prepaid basis must accomplish the following:

(a) Develop a plan for providing health services on a prepaid basis which includes:

(1) A description of the services to be offered on a prepaid basis. These services must include inpatient hospital services unless the center provides a reasonable explanation of why these services cannot be offered;

(2) Market analyses, marketing strategy, and enrollment growth projections;

(3) A description of the population to whom the center proposes to provide services on a prepaid basis; and

(4) A description of how the center proposes to become a qualified Health Maintenance Organization (HMO) under Title XIII of the Act, or, if the center does not intend to become a qualified HMO, an explanation for this decision.

(b) Submit the plan developed under the preceding paragraph to the Secretary for approval.

Subpart F—Grants for Technical and Non-financial Assistance

§ 51c.601 To what programs do the regulations of this subpart apply?

The regulations of this subpart, in addition to the regulations of Subpart A of this part, except as otherwise stated in these regulations, apply to grants awarded under section 330(f) of the Act for the provision of technical and other non-financial assistance to grantees under section 330 of the Act. Consistent with the "Federal Grant and Cooperative Agreement Act of 1977" and Department policy, technical assistance will normally be procured through contracts, except in unique situations when grants are determined to be the appropriate assistance instruments.

§ 51c.602 What information must an application for a grant under this subpart contain?

To be approved by the Secretary, an application for a grant under this subpart must meet the requirements of

§ 51c.104(a), § 51c.401(b) (1), (4), (6), (7), and § 51c.104(c).

§ 51c.603 What requirements must a project supported under this subpart meet?

A project for the provision of assistance to community health centers and entities which intend to become community health centers, supported under this subpart, must:

(a) Provide to centers and entities as are specified in the grant award, any technical and other non-financial assistance (such as fiscal and program management assistance or training of the staff of a center or entity in management of this kind) specified in the grant award. The technical or other non-financial assistance must be designed to assist these centers and entities in:

(1) Developing plans for becoming community health centers; and

(2) Operating as community health centers.

(b) Provide this assistance through its own staff or resources.

(c) Where the project will provide training to the staff of a center or entity in management or in the provision of health services, provide this training consistent, as applicable, with § 51c.108(b)(7).

§ 51c.604 How will the Secretary determine which applicants for grants under this subpart to fund?

Within the limits of funds determined by the Secretary to be available for this purpose, the Secretary may award grants under this subpart to applicants which will, in his or her judgment, best promote the purpose of section 330(f) of the Act and the applicable regulations of this part, taking into consideration:

(a) The cost-effectiveness of the application; and

(b) The number of centers and entities proposed to be served by the applicant.

Subpart G—Acquisition and Modernization of Existing Buildings

§ 51c.701 To what programs do the regulations of this subpart apply?

The regulations of this subpart, in addition to the regulations of the other applicable subparts of this part, apply to grants under section 330 of the Act for project costs which include the cost of acquisition and/or modernization of existing buildings (including amortizing the principal of, and paying the interest on, loans), except that these regulations do not apply to grants for project costs of modernization of existing buildings if those costs can otherwise be supported under Subpart B, C, D, or E of this part as standard alteration and renovation costs, which are subject to the principles set forth in Subpart Q of 45 CFR Part 74 and the policies set forth in the HEW Grants Administration Manual, Chap. PHS: 1–44.

§ 51c.702 Definitions.

(a) "Existing building" means a completed or substantially completed structure, and may include the realty on which it is or is to be located.

(b) "Modernization" means the alteration, expansion, repair, remodeling and/or renovation of a building (including the initial equipment thereof as defined in 45 CFR 74.132 and improvements to the building's site) which, when completed, will render the building suitable for use by the project for which the grant is made.

§ 51c.703 How is an application made for funds to support acquisition/moderization?

(a) *General requirements.* An application for a grant under this part for a project under Subparts B, C, D, or E which includes the acquisition and/or modernization of an existing building must include the following:

(1) A legal description of the site and a drawing showing the location of the building;

(2) A description of the architectual, structural, and other pertinent characteristics of the building sufficient to show that it is or that it will be, after modernization, suitable for use by the project;

(3) A detailed estimate of the cost of the proposed acquisition and/or modernization;

(4) A description of, and copies of any relevant documents concerning, any existing or proposed financing arrangements for the acquisition and/or modernization;

(5) The proposed schedule for acquisition and/or modernization and occupancy;

(6) Information the Secretary requires to carry out the Department's responsibilities under the National Environmental Policy Act and related Acts. This information will be specified in detail in application instructions.

(7) Reasonable assurances that:

(i) The applicant has or will obtain a fee simple or other estate or interest in the site, including necessary easements and rights-of-way, sufficient to assure for a period of not less than 20 years (or, in the case of interim facilities, for the period constituting the estimated useful life of such facilities) undisturbed use and possession for the purpose of the operation of the project;

(ii) The building will be used for the purposes for which the grant is made;

(iii) The building complies, or after modernization will comply, with applicable State and local codes and with:

(A) "American National Standard Specifications for Making Buildings and Facilities Accessible to, and Usable by, the Physically Handicapped" Number ANSI A117.1–1961 (R 1971), as modified by the Secretary or the Administrator of the General Services Administration. The applicant is to be responsible for conducting inspections to insure compliance with the specifications;

(B) The applicable standards set forth in Life Safety Code 1973, NFPA No. 101, which is hereby incorporated by reference and made a part hereof. Copies of this document are available for examination at the Department's and Regional Offices' Information Centers listed in 45 CFR 5.31 and may also be obtained from the National Fire Protection Association, 470 Atlantic Avenue, Boston, MA 02210 for $3.00 per copy.

(iv) In the case of a public applicant with an approved project which involves the displacement of persons or businesses on or after January 2, 1971, whose real property has or will be taken, the applicant will comply with the provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Pub. L. 91–646) and the applicable regulations issued thereunder (45 CFR Part 15);

(v) Sufficient funds will be available to meet any portion of the cost of acquisition and/or modernizing the building not borne by the grant under this part;

(vi) Sufficient funds will be available after acquisition and/or modernization of the building for effective use of the building for the purposes of the project; and

(vii) The applicable requirements of the Flood Disaster Portection Act of 1973 have been met; and

(8) Other information which the Secretary may reasonably require.

(b) *Requirement for acquisition grants.* An application for a grant for a project which includes the acquisition of an existing building must include, in addition to the requirements of paragraph (a) of this section, evidence satisfactory to the Secretary that the applicant has explored other alternatives to the proposed acquisition (such as leasing facilities or acquiring other facilities in the project's catchment area) and that the proposed acquisition constitutes the soundest alternative from a financial and program standpoint.

(c) *Requirements for modernization grants.* In addition to the requirements of paragraph (a) of this section, an application for a grant for a project

which includes modernization of an existing building must include plans and specifications for the proposed modernization which conform to the standards specified in § 51c.703(a)(7)(iii).

§ 51c.704 What requirements must a project which receives funds under this subpart meet?

(a) *General requirements.* A grantee which has received a grant under section 330 of the Act for a project which includes the acquisition and/or modernization of an existing building must:

(1) Not enter into any contract for the acquisition and/or modernization funded under this subpart where the cost of acquisition and/or modernization exceeds the estimates in the application, without the prior approval of the Secretary; and

(2) Make every effort to prevent any default on any loan secured by the building and, in the event of a default, promptly notify the Secretary of the default and make every effort on a timely basis to cure the default.

(b) *Requirements for acquisition grants.* In addition to the requirements of paragraph (a) of this section, a grantee which has received a grant under section 330 of the Act for a project which includes the acquisition of an existing building must:

(1) Acquire or, have acquired the existing building pursuant to a bona-fide sale involving an actual cost to the applicant and resulting in additional or improved facilities for the purposes of the project;

(2) Obtain a determination by the Secretary that the facility conforms (or upon completion of any necessary alteration and renovation or modernization will conform) to the standards set forth in § 51c. 703(a)(7)(iii) before entering into a final or unconditional contract for the acquisition. Where the Secretary finds that exceptions to or modifications of any of these standards would be consistent with the purposes of the Act and of the program, the Secretary may authorize such exceptions or modifications; and

(3) Where the grantee will obtain a loan secured by the building in order to acquire the building, obtain financing at the lowest current rate prevailing in the area for comparable loans on comparable facilities.

(c) *Requirements of modernizations grants.* In addition to the requirements of paragraph (a) of this section, a grantee which has received a grant under section 330 of the Act for a project which includes the modernization of an existing building must:

(1) finance all costs in excess of the estimated costs approved in the application and submit to the Secretary for prior approval any changes that substantially alter the scope of the function, utilities, or safety of the facility;

(2) Obtain the approval of the Secretary before the project is advertised or placed on the market for bidding, including a determination by the Secretary that the final plans and specifications conform to the standards set forth in § 51c. 703(a)(7)(iii);

(3) With respect to construction contracts for the modernization project, meet the procurement standards set forth in Subpart P of 45 CFR Part 74, and the bonding insurance rquirements set forth in Subpart C of 45 CFR Part 74; and

(4) Complete the modernization in accordance with the grant application and the approved plans and specifications.

(d) The Secretary may at any time approve exceptions to the requirements of this section where the Secretary finds that those exceptions are not inconsistent with section 330 of the Act, other requirements of law, or the purposes of the program.

§ 51c.705 How will the amount of funds awarded under this subpart be determined?

The cost of acquisition and/or modernization of existing buildings for which funds may be granted under this part will be determined by the Secretary, using documentation submitted by the applicant which the Secretary may require (including the reports of such real estate appraisers as the Secretary may approve) and other relevant factors, taking into consideration only that portion of the existing building necessary for the operation of the approved project.

§ 51c.706 For what purposes may grant funds be used?

Grant funds may be used to amortize the principal of or pay interest on a loan or mortgage on an existing building acquired under this part, including a building purchased by a grantee prior to the promulgation of this part, but only if the building is being used for purposes of section 330 and complies with the applicable provisions of this subpart and only to the extent the Secretary finds those principal amounts and interest rates to be reasonable.

§ 51c.707 How is a grantee affected by the previous receipt of a Federal grant?

No grant for the acquisition of a facility which has previously received a Federal grant for construction, acquisition, or equipment shall serve either to reduce or restrict the liability of the applicant or any other transferor or transferee from any obligation of accountability imposed by the Federal Government by reason of that prior grant.

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42 CFR Part 56

Project Grants for Migrant Health; Proposed Rulemaking

AGENCY: Public Health Service, HHS.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Assistant Secretary for Health with the approval of the Secretary of Health ahd Human Services proposes to revise the regulations governing the Migrant Health Centers grant program. The Health Services and Centers Amendments of 1978 made a number of changes in the statutory requirements governing the operation of the centers. The Amendments, among other things, change pharmacy services from supplemental to primary health services, make former migratory agricultural workers who are disabled eligible for services, establish priority for certain supplemental health services, provide an incentive for maximized collection of fees, permit conversion for certain centers from fee for service to prepaid operations and change the governing board requirements for public centers. The proposed revisions are intended to revise the present regulations consistent with the revised statutory provisions.

DATE: Comments must be received by February 17, 1981.

ADDRESS: Written comments and recommendations should be submitted to the Director, Division of Policy Development, Bureau of Community Health Services, Health Services Administration, Room 6-40, 5600 Fishers Lane, Rockville, Maryland 20857. All comments received in timely response to this Notice will be considered and will be available for public inspection in the above-named office on weekdays between the hours of 8:30 a.m. and 5:00 p.m., Federal holidays excepted.

FOR FURTHER INFORMATION CONTACT: Mr. Jaime Manzano, Associate Bureau Director for Migrant Health, Bureau of Community Health Services, Room 7A-55, 5600 Fishers Lane, Rockville, Maryland 20857 (301 443-1153).

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Health, with the approval of the Secretary of Health and Human Services, proposes to revise 42

CFR Part 56 to implement amendments to section 329 of the PHS Act (42 U.S.C. 254b) pertaining to the Migrant Health Services grant program. These amendments were enacted by Title I of Pub. L. 95-626, the "Health Services and Centers Amendments of 1978." As the amendments made a number of changes in statutory requirements, changes in the present regulations (42 CFR Part 56) are necessary in order to make the regulations compatible with the new statutory requirements.

There are three statutory changes in the definitions that are self-executing, and the Department proposes to implement the statutory language simply by amending the regulations where appropriate to reflect these changes. *See,* section 329(a)(1), (5) and (7), and definitions of "migrant health center," high impact area," and "supplemental health services" in proposed § 56.102.

Following is a summary of the major changes proposed to be made in the regulations:

1. Seven categories of health services (including primary health services) must be provided by migrant health centers. Several of the services need be provided only if they are appropriate for the particular center, and under the existing regulations, the Secretary must determine that these services are appropriate before their provision is mandatory. The new legislation provides that centers themselves are authorized to make this determination with respect to environmental health services and infectious and parasitic disease screening and control. *See,* section 3299(a)(1) (D) and (E). While the intent of this amendment is to provide increased flexibility to centers in determining which of these services, if any, to provide in their catchment areas, the Secretary proposes that all centers should, in making this determination, consider at least: (a) The number of individuals requiring environmental health services and infectious and parasitic disease screening and control services; (b) the projected utilization of these services; (c) other community resources available to address the problem; and (d) a determination by the governing board of the need for these services in the project's catchment area. This information is required in the proposed regulation at § 56.302(c)(2).

2. The statute was amended to extend eligibility for migrant health services to individuals who have previously been migratory agricultural workers but can no longer meet the requirements set forth in the definition of "migratory agricultural worker" because of age or disability, and to members of their families. *See,* section 329(a)(1). Language to this effect has been added to the definition of "migratory agricultural worker" at proposed § 56.102.

The Department proposes that since the determination of who is a migrant or seasonal farmworker is currently handled at the project level, the determination of who is a disabled or aged migrant should also be handled at the project level. A written statement by a physician that an individual is unable, for medical reasons concerning age or disability, to perform agricultural labor would be sufficient to support such a determination. *See,* definition of "migratory agricultural worker" in proposed § 56.102. It is proposed to require that the center's governing board adopt a process for hearing and resolving any claims of an individual being denied service on the basis of the project's determination that he or she is not disabled or aged. *See,* proposed § 56.304(d)(4)(iv). The Department solicits comment and suggestions as to what would constitute an adequate yet simple review process.

3. The statute was amended to shift pharmaceutical services from a supplemental health service to a primary health service, and the proposed regulation reflects this change in the definition of "primary health services." *See,* proposed § 56.102. Pharmaceutical services, however, are required only "as appropriate for particular centers," and the statute does not require the hiring of a pharmacist or the provision of the service onsite. The determination of whether and what pharmaceutical services are appropriately provided by a center is proposed to be made, as in the case of most other specified services, by the Secretary in order to ensure that needed services are provided despite the additional cost. It should be noted that there are only two instances in which the statute specifically states that the centers should determine for themselves whether services (environmental health, and infectious and parasitic disease services) are appropriate. *See,* Section 329(a)(1)(D) and (E). The Department proposes that the Secretary make the determination of when it is appropriate for a center to provide pharmaceutical services by using the same general criteria used to determine whether it is appropriate for a center to provide any other service listed in the statute, i.e., where there is a need for the service and it is determined to be feasible to provide the service, taking into account the center's projected revenues, other resources, and grant support. *See,* proposed definition of "primary health services" at paragraph (g) (§ 56.102). With respect to pharmaceutical services, the proposed regulation is general in coverage and would provide the basis for guidelines to specify appropriate methods of providing pharmacy services.

4. Under the previous migrant health legislation, the high impact areas with the greatest number of migrants (not seasonals) received the highest priority for assistance. Under the amendments, the highest priority is to be assigned to areas determined by the Secretary to have the greatest need for health services. *See,* section 329(b)(1). Because of the unique health status of migrants, however, it is believed that the greatest need for services will continue to be, for the most part, in areas with the greatest number of migrants. The legislative history clearly supports continued emphasis on services to migrants. Therefore, it is proposed at § 56.106(b) that in determining which areas have the greatest need the Secretary take into consideration: (a) The number of migratory agricultural workers and their families in the proposed catchment area; (b) the number of seasonal agricultural workers and their families in the proposed catchment area; (c) environmental conditions in the proposed catchment area; (d) health status of the target population, to the extent that such information is available; and (e) projected utilization of health services in the proposed catchment area.

5. Pub. L. 95-626 repealed the provision that authorized the Secretary to award grants to entities which intended to become centers but did not meet all center requirements; therefore, the regulatory provisions relating to funding for such entities have been deleted.

6. Another amendment to section 329 provides that up to 5 percent of appropriations for operations may be used for grants to enable centers to plan and develop the provision of services on a prepaid basis if: (a) The center has received operating grants for at least 2 consecutive years preceding the year for which this grant is sought; (b) the governing board requests that the center provide health services on a prepaid basis to some or all of the population the center serves; and (c) the Secretary is assured that provision of services on a prepaid basis will not diminish health services to the population previously served. *See,* section 329(d)(1)(C).

The proposed regulations would require that an application give the reason for seeking to provide health services on a prepaid basis and include assurances satisfactory to the Secretary that: (1) Providing services on a prepaid

basis will not result in a diminution of the health services previously provided; and (2) the center will continue to make services available to all migratory and seasonal agricultural workers and members of their families in the catchment area regardless of method of payment or health status.

The Department proposes to require that centers develop a plan which: (a) Describes the proposed services to be provided on a prepaid basis and the marketing plan; (b) if not proposing to become a qualified Health Maintenance Organization, gives the reasons why; and (c) describes the population to whom the center proposes to provide services on a prepaid basis. *See,* proposed Subpart F.

7. Section 329(d)(4)(A), as amended, provides that the amount of a grant (except for grants under section 329(d)(1)(C)) may not exceed the difference between costs of operation and the amount of income reasonably expected to be received from: (a) State, local, and other funds, and (b) fees, premiums and third-party reimbursements. The proposed regulations state that in determining projected income for the purpose of determining the amount of a grant or determining the amount of income which may be retained by a center, the Secretary shall take into consideration: (a) Previous collections by the center; (b) previous billing levels; (c) any changes in reimbursement program policy by a State or local government affecting center collections; (d) patient utilization; and (e) demographic characteristics of the catchment area, including the number of persons eligible for services under Titles XVIII and XIX of the Social Security Act. *See,* proposed § 56.105(a)(1).

8. An incentive provision has been added which permits centers to retain at least half of the amount by which actual income (from fees, premiums and third-party reimbursements) exceeds costs and projected income. These funds must be used for the following five statutory purposes: (a) Improvement of services; (b) expansion of services; (c) an increase in the number of persons served; (d) construction and modernization of facilities; and (e) establishment of financial reserves for conversion to a prepaid basis. Without the approval of the Secretary, however, not more than one-half of the retained sum may be used for construction and modernization of center facilities. *See,* section 329(d)(4)(B).

The Secretary proposes to establish criteria to be used in determining whether a center may be permitted to retain more than one-half of excess income and, if so, how much more. In making this determination, the Secretary proposes to consider: (a) The center's past performance in administration, management, and provision of services; (b) the center's past collection efforts; (c) the need for increased services in the catchment area; (d) the use of funds proposed in the governing board request; and (e) State and local levels of support for the center. *See,* proposed § 56.306.

9. An application for a grant must, under the amendments to section 329, contain a description of the need for environmental health services, infectious and parasitic disease screening and control, and must also contain a description of the need for home health services, dental services, public health services, and health education services. If funds for these services are not requested, the reasons for not requesting them must be given. *See,* section 329(f)(2).

The proposed regulations at § 56.302 (c) through (e) would require that the need for these services be described in the application in terms of various factors such as the number of individuals requiring the services, the projected utilization of the services, and the availability of other community resources to meet the need for these services. If the applicant requests funds for support of any of these services, the proposed regulations would require the Secretary to provide funds for this purpose (in an amount determined by the Secretary) or provide the applicant with a written finding that the service is not needed. *See,* proposed § 56.105(a)(2).

10. The Secretary, by a written finding of need to the grantee, may require the grantee to provide any health service listed in the statute for which the Secretary finds there is a specific need in the catchment area (section 329(f)(2)). It is proposed to implement this requirement in a broad manner. Thus, it is proposed that if the Secretary makes a finding that a particular service (e.g., neonatal care, immunizations) is needed in the catchment areas of all centers, a notice to this effect would be published in the Federal Register with copies to all grantees. Each center would be required to provide assurances to the Secretary that those services will be provided. The Secretary may also require an individual center to provide a particular service. *See,* proposed §§ 56.302(g); 56.303(b).

11. Section 329(f)(5), as amended, authorizes improvements to private property to be supported with section 329 funds if necessary to alleviate a hazard to the health of those residing on or otherwise using the property and of other persons in the catchment area, but only: (1) Upon specific prior authorization by the Secretary; (2) in the amount approved by the Secretary; (3) with the property owner's written consent; and (4) where the Secretary has determined that funds for the improvement are not available from any other source.

The qualifying language of the amendment and the legislative history make it clear that Congress intended this provision to be implemented in a very limited manner. Therefore, consistent with the legislative requirements, prior approval of the Secretary to expend funds on such improvements will be required and proposed criteria have been developed to determine the necessity for expending funds on improvements to private property. The Department proposes to require that applicants for such funds: (1) Describe the health hazard, including the number of individuals in the catchment area affected by the health hazard; (2) describe the relationship between the proposed improvement and the health hazard; (3) describe the proposed improvement and its estimated cost; (4) identify the Federal, State, and local enforcement and environmental programs contacted in seeking resolution of the health hazard and include a copy of the response made by each of the programs and agencies contacted; (5) include a copy of the document showing the property owner's written consent; (6) identify the amount of funds in the center's approved budget available for making the proposed improvements; and (7) identify the amount of any additional funds requested for making the proposed improvement to private property. *See,* proposed § 56.302(f).

12. Section 329(f)(3)(G) provides that migrant health centers operated by a public agency, including public benefit corporations (referred to as "public centers"), may be exempted from the requirement that their governing boards set general policies (except for public centers funded prior to October 1, 1978). The proposed regulations would exempt governing boards of public centers from performing the following functions which the Department believes are policy setting in nature: (1) Establishing personnel policies and procedures, salary and benefit scales, employee grievance procedures and equal opportunity practices; (2) adopting

policy for financial management practices including a system to insure accountability for center resources; (3) establishing center priorities and eligibility for services; and (4) selecting the location for the provision of services and quality-of-care audit procedures. *See,* proposed § 56.304(d)(3)(vi)–(ix).

13. Program experience has revealed that there is some confusion in the interpretation of who is eligible to serve on the governing board of a center, and the phrase "or who will be served by the center" has been broadly interpreted in some instances to include anyone in the catchment area. In order to preserve the intent of the legislation to insure that *users* of the centers participate on these boards, the Secretary proposes to modify the wording of § 56.304(b)(1) to indicate that a majority of the board members should be composed of actual users of the center, and likely users only in the case of a new center.

Because of some confusion arising from varying interpretations of what constitutes an appropriate selection process for governing board members, proposed § 56.304(c) would require that the process specified in the bylaws of the center for selecting board members assure that there is an opportunity for broad participation in the selection process by the eligible residents of the catchment area. This proposed revision is consistent with legislative intent that governing boards be representative of the population to be served.

14. The regulations applicable to the costs of acquisition and modernization of existing buildings appear at Subpart E of 42 CFR Part 51c (community health services regulations) and are incorporated by reference in the migrant health services regulations at Subpart H of 42 CFR Part 56. The Department is proposing to amend the acquisition and modernization regulations to delete those elements which duplicate certain portions of 45 CFR Part 74. Interested parties should refer to the Notice of Proposed Rulemaking for Project Grants for Community Health Services (proposed Subpart G).

15. The Department is seeking a deviation from OMB Circulars A–102 and A–110 to require annual audits of centers' financial management systems, unless waived for good cause by the Secretary.

16. In addition to the above, several minor technical and editorial changes are proposed.

It is proposed to revise Part 56 of Title 42, Code of Federal Regulations, to read as set forth below.

Date: August 4, 1980.

Julius B. Richmond,

Assistant Secretary for Health.

Approved: December 8, 1980.

Patricia Roberts Harris,

Secretary.

PARTS—56 GRANTS FOR MIGRANT HEALTH SERVICES

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Subpart H—Acquisition and Modernization of Existing Buildings

56.801 Applicability of 42 CFR Part 51c, Subpart G.

Authority: Sec. 329, Public Health Service Act, (42 U.S.C. 254b).

Subpart A—General Provisions

§ 56.101 To what programs do the regulations of this subpart apply?

The regulations of this subpart apply to all project grants authorized by section 329 of the Public Health Service Act (42 U.S.C. 254b).

§ 56.102 Definitions.

As used in this part:

"Act" means the Public Health Service Act (42 U.S.C. 201 et seq.), as amended.

"Agriculture" means farming in all its branches, including:

(1) Cultivation and tillage of the soil;

(2) The production, cultivation, growing and harvesting of any commodity grown on, in, or as an adjunct to or part of a commodity grown in, or on, the land; and

(3) Any practice (including preparation and processing for market and delivery to storage or to market or to carriers for transportation to market) performed by a farmer or on a farm incident to or in conjunction with an activity described in paragraphs (1) and (20 of this definition.

"Catchment area" means the area served by a project funded under section 329 of the Act.

"Environmental health services" means the detection and alleviation of unhealthful conditions of the environment of the catchment area, such as problems associated with water supply, sewage treatment, solid waste disposal, rodent and parasite infestation, field sanitation, housing, and treatment of medical conditions arising from these types of problems. For purposes of this part, the detection and alleviation of unhealthful conditions of the environment includes notifying and making arrangements with appropriate Federal, State, or local authorities responsible for correcting these conditions.

"Health professionals" means professionals (such as physicians, dentists, nurses, podiatrists, optometrists, and physician extenders) who are engaged in the delivery of health services and who meet all applicable Federal or State requirements to provide their professional services.

"High impact area" means a catchment area which has not less than 4,000 migratory agricultural workers, seasonal agricultural workers, and members of the families of these workers residing within its boundaries for more than two months in the most recent calendar year for which statistical data acceptable to the Secretary is available.

"Migrant health center" means an entity which, through its staff and supporting resources or through contracts or cooperative arrangements with other public or private entities, provides for migratory agricultural workers, seasonal agricultural workers, and the members of the families of these workers, within its catchment area:

(a) Primary health services;

(b) As determined by the Secretary to be appropirate for particular centers, supplemental health services necessary for the adequate support of primary health services;

(c) Referral to providers of supplemental health services and payment, as determined by the Secretary to be appropriate and feasible, for their provision of these services;

(d) Environmental health services, as determined by each center to be appropriate for itself;

(e) As determined by each center to be appropriate for itself, infectious and parasitic disease screening and control services;

(f) As determined by the Secretary to be appropriate for particular centers, accident prevention programs, including prevention of excessive exposure to pesticides through, but not limited to, notification of appropriate Federal, State, or local authorities of hazardous conditions due to pesticide use; and

(g) Information on the availability and proper use of health services and services which promote and facilitate optimal use of health services, including, if a substantial number of the individuals in the population served by a center are of limited English-speaking ability, the services of appropriate personnel fluent in the language or languages spoken by a predominant number of these individuals.

For purposes of this definition, the provision of a given service by a center will be determined by the Secretary to be appropriate where the secretary finds that there is a need for the provision of the service in the catchment area and that the provision of the service by the center is feasible, taking into consideration the center's projected revenues, other resources, and grant support under this part.

"Migratory agricultural worker" means and individual whose principal employment is in agriculture on a seasonal basis, who has been so employed within the last 24 months, and who establishes for the purpose of this employment a temporary place of abode. For purposes of this regulation, individuals who previously have been migratory agricultural workers but who no longer meet the requirements of the first sentence in this definition because of age or disability will be considered to be migratory agricultural workers. Projects must determine whether a migratory agricultural worker is aged or disabled on the basis of physician's written statement that a migrant is unable, for medical reasons concerning age or disability, to perform agricultural labor.

"Nonprofit," as applied to any private agency, institution, or organization, means one which is a corporation or association, or is owned and operated by one or more corporations or associations, no part of the net earnings of which benefits, or may lawfully benefit, any private shareholder or individual.

"Physician" means a licensed doctor of medicine or doctor of osteopathy.

"Primary care" means preventive, diagnostic, treatment, consultant, referral, and other services rendered by physicians (including, as appropriate, physician extenders), routine associated laboratory services and diagnostic radiologic services, and emergency health services.

"Primary health services" means:

(a) Diagnostic, treatment, consultative, referral, and other services rendered by physicians, and, where feasible, by physician extenders, such as physicians' assistants, nurse clinicians, and nurse practitioners;

(b) Diagnostic laboratory services and diagnostic radiologic services;

(c) Preventive health services, including medical social services, nutritional assessment and referral, preventive health education, children's eye and ear examinations, prenatal and post partum care, perinatal services, well child care (including periodic screening), immunizations, and voluntary family planning services;

(d) Emergency medical services, including provision, through clearly defined arrangements, for access of users of the center to health care for medical emergencies during and after the center's regularly scheduled hours;

(e) Transportation services as needed for adequate patient care, sufficient so that those persons served by the center with special difficulties of access to services provided by the center receive these services;

(f) Preventive dental services provided by a licensed dentist or other qualified personnel, including: (1) Oral hygiene instruction; (2) oral prophylaxis, as necessary; and (3) topical application of fluorides, and the prescription of fluorides for systemic use when not available in the community water supply; and

(g) Pharmaceutical services, including the provision of prescription drugs, as determined by the Secretary to be appropriate for particular centers. For the purposes of this definition, the provision of pharmaceutical services will be determined by the Secretary to be appropriate where the Secretary finds that there is a need for the provision of pharmaceutical services in the catchment area and that the provision of these services is feasible, taking into account the center's projected revenues, grant support, and other available resources in the catchment area.

"Public center" means a migrant health center funded on or after October 1, 1978 through a grant under section 329(d)(1)(A) of the Act to a public agency, including hospitals which are publicly owned and operated.

"Seasonal agricultural worker" means an individual whose principal employment is in agriculture on a

seasonal basis and who is not a migratory agricultural worker.

"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.

"Supplemental health services" means health services which are not included as primary health services and which are:

(a) Inpatient and outpatient hospital services;

(b) Home health services;

(c) Extended care facility services;

(d) Rehabilitative services (including physical and occupational therapy) and long-term physical medicine;

(e) Mental health services, including services of psychiatrists, psychologists, and other appropriate mental health professionals;

(f) Dental services other than those provided as primary health services;

(g) Vision services, including routine eye and vision examinations and provision of eyeglasses, as appropriate and feasible;

(h) Allied health services;

(i) Therapeutic radiologic services;

(j) Public health services (including, for the social and other nonmedical needs which affect health status, counseling, referral for assistance, and followup services);

(k) Ambulatory surgical services; and

(l) Health education services (including nutrition education).

§ 56.103 Who is eligible to apply for a migrant health services grant?

Any public or nonprofit private entity is eligible to apply for a grant under this part.

§ 56.104 How is an application made for a migrant health services grant?

(a) The application must contain a budget and a narrative plan of the manner in which the applicant intends to conduct the project and carry out the requirements of this part. The application must describe how and the extent to which the project has met, or plans to meet, each of the requirements in Subpart B (relating to grants for planning and developing migrant health centers), Subpart C (relating to grants for operating migrant health centers), Subpart D (relating to grants for planning and developing migrant health programs), Subpart E (relating to grants for the operation of migrant health programs), Subpart F (relating to grants for planning and developing the provision of services on a prepaid basis), or Subpart G (relating to grants for technical assistance), as applicable. In addition, applications, except for applications for grants under Subparts F and G, must include:

(1) A statement of specific, measureable objectives and the methods to be used to assess the achievement of the objectives in specified time periods of not more than 12 months.

(2) The precise boundaries of the catchment area to be served by the applicant.

In addition, the application must include information sufficient to enable the Secretary to determine that the applicant's catchment area meets the following criteria:

(i) The size of the area is such that the services to be provided through the center are available and accessible to the eligible residents of the area promptly and as appropriate;

(ii) The boundaries of the area conform, to the extent practical, to relevant boundaries of political subdivisions, school districts, and areas served by Federal and State health and social service programs; and

(iii) The boundaries of the area eliminate, to the extent practical, barriers to access to the services of the center resulting from the area's physical characteristics, its residential patterns, its economic and social groupings, and available transportation.

(3) (i) The number of migratory agricultural workers and members of their families, and seasonal agricultural workers and members of their families who resided in the project's catchment area in the most recent calendar year for which statistical data acceptable to the Secretary is available; and

(ii) The approximate period or periods of residence of all groups of migratory agricultural workers and their families counted under the preceding subparagraph.

(4) The results of an assessment of the need that the population served or proposed to be served has for the services to be provided by the project (or, in the case of applications for planning and development grants under Subparts B or D of this part, the methods to be used in assessing this need), taking into consideration the following factors:

(i) Available health resources in relation to the size of the catchment area and population of migratory and seasonal agricultural workers and their families in this area, including appropriate ratios of primary care physicians in general or family practice, internal medicine, pediatrics, or obstetrics and gynecology, to this population;

(ii) Health indices for this population, such as infant mortality rate;

(iii) Economic factors affecting this population's use of health services, such as percentage of this population with incomes below the poverty level;

(iv) Demographic factors affecting this population's need and demand for health services, such as percentage of this population age 65 and over; and

(v) Unusual local conditions which are barriers to access to the services of the center resulting from the conditions of employment of these workers (including working hours, housing, and sanitation); and

(vi) Language, cultural, racial, or social factors which may bear on the availability or accessibility of health services to these workers.

(5) Position descriptions for key personnel who will be used in carrying out the activities of the project, a statement indicating the need for the positions to be supported with grant funds to accomplish the objectives of the project, and assurances satisfactory to the Secretary that all project services will be provided by appropriate health professionals.

(6) Except for applications for planning and development grants under Subparts B and D of this part, letters and other forms of evidence showing that efforts have been made to secure financial and professional assistance and support for the project within the proposed catchment area and the continuing involvement of the community in the development and operation of the project.

(7) A list of all services proposed to be provided by the project.

(8) A list of services which are to be provided directly by the project through its own staff and resources and a description of any contractual or other arrangements (including copies of documents, where available) entered into or planned for the provision of services.

(9) The proposed schedule of fees and schedule of discounts for services provided or to be provided by the project;

(10) If the applicant proposes to provide services to populations other than migratory and seasonal agricultural workers and their families, identification of these populations.

Note.—Funds granted under this part and non-Federal funds required to be expended by the project as a condition of any grant under this part may not be used to provide services to individuals who are not migratory or seasonal agricultural workers or members of the families of those workers.

(11) A description of the appeals process to be used by the center for hearing and resolving any claim of an

individual denied services on the basis that he or she is not disabled or aged.

(b) The applications must be executed by an individual authorized to act for the applicant and to assume on behalf of the applicant the obligations imposed by the statute, the applicable regulations of this part, and any additional conditions of the grant.

§ 56.105 How will the amount of each grant be determined?

The Secretary will determine the amount of any grant under this part, subject to the following limitations:

(a) With respect to grants under Subpart C (relating to operating migrant health centers),

(1) The amount of any grant in any fiscal year may not exceed the amount by which the costs of operation of the center in that fiscal year exceed the total of the State, local, and other funds, and the fees, premiums, and third-party reimbursements, which the center may reasonably be expected to receive from its operation in that fiscal year. In determining the projected income that the center may reasonably be expected to receive for a particular fiscal year, the Secretary will consider the following factors, as appropriate:

(i) The income received by the center in previous fiscal years;

(ii) The center's billing level in previous fiscal years;

(iii) Any changes in reimbursement program policy by State or local governments which have affected the center's collections;

(iv) The patient utilization and penetration rate; and

(v) Demographic characteristics of the catchment area, or target population including the number of persons eligible for services under Titles XVIII and XIX of the Social Security Act; and

(2) If the application requests funds for providing

(i) Environmental health services (excluding funds requested for improvement of private property);

(ii) Infectious and parasitic disease screening and control;

(iii) Home health services;

(iv) Dental Services;

(v) Public health services; or

(vi) Health education services (as described in the definition of supplemental health services in § 56.102),

the Secretary will include funds for these services in whatever amount he or she determines is appropriate, within the limits of available funds, unless the Secretary makes a written finding that the service is not needed. The Secretary will provide a copy of any such finding to the applicant.

(b) With respect to any grants under this part that support the provision of health services on a prepaid basis, the amount of the grant will be based upon the amount of premiums enrolled individuals cannot afford to pay, within the limits of available funds.

§ 56.106 What priorities will be used in awarding migrant health services grants?

Grants awarded under this part will be made by the Secretary on a priority basis.

(a) The Secretary will not approve any application for a grant under Subparts B, C, D, E, or F of this part for a project in an area which has no migratory agricultural workers unless grants have been provided for all approved applications for projects in areas with migratory agricultural workers.

(b) The highest priorities for grant assistance will be assigned to areas where the Secretary determines the greatest need exists. In determining where the greatest need exists, the Secretary will take into account the following factors:

(1) The number of migratory agricultural workers and members of their families in the catchment area;

(2) The number of seasonal farm workers and members of their families in the catchment area;

(3) The health status of the target population within the catchment area to the extent that this information is available;

(4) The projected utilization of health services in the catchment area; and

(5) Environmental conditions in the catchment area.

(c) In considering applications for grants under Subparts B, D and E, the Secretary will give priority to applications from community-based organizations, which are representative of the populations to be served by the project, program, or center. For purposes of this paragraph, an applicant will be considered to be such an organization if it provides a formal mechanism (such as membership in the organization's governing board or advisory body) which gives migratory and seasonal agricultural workers and their families significant involvement in the formulation of the organization's policies.

(d) In the case of applicants which propose to serve substantially the same catchment area or where available funds are insufficient to fund all approvable applications within a priority category specified in paragraphs (b) and (c) of this section, the Secretary will award grants to those applicants which will, in his or her judgment, best promote the purposes of section 329 of the Act and the applicable regulations of this part, taking into account with respect to each application:

(1) The degree to which the proposed project satisfactorily provides for the elements set forth in § 56.203, § 56.303, § 56.403, or § 56.503 (depending on which type of grant is sought);

(2) The administrative and management capability of the applicant;

(3) The extent to which community resources will be used in the project; and

(4) The degree to which the applicant intends to integrate services supported by a grant under this part with health services provided under other federally assisted health services or reimbursement programs or projects.

§ 56.107 For what purposes may grant funds be used?

(a) A grantee shall only spend funds it receives under this part according to the approved application and budget, the authorizing legislation, terms and conditions of the grant award, applicable cost principles specified in Subpart Q of 45 CFR Part 74, and the regulations of this part.

(b) The purposes for which funds granted under this part may be expended include the following:

(1) The costs of acquiring and modernizing existing buildings (including the costs of amortizing the principal of, and paying interest on, loans), but only as approved in the grant award;

(2) The costs of obtaining technical assistance to develop and improve the management or service capability of the project, but only as approved by the Secretary;

(3) To reimburse members of the grantee's governing board established under § 56.304 or advisory council established under § 56.503(d), if any, for reasonable expenses incurred by reason of their participation in the activities of the board or council;

(4) To reimburse govering board or advisory council members who are eligible to be served by the project for wages lost by reason of participation in the activities of the board or council, if the individual's annual income is at or below those levels set forth in the most recent "CSA Income Poverty Guidelines" (45 CFR 1060.2) issued by the Community Services Administration;

(5) The cost of delivering health services (including services rendered on a prepaid basis) to migratory agricultural workers, seasonal agricultural workers, and the members of their families within the project's catchment area, within the following limitations: grant funds may be used to

pay the full cost of project services to individuals and families with annual incomes at or below those set forth in the most recent "CSA Income Poverty Guidelines" (45 CFR 1060.2) issued by the Community Services Administration, and to pay the uncompensated portion of the cost of services to all other patients. However, (i) charges must be made to these individuals and families in accordance with § 56.303(g); and (ii) reasonable efforts must be made to collect these charges under a billing and collections system;

(6) The cost of insurance for medical emergency and out-of-area coverage;

(7) The costs of providing to the project staff training related to the provision of health services provided by the project, and, to the staff and governing board or advisory council, if any, training related to the management of migrant health centers or projects, consistent with the applicable requirements of 45 CFR Part 74;

(8) The improvement of private property when the conditions set forth in § 56.302(f) have been met and the Secretary has determined that funds for the improvement are not available from any other source. The Secretary will specify the amount of grant funds which may be used for this purpose; and

(9) The cost of developing and maintaining a reserve fund where required by State law for prepaid health care plans, but only as approved by the Secretary.

§ 56.108 What confidentiality requirements apply to migrant health services grants?

(a) Except as set forth in paragraph (b) of this section, each recipient of a grant under this part must hold confidential all information obtained by its personnel about participants in the project related to their examination and care and may not divulge it without the individual's authorization, unless it is required by law or is necessary to provide service to the individual or in compelling circumstances to protect the health or safety of an individual.

(b) Information may be disclosed in summary, statistical, or other form which does not identify particular individuals. Information may be disclosed, whether or not authorized by the participants, to the Secretary or the Comptroller General if it is necessary for the performance of their duties under the Act. Records pertaining to project participants may be disclosed, whether or not authorized by the participants, to qualified personnel for the purpose of conducting scientific research, but these personnel may not identify, directly or indirectly, any individual participant in any report of the research or otherwise disclose participant identities in any manner.

§ 56.109 What other regulations apply to migrant health services grants?

Several other regulations apply to grants under this part. These include, but are not limited to:

42 CFR Part 2—Confidentiality of alcohol and drug abuse patient records;

42 CFR Part 50, Subpart D—PHS grant appeals process;

42 CFR Part 50, Subpart E—Maximum allowable cost for drugs;

42 CFR Part 122, Subpart E—Health systems agency reviews of certain proposed uses of Federal health funds;

45 CFR Part 16—Department grants appeals process;

45 CFR Part 19—Limitations on payment or reimbursement for drugs;

45 CFR Part 74—Administration of grants;

45 CFR Part 75—Informal grant appeals procedures (indirect cost rates, and other cost allocations);

45 CFR Part 80—Nondiscrimination under programs receiving Federal assistance through the Department of Health, Education, and Welfare's implementation of Title VI of the Civil Rights Act of 1964;

45 CFR Part 81—Practice and procedure for hearings under Part 80;

45 CFR Part 84—Nondiscrimination on the basis of handicap in programs and activities receiving or benefiting from Federal financial assistance; and

45 CFR Part 90—Nondiscrimination on the basis of age in programs or activities receiving Federal financial assistance.

§ 56.110 When may the Secretary impose additional conditions on migrant health services grants?

The Secretary may with respect to any grant award impose additional conditions prior to or at the time of any award when additional conditions are necessary to assure or protect advancement of the approved program, the interest of public health, or the conservation of grant funds.

§ 56.111 For what length of time may a grantee expect to receive grant support?

(a) The notice of grant award specifies how long the Secretary intends to support the project without requiring the project to recompete for funds. This period, called the project period will usually be for 3–5 years, subject to the limitations set forth in § 56.204(b), § 56.404(b) and § 56.605(b).

(b) Generally, the grant will initially be for 1 year and subsequent continuation awards will also be for 1 year at a time. A grantee must submit a separate application to have the support continued for each subsequent year. Decisions regarding continuation awards and the funding level of those awards will be made after consideration of such factors as the grantee's progress and management practices, and the availability of funds. In all cases, continuation awards require a determination by the Secretary that continued funding is in the best interests of the Government.

(c) Neither the approval of any application nor the award of any grant commits or obligates the Federal Government in any way to make any additional, supplemental, continuation, or other award with respect to any approved application or portion of an approved application.

Subpart B—Grants for Planning and Developing Migrant Health Centers

§ 56.201 To what programs do the regulations of this subpart apply?

The regulations of this subpart, in addition to the regulations of Subpart A of this part, apply to grants awarded under section 329(c)(1)(A) of the Act for projects to plan and develop migrant health centers in high impact areas.

§ 56.202 What additional information must an application for a grant under this subpart contain?

To be approved by the Secretary under this subpart, an application for a grant must, in addition to meeting the requirements of § 56.104, contain information sufficient to enable the Secretary to determine that the project for which the grant is sought will meet the requirements of § 56.203.

§ 56.203 What requirements must a project supported under this subpart meet?

A project for planning and developing a migrant health center must accomplish the following:

(a) Determine (by survey or other appropriate means) the approximate number of:

(1) Migratory agricultural workers and the members of their families; and

(2) Seasonal agricultural workers and the members of their families,

within the proposed catchment area in the calendar year in which the grant is made and the period of time migratory agricultural workers and their families reside in the catchment area during that year.

(b) Prepare an assessment of the need of the population proposed to be served by the migrant health center for the services to be provided through the proposed center. This assessment must, at a minimum, consider the factors listed in § 56.104(b)(4) (i)–(vi).

(c) Design a migrant health center program for this population, based on the assessment prepared under the preceding paragraph, which indicates in detail how the proposed center will fulfill the needs identified in the assessment and how it will meet the requirements of Subpart C of this part.

(d) Develop a plan for the implementation of the program designed under paragraph (c) of this section. The plan must provide for the time-phased recruitment and training of the personnel essential for the operation of a migrant health center and the gradual assumption of operational status of the project so that the project will, in the judgment of the Secretary, meet the requirements of Subpart C of this part by the end of the period of support under this subpart.

(e) Submit the plan developed in accordance with paragraph (d) of this section to the Secretary for approval. The plan may be implemented only after the Secretary has determined that the project will meet the requirements of Subpart C of this part.

(f) Make efforts to secure within the proposed catchment area of the center, to the extent practical, financial and professional assistance and support for the project.

(g) Initiate and encourage continuing community involvement in the development and operation of the project.

(h) Establish standards and qualifications for personnel (including the project director).

(i) Use, to the maximum extent feasible, other Federal, State, local, and private resources available for support of the project, prior to use of funds granted under this subpart.

§ 56.204 How will the Secretary determine which applicants for grants under this subpart to fund?

(a) *Funding criteria.* Within the limits of funds determined by the Secretary to be available for this purpose, the Secretary may award grants under this subpart to applicants which will, in the Secretary's judgment, best promote the purposes of section 329(c)(1)(A) of the Act and the applicable regulations of this part, in accordance with the priorities set forth in § 56.106.

(b) *Limitations.* The Secretary may:

(1) Make grants under this subpart for no more than two 12-month periods for the same project except that the Secretary may approve, for good cause shown, extensions without additional funding, and extensions for closeout purposes.

(2) Make a grant under this subpart to an entity which has been awarded one or more grants under Subparts C or E of this part only if the grant under this subpart is for a new project.

Subpart C—Grants for Operating Migrant Health Centers

§ 56.301 To what programs do the regulations of this subpart apply?

The regulations of this subpart, in addition to the regulations of Subpart A of this part, apply to grants awarded under section 329(d)(1)(A) of the Act for the costs of operation of migrant health centers in high impact areas.

§ 56.302 What additional information must an application for a grant under this subpart contain?

To be approved by the Secretary under this subpart, an application for a grant must, in addition to meeting the requirements of § 56.104, meet the following requirements:

(a) Be submitted by an entity (which may be a coapplicant) which the Secretary determines is a migrant health center. For purposes of this paragraph, a coapplicant is a public or nonprofit private entity which has negotiated an agreement with another public or nonprofit private entity to share the functions and responsibilities of operating a migrant health center.

(b) Contain information sufficient to enable the Secretary to determine that the center will meet the requirements of § 56.303.

(c) (1) Contain a description of the need in the center's catchment area for the following services;

(i) Environmental health services;

(ii) Infectious and parasitic disease screening and control;

(iii) Home health services;

(iv) Dental services;

(v) Public health services; and

(vi) Health education services.

(2) The description of need for each of these services must include the following information:

(i) The number of individuals who require the service;

(ii) The projected use of the service;

(iii) The availability of other community resources to meet the need; and

(iv) A summary of the discussion by the governing board, at a meeting open to the public for which at least 2 weeks advance notice is given to users of the center, of the need for the service.

(d) If the applicant determines that one or more of the services referred to in paragraph (c)(1) of this section is not needed, explain the reason for that decision, taking into account the factors listed in paragraph (c)(2) of this section.

(e) If a center determines that a particular service is needed but that a request for funds for providing that service will not be made, an explanation for that determination.

(f) An applicant seeking funds for the improvement of private property must:

(1) Describe the health hazard, including the number of individuals in the catchment area affected by the health hazard;

(2) Describe the proposed improvement and its estimated cost;

(3) Describe the relationship between the proposed improvement and the health hazard;

(4) Identify the Federal, State, and local enforcement and environmental programs contacted in seeking resolution of the health hazard and include the response made by each of the programs and agencies contacted;

(5) Include a copy of the document showing the property owner's written consent;

(6) Indentify the amount of funds in the center's approved budget available for making the proposed improvement; and

(7) Identify the amount of any additional funds requested for making the proposed improvement to private property.

(g) If the Secretary determines, pursuant to § 56.303(b), that as a condition of approving the application a particular service must be provided, assurances that this service will be provided.

(h) If the applicant is a public center and the application is for a second or subsequent grant under this subpart, evidence that the governing board of the center has approved tha application; or, if the governing board has not approved tha application, evidence that the failure of the governing board to approve the application was unreasonable.

§ 56.303 What requirements must a project supported under this subpart meet?

A migrant health center supported under this subpart must:

(a) Provide the health services of the center so that those services are available and accessible promptly, as appropriate, and in a manner which will assure continuity of service to the migratory and seasonal agricultural workers and their families within the center's catchment area.

(b) Provide any health sevice described in the definition of "migrant health center" (§ 56.102) for which the Secretary specifically finds there is a need in the center's catchment area. Such a finding must be in writing with a copy sent to the grantee.

(c) Implement a system for maintaining the confidentiality of

patient records in accordance with the requirements of § 56.108.

(d) Have an ongoing quality assurance program which provides for the following:

(1) Organizational arrangements, including a focus of responsibility, to support the quality assurance program and the provision of high quality patient care; and

(2) Periodic assessment of the appropriateness and the quality of services provided or proposed to be provided to individuals served by the center. These assessments must:

(i) Be conducted by appropriate health professionals who are peers of the health professionals who provided the services;

(ii) Be based on the systematic collection and evaluation of patient records; and

(iii) Identify and document the necessity for change in the provision of services by the center and result in the institution of change where indicated.

(i) Develop management and control systems which are in accord with sound financial management procedures, and the standards contained in 45 CFR Part 74, including the provision for an audit on an annual basis (unless waived for good cause by the Secretary).

(f) Where the cost of care and services furnished by or through the center is to be reimbursed under Title XIX or Title XX of the Social Security Act, obtain or make every reasonable effort to obtain a written agreement with the Title XIX or title XX State agency for reimbursement.

(g) Have prepared a schedule of fees or payments for the provision of its services designed to cover its reasonable costs of operation and a corresponding schedule of discounts adjusted on the basis of the patient's ability to pay. this schedule of discounts must provide for a full discount to individuals and families with annual incomes at or below those set forth in the most recent "CSA Income Poverty Guidelines" (45 CFR 1060.2) and for no discount to individuals and families with annual incomes greater than twice those set forth in the Guidelines. However, nominal fees for services may be collected from individuals with annual incomes at or below the levels set forth in the Guidelines where imposition of those fees is consistent with project goals.

(h) Make every reasonable effort, including the establishment of systems for eligibility determination, billing, and collection, to:

(1) Collect reimbursement for its costs in providing health services to persons who are entitled to insurance benefits under Title XVIII of the Social Security Act, to medical assistance under a State plan approved under Title XIX of that Act, to social services and family planning services under Title XX of that Act, or to assistance for medical expenses under any other public assistance program, grant program, or private health insurance or benefit program, on the basis of the schedule of fees required by paragraph (g) of this section without application of any discounts; and

(2) Secure from patients payments for services in accordance with the schedule of fees and discounts required by paragraph (g) of this section.

(i) Have a governing board which meets the requirements of § 56.304.

(j) Have developed an overall plan and budget for the center that:

(1) Provides for an annual operating budget and a 3-year financial management plan which include all anticipated income and expenses related to items which would, under generally accepted accounting principles, be considered income and expense items;

(2) Provides for a capital expenditures plan for at least a 3-year period (including the year to which the operating budget described in paragraph (j)(1) of this section applies). The plan must identify in detail the anticipated sources of financing for, and the objective of, each anticipated expenditure in excess of $100,000 related to the acquisition of land, the improvement of land, buildings, and equipment, and the replacement, modernization and expansion of buildings and equipment which would, under generally accepted accounting principles, be considered capital items;

(3) Provides for plan review and updating at least annually; and

(4) Is prepared under the direction of the governing board of the center, by a committee consisting of representatives of the governing board, the administrative staff, and the medical staff, if any, of the center.

(k) Establish basic statistical data, cost accounting, management information, and reporting or monitoring systems which will enable the center to provide statistics and other information that the Secretary may reasonably require relating to the center's costs of operation, patterns of utilization of services, availability, accessibility, and acceptability of its services, and expenditures made from any amount the center was permitted to retain under § 56.306.

(l) Review its catchment area annually to insure that the criteria set out in § 56.104(b)(2) are met and, where these criteria are not met, revise its catchment area, with the approval of the Secretary, to conform to these criteria to the extent feasible.

(m) In the case of a center which serves a population including a substantial proportion of individuals of limited English-speaking ability, have developed a plan and made arrangements responsive to the needs of this population for providing services to the extent feasible in the language and cultural context most appropriate to these individuals. The center must also have an identified individual on its staff who is fluent in both that language and in English and whose responsibilities include providing guidance to these individuals and to appropriate staff members with respect to cultural sensitivities and bridging linguistic and cultural differences.

(n) Be operated in a manner calculated to preserve human dignity and to maximize acceptability and effective use of services.

(o) To the extent feasible, coordinate and integrate project activities with the activities of other federally funded, as well as State and local, health services delivery projects and programs serving the same population.

(p) Establish a means for evaluating progress toward the achievement of the specific objectives of the project.

(q) Provide sufficient staff, qualified by training and experience, to carry out the activities of the center.

(r) Assure that facilities used in the performance of the project meet applicable fire and life safety codes.

(s) Use, to the maximum extent feasible, other Federal, State, local and private resources available for support of the project, before using project funds under this part.

(t) Provide for community participation through, for example, contributions of cash or services, loans or full-time or part-time staff, equipment, space, materials, or facilities.

(u) Where the center will provide services through contract or other cooperative arrangements with other providers of services, the center must:

(1) Enter into the contract or arrangement only if the provider of services will provide the services in a timely manner and make the services accessible and appropriate to the population to be served;

(2) Make payment for services so provided only under written agreements with the providers in accordance with a schedule of rates and payment procedures established and maintained by the center. The center must be prepared to substantiate that these rates are reasonable and necessary;

(3) Directly provide at least primary care unless the center has made arrangements for the provision of primary care which include transfer of all medical and financial information relating to this care to the center; and

(4) Enter into contracts or other arrangements for the provision of primary health services only if alternative resources are available to provide these services in the event of termination of those arrangements.

(v) Operate so that no migratory or seasonal agricultural worker or member of his or her family is denied services because of inability to pay for those services. However, the center must charge for the provision of services, to the extent that a third party (including a Government agency) is authorized or is under legal obligations to pay these charges.

(w) In addition to the above, projects which are supported with grant funds for the operation of a prepaid health care plan also must provide:

(1) A marketing and enrollment plan, including market analysis, marketing strategy, and enrollment growth projections;

(2) A plan that provides for funding of services on a capitation basis for that portion of the residents of the catchment area of the center, as approved by the Secretary; and

(3) An assurance that services will be available to all residents of the catchment area without regard to method of payment or health status.

§ 56.304 What requirements must a migrant health center's governing board meet?

The governing board of the center must meet the following requirements:

(a) *Size.* The board must consist of at least 9 but not more than 25 members except that the Secretary may waive this limitation for good cause shown.

(b) *Composition.* (1) A majority of the board members must be migratory and seasonal agricultural workers or members of their families who are served by the center and who, as a group, represent the individuals being served or to be served in terms of demographic factors such as race, ethnicity, and sex. In the case of a newly operational center, these individuals must be likely users of the center.

(2) No more than one-half of the remaining members of the board may be individuals who derive more than 10 percent of their annual income from the health care industry.

(3) The remaining members of the board must be representative of the community in which the center's catchment area is located and must be selected for their expertise in relevant subject areas, such as community affairs, local government, finance and banking, legal affairs, trade unions, and other commercial and industrial concerns, or social services within the community.

(4) No member of the board may be an employee of the center or the spouse, child, parent, or brother or sister by blood or marriage of such an employee.

(5) The project director or chief executive officer may be a nonvoting, ex-officio member of the board. Proposals by the governing board to include other individuals as ex-officio members must be approved by the Secretary.

(c) *Selection of members.* The method of selection of all governing board members must be prescribed in the bylaws or other internal governing rules of the center and is subject to approval by the Secretary. The method of selection of the members who represent the population served or to be served by the center must insure that these members, as a group, are representative of that population, and the method must assure that there is the opportunity for broad participation in the selection process by migratory and seasonal agricultural workers and members of their families.

(d) *Functions and responsibilities.* (1) Except in the case of a public center, the governing board for the center must have authority for the establishment of general policies for the center.

(2) The governing board must hold regularly scheduled meetings, at least once each month, except for periods of the year, as specified in the bylaws, during which monthly meetings are not practical due to migration out of the catchment area.

(3) Minutes must be kept for all meetings of the board.

(4) The governing board must develop bylaws which give the governing board specific responsibility for:

(i) Approval of the selection and dismissal of the project director or chief executive officer of the center;

(ii) Approval of the center's annual budget;

(iii) Selecting the services to be provided, and scheduling the hours during which services will be provided;

(iv) Evaluating center activities, including services utilization patterns, productivity of the center, patient satisfaction, achievement of center objectives and development of a process for hearing and resolving patient grievances;

(v) Assuring that the center is operated in compliance with applicable Federal, State, and local laws and regulations;

(vi) Except in the case of public centers, establishing personnel policies and procedures, including selection and dismissal procedures, salary and benefit scales, employee grievance procedures, and equal opportunity practices;

(vii) Except in the case of public centers, adopting policy for financial management practices, including a system to insure accountability for center sources;

(viii) Except in the case of public centers, establishing center priorities, eligibility for services including criteria for partial payment schedules, and long-range financial planning;

(ix) Except in the case of public centers, selecting the location for the provision of services and quality-of-care audit procedures; and

(x) In the case of public centers, approving or disapproving any second or subsequent application for a grant under this subpart.

§ 56.305 How will the Secretary determine which applicants for grants under this subpart to fund?

Within the limits of funds determined by the Secretary to be available for this purpose, the Secretary may award grants under this subpart to applicants which, in his or her judgment, will provide needed health services in a catchment area which will not be served by another project funded under this part, and meet the applicable requirements of section 329(d)(1)(A) of the Act and the applicable regulations of this part, in accordance with the priorities established under § 56.106.

§ 56.306 What incentives are provided for improved collection performance by migrant health centers?

(a) If in any fiscal year the sum of the total of the amounts described in § 56.105(a)(1) received by a center and the amount of the grant to the center in that fiscal year exceeds its costs of operation in that year because the amount received by the center from fees, premiums, and third-party reimbursements was greater than expected, the amount of the grant will be adjusted for next fiscal year in a manner which permits the center to retain at least one-half of the excess amount. The amount retained by the center must be used for one or more of the following purposes:

(1) To expand or improve its services;

(2) To increase the number of eligible persons it is able to serve;

(3) To construct and modernize its facilities, except that, without the approval of the Secretary, not more than

one-half of the retained sum may be used for this purpose;

(4) To improve the administration of its services program; and

(5) To establish the financial reserve as may be required for the furnishing of services on a prepaid basis.

(b) The Secretary may, upon written request from the governing board, permit the center to retain more than one-half of the amount by which actual income exceeds projected income from fees, premiums and third-party reimbursements. The Secretary will consider the following factors in determining whether to permit the grantee to retain more than one-half of that amount and, if so, how much more:

(1) The center's past performance in administration, management, and provision of services;

(2) The center's past collection efforts;

(3) The need for increased services for migratory and seasonal agricultural workers and their families;

(4) The use of funds proposed in the governing board's request; and

(5) State and local levels of support for the center.

Subpart D—Grants for Planning and Developing Migrant Health Programs

§ 56.401 To what programs do the regulations of this subpart apply?

The regulations of this subpart, in addition to the regulations of Subpart A of this part, apply to grants awarded under section 329(c)(1)(B) of the Act for projects to plan and develop migrant health programs to provide health services in areas in which no migrant health center exists and in which not more than 4,000 migratory agricultural workers and their families reside for more than 2 months of each year.

§ 56.402 What additional information must an application for a grant under this subpart contain?

To be approved by the Secretary under this subpart, an application for a grant must, in addition to meeting the requirements of § 56.104:

(a) Be submitted for a project to serve a catchment area which:

(1) Is not served, in whole or in part, by a migrant health center;

(2) Has not more than 4,000 migratory agricultural workers and members of their families residing in it for more than 2 months per year; and

(b) Contain information sufficient to enable the Secretary to determine that the project for which the grant is sought will meet the requirements of § 56.403.

§ 56.403 What requirements must a project supported under this subpart meet?

A project supported under this subpart for the planning and development of a migrant health program must:

(a) Determine (by survey or other appropriate means) the approximate number of

(1) Migratory agricultural workers and the members of their families, and

(2) Seasonal agricultural workers and the members of their families,

residing within the project's catchment area in the calendar year in which the grant is made, and the period of time these workers and their families reside in the catchment area during that year.

(b) Prepare an assessment of need of the population proposed to be served by the migrant health program for the services set forth in § 56.503(a). This assessment of need must, at a minimum, consider the factors listed in § 56.104(b)(4) (i)–(vi).

(c) Design a migrant health program for this population, based on the assessment prepared under the preceding paragraph, which indicates in detail how the proposed program will fulfill the needs identified in that assessment and meet the requirements of Subpart E of this part.

(d) Develop a plan for the implementation of the program designed under paragraph (c) of this section. The plan must provide for the time-phased recruitment and training of the personnel essential for the operation of a migrant health program and the gradual assumption of operational status of the program so that the program will, in the judgment of the Secretary, meet the requirements of Subpart E of this part by the end of the period of support under this subpart.

(e) Submit the plan, developed in accordance with paragraph (d) of this section, to the Secretary for approval. The plan may be implemented only after the Secretary has determined that the program will meet the requirements of Subpart E of this part.

(f) Make efforts to secure within the proposed catchment area of the program, to the extent practical, financial, and professional assistance and support for the program.

(g) Initiate and encourage continuing community involvement in the development and operation of the program.

(h) Establish standards and qualifications for personnel (including the project director).

(i) Use, to the maximum extent feasible, other Federal, State, local and private resources available for support of the project, prior to use of funds granted under this subpart.

§ 56.404 How will the Secretary determine which applicants for grants under this subpart to fund?

(a) *Funding criteria.* Within the limits of funds determined by the Secretary to be available for this purpose, the Secretary may award grants under this subpart to applicants which will, in his or her judgment, best promote the purposes of section 329(c)(1)(B) of the Act and the applicable regulations of this part, in accordance with the priorities established under § 56.106.

(b) *Limitations.* The Secretary may:

(1) Make a grant under this subpart for no more than one 12-month period for the same project, except that the Secretary may approve, for good cause shown, extensions without additional funding, and extensions for closeout purposes.

(2) Make a grant under this subpart to an entity which has been awarded a grant under Subparts C or E of this part only if the grant under this subpart is for a new project.

Subpart E—Grants for Operating Migrant Health Programs

§ 56.501 To what programs do the regulations of this subpart apply?

The regulations of this subpart, in addition to the regulations of Subpart A of this part, apply to grants awarded under section 329(d)(1)(B) of the Act for projects to operate programs to provide health services to migratory agricultural workers, seasonal agricultural workers, and the members of their families in areas in which no migrant health center exists and in which not more than 4,000 migratory agricultural workers and the members of their families reside for more than 2 months per year.

§ 56.502 What additional information must an application for a grant under this subpart contain?

To be approved by the Secretary under this subpart, an application for a grant must, in addition to meeting the requirements of § 56.104:

(a) Be submitted for a project to serve a catchment area which:

(1) is not served, in whole or in part, by a migrant health center; and

(2) Has not more than 4,000 migratory agricultural workers and the members of their families residing therein for more than 2 months per year.

(b) Contain information sufficient to enable the Secretary to determine that the project for which the grant is sought will meet the requirements of § 56.503.

§56.503 What requirements must a project supported under this subpart meet?

A project for operating a migrant health program supported under this subpart must:

(a) Provide to migratory and seasonal agricultural workers and the members of their families in its catchment area one or more of the following groups of services, as approved by the Secretary and set forth (including specific services to be provided) in the notice of grant award:

(1) Emergency health care, including diagnostic and treatment services for medical emergencies in an ambulatory health care setting or hospital, and dental services for the alleviation of acute pain and suffering, when provision of these services is necessary to avoid jeopardizing the patient's condition until appropriate services from other providers can reasonably be obtained;

(2) Primary care;

(3) Arrangements with existing health care facilities to furnish primary health services (other than primary care); and

(4) Other services listed under the definition of "migrant health center" in § 56.102 which are needed to improve the health of these individuals.

(b) Meet all of the requirements set forth in § 56.303, except paragraphs (b), (d), (i), (j), and (u).

(c) Have an ongoing quality assurance program as described in § 56.303(d) except where the Secretary finds that such a program would not be feasible.

(d) To the extent feasible, establish an advisory council to advise with respect to the overall management of the program including services to be provided, the manner of their provision, and appointment of personnel. The membership of the advisory council must be representative of the population to be served in terms of appropriate demographic characteristics, such as race, sex, and ethnicity.

(e) Develop an overall financial management plan and operating budget which identifies, in accordance with generally accepted accounting principles, all anticipated current income and expense items, and capital income and expense items, if any.

(f) Where the program will provide services through contract or other arrangements with other providers of services, the program must:

(1) Enter into the contract or arrangment only if the provider of services will provide the services in a timely manner and make the services accessible and acceptable to the population to be served; and

(2) Make payment for services so provided only under written agreements with the providers in accordance with a schedule of rates and payment procedures established and maintained by the program. The program must be prepared to substantiate that these rates are reasonable and necessary.

§ 56.504 How will the Secretary determine which applicants for grants under this subpart to fund?

Funding Criteria. Within the limits of funds determined by the Secretary to be available for this purpose, the Secretary may award grants under this subpart to applicants which will, in the judgment of the Secretary, provide needed health services in a catchment area which will not be served by another project funded under this part, and meet the applicable requirements of section 329(d)(1)(B) of the Act and this part, in accordance with the priorities established under §56.106.

Subpart F—Grants to Migrant Health Centers for Planning and Developing the Provision of Services on a Prepaid Basis

§ 56.601 To what programs do the regulations of this subpart apply?

The regulations of this subpart, in addition to the regulations of Subpart A, apply to grants under section 329(d)(1)(C) to migrant health centers to enable them to plan and develop the provision of health services on a prepaid basis to some or all of the individuals served by these centers.

§ 56.602 Which migrant health centers are eligible to apply for a grant under this subpart?

To be eligible for a grant under this subpart, a center must have received grants under Subpart C of this part for at least two consecutive years preceding the year for which the grant under this subpart is sought.

§ 56.603 How does a center apply for a grant under this subpart?

To be approved by the Secretary under this subpart, an application for a grant must, in addition to meeting the requirements of §56.104:

(a) Contain information sufficient to enable the Secretary to determine that the project for which the grant is sought will meet the requirements of § 56.604;

(b) Contain evidence that the governing board of the center has requested that the center provide health services on a prepaid basis to some or all of the population served by the center;

(c) Contain assurances satisfactory to the Secretary that:

(1) The provision of services on a prepaid basis will not result in the dimimution of health services provided by the center to the population served prior to the award of a grant under this subpart; and

(2) The services of the center will continue to be available to all migratory and seasonal agricultural workers and members of their families in the catchment area regardless of the method of payment or health status; and

(d) Describe the reasons for seeking to offer health services on a prepaid basis to some or all of the population served by the center.

§ 56.604 What requirements must projects supported under this subpart meet?

A project for planning and developing the provision of health services on a prepaid basis must accomplish the following:

(a) Develop a plan for providing health services on a prepaid basis which includes:

(1) A description of the services to be offered on a prepaid basis. These services must include impatient hospital services unless the center provides a reasonable explanation of why these services cannot be offered;

(2) Market anlayses, marketing strategy, and enrollment growth projections;

(3) A description of the population to whom the center proposes to provide services on a prepaid basis; and

(4) A description of how the center proposes to become a qualified Health Maintenance Organization (HMO) under Title XIII of the Act, or, if the center does not intend to become a qualified HMO, an explanation for this decision; and

(b) Submit the plan developed under the preceding paragraph to the Secretary for approval.

§ 56.605 How will the Secretary determine which applicants for grants under this subpart to fund?

(a) *Funding criteria.* Within the limits of funds available for this purpose, the Secretary may award grants under this subpart to applicants which will, in his or her judgment, best promote the purposes of section 329(d)(1)(C) of the Act and the applicable regulations of this part, in accordance with the priorities established under § 56.106.

(b) *Limitations.* The Secretary may make a grant under this subpart for no more than two 12-month periods for the same project, except that the Secretary may approve, for good cause shown, extensions without additional funding, and extensions for closeout purposes.

Subpart G—Grants for Technical and Nonfinancial Assistance

§ 56.701 To what programs do the regulations of this subpart apply?

The regulations of this subpart, in addition to the regulations of Subpart A of this part, except as otherwise stated in these regulations, apply to grants awarded under section 329(g) of the Act for the provision of technical and other nonfinancial assistance to grantees under section 329 of the Act. Consistent with the "Federal Grant and Cooperative Agreement Act of 1977" and Department policy, technical assistance will be procured through contracts, except in unique situations when grants are determined to be the appropriate assistance instruments.

§ 56.702 What information must an application for a grant under this subpart contain?

To be approved by the Secretary, an application for a grant under this subpart must meet the requirements of § 56.104(a), § 56.104(b)(1), (5), (7), (8) and § 56.104(c).

§ 56.703 What requirements must a project supported under this subpart meet?

A project for the provision of technical assistance to migrant health centers and entities which intend to become migrant health centers, supported under this subpart, must:

(a) Provide to centers and entities as are specified in the grant award, any technical and other nonfinancial assistance (such as fiscal and program management assistance or training of the staff of a center or entity in management of this kind) specified in the grant award. The technical or other nonfinancial assistance must be designed to assist these centers and entities in:

(1) Developing plans for becoming migrant health centers; and

(2) Operating as migrant health centers.

(b) Provide this assistance through its own staff or resources.

(c) Where the project will provide training to the staff of a center or entity in management or in the provision of health services, provide this training consistent, as applicable, with § 56.107(b)(7).

§ 56.704 How will the Secretary determine which applicants for grants under this subpart to fund?

Within the limits of funds determined by the Secretary to be available for this purpose, the Secretary may award grants under this subpart to applicants which will, in the judgment of the Secretary, best promote the purposes of section 329(g) of the Act and the applicable regulations of this part, taking into consideration:

(a) The cost-effectiveness of the application; and

(b) The number of centers and entities proposed to be served by the applicant.

Subpart H—Acquisition and Modernization of Existing Buildings

§ 56.801 Applicability of 42 CFR Part 51c, Subpart G.

The provisions of 42 CFR Part 51c, Subpart G, establishing requirements for the acquisition and modernization of existing buildings, applies to all grants under section 329 of the Act for project costs which include the cost of acqusition and/or modernization of existing buildings (including the cost of amortizing the principal of, and paying the interest on, loans); except that, for purposes of this subpart, references within Subpart G to Part 51c, or to subparts of Part 51c, shall be deemed to be references to Part 56, or to the appropriate subparts of Part 56, and references to section 330 of the Act shall be deemed to be references to section 329 of the Act.

[FR Doc. 80-39057 Filed 12-10-80; 8:45 am]
BILLING CODE 4110-85-M

Center for Disease Control

42 CFR Part 65

Fees for Direct Training, Centers for Disease Control

AGENCY: Centers for Disease Control (CDC), Public Health Service, HHS.

ACTION: Notice of Decision to Develop Regulations.

SUMMARY: The Public Health Service Proposes to amend its regulations in 42 CFR Part 65 on direct training fees to eliminate the provision which permits applicants to submit written requests for waiver of fees for training conducted by the Centers for Disease Control (CDC). The present regulations provide that the Centers for Disease Control may waive the fee requirement when such waiver is judged to be in the public interest.

Section 202(c) of Title II, Disease Control Amendments of 1976 (Pub. L. 94-317), enacted June 23, 1976, amended Section 311(b) of the Public Health Service Act to provide that "The Secretary may charge only private entities reasonable fees for the training of their personnel * * *". This legislation eliminated the need for applicants from public agencies to request waiver of training fees since they are not charged fees for this training.

In addition, Title II of Pub. L. 95-480, enacted October 18, 1978, provided that "* * * training of employees of private agencies shall be made subject to reimbursement or advances to this appropriation for the full cost of such training." This legislation made it mandatory for applicants of private agencies to pay tuition for CDC training.

In addition to eliminating the provision for waiver of training fees, the Public Health Service intends to propose changes in 42 CFR Part 65 to reflect the Department's commitment to clairfy its regulations to promote public understanding of its programs.

FOR FURTHER INFORMATION CONTACT: Seth N. Leibler, Ed.D., Center for Professional Development and Training, Centers for Disease Control, PHS, HHS, Atlanta, Georgia 30333, telephone (404) 262-6671, or FTS: 236-6671.

Dated: December 5, 1980.

Julius B. Richmond,

Assistant Secretary for Health.

[FR Doc. 80-39518 Filed 12-18-80; 8:45 am]
BILLING CODE 4110-86-M

Health Care Financing Administration

42 CFR Part 405

Medicare and Medicaid; Conditions of Participation for Hospitals; Conditions for Coverage of Services of Independent Laboratories; Transfusion and Blood Banking Services

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

ACTION: Notice of Decision to Develop Regulations.

SUMMARY: A Memorandum of Understanding was signed by HCFA and the Public Health Service (PHS)/ Food and Drug Administration (FDA) and approved by the Secretary to consolidate the survey of transfusion services in approximately 3,000 facilities now being surveyed by both HCFA and FDA (45 FR 19316, March 25, 1980). These facilities consist of hospitals and independent laboratories certified for participation in the Medicare and Medicaid programs whose transfusion services are also subject to registration and inspection by the FDA. This regulation will result in the reduction of duplication and save the Department approximately $4 million annually in Federal survey costs and is expected to save the affected laboratories approximately $1 million annually.

In order to assure the maintenance of health and safety of the patients, HCFA regulations will be amended to adopt the relevant portions of the FDA regulations which are applicable to all transfusion services. HCFA will not require the facilities to meet any regulatory or survey requirements which are not already in HCFA or FDA regulations. The changes have been publicized and discussed with affected groups without receiving any adverse comments.

Since HFCA is already inspecting these facilities, adopting these regulations will not place a significant burden on the survey agencies or facilities. The facilities must comply with the FDA regulations to be registered. Surveying the compliance with the Medicare requirements as amended is expected to add less than one hour to the current laboratory survey time.

For these reasons, we plan to publish this as a final regulation. We have classified this regulation as policy significant. A regulatory analysis is not planned.

FOR FURTHER INFORMATION CONTACT: Mr. Royal A. Crystal, Director, Division of Laboratory and Ambulatory Services, Office of Standards and Certification, Health Care Financing Administration, 1849 Gwynn Oak Avenue, 2K3, Baltimore, MD 21207 (301) 594-7910.

Dated: August 28, 1980.

Earl M. Collier, Jr.,

Acting Administrator, Health Care Financing Administration.

[FR Doc. 80-39528 Filed 12-18-80; 8:45 am]

BILLING CODE 4110-35-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 4100

Grazing Administration and Trespass on Public Lands; Admendments to Grazing Regulations

AGENCY: Bureau of Land Management, Interior.

ACTION: Extension of comment period on proposed rulemaking.

SUMMARY: In response to numerous requests for an extension of time to comment on the Amendments to Grazing Regulations published as proposed rulemaking in the Federal Register of October 15, 1980 (45 FR 68506), an additional extension of 24 days is hereby granted. This extension of time will give the public more time to study and comment on the proposed rulemaking.

DATE: Comment period extended to January 9, 1981.

ADDRESS: Any comments or inquires should be addressed to: Director (650), Bureau of Land Management, 1800 C Street, N.W., Washington, D.C. 20240.

These comments will be available for inspection in room 5555 of the above address during regular business hours (7:45 a.m. to 4:15 p.m.) on work days.

FOR FURTHER INFORMATION CONTACT: Paul Leonard (202) 343-5841.

December 16,1980.

Guy R. Martin,

Assistant Secretary of the Interior.

[FR Doc. 80-39449 Filed 12-18-80; 8:45 am]

BILLING CODE 4310-84-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Ch. I

[CC Docket No. 80-54; FCC 80-607]

Regulatory Policies Concerning Resale and Shared Use of Common Carrier Domestic Public Switched Network Services

AGENCY: Federal Communications Commission.

ACTION: Termination of rulemaking.

SUMMARY: The Federal Communications Commission (FCC) is terminating its rulemaking relating to regulatory policies concerning resale and shared use of common carrier domestic public switched network services. The FCC finds tariff restrictions on such services unlawful under the Communications Act of 1934. The FCC further prescribes unlimited resale and sharing of such services. The services immediately affected are American Telephone and Telegraph's (AT&T's) Message Telecommunications Service (MTS), which is everyday interstate toll telephone service, and all Wide Area Telecommunications Service (WATS).

DATES: Tariff restrictions on resale and sharing are to be removed within 150 days of release of this Report and Order.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Braden Allenby or Tim Stevens, Common Carrier Bureau, (202) 632-6917/ 632-9342.

SUPPLEMENTARY INFORMATION:

In the matter of regulatory policies concerning resale and shared use of Common Carrier Domestic Public Switched Network Services, CC Docket No. 80-54, RM 3453.

Report and Order

Adopted: October 21, 1980.

Released: December 18, 1980.

By the Commission: Commissioner Fogarty concurring and issuing a statement; Commissioner Jones concurring in the result.

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Introduction

1. We initiated this proceeding to consider the adoption of rules removing or modifying current tariff restrictions in the resale and shared use of domestic public switched network services.[1] *Notice of Proposed Rulemaking*, 77 FCC 2d 274 (1980) ("*Notice*"). Assuming we found such restrictions unreasonable and unlawful, we left open the possibility of conducting a market experiment or taking other measures short of immediately prescribing unlimited resale and sharing if found necessary to ensure an orderly transition to a resale environment. *Notice* at 277-278. Comments and reply comments have been received from twenty-eight parties, including carriers, large and small users of public switched network services, hotels, network managers, equipment manufacturers and potential resellers.[2] This record, as well as the experience we have accumulated to date with resale and sharing activities in telecommunications generally, lead us to conclude that tariff restrictions of any kind on the resale and sharing of domestic public switched network services are unjust, unreasonable, and

[1] The specific services involved in this proceeding are American Telephone and Telegraph Company's ("AT&T") Message Telecommunications Service ("MTS") and Wide Area Telephone Service ("WATS"). However, we consider the findings and conclusions we reach here to be applicable to all domestic public switched network services.

[2] A list of parties filing comments and reply comments may be found in Appendix A; their comments are summarized in Appendix B which is not included in this document but may be seen on file in the FCC Dockets Branch, Room 239, 1919 M St. NW., Washington, D.C. 20554.

unreasonably discriminatory, and hence unlawful under Sections 201(b) and 202(a) of the Communications Act. We also find insufficient justification for allowing any modified or partial restrictions on either resale or sharing of these services. Moreover, we find that the prescription of unlimited resale and sharing of domestic public switched network services will be just, reasonable, and otherwise in the public interest. With regard to implementation of this result, we discern insufficient evidence in the record to justify a market experiment or similar delay in the removal of current tariff restrictions.

Background and Summary

2. For many years, certain carriers, such as the American Telephone and Telegraph Company ("AT&T"), have limited resale and sharing of their services through restrictions in their tariffs on file with this Commission. In 1974, however, we began to question whether these restrictions have operated to segment markets and sustain price discriminations. In other words, we were concerned that resale and sharing restrictions prevented normal economic activities such as arbitrage,[3] which could help insure that rates are cost-based. Our theory may be plainly stated: by purchasing discounted bulk public switched network services such as WATS, and reselling them to smaller users as substitutes for MTS, arbitrageurs would create pressure on the underlying carrier to set rates for the discounted service which fully recover the costs of providing that service. In addition, we were cognizant of unmet demand for communication services, complaints from user groups denied service under tariff restrictions preventing resale or sharing, and the possible anti-competitive effect of such provisions in limiting entry and artificially segmenting markets. We therefore initiated Docket No. 20097, *Resale and Shared Use,*[4] to investigate appropriate regulatory policies concerning resale and shared use of common carrier services and facilities.

3. As a result of that proceeding, we found that tariff restrictions preventing or restricting resale and sharing of all domestic services other than MTS and WATS were unjust and unreasonable, and therefore unlawful.[5] *Resale and Shared Use,* 60 FCC 2d at 321. We further prescribed unlimited sharing and resale of domestic private line services as just and reasonable. *Id.* Nevertheless we expressly left open the lawfulness of MTS and WATS restrictions, explaining that the issues involving switched voice services had not been adequately addressed in the record. See *Notice* at 278–279; *Resale and Shared Use,* 60 FCC 2d at 290–291.[6]

4. We instituted this proceeding in response to a petition filed by MCI Telecommunications Corp. ("MCI") on July 27, 1979, which asked us to institute a rulemaking to adopt policies and rules concerning tariff restrictions on the resale and shared use of switched voice services and facilities provided by common carriers. MCI claimed that these restrictions are unjust, unreasonable, unduly discriminatory, and anticompetitive. Stated differently, MCI alleged that they violated Section 201(b), 47 U.S.C. 201(b), which, in pertinent part makes unlawful any charge, practice, classification or regulation for or in connection with communications service which is unjust or unreasonable. MCI also claimed that the provisions violate Section 202(a), 47 U.S.C. 202(a), which provides in part that it is unlawful for any common carrier to give any undue or unreasonable preference or advantage to any person, class or locality, or to make any unjust or unreasonable discrimination in charges, practices, classifications, regulations, facilities, or services in connection with like communication services. Specifically, MCI asserted that AT&T's WATS and MTS tariffs unreasonably discriminate between customers based on the function of the user. MCI further maintained that the WATS tariff discriminated between large volume and small volume users by providing an unjustified bulk rate discount, since, according to MCI, WATS rates bear little relation to the cost of providing the service. Similarly, petitioner noted that only "composite data service vendors"[7] and certain other favored users are permitted to resell WATS. As a separate matter, it predicted that the same benefits would flow from permitting resale and sharing of the domestic public switched voice network as we found would result from the resale and sharing of private line services in *Resale and Shared Use.*[8]

5. Turning to the structure of the proceeding, we called for comments on a wide range of possible options with regard to MTS and WATS.[9] We specifically mentioned as possibilities, either singly or in combination, unlimited sharing of WATS, unlimited sharing and resale of WATS, unlimited resale of interstate MTS, and a market experiment in the resale of WATS. However, we excluded international/overseas services from the scope of the proceeding.[10] We also left aside as beyond the scope questions dealing with the appropriate regulatory status of resellers and sharers in general.

6. Our discussion below begins with an analysis of the lawfulness of current tariff restrictions on resale and sharing in light of the record, followed by an analysis of whether unlimited, resale and sharing is just, fair, reasonable, and in the public interest.[11] The economic and public interest analysis is also divided into two parts. First, we discuss the purposes and effects or resale and

[3] Arbitrage is the purchase of a product or service in one market for the purpose of immediate resale in another market for guaranteed profit.

[4] Regulatory Policies Concerning Resale and Shared Use of Common Carrier Services and Facilities ("Resale and Shared Use"), Notice of Inquiry and Proposed Rulemaking, 47 FCC 2d 644 (1974), 48 FCC 2d 1077 (1974), Report and Order, 60 FCC 2d 261 (1976), *recon.* 62 FCC 2d 588 (1977), *aff'd sub nom.* American Telephone and Telegraph Co. v. FCC, 572 F. 2d 17 (2nd Cir. 1978), *cert. denied,* 439 U.S. 875 (1978) ("AT&T v. FCC").

[5] WATS service consists of 600 Service (formerly Inward WATS) and Outward WATS, which provides the purchaser access from his line to all phones in each of several geographic zones. Both are offered under Tariff FCC No. 259.

[6] That result was in part predicated on our policy at that time which contemplated that MTS and WATS were to be provided on a sole source basis. This policy has since changed, as we have now found competition in providing these services to be in the public interest. *See* MTS and WATS Market Structure Inquiry, Docket No. 78–72, 67 FCC 2d 757 (1978), 73 FCC 2d 222 (1979), 77 FCC 2d 224 (1980), Order FCC 80–463, released August 25, 1980 ("Docket No. 78–72").

[7] See note 14, *infra.*

[8] These included increased incentives for cost-based pricing of the services, reduction in required enforcement of Sections 201(b) and 202(a) and more efficient use of network capacity. Other anticipated benefits we perceived were better network management, improved marketing of communications services and facilities, wider variety of communications offerings, and increased research, development, and implementation of communications technology.

[9] All other domestic public switched network services, including MCI's Execunet service, United States Transmissions System's ("USTS") City-Call service, Western Union's ("WU") Metro-Call service and Southern Pacific Communications Company's ("SPCC") Sprint service, are presently freely available for resale and sharing. Thus, although we consider our analysis applicable to all domestic public switched network services, we will be dealing mainly with MTS and WATS. Additionally, the record does not support any conclusions at this time with regard to TWX or Telex, so our findings do not apply to those services.

[10] Resale and sharing of international telecommunications services are presently being considered in Regulatory Policies Concerning Resale and Shared Use of Common Carrier International Communications Services, Docket No. 80–176. *See* 77 FCC 2d 831 (1980). ("International Resale").

[11] The fundamental statutory definition of the public interest as it relates to communications is given in Section 1 of the Communications Act, where the Commission is directed to "make available, so far as possible * * * a rapid, efficient, Nationwide and worldwide wire and radio communication service with adequate facilities at reasonable charges, for the purpose of the national defense, for the purpose of promoting safety of life and property * * *."

sharing both generally and with reference to MTS and WATS, and find that the record before us overwhelmingly shows them to be in the public interest. Second, we discuss the considerations leading to our chosen course for implementing resale and sharing in light of the parties' comments and why it is preferable to other possibilities, such as a market experiment.

Lawfulness of the Tariff Provisions

7. The *Notice* placed the burden of proving these restrictions just and reasonable squarely on the promulgating carrier and, inferentially, on those parties seeking to have these tariff provisions retained. *Notice* at 280; *see also, Resale and Shared Use,* 60 FCC 2d at 284–285, and the cases cited there. Significantly, though, no carrier or other party has attempted in its submissions to defend the lawfulness of tariff restrictions on sharing and resale. There is thus no evidence in the record before us which in any way justifies the restrictions currently in AT&T's tariffs or resale and sharing restrictions in general. Indeed, AT&T itself concedes that resale and sharing of all interstate telecommunications services can have "salutary effects" (Comments at 1) and that resale and sharing can benefit the public by assuring through the arbitrage mechanism that the resold and shared services are offered at rates closely related to cost. *Id. at D–7.*

8. We do not rely solely on the carrier's or other parties' failure to come forward with justification for these tariff restrictions as the basis for finding them unlawful under Section 201(b) of the Act. Rather, the record before us permits the affirmative finding that these provisions fail the judicial test established in *Hush-a-Phone Corp. v. U.S.,* 238 F.2d 266 (D.C. Cir. 1956) (*"Hush-a-Phone"*), to determine if a communications common carriers practice is just and reasonable within the meaning of Section 201(b). There, the court held that AT&T could not by tariff establish a restriction which amounted to "an unwarranted interference with the telephone subscriber's right reasonably to use his telephone in ways which are privately beneficial without being publicly detrimental." 238 F.2d at 269. Our past decisions introducing competition into other telecommunications market have rested on this test. It was this principle which guided us in removing the numerous tariff restrictions AT&T established against interconnection of customer-supplied terminal equipment. *See Carterfone,* 13 FCC 2d 420 (1968), *recon. denied,* 14 FCC 2d 605 (1968), *recon.* 18 FCC 2d 871 (1969). Our program of registering terminal equipment to ensure private parties could benefit from its use without any concomitant public detriment was expressly based on *Hush-a-Phone. See* our Decision and Order on Remand in that proceeding, 22 FCC 112 (1957). There we held that tariff restrictions involving interconnection of terminal equipment which encroached upon the right of the user to make reasonable use of AT&T's facilities without harming them were unlawful. 22 FCC 112, 113–114 (1957); *see* Interstate and Foreign MTS and WATS, Docket No. 19528, 35 FCC 2d 533 (1972), 56 FCC 2d593 (1975), *recon.* 58 FCC 2d 716 (1976), 58 FCC 2d 736 (1976), *aff'd sub. nom. North Carolina Utilities Commission v. FCC,* 552 F.2d 1036 (D.C. Cir. 1977), *cert. denied* 434 U.S. 874 (1977). More recently, we have applied this test in *Resale and Shared Use,* to determine that tariff restrictions which prevented users from reselling or sharing private line services in ways which benefitted them privately but were not publicly detrimental were unlawful. *See* 60 FCC 2d at 280–281.

9. Applying this test here, we find substantial evidence in the record that a number of public and private benefits may be anticipated to flow from resale and sharing of domestic public switched network services. The comments of potential resellers and sharers persuade us that the elimination of these restrictions will have a number of salutary public interest effects, including the fostering of innovation and the introduction of new technology, especially new ancillary devices, and the spreading of peak-period usage. Also, resale and sharing can be expected to promote better management of communications networks, a reduction in wasted communications capacity, and the growth of customer networks for particular applications. We foresee the development of competition in the provision of telecommunications services, new entry into telecommunications markets, and stimulation of demand. Moreover, lower rates for small to medium domestic public switched network consumers should result. We also anticipate a movement on the part of carriers toward cost-based rates, an important regulatory goal, as the prospect of arbitrage actually arises. We will elaborate on these benefits in the course of our discussion; we mentioned them briefly here to emphasize that the *Hush-a-Phone* test, in our opinion, is clearly met.

10. Conversely, there is no evidence in this record which convincingly demonstrates that any public detriments would result if WATS, MTS or other public network switched services were not subject to resale and shared use restrictions. Indeed, carriers such as MCI and SPCC have successfully offered such services without restriction for several years. We are unaware of any public detriment flowing from this arrangement. Furthermore, the experience of the past several years since our Resale and Shared Use decision indicates that the opening of AT&T's private line services to resale and sharing has not produced any harmful effects on the company or the public at large. To repeat, moreover, no party, including AT&T, argues that there would be any harm to the public interest as a result of resale and sharing.[12]

11. We next consider the tariff provisions in light of Section 202(a). We find that several different forms of discrimination occur under the current WATS tariff restrictions limiting resale and sharing and the MTS restrictions against resale. First, it is clear that potential sharers or resellers are discriminated against as a general class in both tariffs. In other words, a potential reseller or sharer is refused service simply because of his status. This constitutes a facial discrimination. *See Telepak Sharing,* 23 FCC 2d 606, 612 (1970)[13]; *Resale and Shared Use,* 60 FCC 2d at 286.

12. Upon close examination, moreover, we find that this discrimination is without justification, and, hence, unlawful under the Act. Initially, we note that none of the comments purport to provide justification for this discrimination against one class of users. Further, we have previously held that "discrimination against a communications customer—in this case, by the carrier's refusal to provide service to a reseller—is unlawful if it is based upon the fact that the customer is not the ultimate user of the service." *Resale and Shared Use,* 60 FCC 2d at 286. This principle is applicable here since the mere status of entities as resellers or sharers, as opposed to ultimate users of these services, is the basis for the carrier's refusal to serve. This conclusion is reinforced by the fact that, as we discuss below, the major purpose of these restrictions is to

[12] Some large volume users argue that the economic consequences of resale and sharing on them would be detrimental, but, as we discuss below, we view this as a separate matter from the lawfulness of the tariff restrictions at issue here.

[13] Telpak Sharing, Docket No. 17457, 8 FCC 2d 178 (1967), 23 FCC 2d 606 (1970), 26 FCC 2d 662 (1970), *aff'd in part and reversed in part sub nom.* AT&T v. FCC, 449 F.2d 439 (2nd Cir. 1971).

enforce price discrimination which requires, in part, prevention of resale and sharing activities. We therefore find that this constitutes unjust and unreasonable, and thus unlawful, discrimination under Section 202(a) of the Act. *See Resale and Shared Use,* 60 FCC 2d at 281–284, and cases cited there.

13. Additionally, in the case of the WATS tariff provisions, resellers and sharers are discriminated against in relation to composite data service vendors (CDSVs),[14] or customers providing a message forwarding service for transient clients. *See* Tariff F.C.C. No. 259, Section 2.2.1. Again, no one has attempted to defend as just or reasonable under the Act the preference granted these entities. Even AT&T proffers no justification or explanation for its practice of excepting CDSV's and selected other resellers from the resale restrictions in its WATS tariff. Finding no justification whatsoever in the record, we are compelled to conclude that the WATS tariff provisions in question constitute an undue and unreasonable preference in favor of the CDSVs and certain other favored parties as well as an unlawful discrimination against resellers and sharers. *See Resale and Shared Use,* 60 FCC 2d at 281–284.

14. Having concluded that the restrictions against reselling and sharing of domestic public switched network services are unlawful under 201(b) and 202(a), we will now consider whether unlimited resale and shared use of public switched network services will be just, fair, reasonable, and in the public interest. Section 205 of the Act, 47 U.S.C. § 205, provides that whenever the Commission after hearing determines that any charge, classification, regulation or practice of a carrier is unlawful, the Commission may prescribe a just, fair and reasonable practice or regulation. To aid us in this undertaking, we look to the economic and technical content of the present record. Our goal here is to determine the extent of sharing and resale which best serves the public interest, as well as the best manner of implementation. In doing so, we shall consider the obvious and extensive benefits to the public which will accrue from resale and sharing, as well as the comments on certain concerns we expressed in the *Notice (see, e.g.,* Appendix, 1(b), (c), 2, 6).

[14] Examples of such CDSVs are Tymnet, Inc., Graphnet Services Inc., and GTE Telenet Communications Corp. ("GTE Telenet"). AT&T in its Tariff FCC No. 259, Section 2.5, defines such entities as customers certificated by us to perform data switching for others.

Economic Issues

15. Price discrimination, from an economic point of view, arises when a firm charges different prices for the same good or service, where each unit of the good or service costs the same.[15] When practiced on a consistent or "systematic" basis, price discrimination can have anticompetitive effects. An example would be selective price cuts (below cost) designed to drive competing suppliers from the marketplace.[16] Among the public interest benefits which our decision here is designed to bring about is a lessening of the opportunity to engage in systematic price discrimination which a firm in AT&T's market position would otherwise enjoy.[17] These opportunities are reduced because restrictions against resale and shared use are often necessary to sustain price discrimination on a systematic basis.[18]

16. The undesirable effects of price discrimination arise from several sources. First, the ability to engage in third degree price discrimination can have a dampening effect on the degree of competition in an industry.[19] In the case of AT&T the Commission has long been concerned with the possibility that revenues derived from services provided on an historical monopoly basis have been used to sustain artificially low prices for like services provided on a competitive basis.[20] Second, price discrimination leads to income redistribution towards the discriminator and away from is customers. Higher income levels are the result of the price discriminator's ability to charge higher prices to those groups of users whose demand is more inelastic.

17. It is difficult to sustain price discriminations in a competitive environment where customers are free to choose among many alternative suppliers. With MTS and WATS, however, the customer has no choice but to pay the tariffed rates. Any discriminations which may be present are sustained through the enforcement mechanism of regulation.[21]

18. Our decision to prescribe unlimited resale and shared use of public switched network services reflects in large part our determination to alleviate the adverse impact of price discrimination. Thus we expect resale activities to moderate certain types of discrimination in the pricing of telephone service in instances where the firm is not providing a product or services in appropriate relationship to its cost. The desired result would come about when arbitrageurs (entities purchasing a product in one market and reselling it in another market for a guaranteed profit) are free search out and capitalize upon attempts by the telephone company to charge different prices for the same product.[22] If the decision to use MTS is not based on those aspects of the service which appear to differentiate it from WATS (e.g., dedicated access lines, advanced billing, two termination requirement) then it can be expected that removal of resale and sharing restrictions will result in consumers purchasing WATS service at cheaper unit rates, using none or only a portion and selling or sharing the rest with other users at cheaper rates than MTS.[23] If WATS prices are not cost-based, the increased demand for WATS lines will eventually force the telephone company to withdraw the

[15] *See, e.g.,* Koch, James V., *Microeconomic Theory and Applications,* 1976, pp. 227–235; Robinson, Joan, *The Economics of Imperfect Competition* Book v, London: MacMillan & Co., Ltd., 1934. The term "price discrimination" is used here in the general economic sense, as opposed to the legal term "discrimination" used in connection with Section 202(a) of the Act.

[16] *See* Scherer, F. M., *Industrial Market Structure and Economic Performance,* Second Ed., 1980, pp. 324–5.

[17] It is generally recognized that price discriminations can have beneficial as well as detrimental effects, which is why the Communications Act of 1934 only makes "unjust or unreasonable" price discriminations unlawful. The ability of carriers to change prices on an unsystematic, short-term basis can undermine oligopolistic discipline, making it difficult to achieve joint profit maximization. In addition, short run changes in prices can allow firms to test for the location of the elastic portion of the demand curves for their products. See Scherer, *op cit.* Chapter 11. Therefore it is not our intention to eliminate all price discriminations.

[18] Two additional factors which must be present in conjunction with resale restrictions in order to engage in price discrimination are market power—*i.e.,* control over price levels—and the ability to segregate customers into groups with different price elasticities of demand. See Scherer, *op. cit,* p. 315.

[19] Third degree price discrimination arises when the firm is able to take advantage of customer groups having different price elasticities of demand by deriving a set of profit maximizing prices whereby each customer group gets charged a different price. *Ibid.,* p. 310, 319–20.

[20] *See e.g.,* 61 FCC 2d at 589, 608, 669–670, In AT&T, Docket No. 18128, 61 FCC 2d 587 (1976), *recon. denied.* 64 FCC 2d 971 (1977), *further recon.,* 67 FCC 2d 1441 (1978). *aff'd sub nom.* Aeronautical Radio, Inc. v. FCC, No. 77–1333 (D.C. Cir. June 24, 1980) ("Docket No. 18128").

[21] *See e.g.,* Associated Students of the University of Arizona (ASUA) v. AT&T, 43 FCC 2d 197 (1973).

[22] By the same product, we are referring to the existence of significant cross-elasticities of demand such that the consumer is basically indifferent as to the choice of one product over another in the absence of pricing differentials.

[23] The possibility for arbitrage between WATS and MTS is indicated by the price differences in per minute charges for similar services between MTS users, low volume WATS users, and high volume WATS users. *See* Appendix C.

offering or reprice it such that rates are based on costs.[24]

19. The ability of resale and sharing to force rates to reflect costs gives rise to the prospect that our concerns about cost-based rates will move a major step toward resolution. Our policy favoring cost-based rates has existed for some time. As we stated in Docket No. 19989, 59 FCC 2d at 678, "well-established Commission policy holds that cost of providing service is at the heart of the statutory requirements under Sections 201–205 of the Act for just, reasonable and non-discriminarory rates and that costs are to be directly controlling in the fixing of rates, or are to be considered as reference points or benchmarks, from which to measure the extent of any departures therefrom. See *Private Line Rate Cases,* 34 FCC 244, 297 (1961), 34 FCC 217, 231 (1963). *Re WATS,* 35 FCC 149, 153–56 (1963); *Re WATS,* 37 FCC 695, 698 (1964); *Re Part 61 of the Rules,* 25 FCC 2d 957, 965 (1970), 40 FCC 2d 149, 154 (1973); *Re 48Khz,* 20 FCC 2d 493 (1971); and *Hi-Lo,* 55 FCC 2d 224, 241 (1975), 58 FCC 2d 362, 366 (1976)." [25] In the case of WATS, the struggle to achieve cost-based rates has been considerable. The history of WATS regulation is marked by time-consuming and complex proceedings which have been primarily concerned with the derivation and proper calculation of costs. Since the first Outward WATS tariff was filed in 1961, the offering has been under almost continuous investigation as a part of Docked Nos. 13914,[26] 19129,[27] and 19989.[28] The basic problem with each filing has been AT&T's failure to provide required cost support data and the continued use of improper costing methodologies. A prime example was AT&T's use of the "alignment" theory, where the carrier insisted that WATS rates could be justified solely on the lasis that a consistent rate relationship over distance between MTS and WATS was maintained, and that independent cost of service studies were therefore not required for WATS. *See* Docket No. 19989, 59 FCC 2d 671 (1976). As we have consistently emphasized, however, cost of service forms the fundamental benchmark for our rate regulation activities. Thus, we have rejected methodologies which ignore the actual costs of Providing the service. *Id.* AT&T filed new WATS tariff revisions in 1977 which purportedly complied with the Docket No. 19989 decision. However, we summarily rejected those proposed revisions on nineteen independent grounds as violating ratemaking principles and costing standards established in Dockets No. 19989, 18128, and elsewhere. *See WATS Rejection.*[29] 59 FCC 2d at 703–708 (1976).

20. The Commission is currently attempting through its efforts in the *Cost Manual* proceeding (Docket No. 79–245) to develop costing procedures which will lead to the proper calculation of costs for WATS.[30] Yet it is only in conjunction with the capability for resale and shared use that substantial improvement in rate structures can be expected. We caution, however, that resale and shared use opportunities will not provide a panacea for all problems which have arisen regarding the princing of AT&T's services. In particular, resale and sharing can assist in preventing services from being priced too low in relation to cost (*i.e.* earning less than the market required rate of return) but it cannot in the short run prevent prices from being priced too high in relation to costs (*I.e.,* earning more than the market required rate of return), in instances where the carrier possesses sufficient market power. *See* Comments of National Telecommunications and Information Administration ("NTIA") at 10; Comments of Ad Hoc Telecommunications Users Committee ("Ad Hoc Committee") at 6.[31]

Marketplace Response

21. At the outset we stress the limited nature of our action, which involves only the barring of restrictions against the resale and shared use of public switched network services. We are making no changes in the industry structure, although we recognize some may come about as the transition is made from a non-resale environment where price levels were in improperly set or certain service demands were not met. It is likely that carriers who have been engaging in price discrimination will be prompted to begin on their own to redesign rates to remove discriminatory charges. Quite apart from any active encouragement of resale activity by the FCC, resellers will offer service if they perceive the opportunity to earn a profit. The situation is thus similar to that before us in our decisions promoting the interconnection of customer-owned terminal equipment with the telephone network: the Commission plays a role in establishing broad marketplace rules consistent with the Communications Act, but it is the competing carrier who must decide if profits are sufficient to reward the decision to enter the market.[32]

22. The marketplace rule of primary importance here is that all users (not just composite date service vendors) should have the opportunity to use the telephone network to satisfy individual needs, as long as firmly-established evidence is not presented which would show that such individual actions would significantly harm or otherwise constrain the development of the network for users as a whole. It has been our experience that such flexibility (*e.g.,* the ability to interconnect terminal equipment of the user's own choice) induces more rapid technological development as well as providing users the increased benefits of customizing their telecommunications functions.

23. The record in this proceeding has provided a number of examples (as discussed below) where the ability to resell and share public switched network services might lead to the expansion of service options available to the public.[33] For example, opening up

[24] As AT&T concedes in its comments, at D–7 "resale and sharing can benefit the public * * * by assuring, through the arbitrage mechanism, that the resold and shared services are offered at rates closely related to cost. If they are offered below cost, the demand of resellers and sharers will cause the underlying provider to suffer unsustainable losses. If they are offered above cost, resellers and sharers will duplicate the underlying offerings themselves at lower prices and gain the lion's share of customers."

[25] AT&T, 46 FCC 2d 80 (1974), 52 FCC 2d 155 (1975), 58 FCC 2d 1 (1976), 59 FCC 2d 671 (1976), *recon.,* 64 FCC 2d 538 (1977) ("Docket No. 19989").

[26] *Re* WATS, Docket No. 13914, 37 FCC 688 (1964), *recon. denied,* 38 FCC 475 (1965) ("*Re* WATS").

[27] *See* 40 FCC 2d 18 (1973). The WATS tariff revisions at issue were later removed from this proceeding and placed in Docket No. 19989. *See* 46 FCC 2d at 86.

[28] In Docket No. 19989, we found that AT&T had failed to show that the WATS tariff revisions filed under Transmittal No. 11657 (40 FCC 2d 18 (1973)) Tr. No. 11935 (46 FCC 2d 80 (1974)), Tr. No. 12303 (52 FCC 2d 155 (1975)), and Tr. No. 12497 (58 FCC 2d, (1976)), were just, reasonable, and otherwise lawful. 59 FCC 2d at 703–708 (1976).

[29] American Telephone and Telegraph Co. (Long Lines Department), 66 FCC 2d 9, (1977), *recon.,* 69 FCC 2d 1672 (1978), *remanded and jurisdiction retained sub nom.* MCI Telecommunications Corp. v. F.C.C. No. 79–119 (D.C. Cir. April 2, 1980). In this decision the Court of Appeals for the District of Columbia Circuit required us to establish a timetable for the achievement of a lawful WATS rate sturcture.

[30] *See* Manual and Procedures for the Allocation of Costs, 73 FCC 2d 629 (1979), 77 FCC 2d 224 (1980), FCC 80–463, released August 25, 1980 ("Cost Manual").

[31] Market control over services which are overpriced comes in the long run through the entry of new firms seeking to provide services at lower prices.

[32] *See* Economic Implications and Interrelationships Arising from Policies and Practices Relating to Customer Interconnection, Jurisdictional Separations and Rate Structures, 61 FCC 2d 766 (1976), 75 FCC 2d 506 (1980) ("Docket No. 20003").

[33] Aerospace Industries Association of America, Inc. ("AIA") alone claims (Comments at 8) that there is no unmet demand for services in the public switched network markets. Most other parties, especially the potential resellers, other common carriers ("OCCs"), and telecommunications managers, flatly dispute this. Indeed, it is clear from

Footnotes continued on next page

the MTS/WATS market to resale and sharing opportunities may give rise to entry by firms specializing in sophisticated telecommunications management services which can offer services previously unavailable. In addition, firms which provide access to telephone company services as part of their commercial offering (*e.g.*, room telephone service in hotels and motels) will have the opportunity to adapt telephone services to their individual circumstances, in ways which will benefit not only these entities, but the public and the telephone companies as well.

24. More important than the accuracy of these predictions, however, is the fact that the opportunity itself would be available for users to seek improved telecommunications services. These improved marketplace opportunities, in addition to the pressure to remove price discriminations as discussed above, form the primary bases for our prescription of unlimited resale and sharing of public switched network services.

25. The comments of Rolm Corp. ("Rolm"), Bitek International Corp. ("Bitek"), and the Ocean Reef Club ("Ocean Reef"), among others, suggest that resale would offer immediate opportunities for hotels and motels to provide new types of telephone service at favorable rates. Moreover, these commenters believe that resale will provide an incentive to enter the marketplace by manufacturers with product strength in the area of storage capacity and smart switching capability. *See* Rolm comments at 13.

26. The record supports the conclusion that allowing resale and shared use will provide the opportunity for hotels and motels to provide improved telephone service on an economical basis. Currently, a hotel/motel guest generally accesses the network through a telephone company TSPS operator. Since no mechanism for verifying the identity of the caller exists, disputes over telephone bills are frequent. Losses from unpaid telephone bills are borne to some extent by the hotel/motel. In addition, each call requires manual oversight by both hotel/motel employees as well as telephone company employees. Accuracy is said to be impossible to insure, and the amount of work involved creates additional personnel payroll and training costs which the hotel must cover. Rolm Comments at 5. *See also,* Comments of Ocean Reef and Bitek.

27. The ability to buy long distance service from AT&T at DDD rates and resell to patrons at higher rates (patrons are now charged operator assisted station-to-station rates) would provide the financial incentive for hotels/motels to install "smart" PBX's. This equipment would allow the hotel/motel to perform the billing and identification function on its premises rather than having to rely on a distant third party (i.e. the telephone operator). The advantage to hotel/motel patrons as a group would be that hotel/motel losses on telephone operations would no longer have to be averaged onto everyone's room charge.[34] The costs of providing telephone service could then be charged more directly to patrons making use of telephone service. Of course, AT&T itself, upon initiation of resale opportunities, could offer on-premise time and charge service to hotels through its Dimension PBX and other related equipment.

28. As further evidence that demand exists for specialized hotel/motel telephone services, Rolm points to the Commission's recent authorization of resale carriers, including Hyatt Corporation, Ocean Reef Club, and Ho-Tel, Inc. It notes that these entities have formed to resell MTS-type services obtained from the specialized carriers. Rolm comments at 9.

29. In addition to describing the demand for resale and shared use of MTS and WATS by hotels and motels, the record spells out how resale capability would provide new opportunities for firms specializing in the management of telecommunications resources purchased or leased by business firms. This development has the potential for providing benefits not only for the firms utilizing these services, but for the public switched telephone network as well. This is because services provided by firms specializing in "telemanagement" can lead to more efficient use of the network. As TDX Systems, Inc. ("TDX") points out, such techniques as queuing can achieve significant efficiencies and economies on the national MTS/WATS network by spreading out peak period usage.[35] TDX Comments at 8. In addition, resale and sharing would allow the benefits of queuing to be extended to small-to-medium-volume customers who individually lack sufficient calling volume to justify ordering their own WATS lines.

30. The question of network efficiency was raised in our Final Decision and Order in Docket No. 19989:

> We are not persuaded that the sole criterion for judging the lawfulness of WATS rate structures, or rate structures in general, is whether or not the rate structures generate compensatory revenues (footnote omitted). We believe that sound regulatory policy should encourage the development of rate structures which in addition to being compensatory, tend to promote efficiency in the use of the public switched network by allowing and encouraging subscribers to shift usage out of peak periods.[37]

[37] We note that rate structures which strive for such efficiency would appear to be very much in the interest of the ratepayers and AT&T stockholders. Rate structures which allow provision of an adequate supply of communications at the least possible cost, *i.e.*, insure that society as a whole is allocating as few of its resources as possible in order to obtain the service, leaving the maximum amount of resources available for other desirable uses. 59 FCC 2d at 701.

We find for the reasons just stated that managers of resold services will

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numerous previous proceedings that the rapid pace of technological change provides entrepreneurs with unique opportunities to develop new markets or offerings using, in part, traditional services. *See* Allocation of Frequencies in the Bands Above 890 Mc, 27 FCC 359 (1959), 29 FCC 825 (1960); Telpak Sharing; Establishment of Policies and Procedures for Consideration of Applications to Provide Specialized Common Carrier Services in the Domestic Public Point-to-Point Microwave Radio and Proposed Amendments to Parts 21, 43 and 61 of the Commission's Rules, Docket No. 18920, 24 FCC 2d 318 (1970), 29 FCC 2d 870, 904–920 (1971), *recon. denied,* 31 FCC 2d 1106 (1971) *aff'd sub nom.* Washington Utilities and Transportation Commission v. FCC, 513 F.2d 1142 (9th Cir. 1975), *cert. denied,* 423 U.S. 836 (1975); Docket No. 20003; Resale and Shared Use; Regulatory and Policy Problems Presented by the Interdependence of Computer and Communications Service and Facilities, Docket No. 16979, 7 FCC 2d 11 (1966), 7 FCC 2d 19 (1967), 17 FCC 2d 587 (1969), 28 FCC 2d 267 (1970), 28 FCC 2d 291 (1970), 29 FCC 2d 162 (1971), 34 FCC 2d 557 (1972), *aff'd in part sub nom.* GTE Service Corp v. FCC, 474 F.2d 724 (2nd Cir. 1973), *decision on remand,* 40 FCC 2d 293 (1973) ("First Computer Inquiry"); Amendment of Section 64.702 of the Commission's Rules and Regulations (Second Computer Inquiry), Docket No. 20828, 61 FCC 2d 103 (1976), 64 FCC 2d 771 (1977), 72 FCC 2d 358 (1979), 77 FCC 2d 384 (1980), *recon. pending.*

[34] See, for example, Appendix A to Comments of the Rolm Corporation which indicates that the provision of such services is a consistent source of losses for that industry.

[35] This differs from the queuing effect of the WATS line itself, which AT&T has relied upon in claiming that WATS encourages efficient use of the network (See AT&T comments and findings in Docket No. 19989). As noted in our Docket 19989 *Final Decision and Order,* we have long been concerned that alternative rate structures—especially those employing off-peak pricing differentials—could be devised to encourage more efficient use of the network. See 59 FCC 2d at 700–701. Customer initiated queuing, however, which is the subject here, is a proven technique for improving overall network utilization. The objective with queuing is to reduce the variance of the average number of simultaneous calls during each hourly interval. This is accomplished by arranging for users to "wait in line" during periods when offered calls exceed the optimal network capacity. This technique is designed to save the customer money by cutting down on unneeded trunk and access lines and by taking better advantage of off-peak MTS rates. Queuing in this instance clearly cuts down on overall use of the network during peak hours. See Technical Appendix to TDX Comments.

enhance the efficiency with which the network is used because of such factors as queuing. Thus, resale can yield tangible benefits to all ratepayers who must share in the construction costs of peak capacity. See also, Comments of Telecommunications Cooperative Network ("TCN") at 11.

31. Resale can also be expected to expand the array of choices which consumers of telecommunications services have with respect to grade of services. Through sharing and the capabilities offered by enhanced PBX's, the user can have access to a variety of grades of service at different prices in addition to the single grade of service supplied or recommended by the underlying carrier. The user would thus be able to make his or her own service choice based on the economic trade-off between performance level and cost. TDX Comments at 1. This expanded consumer choice will extend the level of billing detail which can be made available, including individualized departmental or personal billing. NTIA adds that we can expect a number of new service options to accompany resale, including minimum cost routing of toll calls, automatic call distribution, voice message storing and forwarding, centralized answering and recording, call restriction, metered billing, automatic call forwarding, conferencing, and call broadcasting. NTIA Comments at 11.

32. In response to our question concerning the impact of resale on industry structure, several parties predict that resale capabilities will support our pro-competitive policies by lowering barriers to entry. USTS suggests that resale will reduce entry barriers by allowing start-up of operation without large capital expenditures.[36] USTS Comments at 7. Ms. Therese Asmussen ("Asmussen") points out that our policies on terminal equipment interconnection have already stimulated innovation in that sector of the industry, with the implication that a more open environment on the utilization of interstate services will lead to similar results. SPCC agrees that resale will lead to the development and production of new equipment and software. SPCC Comments at 9. None of the commentors suggests that resale and sharing would have negative effects on the telecommunications industry structure, such as increasing concentration ratios or reducing product differentiation. In fact, it seems reasonable to expect that resale will relieve somewhat the necessity for firms to vertically integrate (or enter the industry as vertically integrated firms) because intermediate markets in equipment and specialized services will became more active and efficient. Advantages to firms and the public arise because such markets generally tend to provide more information (*e.g.*, whether a certain service or product is profitable, and if so, by how much) than could be obtained from internal sources of a vertically integrated firm. See SPCC Comments at 32. Our review of the record, therefore, leads us to conclude that resale and shared use of public switched message services will affect this industry structure in ways which are beneficial to the public interest.

33. Turning to concerns about the effects of unlimited resale and sharing, several higher volume WATS users express a fear that the lifting of resale restrictions will prompt AT&T to increase WATS rates. We are asked, therefore, not to tamper unnecessarily with the regulatory framework governing WATS (*e.g., comments of Aeronautical Radio, Inc. ("ARINC") and AIA), or permit AT&T to cancel WATS as it attempted to do with its bulk channel private line offering, TELPAK, After the Resale and Shared Use* decision. *See, e.g.,* Comments of GTE Telenet at 8; AIA at 2.[37]

34. To the extent these comments suggest that AT&T will propose changes in the WATS rate structure or rate levels which are unreasonable under the Communications Act, this concern is essentially independent of the basic question before us, that is, whether unlimited resale and sharing will be just, reasonable, and in the public interest. (See paragraph 48). Such issues, in other words, should be properly raised in the context of a specific tariff filing, where cost support material and data are available to support reasoned analysis. To this end, AT&T's recent proposed WATS rate revisions are currently being subjected to full review under statutory standards of justness and reasonableness found in Sections 202(b) and 202(a).

35. In the Appendix to the *Notice,* we raised several questions on the feasibility of unlimited, immediate resale of MTS. We were concerned, in part, with possible harmful effects of too rapid a shift into an unrestricted environment. Such effects, among others, might entail resale entities taking advantage of MTS customers in instances where telephone company pay telephones are not available, and the shifting of revenue requirements among jurisdictions under existing separations methods. The comments generally acknowledged the plausibility of our concerns, yet favored placing no restrictions on the resale of MTS. Our analysis persuades us to prescribe unlimited immediate reselling of MTS.

36. Several parties (including Bitek, TDX, MCI, and Ocean Reef) strongly favor allowing resale of MTS in order to provide new, improved services to hotels and motels (see paragraphs 26–28 above). They contend that traditional regulatory oversight of carrier rates and practices should be sufficient to prevent business behavior clearly not in the public interest (*e.g.* price gouging).

37. Although AT&T and NTIA see possible undesirable side-effects in the resale of MTS (*see* AT&T Comments at 48, NTIA Comments at 17), neither specifically recommends the exclusion of MTS from any Commission decision in favor of resale and sharing.[38] Rolm suggests that AT&T would benefit from the resale of MTS to the extent that the hotel/motel industry would not be forced to divert its toll traffic to the services of other carriers in order to provide services on a resold basis. Rolm Comments at 2.[39] Rolm further suggests (along with SPCC) that the Commission rely on telephone company operator-assisted station-to-station rates from AT&T interstate MTS tariff FCC No. 263 as a ceiling rate to be charged by resellers. Rolm Comments at 7.

38. We conclude, based on the record before us, that the ability of hotels or other institutional resellers to significantly mark up MTS will be found only in relatively few isolated instances. We believe this would most likely occur where for some reason subsititute services were not readily available. Any success which resellers might have in

[36] AT&T comes to a similar conclusion in its comments in Competitive Common Carrier at 29. Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations, 77 FCC 2d 308 (1979).

[37] In light of AT&T's statements which indicate that the proposed new WATS tariff has been designed by the carrier to provide service in a resale and sharing environment, concerns about cancellation of the service appear to be unfounded. *See* AT&T Comments at 3; Volume I of AT&T Description and Justification (accompanying proposed WATS tariff revisions filed September 15, 1980) at 1–4.

[38] NTIA further contends that our Like Services proceeding supports the conclusion that there is no justification for treating MTS differently from WATS for resale purposes. NTIA Comments at 4. *See* AT&T, (Docket No. 21402), 66 FCC 2d 224 (1977), 70 FCC 2d 593 (1978), *recon. denied,* FCC 80-385, released July 15, 1980, appeal docketed sub nom. Ad Hoc Telecommunications Users Committee v. FCC, D.C. Cir. No. 80-1785.

[39] Fromm Services, Inc. ("Fromm") states in its Comments that resale and sharing will lead to reduced labor costs, another benefit for AT&T, since there will be less demand for operator assistance in making long distance calls. Ocean Reef explains that the hotel/motel, as reseller, could assume the time and charge calculation and billing functions. Ocean Reef Comments at 2.

exploiting such situations would in all likelihood be transitional as competitors enter the market and users adjust their behavior to avoid charges they perceive as excessive. This limited potential for exploitation does not in our judgment warrant the imposition of regulatory measures of general applicability in this area. Of course, we will monitor progress in this new environment, and exercise our statutory authority to restrain unlawfull conduct if necessary. *See* 47 U.S.C. 205, 208, 403; *Ambassador, Inc.* v. *U.S.*, 325 U.S. 371 (1945).[40]

39. Our question in the *Notice* about the need to limit WATS to sharing only was based on the recognition that subjecting WATS to resale might alter relative interstate and intrastate toll usage with the result that state jurisdictions would be allocated a higher level of revenue requirement. The Executive Agencies of the United States ("Executive Agencies") are in favor of retaining the restriction on resale of WATS because of the unknown magnitude of effects of unlimited resale of WATS on the present separations process. Executive Agencies Comments at 2. The securities Industry Automation Corp. ("SIAC"), ARINC, and TCN also favor the sharing only of WATS to avoid complications which they suggest might arise form the resale of WATS. *See, e.g.*, SIAC Comments at 9. This conclusion is highly speculative in as much as none of these parties provided us with a detailed explanation of events, harmful or otherwise, which could be expected to occur upon commencement of the resale of WATS. MCI, in fact, relies on the same speculative approach to reach the opposite conclusion. It suggests that interstate minutes of use on the public switch network may increase relative to intrastate minutes of use as a result of usage stimilation from the resale of WATS, thereby increasing the separations contribution to state jurisdictions. MCI Comments at 4.

40. Given the inconclusive nature of the comments on this question, we do not find it in the public interest to withhold the benefits of resale of WATS we have found because of possible short term imbalances generated from the mechanics of the separations process. In any case, as we explain below (paragraphs 49 and 50), we are currently considering making significant changes to the Jurisdictional Separations Manual as part of the implementation of our Final Decision in the *Second Computer Inquiry*. In addition, we have also made proposals in Docket No. 78–72 which would lead to the development of a new interstate revenue pool. Thus it is apparent that our competitive policies will require changes in the separations process to accommodate those policies. In the event that problems arise with separations which can clearly be attributed to the resale of WATS (as opposed to other factors, such as changes in the rate level and rate structure of WATS, and/or MTS), our preferred course of action is to consider this phenomenon, as well, in the context of changes to the separations process. *See* NTIA Comments at 2 and 16.[41]

41. In sum, we have determined that resale and shared use of domestic public switched network services can reasonably be anticipated to produce numerous salutary benefits which are clearly in the public interest. Among them are increased entry and competition by new entrants; numerous new and specialized service offerings by telecommunications managers, OCCs, and other entities; a greater possibility of innovation by equipment system manufacturers, with less waste of available communications facilities through improved management techniques such as queuing. We also look forward to the creation of demand for new services as a result of resale and sharing, as well as the entry of numerous entities willing to meet that demand. In addition, resale and sharing will generate pressures upon established carriers to align their rates with costs, which in turn will make our exercise of our regulatory responsibilities easier and more efficient.

42. Conversely, no party has presented concrete evidence that unlimited resale and sharing of these services would cause any harm to the public, or, for that matter, to private interests. The concern of certain parties that a resale environment may lead to increases in charges they incur for WATS usage is answered by the fact that, irrespective of the availability of resale, any change in WATS rates must be reasonable under Sections 201(b) and 202(a) of the Act. Further, to the extent such comments implicitly urge the retention of unlawful price discriminations, we reject the notion that large WATS users should be immune from increases in their communications costs regardless of the public interest. Finally, it is apparent that potential harm to the underlying carrier, AT&T, can be mitigated by its filing cost-based rates.

43. We thus find, based on the record before us, that unlimited resale and sharing are in the public interest.[42] We now turn to the question of how resale and shared use should be implemented.

Implementation

44. Given the unlawfulness of the tariff provisions and our finding that unlimited resale and sharing will be just, fair and reasonable, the only remaining question is whether we should implement these measures immediately. We therefore consider the specific proposals to postpone or condition the effectuation of unlimited resale or sharing, such as a market experiment or accompanying alterations in our procedures. The issue, then, is not whether an experiment or procedural changes have merit *per se*, but whether they are preferable to immediate resale and sharing.

45. Although AT&T supports the concept of resale and shared use of MTS and WATS, it conditions its support for the elimination of current tariff restrictions on Commission action in several significant areas. First, it claims that the initiation of resale and sharing of WATS presents "a severe risk of substantial and irreparable harm" unless it takes place under a restructured WATS tariff. Second, the carrier states that the Commission should provide assurance of prompt action to reform treatment of access costs and jurisdictional separations.[43] Third, AT&T urges that the effects of resale and sharing of WATS be tested initially in the crucible of a limited trial under restructured rates.

A. Restructured WATS Tariff

46. AT&T claims that several actions should precede the removal of resale and sharing restrictions in its WATS and MTS tariffs. Most importantly, AT&T would have us delay the implementation of resale and sharing until such time as a new, restructured WATS tariff takes effect. AT&T claims it would suffer "irreparable harm" if

[40] We note that we are presently reviewing the appropriate regulatory status of resellers in the Competitive Common Carrier proceeding. Even if we determine to forbear from regulating such carriers under Title II at some point, however, we will retain sufficient regulatory authority to prevent gouging. *See* U.S. v. Southwestern Cable Co., 392 U.S 157 (1968); U.S. v. Midwest Video Corp., 406 U.S. 649 (1972); *but see FCC v. Midwest Video Corp., 440 U.S. 689 (1979).*

[41] Should separations results be significantly affected by resale and sharing activities, the mater would be appropriately addressed by a joint board.

[42] This finding is based on the information in the record before us, as well as our recent experiences with private line market activities since the Resale and Shared Use decision. We have been unable to make this finding in the past because of inadequate information. *See* Resale and Shared use, 60 FCC at 289–291. Additionally, the question of entry into the domestic public switched network services has only recently been resolved. *See* Docket No. 78–72. Thus, we are formulating a new policy which we intend to apply prospectively.

[43] *See* Docket No. 78–72, 77 FCC 2d 224 (1980).

resale and sharing were to commence immediately under the existing WATS tariff. AT&T provides calculations which it maintains indicate that the company would lose between .7 and 1.3 billion dollars under current rates if immediate resale and sharing were allowed. AT&T Comments, Appendix B. AT&T warns that such losses would have to be recovered through increases in rates for MTS and other services. AT&T Comments at 2. We now examine these claims as they relate to the timing of the implementation of resale and sharing.

47. According to AT&T, these losses would occur because the WATS rate structure contains subclasses of service for which the rates are not now fully compensatory, and would be much less so under resale and sharing. Comments at 24–25. Rates for these subclasses, it admits, have been based on an "alignment approach," which we found to be unlawful in our Docket No. 19989 Decision, 59 F.C.C. 2d 671 (1976). According to AT&T, resale and sharing of WATS would result in substantially increased demand for the Full Business Day option, leading to "huge revenue losses and cost increases".[44] Comments at 25.

48. Although AT&T claims that losses would result from stimulated usage of non-cost based WATS subclasses, examination of AT&T's study showing estimated losses in Appendix B shows that such losses would instead come from displaced MTS usage. This can be concluded from AT&T's own estimates of the impact of resale on WATS under existing WATS rates which show that additional WATS revenues derived from stimulated reseller demand exceeds additional WATS costs due to stimulation.[45] Comments at B–5. Thus any overall losses to AT&T would have to come from elsewhere, *i.e.* reduced MTS revenues as a result of customer migration from MTS to resold WATS.[46]

49. Whatever the magnitude of losses confronting AT&T as a result of resale and shared use, such losses would only arise from AT&T's inability to continue to enforce price discriminations in tariffs which AT&T itself designed. AT&T is free to file rates which do not contain price discriminations, and which would therefore minimize migration to or from WATS services. In fact, AT&T has attempted to do precisely this in filing new, purportedly "more usage sensitive" WATS rates on September 15, 1980. See Transmittal No. 13555.[47]

50. We recognize that resale and sharing restrictions have been in place for a long time, and have affected usage patterns accordingly. As an alternative to abrupt removal of these tariff provisions, we deem it prudent to provide a reasonable period of adjustment before implementing the policies we adopt today. This should afford carriers and users alike the opportunity to take into account not only this major policy determination in their business decisions, but also the impact of proposed revisions which, if permitted to take effect as filed, on December 14, 1980, would significantly restructure the WATS tariff. Under all these circumstances, we believe the best course of action is to await our analysis of that filing and disposition of petitions against it before implementing resale and sharing.

51. In addition to arguing that resale and sharing should not be permitted unless a restructured more fully usage sensitive WATS tariff is in place, AT&T urges us to implement access cost and jurisdictional separations reforms, as soon as practicable.[48] AT&T Comments at 23. NTIA, the United States Independent Telephone Association ("USITA"), and GTE Service Corp. ("GTE") support AT&T's position although NTIA argues that such reforms need not precede the implementation of full resale. National Data Corp. ("National Data") agrees with AT&T that access cost and jurisdictional separations reform are necessary.

52. We are of course already on record as to the need for comprehensive access cost and jurisdictional separations reform not only as a result of this proceeding but because of fundamental changes in the telecommunications sector caused by new technology and increased competition. See Docket No. 78–72, 77 FCC 2d 224, 226 *et seq.* (1980). For this reason, we agree with those parties which view this issue as one which cannot be effectively addressed within the confines of this proceeding. *See, e.g.*, NTIA Comments at 6, 15–16. Indeed, we have already proposed a tentative plan for prescribing arrangements to compensate local exchange carriers for access arrangements and established a schedule for comments on that plan in the *Second Supplementary Notice of Inquiry and Proposed Rulemaking* in Docket No. 78–72, 77 FCC 2d 224, referred to above.

53. We have also convened a Federal/State Joint Board pursuant to Section 410(c) of the Act, 47 U.S.C. 410(c), to submit recommendations on amending the Jurisdictional Separations Manual, which establishes rules for the allocation of exchange plant investment between interstate and intrastate services. *Notice of Proposed Rulemaking and Order Establishing a Joint Board,* Docket No. 80–286, 78 FCC 2d 837 (1980).

54. The question before us, therefore, is not whether reform in these two areas is desirable, but whether we should delay removal of the tariff restrictions at issue until completion of the above rulemakings. We find delay is unnecessary for several reasons. First, we agree with those parties, (*e.g.*, NTIA, SBS, MCI, and SPCC) who maintain that allowing separations and access issues to postpone resolution of this proceeding would serve no useful purpose. Any allegations of harm that have been made depend heavily on unverifiable assumptions concerning cross elasticities amongst all of AT&T's services, patterns of expansion of resellers such as the Other Common Carriers ("OCCs") in the new market environment, and new consumption and use patterns resulting from an altered WATS rate structure. Indeed, we note that AT&T itself has only called for the development of "a plan of action to reform treatment of access costs and jurisdictional separations before resale and sharing are introduced." Comments at 31. In fact, it is quite possible that the market response to a resale and sharing environment may provide important data for the rulemakings involving access and jurisdictional separations.

Market Experiment

55. The final precondition AT&T proposes is a market experiment.[49] In

[44] Full Business Day service, under the existing WATS tariff, allows customers to use up to 240 hours of service per month for a fixed price.

[45] The study report compiled by Booz, Allen & Hamilton, Inc., for AT&T on the impact of WATS resale/sharing does not even address cost effects.

[46] Although the magnitude of losses as a result of resale and shared use is not directly in issue here, the record casts considerable doubt on AT&T's claim that it would actually lose $1.3 billion. Such factors as the understating of reseller costs (*e.g.*, ignoring reseller's overhead costs) and the overestimation of demand for reseller services (*e.g.*, AT&T makes the questionable assumption that resellers would bill in increments of six seconds) suggested that actual losses would be much less.

[47] We of course intimate no position on the lawfulness of those rates here.

[48] Access costing issues are raised when interstate telecommunications originate or terminate in local exchange facilities, that is, "access" such facilities. The major difficulty in this area at present is the discrepancy in charges for access for various services. The jurisdictional separations question, like access charges, involves the attempt to meaningfully differentiate interstate as opposed to intrastate service and costs. Governed by the Jurisdictional Separations Manual incorporated by reference into Part 67 of our Rules, 47 CFR Part 67, the issue involved is the allocation of local exchange plant investment between interstate and intrastate services.

[49] AT&T also makes a short reference to the need for "reasonable flexibility" in adjusting its rate structure, by which it apparently comprehends some sort of change in our present regulations, such as

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our *Notice* we requested comments on the desirability of instituting a market experiment in the resale of WATS. Although we expressed concern that any market experiment of limited duration would result only in short run adjustments, we nevertheless invited comments on the proposal for an experiment made by AT&T in its reply to the original MCI petition for rulemaking.

56. An experiment, according to AT&T, would determine "* * * the precise nature and extent * * *" of the consequences of unlimited resale and sharing of WATS, and the corrective action that may have to be taken. AT&T Comments at 39. AT&T believes an experiment will be beneficial to the public in that it will enable the company to avoid potential "adverse effects" of resale and sharing on its revenues and on the public switched network in general.

57. Other parties have diverse views on the need for an experiment. GTE Telenet, SIAC, ARINC, and the Executive Agencies generally favor a market trial, although there does not appear to be an underlying consensus as to how the public will benefit. Thus, SIAC urges the Commission to endorse a market experiment, but is silent on the public interest benefits of an experiment *vis a vis* an unrestricted approach. ARINC proposes a market experiment involving relaxed limitations on the shared use of WATS. ARINC sees it as a means of gathering accurate economic information, although the purpose for gathering the information is not described. The Executive Agencies propose a resale experiment with WATS which would involve no change in either current WATS rate levels or rate structure. They cite the past profitability of WATS (according to AT&T's Fully Distributed Cost studies) as a reason for not allowing any increases in the WATS rates.

58. Other firms, including Rolm, TDX, and MCI take a middle ground; they do not oppose a WATS resale experiment, but generally do not endorse that approach outright. Rolm does not consider an experimental approach necessary to satisfy our public interest concerns. Rolm Comments at 12. TDX favors a limited experiment only if the Commission has doubts about unlimited approaches. TDX Comments at 10. MCI does not believe an experiment is necessary, but would not oppose one if the Commission were so disposed. MCI Comments at 6.

59. Finally, other firms (AIA, Bitek, USTS, SPCC, and NTIA) categorically oppose the adoption of a WATS resale experiment. Bitek reviews the Commission's unsuccessful experience with the experiment in AT&T's previously offered Series 11000 service. Bitek Comments at 4. SPCC points to the short run response which any experiment will yield. It claims that a certain amount of capital investment in switching equipment and other facilities is needed to enable the users of resold WATS services to access and utilize the WATS circuits involved. SPCC Comments at 19. An experiment, it says, would deter the potential resellers and users from committing the necessary capital resources. Lastly, NTIA expresses the view that the benefits of resale far outweigh any potential detriments and, therefore, further theoretical studies or a time-consuming, limited market trial would not be the most efficient or effective way to proceed. NITA Comments at 5.

60. In summary, the commentors who support an experiment give essentially two reasons for their position: the need to limit losses which AT&T would incur in the absence of its ability to control end user access to the network, and further, the need to buffer the transition to a resale environment by offering resale opportunities only to a limited group of customers. As our analysis below shows, however, neither reason is sufficient to support the reliance on a market experiment, and the public interest would best be served by requiring immediate removal of resale and sharing restrictions in AT&T's WATS and MTS tariffs.

61. We have serious reservations about using a market experiment to limit losses which might be incurred in a resale and sharing environment. As discussed above, price discrimination, when sustainable, allows a firm to earn higher profits. Thus, it is not unreasonable to expect that AT&T could "lose" revenues in the absence of tariff restrictions designed to take advantage of price discriminations. Although the Commission has an obligation to allow a carrier to earn a fair rate of return, this obligation does not include allowing a carrier to enhance its revenues through an experiment designed to limit artificial "losses" which may amount to no more than foregone revenues which would have accrued as the result of price discrimination. The limitation of "losses" is particularly inappropriate in this instance where we have found the tariff mechanism which can sustain a price discrimination to be unjust and unreasonable.

62. The assertions that a market trial is necessary to explore customer and reseller reaction to the opportunity to engage in resale and sharing are also unconvincing. A.T. & T. states that an experiment could be employed to study changes in usage and revenues, changes in costs and earnings of underlying carriers, and changes in network utilization, efficiency, and costs. A.T. & T. Comments at 45, 46. We find, however, that customer and user reaction under a limited market trial would be significantly different than what could be expected in a completely unlimited environment. A limited market trial could only be expected to result in short-run adaptations to an incomplete and tentative set of market rules. A trial would imply that at some future time, restrictions against resale and sharing could be reinstated.[50] In addition, the experience gained from resale of MTS and WATS on a geographically limited basis (i.e. nine states only under A.T. & T.'s proposal) would have uncertain relevance to WATS and MTS services since these are nationwide services. As A.T. & T. states: "Resale and sharing under the existing WATS tariff will * * * penalize resellers and their prospective customers by giving them a false economic signal encouraging the marketing and purchase of resold services at usage rate levels that cannot remain in effect for long because certain rate elements will not fully recover costs at very high usage levels." Comments at p. A-2. We find that a market trial will provide the same "false economic signals," and that results of such a trial would therefore not be useful.

63. The Booz Allen and Hamilton study, included in A.T. & T.'s Comments (Appendix C), also discusses the effects of a tentative approach by the Commission in allowing resale and shared use. The study assesses the willingness of prospective resellers to enter the market and concludes that perceived risks associated with changes in regulatory policy will be an important factor. Prospective entrants, it says, would be highly sensitive to the possible withdrawal or curtailment of resale/sharing provisions (p. VII-7). SPCC, in addressing this aspect of a trial, claims that a lead time is needed to establish service and warns that a two year proposed trial would not be adequate for an investor to evaluate the return on

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§ 61.38, 47 CFR 61.38, which govern tariff filing procedures. However, the carrier makes no specific proposals, nor does it establish any need for such changes. We therefore do not consider the issue further here.

[50] A.T. & T. directs attention to this in stating that during an experiment, the Commission would be able to modify or fine tune the manner of resale and sharing or even terminate it, at the conclusion of the trial, based on actual experience. A.T. & T. Comments at 6.

a reselling service, buy switches, set up operation, develop a market and produce a return high enough to cover the initial costs. SPCC Reply Comments at 2. *See,* also, AIA Comments at 6. We agree with the assessment that stable marketplace rules are required to encourage entry.

64. Several parties have reminded us of the experience with A.T. & T.'s experimental Series 11,000 service, involving the sharing of 12–60 voice grade channel in seven states between November, 1969 and May, 1973.[51] That advice is well-taken, since the experimental nature of the service caused the Commission to warn potential customers of the possible short-run life of this service:

> We wish to emphasize that all customers of this experimental service are on notice that this service is a trial for a limited period of time and that the lawfulness thereof is yet to be determined. Therefore, any subscriber to this service is forewarned that use of the service will not constitute any equitable or other basis for continuance of the service in the future. *American Telephone and Telegraph Co., Long Lines Department,* Docket No. 18128, 20 FCC 2d 383, 385, (1969).

The service was discontinued at A.T. & T.'s request because of asserted lack of demand. In retrospect, we can only speculate as to whether the alleged underlying demand for this service was lacking; or whether the experimental terms of the service offering discouraged potential users from ordering service.

65. As stated above, A.T. & T. also requests a market trial to study possible harmful effects on the public switched network of immediately removing all resale and sharing restrictions. This aspect of the market trial would address the practical engineering consequences of possible shifts in traffic patterns brought about by resale activities. Compared to its very specific and detailed description of expected financial "harm" occuring from resale, A.T. & T.'s response to the question (See *Notice,* Appendix, questions 6) of possible engineering harm was rather vague. Thus, in lieu of the detailed forecasts of on the existing network which we might otherwise expect, A.T. & T.'s support comes down to the following:

> A trial is also needed to evaluate the adverse impact that resale and sharing may have on network utilization, efficiency and reliability. Resale and sharing, even under a restructured tariff, may result in unforeseen changes in service usage patterns, or unanticipated shifts in peak usage. This could result in substantial increased network costs or even service blockages in the short run unless proper rate adjustments are made. Resale and sharing could also stimulate heavy new unanticipated demand for 800 numbers WATS access lines and other facilities or service.

Plainly, such a showing is insufficient.

66. A.T. & T. proposes to rely on the market trial to reveal whether harm to the network will occur. As we have explained above, however, we do not expect a market trial to provide representative usage responses on the part of customers or firms engaged in offering resold services. Since other variables such as the filing of a new, more usage sensitive tariff are likely to affect network usage to a larger degree than will the entry of WATS resellers, we also question the usefulness of data provided by a market experiment.

67. Finally, AT&T references an article in the *Journal of Economic Literature* by way of support for its proposed resale and sharing trial.[52] The article focuses on the ability of experimentation to provide, in some instances, a better measure of the effect of changes in public policy variables on the behavior of economic units as compared to the usual techniques of econometric models, simulation models of artificial populations, surveys of past behavior, and surveys with questions about behavior under hypothetical conditions.

68. We do not believe that the kind of experiment discussed in the *JEL* article is relevant as support for AT&T's proposed market experiment in this instance. In a sole source environment, it may have been appropriate to consider the consequences of changes in telephone rate structures through use of a FCC-backed experiment. AT&T, for instance, references several instances where past experiments regarding telephone rates were appropriate. The analogy will not hold, however, in a competitive environment—especially one where, as here, the competitive structure is in its early stages of development. The Commission's mandate does not include the oversight of experiments which have significant financial ramifications for private firms, in the absence of clearly perceived public benefits.

69. In summary, on the basis of the record before us, we do not find that the public interest would be better served by allowing AT&T to conduct a market trial as a prelude to complete removal of resale and shared use restrictions from its tariffs. It is clear that removal of these restrictions will exert corrective pressures on noncost based rates, to the extent this is required. It is clear also that there is both a desire to enter the market on the part of firms who would resell underlying telecommunications services, and a demand for the resold services. Although there is some indication that moderation of price discriminations brought about through resale activities may lead to some decline in the level of AT&T's revenues, losses clearly can be minimized through the effectuation of cost-based rates. Although the question of engineering impact on the network resulting from resale depends in part on usage patterns which are admittedly not fully known, it's far from apparent that a market test is required to test these effects, or that such an experiment would produce any useful information whatsoever.

Prescription

70. We have determined in this decision that tariff provisions restricting the resale and shared use of common carrier domestic public switched network services are unjust, unreasonable, and unjustly and unreasonably discriminatory under Sections 201(b) and 202(a) of the Act. We have found that extensive public interest benefits can reasonably be expected to result from unlimited resale and sharing of these services, without any major adverse consequences. Significantly, none of the comments received take issue with these fundamental positions.

71. With regard to the implementation of these policies and conclusions, we considered the various arguments favoring some delay or precondition. Careful analysis of all the parties' comments, including responses to several concerns we voiced in the *Notice,* however, indicates that the introduction of resale and shared use of the domestic public switched network services should proceed immediately following a short adjustment period.[53]

72. We therefore prescribe unlimited resale and shared use of all common carrier domestic public switched network services to be implemented as we order below. We further find that this prescription, based on the record before us and our experience with the

[51] *E.g.,* SPCC Comments, Appendix B, at 3.

[52] Ferber R. and W. Hirsch, "Social Experimentation and Economic Policy A Survey" 16 *JEL* 1379 (1978).

[53] Additionally ARINC, the Executive Agencies, and API argued that resale and sharing of MTS and WATS should only be considered in the context of Docket No. 78–72, the MTS and WATS Market Structure Inquiry. They argue that we would, in effect, prejudge the issues in that proceeding by removing the tariff restrictions at issue here. This argument has been mooted by our recent *Report and Third Supplemental Notice of Inquiry and Proposed Rulemaking* in that Docket, FCC 80–463, released August 25, 1980. There, we specifically found that "Competition in all interstate interexchange services is in the public interest and will further the goals of the Communications Act of 1934." *Id.* at 7; *see also id.* at 29.

resale and sharing of other services, is just, fair, reasonable, and in the public interest.

73. Accordingly, it is ordered, that the policies here set forth are hereby adopted, and that all common carriers subject to the jurisdiction of the Commission shall file revised tariffs eliminating all restrictions on the resale and sharing of their domestic public switched network services.

74. It is further ordered, pursuant to Sections 4(i), (j), 201(b), and 202(a), of the Communications Act of 1934, 47 U.S.C. 154(i), (j), 201(b), and 202(a), that Sections 2.2.1 of American Telephone and Telegraph Company's (AT&T) Wide Area Telecommunications Service (WATS) tariff, Tariff F.C.C. No. 259 § 2.2.1, and AT&T's Message Telecommunications Service (MTS) tariff, Tariff F.C.C. No. 263 § 2.2.1, be withdrawn, and that AT&T shall file appropriate tariff revisions no later than 60 days after release of this order.

75. It is further ordered, that this proceeding is terminated.

76. It is further ordered, that the Secretary shall cause this Report and Order to be published in the Federal Register.

(Secs. 1, 2, 4, 201–205, 208, 215, 218, 313, 314, 403, 404, 410, 602; 48 Stat as amended; 1064, 1066, 1070, 1071, 1072, 1073, 1076, 1077, 1087, 1094, 1098, 1102; (47 U.S.C. 151, 152, 154, 201–205, 208, 215, 218, 313, 314, 403, 404, 410, 602))

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix A

Comments Were Received From

Aeronautical Radio, Inc. (ARINC)
Aerospace Industries Association of America, Inc. (AIA)
American Telephone and Telegraph Co. (AT&T)
Ms. Therese Asmussen (Asmussen)
American Petroleum Institute's Central Committee on Telecommunications (API)
Committee of Corporate Telephone Users (CCTU)
Executive Agencies of the United States (Executive Agencies)
Fromm Services, Inc. (Fromm)
GTE Service Corp. (GTE)
GTE Telenet Communications Corporation (GTE Telenet)
MCI Telecommunications Corp. (MCI)
National Telecommunications and Information Administration (NTIA)
Rolm Corporation (Rolm)
Satellite Business Systems (SBS)
Securities Industry Automation Corporation (SIAC)
Southern Pacific Communications Company (SPCC)
TDX Systems, Inc. (TDX)
Telecommunications Cooperative Network (TCN)
Trans National Network, Inc. (TNN)
United States Transmission Systems, Inc. (USTS)
Ms. Janet Whitney (Whitney)
William Boggess & Co. (Boggess)

Reply Comments Were Received From

Ad Hoc Telecommunications Users Committee (Ad Hoc Committee)
Aeronautical Radio, Inc. (ARINC)
Aerospace Industries Association of America, Inc. (AIA)
American Telephone and Telegraph Co. (AT&T)
Bitek International Corp. (Bitek)
Committee of Corporate Telephone Users (CCTU)
GTE Service Corp. (GTE)
MCI Telecommunications Corp. (CI)
National Data Corp. (National Data)
Ocean Reef Club (Ocean Reef)
Satellite Business Systems (SBS)
Society of Telecommunications Consultants (STC)[1]
Southern Pacific Communications Company (SPCC)
TDX Systems, Inc. (TDX)
United States Independent Telephone Association (USITA)
United States Transmission Systems, Inc. (USTS)

Appendix C [1]

[Average Price per Minute of Use in Cents]

Customer size: Total hours of use per month	Existing		Existing outward	
	Business: MTS DDD Day[2]	Residence: MTS DDD Day [2]	WATS MT	WATS FBD
10	36.7	33.1	40.3	[3]
25	36.7	33.1	34.3	[3]
80	36.7	33.1	31.5	34.6
90	36.7	33.1	33.4	30.7
110	36.7	33.1	[4]	25.2
140	36.7	33.1	[4]	19.8
190	36.7	33.1	[4]	14.6
240	[5] 23.0	[5] 21.6	[4]	11.5

[1] Source: AT&T Comments, Appendix A, p. A-15, Table 1.

[2] Based on the average length of conversation and average price per minute of MTS and DDD day Business and Residence calling (October 1979 MROI) Although the same rates apply to business and residence customers, different calling characteristics result in a different average price per minute.

[3] Because of its high cost relative to this amount of usage, FBD WATS would not be purchased to meet these usage requirements.

[4] The average economic crossover point (*i.e.*, the point at which FBD becomes less costly per minute than MT) is between 80 and 90 hours per month.

[5] The prices shown here are based on evening rates because day rates apply during about 190 hours per month (based on 9 hours in a business day, 22 business days in a month).

Concurring Statement of Commissioner Joseph R. Fogarty

In Re: Regulatory Policies Concerning Resale and Shared Use of Common Carrier Domestic Public Switched Network Services

I am pleased with the basic thrust of this decision—the prescription of the unlimited resale and shared use of MTS/WATS. I have supported and will continue to support such pro-competitive actions.

Nevertheless, I cannot fully support the action taken in this Report and Order. In my dissent to the Notice of Proposed Rulemaking in this proceeding,[1] I argued that the issue of the resale and shared use of MTS/WATS should be addressed in the broader context of Docket 78–72, the *MTS/WATS Market Structure Inquiry.*[2] I was particularly concerned with the need to study the compatibility of existing jurisdictional separations procedures with the unlimited resale and shared use of MTS/WATS, and the necessity for, and the nature of, any changes to the separations process that might be necessary.[3] Due to my belief that the need to study the impact of unlimited resale and share use MTS/WATS on the separation process has become imperative with our adoption of this Order, I recommended that this Order be amended to refer the impact issue to the Joint Board established in Docket 80–286, *Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board.*[4] I cannot concur with the majority's decision to refer this issue, instead, to some future Joint Board.

Two years ago I recommended that the Commission establish a Joint Board to consider the impact of all our competitive policies on the separations process. Although this recommendation was never adopted, I was pleased that in Docket 80–286 the Commission established a Joint Board to consider separations issues arising from the *MTS/WATS Market Structure* proceeding and our *Final Decision* in the *Second Computer Inquiry.* I believe that the question of the impact of our decision on the separations process is not only closely related to the issues already being considered by this Joint Board, but that it would be inappropriate to consider it apart from the Board's analysis of MTS/WATS market structure issues. Moreover, I cannot accept the argument that to refer this issue to the Joint Board would unduly complicate the proceeding. I note that if my recommendation of two years ago had been adopted, the Joint Board would already be at work. The impact issue is important as the effect of our decision may not simply be "at the margins." Both the work of the Joint

[1] STC's filing was labeled "comments", but was responsive in nature. Therefore, we will treat it as reply comments.

[1] 77 FCC 2d 274 (1980).

[2] Notice of Inquiry and Proposed Rulemaking, 67 FCC 2d 937 (1978). *Supplemental Notice.* 73 FCC 2d 222 (1979). *Second Supplemental Notice.* —— FCC 2d —— (1980). *Third Supplemental Notice.* FCC 80– (released August , 1980).

[3] 77 FCC 2d at 250.

[4] —— FCC 2d —— (1980).

Board and the goals we seek to promote in this decision (e.g. low cost service to consumers) may be frustrated unless appropriate action is taken to offset any detrimental consequences to the separations process. To avoid such a result, the matter should be referred to the Joint Board established in Docket 80-286.

Finally, policy decisions such as this one are properly within the province of the Commission. However, the Commission does not have the expertise to consider the effect that our decision will have on intrastate revenue requirements. State Commissioners, on the other hand, are particularly well situated to offer a pragmatic input as to what rates should be prescribed by this Commission. The sooner the Commission receives this input the better.

[FR Doc. 80-39458 Filed 12-18-80; 8:45 am]
BILLING CODE 6712-01-M

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47 CFR Part 97

[PR Docket No. 80-729; FCC 80-672]

Revision of the Amateur Radio Service Rules into "Plain Language"

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission proposes to revise the Amateur Radio Services Rules into "plain language." The existing Amateur Radio Services Rules are unnecessarily complex and difficult to understand. The purpose of this proposed revision is to make these rules less complex and more understandable by persons they affect.

DATES: Comments must be received on or before June 19, 1981 and reply comments must be received on or before August 19, 1981.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: John B. Johnston, (202) 254-6884.

SUPPLEMENTARY INFORMATION:

In the matter of revision of the Amateur Radio Service Rules into "Plain Language," PR Docket No. 80-729.

Adopted: November 18, 1980.

Released: December 19, 1980.

By the Commission: Commissioner Fogarty absent.

1. The Commission proposes to revise the rules governing the Amateur Radio Services, Part 97 of the Commission's Rules.

2. We propose to revise these rules into "plain language" as part of a continuing effort to make our rules more understandable by those persons they affect. We began this effort in December, 1976, when we reorganized Part 95 of the Commission's Rules governing the personal radio services into four subparts: Subpart A, General Mobile Radio Service; Subpart C, Radio Control (R/C) Radio Service; Subpart D, Citizen's Band (CB) Radio Service; and Subpart E, Technical Regulations. In March, 1978, we issued a "plain language" revision of the CB Rules, which was met with widespread acclaim. We used the same format and style of the CB Rules recently when we proposed a "plain language" version of the R/C Rules (Docket No. PR 80-8). Now we have chosen Part 97, the Amateur Radio Service Rules, as our latest "plain language" revision.

3. We chose the Amateur Radio Services Rules as our latest "plain language" revision because the existing rules are unnecessarily complex and difficult to understand. This is especially a problem in the Amateur Radio Services, since many of our applicants and licensees are young persons. Unlike our other radio services, there is no minimum age to qualify for an Amateur radio license. The existing rules are not written to take into account this wide range of applicants and licensees. For this reason, the rules are not as useful as they shoud be. We believe that if applicants and licensees use the rules more to find information on correct radio operation, they will gain more benefit from the services.

4. In revising Part 97, we used a part structure similar to the one we used in Part 95. This type of structure has proven to be much more useful to licensees and the Commission than the type formerly used because it brings together the FCC requirements for a particular radio service into a subpart covering only that service. We are proposing to structure Part 97 into the following subparts: Subpart A, Amateur Radio Service (AR Rules); Subpart B, Radio Amateur Civil Emergency Service (RACES Rules); Subpart C, Amateur Satellite Service (ASAT Rules); and Subpart D, Technical Standards (TEC Rules). Each subpart contains the rules for that service, except that Subpart D contains the technical standards for all three services. We consolidated the technical standards into one subpart rather than repeat them for each service.

5. Since the title "Amateur Radio Service" is used for Subpart A, to conform with the terms used in the International Regulations, its use is preempted for the title of Part 97. To use the same title for two different meanings would be inconsistent with our objective to write rules in plain language. Therefore, we have chosen the title "Amateur Telecommunications Services" for the title of the overall Part 97. We believe this title will be clearly understood by all. Moreover, it will also cover digital networks and other types of amateur radio communications in the future.

6. We used the same question-and-answer format and the same writing style that we used for the CB and R/C revisions. We think that both this format and style are helpful to users in finding answers to their questions.

7. While we propose to change the structure of Part 97, we do not propose to change the structure of the Amateur Radio Services in this rulemaking. Our principal interest is in developing a "plain language" statement of the rules as they now exist. We did not intentionally propose any substantive changes to these rules other than those discussed in the explanation that accompanies each proposed rule. In summary, we propose the following major substantive changes. First, we propose to eliminate all logging requirements. We are substituting for the existing logging rule a new rule requiring licensees to keep certain items in their station records (see AR Rule 57). We propose to require licensees to keep an up-to-date copy of the Amateur Telecommunication Service Rules (see AR Rule 51).

This proposed requirement should help licensees know and understand the rules better and promote self-regulation by licensees. This in turn will result in better radio operation and more efficient use of the limited radio spectrum. We have similar requirements in other of our radio services. Finally, we propose to exercise the authority granted in Section 303(n) of the Communications Act and require that licensees make their stations available for inspection by an FCC representative (see AR Rule 56). We think that this requirement is necessary to encourage compliance with the rules.

8. Other substantive changes, when required, will be made to these rules through other rulemakings. For example, we recently adopted rules for the Amateur Satellite Service, which is a subpart of Part 97. Some of the rulemakings that affect Part 97 are presently underway, while others may get underway before this "plain language" revision is completed. These substantive changes will be discussed in those separate rulemakings. Any changes made to Part 97 by these rulemakings will be written in a format

and style consistent with this "plain language" revision.

9. The proposed revision is set out below. For the convenience of our users, we matched existing sections of the existing Part 97 rules with corresponding sections of the proposed "plain language" rules. We also followed each proposed rule with a brief explanation of our revision of the existing section.

10. The authority to issue this Notice is contained in Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303(r). Under procedures set out in § 1.415, interested persons may file comments on or before June 19, 1981, and reply comments on or before August 19, 1981.

All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. In reaching its decision, the Commission may take into consideration information and ideas not contained in the comments, provided that such information or a writing indicating the nature and source of the information is placed in the public file, and provided that the fact of the Commission's reliance on such information is noted in the Report and Order. According to § 1.419 of the rules and regulations, 47 CFR 1.419, formal participants must file an original and five copies of their comments and other materials. Participants who wish each Commissioner to have a personal copy of their comments should file an original and 11 copies. Members of the general public who wish to express their interest by participating informally may do so by submitting one copy. All comments are given the same consideration, regardless of the number of copies submitted. All documents will be available for public inspection during regular business hours in the Commission's Public Reference Room at its headquarters in Washington, DC. For information, contact John B. Johnston, (202) 254–6884.

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix

The FCC proposes to revise Part 97 of its rules, 47 CFR, as set forth below:

PART 97—AMATEUR TELECOMMUNICATIONS SERVICES

Subpart A—Amateur Radio (AR) Service

General Information on the AR Service

Sec.

97.1 (AR Rule 1) What is the Amateur Radio (AR) Service?
97.2 (AR Rule 2) How do I use these rules?
97.3 (AR Rule 3) Do I need a license?
97.4 (AR Rule 4) Am I eligible to get an AR station license?
97.5 (AR Rule 5) Am I eligible to get an AR operator license?

How To Get Your AR Licenses

97.6 (AR Rule 6) How do I qualify for an AR operator license?
97.7 (AR Rule 7) What must I know to pass the Telegraphy Tests?
97.8 (AR Rule 8) What must I know to pass the Written Tests?
97.9 (AR Rule 9) Where do I take the tests?
97.10 (AR Rule 10) How do I take the Novice AR operator class tests?
97.11 (AR Rule 11) How do I give a test as a volunteer examiner?
97.12 (AR Rule 12) How do I take the Technician, General, Advanced and Amateur Extra AR operator class tests?
97.13 (AR Rule 13) What do I do if I pass the tests?
97.14 (AR Rule 14) What do I do if I fail the tests?
97.15 (AR Rule 15) Can I get test credit for a license I already have?
97.16 (AR Rule 16) How do I apply for an AR station license?
97.17 (AR Rule 17) What information must I furnish on my application?
97.18 (AR Rule 18) How long is my license term?
97.19 (AR Rule 19) How do I renew or modify my AR licenses?
97.20 (AR Rule 20) May I renew my AR licenses if I forget to apply in time?
97.21 (AR Rule 21) How does the FCC assign call signs to AR stations?
97.22 (AR Rule 22) What privileges does my license allow?
97.23 (AR Rule 23) What must I do if my name, station location or address changes?
97.24 (AR Rule 24) Are there any special restrictions on the location of my AR station?
97.25 (AR Rule 25) How do I get permission to put my antenna higher than normally allowed (over height)?

How to Operate Your Station

97.26 (AR Rule 26) On what frequencies may I transmit?
97.27 (AR Rule 27) How do I select the frequency to transmit on?
97.28 (AR Rule 28) Where are the ITU Regions?
97.29 (AR Rule 29) What transmitter or amplifier may I use at my AR station?
97.30 (AR Rule 30) How high may I put my antenna?
97.31 (AR Rule 31) How much power may I use?
97.32 (AR Rule 32) What communications may I transmit?
97.33 (AR Rule 33) What communications are prohibited?
97.34 (AR Rule 34) May I transmit communications for third parties?
97.35 (AR Rule 35) May I be paid to use my AR station?
97.36 (AR Rule 36) How do I use my AR station in an emergency?
97.37 (AR Rule 37) Does my AR station need a control operator?
97.38 (AR Rule 38) Who may operate under my license?
97.39 (AR Rule 39) Who is responsible for transmissions made under the authority of my license?
97.40 (AR Rule 40) Who must not operate undr my license?
97.41 (AR Rule 41) How do I identify my communications?
97.42 (AR Rule 42) Where may I operate my AR station?
97.43 (AR Rule 43) How do I operate my AR station by remote control?
97.44 (AR Rule 44) How do I operate my AR station as a repeater?
97.45 (AR Rule 45) How do I operate my AR station as an auxiliary?
97.46 (AR Rule 46) How do I operate my AR station to remotely control a model craft?
97.47 (AR Rule 47) When may I operate my AR station by automatic control?

Other things You Need To Know

97.48 (AR Rule 48) How long must I keep my license?
97.49 (AR Rule 49) Where must I keep my license?
97.50 (AR Rule 50) What must I do if I misplace my license?
97.51 (AR Rule 51) Do I need to have a copy of the Amateur Telecommunications Service Rules?
97.52 (AR Rule 52) What are the penalties for violating these rules?
97.53 (AR Rule 53) How do I answer discrepancy notifications?
97.54 (AR Rule 54) What must I do if the FCC tells me my AR station is causing interference?
97.55 (AR Rule 55) May I interconnect my AR station transmitter to a telephone?
97.56 (AR Rule 56) Do I have to make my AR station and its records available for inspection?
97.57 (AR Rule 57) What do I have to keep in my station records?
97.58 (AR Rule 58) How do I contact the FCC?
97.59 (AR Rule 59) Can I get these rules changed?
97.60 (AR Rule 60) Can the FCC modify my AR licenses?
97.61 (AR Rule 61) May I operate an AR station in the United States under Canadian authority?
97.62 (AR Rule 62) How are the key words in these rules defined?

Subpart B—Radio Amateur Civil Emergency Service (RACES)

General Information on RACES

97.101 (RACES Rule 1) What is the Radio Amateur Civil Emergency Service (RACES)?
97.102 (RACES Rule 2) How do I use these rules?
97.103 (RACES Rule 3) Do I need a license?
97.104 (RACES Rule 4) Is my station eligible for RACES station authority?
97.105 (RACES Rule 5) Am I eligible to get a RACES station license?
97.106 (RACES Rule 6) How do I get a certificate of enrollment?

How To Get Your RACES License

97.107 (RACES Rule 7) How do I apply for a RACES station license?
97.108 (RACES Rule 8) What information must I furnish on my application?

97.109 (RACES Rule 9) What kind of operation does my RACES authorization allow?

How To Operate Your Station in RACES

97.110 (RACES Rule 10) On what frequencies may I transmit?
97.111 (RACES Rule 11) What are the limitations on the use of these frequencies?
97.112 (RACES Rule 12) What communications may I transmit?
97.113 (RACES Rule 13) What communications are prohibited?

Subpart C—Amateur Satellite Service (ASAT)

General Information on the ASAT Service

97.201 (ASAT Rule 1) What is the Amateur Satellite (ASAT) Service?
97.202 (ASAT Rule 2) How do I use these rules?
97.203 (ASAT Rule 3) Do I need a license?
97.204 (ASAT Rule 4) What is earth operation?
97.205 (ASAT Rule 5) What is telecommand operation?
97.206 (ASAT Rule 6) What is space operation?

How To Operate Your AR Station in the ASAT Service

97.207 (ASAT Rule 7) On what frequencies may I transmit?
97.208 (ASAT Rule 8) What are the limitations on the use of these frequencies?
97.209 (ASAT Rule 9) How do I use my AR station in earth operation?
97.210 (ASAT Rule 10) How do I use my station in telecommand operation?

Information on Requirements for Space Operation

97.211 (ASAT Rule 11) When may my AR station be in space operation?
97.212 (ASAT Rule 12) How do I use my AR station in space operation?
97.213 (ASAT Rule 13) What are telemetry transmissions?
97.214 (ASAT Rule 14) May telemetry messages be coded?

How To Notify the FCC of Space Operation

97.215 (ASAT Rule 15) Why must I notify the FCC?
97.216 (ASAT Rule 16) When do I send my notifications to the FCC?
97.217 (ASAT Rule 17) Where do I send my notifications?
97.218 (ASAT Rule 18) What information must I furnish in my pre-space operation notifications?
97.219 (ASAT Rule 19) What orbital parameters must I furnish?
97.220 (ASAT Rule 20) What technical parameters must I furnish?
97.221 (ASAT Rule 21) How do I determine the lowest equivalent satellite noise temperature?
97.222 (ASAT Rule 22) What information must I furnish in my in-space operation notification?
97.223 (ASAT Rule 23) What information must I furnish in my post-space operation notification?

Subpart D—Technical (TEC) Standards

General Information on Technical Standards

97.301 (TEC Rule 1) What are technical standards?
97.302 (TEC Rule 2) How do I use these rules?

Information on Requirements

97.303 (TEC Rule 3) What are emissions?
97.304 (TEC Rule 4) On what frequencies may my station transmit the various emissions?
97.305 (TEC Rule 5) What are the technical standards for sideband emissions?
97.306 (TEC Rule 6) What are the technical standards for spurious emissions?
97.307 (TEC Rule 7) What are the technical standards for voice transmissions?
97.308 (TEC Rule 8) What are the technical standards for video transmissions?
97.309 (TEC Rule 9) What are the technical standards for digital transmissions?

Information on Measurements

97.310 (TEC Rule 10) How does the FCC measure transmitter power?
97.311 (TEC Rule 11) How does the FCC measure levels of transmitter emissions?

Other Things You Need To Know

97.312 (TEC Rule 12) What amplifiers may I manufacture, market or use in the Amateur Telecommunications Services?
97.313 (TEC Rule 13) What are the standards for amplifier type acceptance?

Appendices

Appendix A What areas of the world are included in each ITU Region?
Appendix B What are the ITU rules governing the Amateur Telecommunications Services?
Appendix C Where are the FCC field offices located?
Appendix D Where are the FCC monitoring stations located?
Appendix E What are the procedures for protecting FCC monitoring stations?
Appendix F How do I determine antenna height above average terrain (AHAAT)?
Appendix G How do I determine effective radiated power (ERP)?

Authority: Secs. 4(i) and 303(r), Communications Act of 1934, as amended, (47 U.S.C. 154(i) and 303(r).

Subpart A—Amateur Radio (AR) Service

EXISTING RULE

§ 97.1 Basis and purpose.

The rules and regulations in this part are designed to provide an amateur radio service having a fundamental purpose as expressed in the following principles:

(a) Recognition and enhancement of the value of the amateur service to the public as a voluntary noncommercial communication service particularly with respect to providing emergency communications.

(b) Continuation and extension of the amateur's proven ability to contribute to the advancement of the radio art.

(c) Encouragement and improvement of the amateur radio service through rules which provide for advancing skills in both the communication and technical phases of the art.

(d) Expansion of the existing reservoir within the amateur radio service of trained operators, technicians, and electronics experts.

(e) Continuation and extension of the amateur's unique ability to enhance international good will.

PROPOSED HEADING

General Information on the AR Service

PROPOSED RULE

§ 97.1 (AR Rule 1) What is the Amateur Radio (AR) Service?

The AR Service is for persons interested in the technical side of radio communications. They use the service only for their own personal satisfaction and get no financial benefit from its use. They learn about radio, communicate with other operators around the world, and find better ways to communicate by radio.

EXPLANATION

This rule replaces § 97.1. We rewrote the rule in simple language, using the definition of the service contained in Article 1 of the ITU Radio Regulations. It defines the Amateur Service as follows:

"A service of self-training, intercommunication and technical investigations carried on by amateurs, that is, by duly qualified persons interested in radio technique solely with a personal aim and without pecuniary interest."

EXISTING RULE

None.

PROPOSED RULE

§ 97.2 (AR Rule 2) How do I use these rules?

(a) Read and obey these rules. Every AR station operating under a license (or other authorization) from the FCC must comply with these rules. (See AR Rule 52 for the penalties for violations of these rules.)

(b) Where the rules use the word "you," "you" means an applicant or a person with an FCC license (or other authorization), where appropriate.

(c) Where the rules use the word "person," the rules are concerned with any person, including a citizen of the United States or an alien.

EXPLANATION

We are proposing to include this section on proper use of the rules. We believe information on the scope of the rules will

assist applicants and licensees to better understand their responsibilites under these rules.

EXISTING RULES

§ 97.40 Station license required.

(a) No transmitting station shall be operated in the amateur radio service without being licensed by the Federal Communications Commission, except that an amateur radio station licensed by the Government of Canada may, in accordance with Section 97.41, be operated in the United States without the prior approval of the Commission.

(b) Every amateur radio operator shall have one, but only one, primary amateur radio station license.

§ 97.79 Control operator requirements.

* * * * *

(c) An amateur station may only be operated in the manner and to the extent permitted by the operator privileges authorized for the class of license held by the control operator, but may exceed those of the station licensee provided proper station identification procedures are performed.

* * * * *

§ 97.129 Fraudulent licenses.

No licensed radio operator or other person shall obtain or attempt to obtain, or assist another to obtain or attempt to obtain, an operator license by fraudulent means.

§ 97.311 Operating conditions.

(a) The alien amateur may not under any circumstances begin operation until he has received a permit issued by the Commission.

* * * * *

§ 97.41 Operation of Canadian amateur stations in the United States.

(a) An amateur radio station licensed by the Government of Canada may be operated in the United States without the prior approval of the Federal Communications Commission.

* * * * *

PROPOSED RULE

§ 97.3 (AR Rule 3) Do I need a license?

(a) You must get FCC AR station authority before your station may transmit in the AR Service from:

(1) Within or over the territorial limits of places where the AR Service is regulated by the FCC (see AR Rule 42);

(2) Aboard any vessel or aircraft registered in the United States; *or*

(3) Aboard any unregistered vessel or aircraft owned or operated by a United States citizen or company.

(b) For FCC AR station authority, you must get one of the following:

An AR primary station license from the FCC;
An AR club station license from the FCC;
An AR Military Recreation Station license from the FCC;
An Amateur Alien permit from the FCC; *or*
An Amateur Experimental Service Certificate from the Government of Canada (Canadian citizens only).

(c) You must get FCC AR operator authority before you may be the control operator (see AR Rule 37) of an AR station transmitting under FCC AR station authority.

(d) For FCC AR operator authority, you must get one of the following:

If you are a United States citizen;
An AR operator license from the FCC; *or*
An Interim Amateur Permit from the FCC.

If you are *not* a United States citizen, you must get one of the following:

An AR operator license from the FCC;
An Interim Amateur Permit from the FCC;
An Amateur Alien Permit from the FCC; *or*
An Amateur Experimental Service Certificate from the Government of Canada (Canadian citizens only).

(e) You may not use fraud to obtain or try to obtain AR station or operator authority for yourself or any other person.

EXPLANATION

The proposed rule emphasizes the requirement that both a station license and an operator license are needed in order to operate an AR station. All of the various types of station and operator authorizations recognized by the FCC for the Amateur Radio Service are listed in this one rule.

We are including in this proposed rule the requirements of Section 301 (e) of the Communications Act of 1934, as amended, concerning FCC authorization for stations aboard vessels and aircraft of United States registry.

In paragraph (b) of the proposed rule, we stressed that the FCC will only honor Amateur Experimental Service Certificates if they are held by citizens of Canada. This will discourage U.S. operators who fail to qualify for FCC licenses from attempting to get an Amateur Experimental Service Certificate from Canada to operate in the U.S.

§ 97.3 Definitions.

* * * * *

EXISTING RULES

(g) *Military recreation station.* An amateur radio station licensed to the person in charge of a station at a land location provided for the recreational use of amateur radio operators, under military auspices of the Armed Forces of the United States.

(h) *Club station.* A separate Amateur radio station licensed to an Amateur radio operator acting as a station trustee for a *bona fide* amateur radio organization or society. A *bona fide* Amateur radio organization or society shall be composed of at least two persons, one of whom must be a licensed Amateur operator, and shall have:

(1) A name,

(2) An instrument of organization (e.g., constitution),

(3) Management, and

(4) A primary purpose which is devoted to Amateur radio activities consistent with § 97.1 and constituting the major portion of the club's activities.

* * * * *

§ 97.37 General eligibility for station license.

(a) An amateur radio station license will be issued only to a licensed amateur radio operator, except that a military recreation station license may also be issued to an individual not licensed as an amateur radio operator (other than a representative of a foreign government), who is in charge of a proposed military recreation station not operated by the U.S. Government but which is to be located in approved public quarters.

(b) Only modification and/or renewal station licenses will be issued for club and military recreation stations. No new licenses will be issued for these types of stations.

§ 97.39 Eligibility of corporations or organizations to hold station license.

An amateur station license will not be issued to a school, company, corporation, association, or other organization, except that in the case of a *bona fide* amateur radio organization or society meeting the criteria set forth in Section 97.3, a station license may be issued to a licensed amateur operator, other than the holder of a Novice Class license, as trustee for such society.

PROPOSED RULE

§ 97.4 (AR Rule 4) Am I eligible to get an AR station license?

(a) You are eligible to get an AR primary station license if you have an AR operator license (see AR Rule 5). The FCC combines both these licenses on one form.

(b) You are eligible for an AR Club station license if—

(1) You have an AR operator/primary station license;

(2) You are a member of an AR Club which already has an AR Club station license (new AR Club station licenses are not issued);

(3) You are the station trustee for the club; *AND*

(4) The club—

Is:	Is not:
Composed of at least one other member; *AND*	A school; *NOR*
Operated with a constitution; *AND*	A company; *NOR*
Engaging in AR Service activities.	A corporation formed for any purpose other than being an AR Club; *NOR*
	An organization for profit; *NOR*
	An agency of a foreign government; *NOR*
	An agency of the United States government.

(c) You are eligible for an AR Military Recreation station license if you are in charge of a station sponsored by the armed forces of the United States for recreation by AR operators. The station must already have an AR Military Recreation station license. (New AR Military Recreation station licenses are not issued.)

EXPLANATION

This rule replaces portions of § 97.3 and all of § 97.37 and § 97.39. We rewrote these rules in simpler language to explain the eligibility requirements for a Club station license in more practical terms.

§ 97.9 Eligibility for new operator license.

Anyone except a representative of a foreign government is eligible for an amateur operator license.

EXISTING RULE

§ 97.301 Basis, purpose, and scope.

(a) The rules in this subpart are based on, and are applicable solely to, alien amateur operations pursuant to section 303(1)(3) and 310(a) of the Communications Act of 1934, as amended. (See Pub. L. 93–505, 88 Stat. 1576.)

(b) The purpose of this supbart is to implement Public Law 88–313 by prescribing the rules under which an alien, who holds an amateur operator and station license issued by his government (hereafter referred to as an alien amateur), may operate an amateur radio station in the United States, in its possessions, and in the Commonwealth of Puerto Rico (hereafter referred to only as the United States).

§ 97.303 Permit required.

(a) Before he may operate an amateur radio station in the United States, under the provisions of sections 303(1)(2) and 310(a) of the Communications Act of 1934, as amended, an alien amateur licensee must obtain a permit for such operation from the Federal Communications Commission. A permit for such operation shall be issued only to an alien holding a valid amateur operator and station authorization from his government, and only when there is in effect a bilateral agreement between the United States and that government for such operation on a reciprocal basis by United States amateur radio operators.

§ 97.32 Interim Amateur Permits.

(a) Upon successful completion of a Commission supervised Amateur Radio Service operator examination, an applicant already licensed in the Amateur Radio Service may operate his amateur radio station pending issuance of his permanent amateur operator and station licenses under the terms and conditions of an Interim Amateur Permit, evidenced by a properly executed FCC Form 660–B.

* * * * *

PROPOSED RULE

§ 97.5 (AR Rule 5) Am I eligible to get an AR operator license?

(a) You are eligible for an AR operator license if you are qualified to be an AR operator (see AR Rule 6).

(b) You are eligible for an Interim Amateur Permit if you have an AR operator license from the FCC and you qualify for a higher AR operator license class by passing tests (see AR Rule 13).

(c) You are eligible for an Amateur Alien Permit if—

(1) You are not a citizen of the United States;

(2) You have an AR Service license from your government; *AND*

(3) Your government has an agreement with the United States which allows amateur radio operation on a reciprocal basis.

(d) You can get a list of countries which have a reciprocal agreement with the United States from the FCC's Office of Public Affairs.

(e) You must not have more than one AR operator license from the FCC at any one time.

(f) You are not eligible for an AR operator license if you are a representative of a foreign government.

EXPLANATION

We believe it is helpful to have all of the eligibility requirements for an AR operator license in one rule. Therefore, we combined existing § 97.9, § 97.32(a), § 97.301 and § 97.303 into this one proposed rule that covers all eligibility requirements.

§ 97.5 Classes of operator licenses.

Amateur extra class.
Advanced class (previously class A).
General class (previously class B).
Conditional class (previously class C).
Techician class.
Novice class.

EXISTING RULES

§ 97.19 When examination is required.

Examination is required for the issuance of a new amateur operator license, and for a change in class of operating privileges. Credit may be given, however, for certain elements of examination as provided in § 97.25.

§ 97.23 Examination requirements.

Applicants for operator licenses will be required to pass the following examination elements:

(a) Amateur Extra Class: Elements 1(C), 2, 3, 4(A) and 4(B);

(b) Advanced Class: Elements 1(B), 2, 3, and 4(A);

(c) General Class: Elements 1(B), 2 and 3;

(d) Technician Class: Elements 1(A), 2, and 3;

(e) Novice Class: Elements 1(A) and 2.

PROPOSED HEADING

How to get your AR licenses.

PROPOSED RULE

§ 97.6 (AR Rule 6) How do I qualify for an AR operator license?

(a) You must prove you are qualified for an AR operator license by passing a series of tests, as follows:

For AR operator class	You must pass	
	Telegraphy test	Written tests
Novice	5 WPM	A.
Technician	5 WPM	A and B.
General	13 WPM	A and B.
Advanced	13 WPM	A, B, and C.
Amateur extra	20 WPM	A, B, C, and D.

(b) You must pass the Written Tests in the above order (A before B, B before C and C before D).

(c) When you are taking the Written Tests for Technician AR operator class, you may be given a combined Written Test A and B. This will happen if you do not already have the Novice Class licenses.

(d) You cannot get waiver of the telegraphy requirement.

EXPLANATION

We combined § 97.5, § 97.19 and § 97.23 into this one proposed rule that tells applicants how to qualify for an AR operator license. In combining the existing sections,

we renamed the tests to make the qualification requirements more clear to applicants.

EXISTING RULES

§ 97.21 Examination elements.

Examinations for amateur operator privileges will comprise one or more of the following examination elements.

(a) Element 1(A): Beginner's code test at five (5) words per minute;

(b) Element 1(B): General code test at thirteen (13) words per minute;

(c) Element 1(C): Expert's code test at twenty (20) words per minute;

* * * * *

§ 97.28 Manner of conducting examinations.

* * * * *

(c) The code test required of an applicant for an amateur radio operator license, in accordance with the provisions of §§ 97.21 and 97.23 shall determine the applicant's ability to transmit by hand key (straight key or, if supplied by the applicant, any other type of hand operated key such as a semi-automatic or electronic key, but not a keyboard keyer) and to receive by ear, in plain language, messages in the international Morse code at not less than the prescribed speed during a five minute test period. Each five characters shall be counted as one word. Each punctuation mark and numeral shall be counted as two characters.

* * * * *

PROPOSED RULE

§ 97.7 (AR Rule 7) What must I know to pass the telegraphy tests?

(a) You must know how to send by hand and receive by ear AR Service messages in the international Morse code. The FCC will test you only for receiving.

(b) During a Telegraphy Test, you must listen to, and understand, a message like AR operators send to each other. The message will take about five minutes for you to receive. Then you must correctly answer questions about what was in the message.

(c) Telegraphy Test messages are in the English language. They use the following telegraphy characters:

(1) Alphabet

(2) Numbers

(3) Punctuation marks—

(i) Period (RK)

(ii) Comma (GW)

(iii) Question mark (UD)

(iv) Slant bar (DN)

(4) Ending signals—

(i) End of transmission (AR)

(ii) Invitation to transmit, specific station (KN)

(iii) End of contact (SK)

(d) Telegraphy Test messages are sent at the following rates:

(1) Telegraphy Test 5 WPM—five words per minute. Individual characters are sent at 10.83 baud.

(2) Telegraphy Test 13 WPM—Thirteen words per minute, 10.83 baud.

(3) Telegrahpy Test 20 WPM—Twenty words per minute, 16.67 baud.

(e) You must answer 70 to 100 percent of the questions correctly.

(f) If you have difficulty hearing, you can prove you know how to receive messages in the international Morse code by using the flashing light or vibrating device you normally use. You must bring this device with you when you take the test.

(g) If you have difficulty writing by hand, you may use your typewriter. You must—

(1) Make prior arrangements with your examiner; *AND*

(2) Bring your typewriter with you when you take the test.

EXPLANATION

We rewrote these existing rules to help applicants prepare for the telegraphy tests. We included information on the type of material we test on and how we give the test. In paragraph (d)(1) of the proposed rule, applicants taking the Telegraphy Test 5 WPM shoud note that while the individual characters must be sent at a rate of 13 WPM, the spacing between works is at a rate of 5 WPM.

We added paragraphs (f) and (g) to the proposed rule to express the FCC policy on administering tests to persons who have difficulty hearing or writing by hand.

EXISTING RULES

§ 97.21 Examination elements.

* * * * *

(d) Element 2: Basic law comprising rules and regulations essential to beginners' operation, including sufficient elementary radio theory for the understanding of those rules;

(e) Element 3: General amateur practice and regulations involving radio operation and apparatus and provisions of treaties, statutes, and rules affecting amateur stations and operators;

(f) Element 4(A): Intermediate amateur practice involving intermediate level radio theory and operation as applicable to modern amateur techniques, including, but not limited to, radiotelephony and radiotelegraphy;

(g) Element 4(B): Advanced amateur practice involving advanced radio theory and operation as applicable to modern amateur techniques, including, but not limited to radiotelephony, radiotelegraphy, and transmissions of energy for measurements and observations applied to propagation, for the radio control of remote objects and for similar experimental purposes.

§ 97.28 Manner of conducting examinations.

* * * * *

(d) All written portions of the examinations for amateur operator privileges shall be completed by the applicant in legible handwriting or hand printing. Whenever the applicant's signature is required, his normal signature shall be used. Applicants unable to comply with these requirements, because of physical disability, may dictate their answers to the examination questions and the receiving code test. If the examination or any part thereof is dictated, the examiner shall certify the nature of the applicant's disability and the name and address of the person(s) taking and transcribing the applicant's dictation.

§ 97.31 Grading of examinations.

(a) Code test for sending and receiving are graded separately.

(b) Seventy-four percent (74%) is the passing grade for written examinations. For the purpose of grading, each element required in qualifying for a particular license will be considered as a separate examination. All written examinations will be graded only by Commission personnel.

PROPOSED RULE

§ 97.8 (AR Rule 8) What must I know to pass the Written Tests?

(a) You must know how to properly use the privileges authorized by an AR operator license in order to pass the Written Tests for that license.

(b) Your examiner will hand you test papers during a Written Test. These papers will contain questions about the following subjects:

(1) FCC Rules;

(2) Operating procedures;

(3) Radio wave propagation;

(4) AR practices;

(5) Electrical principles;

(6) Circuit components;

(7) Practical circuits;

(8) Signals and emissions; *AND*

(9) Antenna and feedlines.

(c) Each Written Test for a higher AP operator class requires more knowledge to pass.

(d) You must answer 74 to 100 percent of the questions correctly to pass.

(e) You can get a study guide from the FCC. It lists the main topics covered in each Written Test.

EXPLANATION

This proposed rule replaces existing § 97.21, § 97.28 and § 97.31. We combined these existing rules and rewrote them to

provide more detailed information on the type of material covered in the Written Tests. We also included information on obtaining a study guide from the FCC.

EXISTING RULES

§ 97.27 Mail examinations for applicants unable to travel.

The Commission may permit the examinations for an Amateur Extra, Advanced, General, or Technician Class license to be administered at a location other than a Commission examination point by an examiner chosen by the Commission when it is shown by physician's certification that the applicant is unable to appear at a regular Commission examination point because of a protracted disability preventing travel.

§ 97.28 Manner of conducting examinations.

(a) Except as provided in § 97.27, all examinations for Amateur Extra, Advanced, General, and Technician Class operator licenses will be conducted by authorized Commission personnel or representatives at locations and times specified by the Commission. Examination elements given under the provisions of § 97.27 will be administered by an examiner selected by the Commission. All applications for consideration of eligibility under § 97.27 should be filed on FCC Form 610, and should be sent to the FCC field office nearest the applicant. (A list of these offices appears in § 0.121 of the Commission's Rules and can be obtained from the Regional Services Division, Field Operations Bureau, FCC, Washington, D.C. 20554, or any field office.)

* * * * *

APPENDIX

Examination Points

Examinations for amateur radio operator licenses are conducted at the Commission's office in Washington, D.C. and at each field office of the Commission on the days designated by the Engineer in Charge of each office. Specific dates should be obtained from the Engineer in Charge of the nearest field office of the Commission.

Examinations are also given at prescribed intervals in the cities listed in the Commission's current Examination Schedule, copies of which are available from the Federal Communications Commission Regional Services Division, Washington, D.C. 20554, or from any one of the Commission's field offices listed in § 0.121.

PROPOSED RULE

§ 97.9 (AR Rule 9) Where may I take the tests?

(a) You may take the tests for Novice AR operator class at any place agreeable to you and your volunteer examiner (see AR Rule 10).

(b) You may take the tests for Technician, General, Advanced and Amateur Extra AR operator class at one of the FCC's testing places (see AR Rule 12).

(c) You can get a list of the FCC's testing places from the FCC.

(d) If you are unable to travel to any of the FCC testing places because you have a physical disability, you may take the tests at a place convenient to you (See AR Rule 12).

EXPLANATION

This proposed rule replaces § 97.27, § 97.28 and Appendix 1 of the existing rules. We combined these existing rules and rewrote them in simpler language to explain where applicants can take tests for the various operator licenses.

EXISTING RULES

§ 97.28 Manner of conducting examinations.

(b) The examination for a Novice Class operator license shall be conducted and supervised by a volunteer examiner selected by the applicant, unless otherwise prescribed by the Commission. The volunteer examiner shall be at least 18 years of age, shall be unrelated to the applicant, and shall be the holder of an Amateur Extra, Advanced, or General Class operator license. The written portion of the Novice Class operator examination shall be obtained, administered, and submitted in accordance with the following procedure:

(1) Within 10 days after successfully completing telegraphy examination element 1(A), an applicant shall submit an application (FCC Form 610) to the Commission's office in Gettysburg, Pennsylvania 17325. The application shall include a written request from the volunteer examiner for the examination papers for Element 2. The examiner's written request shall include (i) the names and permanent addresses of the examiner and the applicant, (ii) a description of the examiner's qualifications to administer the examination, (iii) the examiner's statement that the applicant has passed telegraphy element 1(A) under his supervision within the 10 days prior to submission of the request, and (iv) the examiner's written signature. Examination papers will be forwarded only to the volunteer examiner.

(2) The volunteer examiner shall be responsible for the proper conduct and necessary supervision of the examination. Administration of the examination shall be in accordance with the instructions included with the examination papers.

(3) The examination papers, either completed or unopened in the event the examination is not taken, shall be returned by the volunteer examiner to the Commissioner's office in Gettysburg, Pa., no later than 30 days after the date the papers are mailed by the Commission (the date of mailing is normally stamped by the Commission on the outside of the examination envelope).

* * * * *

PROPOSED RULES

§ 97.10 (AR Rule 10) How do I take the Novice AR operator class tests?

(a) You must take the tests for your Novice AR operator class license from a volunteer examiner.

(b) You may request the tests be given to you by doing the following:

(1) Fill out an application (FCC Form 610); *AND*

(2) Get a qualified AR operator to be your volunteer examiner (see AR Rule 11).

(c) If you pass Telegraphy Test 5 WPM, your volunteer examiner will certify on your application that you have passed. He/she will ask the FCC to mail the papers for Written Test A.

(d) You must mail your application to FCC, Gettysburg, PA 17325.

(e) When your volunteer examiner receives the Written Test A papers from the FCC, he/she will tell you how to take the test. You must follow his/her instructions.

EXPLANATION

We took from existing § 97.28(b) information that is relevant to persons taking the tests for a Novice AR operator class license. We put this information into a single rule that tells applicants for this license, in a step-by-step sequence, how to take the tests.

EXISTING RULES

§ 97.28 Manner of conducting examinations.

* * * * *

(b) The examination for a Novice Class operator license shall be conducted and supervised by a volunteer examiner selected by the applicant, unless otherwise prescribed by the Commission. The volunteer examiner shall be at least 18 years of age, shall be unrelated to the applicant, and shall be the holder of an Amateur Extra, Advanced, or General Class operator license. The written portion of the Novice Class operator examination shall be obtained, administered, and submitted in accordance with the following procedure:

(1) Within 10 days after successfully completing telegraphy examination element 1(A), an applicant shall submit an application (FCC Form 610) to the Commission's office in Gettysburg, Pennsylvania 17325. The application shall include a written request from the volunteer examiner for the examination papers for Element 2. The examiner's written request shall include (i) the names and permanent addresses of the examiner and the applicant, (ii) a description of the examiner's qualifications to administer the examination (iii) the examiner's statement that the applicant has passed telegraphy element 1(A) under his supervision within the 10 days prior to submission of the request, and (iv) the examiner's written signature. Examination papers will be forwarded only to the volunteer examiner.

(2) The volunteer examiner shall be responsible for the proper conduct and necessary supervision of the examination. Administration of the examination shall be in accordance with the instructions included with the examination papers.

(3) The examination papers, either completed or unopened in the event the examination is not taken, shall be returned by the volunteer examiner to the Commission's office in Gettysburg, Pa., no later than 30 days after the date the papers are mailed by the Commission (the date of mailing is normally stamped by the Commission on the outside of the examination envelope).

* * * * *

PROPOSED RULE

§ 97.11 (AR Rule 11) How do I give a test as a volunteer examiner?

(a) If you are asked by a person wanting to become a Novice AR operator class licensee, you may be his/her volunteer examiner if you—

(1) Are willing to be his/her volunteer examiner;

(2) Have a General, Advanced, or Amateur Extra AR operator class license from the FCC;

(3) Are at least 18 years old; *AND*

(4) Are not related to him/her. (The following persons are "related " to you: Husband, wife, mother, father, daughter, son, sister, brother, aunt, uncle, niece, nephew, grandmother, grandfather, granddaughter, grandson, step-mother, step-father, step-daughter, step-son, mother-in-law, father-in-law, daughter-in-law, and son-in-law.)

(b) If you agree to be the volunteer examiner, give the applicant, Telegraphy Test 5 WPM (see AR Rule 7). Then grade the test. If he/she passes the test, you must add to his/her application (FCC Form 610) all of the following:

(1) Your certification that he/she has passed Telegraphy Test 5 WPM;

(2) Your request for Written Test A papers;

(3) Your qualifications to be a volunteer examiner (see paragraph (a) of this section);

(4) Your name and mailing address. (Your mailing address must be the same as the mailing address on your AR operator/primary station license. If it is not, you must add an explanation); *AND*

(5) Your signature.

(c) When you receive Written Test A papers through the Mail, read the instructions carefully. You must not read the test questions, nor discuss them with the person you are testing.

(d) When both you and the person you are testing are ready, read the instructions to him/her. Then give him/her the test. You must follow the FCC's instructions and you must make sure the person taking the test follows the FCC's instructions.

(e) When he/she is finished with the test, you must mail all of the papers back to the FCC, Gettysburg, PA 17325. The test will be graded by the FCC. The papers must be sent back to the FCC within 30 days of the date the FCC mailed them to you, whether you give the test or not.

EXPLANATION

We took from existing § 97.28 material that is relevant to giving a test as a volunteer examiner. We thought it would be helpful to volunteer examiners to have a single rule telling them how to give a test. We rewrote the existing rule in a step-by-step sequence and included a detailed listing of those persons the FCC considers to be "related."

EXISTING RULE

§ 97.11 Application for operator license.

(a) An application (FCC Form 610) for a new operator license, including an application for change in operating privileges, which will require an examination supervised by Commission personnel at a regular Commission examining office shall be submitted to such office in advance of or at the time of the examination, except that, whenever an examination is to be taken at a designated examination point away from a Commission office, the application, together with the necessary filing fee should be submitted in advance of the examination date to the office which has jurisdiction over the examination point involved.

(b) An application (FCC Form 610) for a new operator license, including an application for change in operating privileges, which requests an examination supervised by a volunteer examiner under the provisions of § 97.27, shall be submitted to the FCC field office nearest the applicant. Applications for the Novice Class license should be sent to the Commission's offices in Gettysburg, Pa. 17325. All applications should be accompanied by any necessary filing fee.

(c) An application (FCC Form 610) for renewal and/or modification of license when no change in operating privileges is involved shall be submitted, together with any necessary filing fee, to the Commission's office at Gettysburg. Pennsylvania 17325.

PROPOSED RULE

§ 97.12 (AP Rule 12) How do I take the Technician, General, Advanced, and Amateur Extra AR operator class tests?

(a) You must take the tests for your Technician, General, Advanced or Amateur Extra AR operator class license from an FCC examiner.

(b) You may request the test be given to you by doing the following:

(1) Fill out an application (FCC Form 610); *AND*

(2) Send you application to the FCC Field Office which gives tests at the testing place where you want to take the tests. (Consult the FCC examination schedule for specific instructions. You need an appointment at most testing locations. The examination schedule may be obtained from any FCC office, or from the FCC, Washington, DC 20554)

(c) If you are blind or unable to travel to an FCC testing place because of physical disability, you may request to take the test at a place convenient to you (such as your home.) You must do the following:

(1) Fill out an application (FCC Form 610); *AND*

(2) Have your physician certify on your application that you are unable to travel to the nearest FCC testing place because of your physical disability; *AND*

(3) Send you application to the nearest FCC Field Office.

(d) If you are taking the Telegraphy Test by using a flashing light or vibrating device, you must make arrangements in advance with the FCC Field Office.

(e) An FCC examiner, or someone selected by an FCC examiner, will give you the tests. You must follow his/her instructions. Your answers will be graded by the FCC.

EXPLANATION

We rewrote the existing rule in simpler, step-by-step language that clarifies the application process. We added the reference

to testing of blind persons in the proposed rule to make the rule consistent with FCC policy.

EXISTING RULES

§ 97.3 Definitions.

* * * * *

(aa) *Amateur Code Credit Certificate:* A certificate issued to applicants for an amateur operator license evidencing successful completion of a telegraphy examination element.

* * * * *

§ 97.32 Interim Amateur Permits.

(a) Upon successful completion of a Commission supervised Amateur Radio Service operator examination, an applicant already licensed in the Amateur Radio Service may operate his amateur radio station pending issuance of his permanent amateur operator and station licenses under the terms and conditions of an Interim Amateur Permit, evidenced by a properly executed FCC Form 660-B.

(b) An Interim Amateur Permit conveys all operating privileges of the applicant's new operator license classification.

* * * * *

§ 97.25 Examination credit.

* * * * *

(b) Amateur Code Credit Certificates (FCC Form 845) will be issued by the Engineers in Charge of FCC offices to applicants for amateur operator licenses who successfully complete telegraphy examination elements 1(A), 1(B) or 1(C), but who fail the associated written examination element(s). Upon presentation of a properly completed Amateur Code Credit Certificate, the FCC shall give the applicant for an amateur radio operator license examination credit for the code speed listed on the Amateur Code Credit Certificate. An Amateur Code Credit Certificate is valid for a period of one year from the date of its issuance.

* * * * *

PROPOSED RULE

§ 97.13 (AR Rule 13) What may I do if I pass the tests?

(a) After you pass the tests (AR Rule 6), you will receive your AR operator/primary station license through the mail.

(1) If you are upgrading from a lower AR operator class to a higher class, you will be given an Interim Amateur Permit by the FCC Examiner. Until you receive your new license, you may be the control operator of an AR station using the same frequency privileges as your new operator class.

(2) If you do not already have an AR operator license at the time you pass the tests, you must wait until you receive your new license before you may be the control operator of an AR station.

(b) If you pass a Telegraphy Test, but fail the Written Test(s), the FCC Examiner will give you an Amateur Code Credit Certificate (see AR Rule 14).

EXPLANATION

We combined portions of § 97.3, § 97.25, § 97.32 into this one proposed rule. It explains in simple language what an applicant may do after he/she passes the tests for an AR operator/primary station license.

EXISTING RULES

§ 97.3 Definitions.

* * * * *

(a) *Amateur Code Credit Certificate:* A certificate issued to applicants for an amateur operator license evidencing successful completion of a telegraphy examination element.

* * * * *

§ 97.33 Eligibility for re-examination.

An applicant who fails an examination element required for an amateur radio operator license shall not apply to be examined for the same or higher examination element within thirty days of the date the examination element was failed.

§ 97.25 Examination credit.

* * * * *

(b) Amateur Code Credit Certificates (FCC Form 845) will be issued by the Engineers in Charge of FCC offices to applicants for amateur operator licenses who successfully complete telegraphy examination elements 1(A), 1(B) or 1(C), but who fail the associated written examination element(s). Upon presentation of a properly completed Amateur Code Credit Certificate, the FCC shall give the applicant for an amateur radio operator license examination credit for the code speed listed on the Amateur Code Credit Certificate. An Amateur Code Credit Certificate is valid for a period of one year from the date of its issuance.

* * * * *

PROPOSED RULE

§ 97.14 (AR Rule 14) What do I do if I fail the tests?

(a) If you fail a Telegraphy Test or a Written Test, you must wait at least 30 days before you can take it again. If you are applying for a Novice Class AR operator license, you do not have to wait 30 days before you take the telegraphy test again.

(b) If you fail the Written Test(s) for the Technician, General, Advanced or Amateur Extra Class AR operator license, but pass the Telegraphy Test, the FCC Examiner will give you an Amateur Code Credit Certificate. This Certificate is good for one year. Show it to the FCC Examiner when you try again, and you will only have to take the Written Test.

EXPLANATION

This proposed rule replaces § 97.3(aa), § 97.25(b) and § 97.33. We combined these existing sections into one rule to clarify the procedure an applicant must follow to be retested.

§ 97.25 Examination credit.

(a) An applicant for a higher class of amateur operator license who holds any valid amateur license will be required to pass only those elements of the higher class examination that are not included in the examination for the amateur license held.

EXISTING RULE

(b) Amateur Code Credit Certificates (FCC Form 845) will be issued by the Engineers in Charge of FCC offices to applicants for amateur operator licenses who successfully complete telegraphy examination elements 1(A), 1(B), or 1(C), but who fail the associated written examination element(s). Upon presentation of a properly completed Amateur Code Credit Certificate, the FCC shall give the applicant for an amateur radio operator license examination credit for the code speed listed on the Amateur Code Credit Certificate. An Amateur Code Credit Certificate is valid for a period of one year from the date of its issuance.

(c) An applicant for an amateur operator license will be given credit for either telegraph code element 1(A) or 1(B) if within 5 years prior to the receipt of his application by the Commission he held a commercial radiotelegraph operator license or permit issued by the Federal Communications Commission. An applicant for an amateur extra class license will be given credit for the telegraph code element 1(C) if he holds a valid first class commercial radiotelegraph operator license or permit issued by the Federal Communications Commission or holds any commercial radiotelegraph operator license or permit issued by the Federal Communications Commission containing an aircraft radiotelegraph endorsement.

(d) No examination credit, except as herein provided, shall be allowed on the basis of holding or having held any amateur or commercial operator license.

PROPOSED RULE

§ 97.15 (AR Rule 15) Can I get test credit for a license I already have?

(a) When you apply to upgrade your AR operator license to a higher AR operator class, you will get credit for the tests required for your present class.

(For example: Suppose you have a Technician Class AR operator license. You would only have to pass Telegraphy Test 13 WPM in order to upgrade to General Class. You would get credit for Written Tests A and B.)

(b) You will get credit for Telegraphy Tests 5 WPM, 13 WPM and 20 WPM if you have a current commercial radiotelegraph operator's license of any class issued to you by the FCC.

EXPLANATION

We simplified the existing rule greatly by eliminating unnecessary language and by using a specific example. We also propose in this rule that persons who have any class of commercial radiotelegraph operator license be given credit for Telegraphy Tests 5 WPM, 13 WPM and 20 WPM. We are proposing this because the telegraphy requirements for the commercial radiotelegraph operator's license are more stringent than the telegraphy requirements for the AR operator's license.

EXISTING RULE

§ 97.42 Application for station license.

(a) Each application for a club or military recreation station license in the Amateur Radio Service shall be made on the FCC Form 610–B. Each application for any other amateur radio license shall be made on the FCC Form 610.

(b) One application and all papers incorporated therein and made a part thereof shall be submitted for each amateur station license. If the application is only for a station license, it shall be filed directly with the Commission's Gettysburg, Pennsylvania office. If the application also contains an application for any class of amateur operator license, it shall be filed in accordance with the provisions of § 97.11.

* * * * *

§ 97.305 Application for permit.

(a) Application for a permit shall be made on FCC Form 610–A. Form 610–A may be obtained from the Commission's Washington, D.C., office, from any of the Commission's field offices and, in some instances, from United States missions abroad.

(b) The application form shall be completed in full in English and signed by the applicant. A photocopy of the applicant's amateur operator and station license issued by his government shall be filed with the application. The Commission may require the applicant to furnish additional information. The application must be filed by mail or in person with the Federal Communications Commission, Gettysburg, Pennsylvania 17325, U.S.A. To allow sufficient time for processing, the application should be filed at least 60 days before the date on which the applicant desires to commence operation.

PROPOSED RULE

§ 97.16 (AR Rule 16) How do I apply for an AR station license?

(a) You apply for your AR primary station license on the same application (FCC Form 610) and at the same time you apply for your AR operator license. (See AR Rules 10 and 12).

(b) You apply for an Alien Amateur Permit by filling out an application (FCC Form 610–A) and sending it to FCC, Gettysburg, PA 17325.

(c) You apply for an AR Club station license or an AR Military Recreation station license by filling out an application (FCC Form 610–B) and sending it to the FCC, Gettysburg, PA 17325.

(d) The FCC will return your application if you do not include all necessaray information and certifications.

(e) If you have questions about your application, you should write to the FCC, Gettysburg, PA 17325. You should allow at least 60 days for the FCC to act on your application.

EXPLANATION

We combined portions of § 97.41 and all of § 97.305 into this proposed rule on applying for an AR station license. We rewrote the proposed rule in simpler language and included the addresses where the various applications must be sent. We also included a warning that the FCC will return an application if it lacks any necessary information and certifications.

EXISTING RULES

§ 97.305 Application for permit.

(a) Application for a permit shall be made on FCC Form 610–A. Form 610–A may be obtained from the Commission's Washington, D.C., office, from any of the Commission's field offices and, in some instances, from United States missions abroad.

(b) The application form shall be completed in full in English and signed by the applicant. A photocopy of the applicant's amateur operator and station license issued by his government shall be filed with the application. The Commission may require the applicant to furnish additional information. The application must be filed by mail or in person with the Federal Communications Commission, Gettysburg, Pennsylvania 17325, U.S.A. To allow sufficient time for processing, the application should be filed at least 60 days before the date on which the applicant desires to commence operation.

§ 97.43 Mailing address furnished by licensee.

Each application shall set forth and each licensee shall furnish the Commission with an address in the United States to be used by the Commission in serving documents or directing correspondence to that licensee. Unless any licensee advises the Commission to the contrary, the address contained in the licensee's most recent application will be used by the Commission for this purpose.

§ 97.44 Location of station.

Every amateur radio station shall have one land location, the address of which appears on the station license, and at least one control point.

§ 97.42 Application for station license.

(a) Each application for a club or military recreation station license in the Amateur Radio Service shall be made on the FCC Form 610–B. Each application for any other amateur radio license shall be made on the FCC Form 610.

(b) One application and all papers incorporated therein and made a part thereof shall be submitted for each amateur station license. If the application is only for a station license, it shall be filed directly with the Commission's Gettysburg, Pennsylvania office. If the application also contains an application for any class of amateur operator license, it shall be filed in accordance with the provisions of § 97.11.

(c) Each applicant in the Safety and Special Radio Services (1) for modification of a station license involving a site change or a substantial increase in tower height or (2) for a license for a new station must, before commencing construction, supply the environmental information, where required, and must follow the procedure prescribed by Subpart I of Part 1 of this chapter (§§ 1.1301 through 1.1319) unless Commission action authorizing such construction would be a minor action within the meaning of Subpart I of Part 1.

PROPOSED RULE

§ 97.17 What information must I furnish on my application?

(a) You must furnish all of the following information on your FCC Form 610, 610–A or 610–B application.

(1) Your name;

(2) Your current mailing address in the United States;

(3) Your station location;

(4) Your birth date;

(5) Information about your present license(s); *AND*

(6) Your signature.

(b) You must furnish all of the following information on your FCC Form 610–A:

(1) Your mailing address in your own country;

(2) Approximate dates for the start and end of your AR Service operation in the United States;

(3) Name of the country which issued your AR station license; *AND*

(4) Name of the country of which you are a citizen.

(c) You must furnish all of the following information on your FCC Form 610 or 610–B application:

(1) Environmental information (See AR Rule 24);

(2) Antenna height information (See AR Rule 25); *AND*

(3) A photocopy, or the original, of your present AR Service license(s).

(d) You must furnish all of the following information on your FCC Form 610–B application:

(1) Name of your club; *AND*

(2) Certification by an officer of your club that you are an AR Club station trustee; *OR*

(3) Name of your armed forces organization;

(4) Your certification that your proposed AR Military Recreation station will have only licensed AR operators as control operators;

(5) Your certification that your proposed AR Military Recreation station will not be used by the United States Government; *AND*

(6) Approval by appropriate authority for you to establish an AR Military Recreation station on United States Government premises.

EXPLANATION

This rule replaces §§ 97.42, 97.43, 97.44 and 97.305. We combined these existing rule sections to give applicants one rule on what information they must furnish on their applications.

EXISTING RULE

§ 97.59 License term.

(a) Amateur operator licenses are normally valid for a period of five years from the date of issuance of a new, modified or renewed license.

(b) Amateur station licenses are normally valid for a period of five years from the date of issuance of a new, modified or renewed license. All amateur station licenses, regardless of when issued, will expire on the same date as the licensee's amateur operator license.

(c) A duplicate license shall bear the same expiration date as the license for which it is a duplicate.

§ 97.32 Interim Amateur Permits.

* * * * *

(e) Interim Amateur Permits are valid for a period of 90 days from the date of issuance or until issuance of the permanent station and operator licenses, whichever comes first, but may be set aside by the Commission within the 90 day term if it appears that the permanent operator and station licenses cannot be granted routinely.

(f) Interim Amateur Permits shall not be renewed.

§ 97.307 Issuance of permit.

* * * * *

(c) Normally, a permit will be issued to expire 1 year after issuance but in no event after the expiration of the license issued to the alien amateur by his government.

PROPOSED RULE

§ 97.18 (AR Rule 18) How long is my license term?

(a) Your AR licenses usually expire five years from the date the FCC issued them. The expiration date is printed on your licenses. However, they will expire before that date if you get new ones.

(b) Your Interim Amateur Permit term expires when you get your new AR operator/primary station license. However, if you do not get your license within ninety days after you pass the tests, your Permit will expire. If this happens, contact the FCC, Gettysburg, PA 17325.

(c) Your Alien Amateur Permit term is usually one year from the date the FCC first issued it. The expiration date will not be beyond the expiration date on the license you got from your government.

(d) The expiration date is printed on your license or permit.

EXPLANATION

We combined portions of existing §§ 97.32, 97.59 and 97.307 in this proposed rule. Our purpose was to create one rule covering the length of license terms for all of the various licenses.

EXISTING RULES

§ 97.13 Renewal or modification of operator license.

(a) An Amateur operator license may be renewed upon proper application.

(b) The applicant shall qualify for a new license by examination, if the requirements of this section are not fulfilled.

(c) Application for renewal and/or modification of an amateur operator license shall be submitted on FCC Form 610 and shall be accompanied by the applicant's license. Application for renewal of unexpired licenses must be made during the license term and should be filed within 90 days but not later than 30 days prior to the end of the license term. In any case in which the licensee has, in accordance with the provisions of this chapter, made timely and sufficient application for renewal of an unexpired license, no license with reference to any activity of a continuing nature shall expire until such application shall have been finally determined.

* * * * *

§ 97.47 Renewal and/or modification of amateur station license.

(a) Application for renewal and/or modification of an individual station license shall be submitted on FCC Form 610, and application for renewal and/or modification of an amateur club or military recreation station shall be submitted on FCC Form 610–B. In every case the application shall be accompanied by the applicant's license or photocopy thereof. Applications for renewal of unexpired licenses must be made during the license term and should be filed not later than 60 days prior to the end of the license term. In any case in which the licensee has in accordance with the provisions of this chapter, made timely and sufficient application for renewal of an unexpired license, no license with reference to any activity of a continuing nature shall expire until such application shall have been finally determined.

(b) If a license is allowed to expire, application for renewal may be made during a period of grace of 1 year after the expiration date. During this 1-year period of grace, an expired license is not valid. A license renewed during the grace period will be dated currently and will not be backdated to the date of expiration. An application for an individual station license shall be submitted on FCC Form 610. An application for an amateur club or military recreation station license shall be submitted on FCC Form 610–B. In every case the application shall be

accompanied by the applicant's expired license or photocopy thereof.

§ 97.32 Interim Amateur Permits.

* * * * *

(f) Interim Amateur Permits shall not be renewed.

§ 97.307 Issuance of permit.

(a) The Commission may issue a permit to an alien amateur under such terms and conditions as it deems appropriate. If a change in the terms of a permit is desired, an application for modification of the permit is required. If operation beyond the expiration date of a permit is desired, an application for renewal of the permit is required. In any case in which the permittee has, in accordance with the provisions of this subpart, made a timely and sufficient application for renewal of an unexpired permit, such permit shall not expire until the application has been finally determined. Applications for modification or for renewal of a permit shall be filed on FCC Form 610–A.

* * * * *

PROPOSED RULE

§ 97.19 (AR Rule 19) How do I renew or modify my AR license?

(a) You renew or modify your AR license by filling out an application (see AR Rule 16) and sending it to the FCC, Gettysburg, PA 17325. You should allow at least sixty days for the FCC to act on your application.

(b) If you send your renewal application to the FCC before your license expires, your license will still be valid until the FCC acts on your application. You should keep a copy of your old license and a copy of the application you send to the FCC in your station records.

(c) If you do not send your renewal application to the FCC before your license expires, you must not be the control operator of an AR station, and your station must not transmit on frequencies allocated to the AR Service. You may not begin again until you have received a new license from the FCC.

(d) Your Interim Amateur Permit cannot be renewed.

(e) Your Alien Amateur Permit cannot be renewed. You may apply for another permit when yours expires.

EXPLANATION

We simplified the existing rules by organizing the necessary information on renewal and modification in one rule. Most of the language in the existing rules is unnecessary to accomplish the regulatory purpose and is deleted from the proposed rule for that reason.

EXISTING RULE

§ 97.13 Renewal or modification of operator license.

* * * * *

(d) If a license is allowed to expire, application for renewal may be made during a period of grace of five years after the expiration date. During this five year period of grace, an expired license is not valid. A license renewed during the grace period will be dated currently and will not be backdated to the date of its expiration. Application for renewal shall be submitted on FCC Form 610 and shall be accompanied by the applicant's expired license.

* * * * *

PROPOSED RULE

§ 97.20 (AR Rule 20) May I renew my AR licenses if I forget to apply in time?

(a) You may renew your AR operator license until five years after it expires.

(b) You may renew your AR station license during the year following its expiration and get the same call sign. After one year, your AR station will get another call sign.

(c) You must not be the control operator of an AR station while your AR operator license is expired.

(d) Your station must not transmit in the AR Service while your AR station license is expired.

EXPLANATION

Existing rule § 97.13(d) was amended recently to provide a five year grace period for renewing expired licenses. This topic is the subject of numerous questions from licensees. We believe it should be addressed in a separate rule.

In paragraph (b) of the proposed rule, we explain what happens to an AR station call sign after a license expires. Our purpose in adding this explanation was to answer a question we are often asked.

EXISTING RULE

§ 97.51 Assignment of call signs.

(a) The Commission shall assign the call sign of an amateur radio station on a systematic basis.

(b) The Commission shall not grant any request for a specific call sign.

(c) From time to time the Commission will issue public announcements detailing the policies and procedures governing the systematic assignment of call signs and any changes in those policies and procedures.

PROPOSED RULE

§ 97.21 (AR Rule 21) How does the FCC assign call signs to AR stations?

(a) The FCC assigns a call sign to each AR station according to a system. The FCC Private Radio Bureau will announce to the public the policies of the call sign assignment system.

(b) You cannot get a call sign of your choice for your AR station.

(c) Your station call sign is printed on your AR station license.

(d) The FCC does not assign call signs to AR stations authorized under either an Alien Amateur Permit or a Canadian Amateur Experimental Service Certificate. The call sign is assigned by your government.

EXPLANATION

We rewrote the existing rule in simpler language and added more information to make the rule more useful to licensees.

EXISTING RULES

§ 97.78 Practice to be observed by all licensees.

In all respects not specifically covered by these regulations each amateur station shall be operated in accordance with good engineering and good amateur practice.

§ 97.79 Control operator requirements.

(a) The licensee of an amateur station shall be responsible for its proper operation.

(b) Every amateur radio station, when in operation, shall have a control operator at an authorized control point. The control operator shall be on duty, except where the station is operated under automatic control. The control operator may be the station licensee, if a licensed amateur radio operator, or may be another amateur radio operator with the required class of license and designated by the station licensee. The control operator shall also be responsible, together with the station licensee, for the proper operation of the station.

(c) An amateur station may only be operated in the manner and to the extent permitted by the operator privileges authorized for the class of license held by the control operator, but may exceed those of the station licensee provided proper station identification procedures are performed.

(d) The licensee of an amateur radio station may permit any third party to participate in amateur radio communication from his station, provided that a control operator is present and continuously monitors and supervises the radio communication to insure compliance with the rules.

§ 97.81 Authorized apparatus.

An amateur station license authorizes the use under control of the licensee of all transmitting apparatus at the fixed location specified in the station license which is operated on any frequency, or

frequencies allocated to the amateur service, and in addition authorizes the use, under control of the licensee, of portable and mobile transmitting apparatus operated at other locations.

PROPOSED RULE

§ 97.22 (AR Rule 22) What privileges does my license allow?

(a) You must obey all the conditions and terms of your license.

(b) Your AR operator license authorizes you to use the privileges of the AR operator license class printed on your license.

(c) Your AR operator license authorizes you to be the control operator of any AR station licensed by the FCC. For an AR station licensed to another person, you must also have his/her permission.

(d) Your AR station license authorizes radio transmissions from your apparatus on frequencies allocated to the AR Service, provided a control operator supervises the transmissions.

EXPLANATION

The proposed rule pulls together and simplifies general information about operating authority under an amateur license. The information contained in proposed AR Rule 22 is addressed in more detail in other proposed AR Rules.

EXISTING RULE

§ 97.43 Mailing address furnished by licensee.

Each application shall set forth and each licensee shall furnish the Commission with an address in the United States to be used by the Commission in serving documents or directing correspondence to that licensee. Unless any licensee advises the Commission to the contrary, the address contained in the licensee's most recent application will be used by the Commission for this purpose.

PROPOSED RULE

§ 97.23 (AR Rule 23) What must I do if my name, station location or address changes?

If you name, station location or mailing address changes, you must file an application for license modification. You must include information on what you want changed (see AR Rule 17).

EXPLANATION

The proposed rule contains information for licensees who must modify their license due to name, station location or address change.

EXISTING RULES

§ 97.42 Application for station license.

* * * * *

(c) Each applicant in the Safety and Special Radio Services (1) for modification of a station license involving a site change or a substantial increase in tower height or (2) for a license for a new station must, before commencing construction, supply the environmental information, where required, and must follow the procedure prescribed by Subpart I of Part 1 of this chapter (§§ 1.1301 through 1.1319) unless Commission action authorizing such construction would be a minor action with the meaning of Subpart I of Part 1.

(d) Protection for Federal Communications Commission Monitoring Stations:

(1) Applicants for an amateur radio station license to operate in the vicinity of an FCC monitoring station are advised to give consideration, prior to filing applications, to the possible need to protect the FCC stations from harmful interference. Geographical coordinates of the facilities which require protection are listed in § 0.121(c) of the Commission's Rules. Applications for stations (except mobile stations) in the vicinity of monitoring stations may be reviewed by Commission staff on a case-by-case basis to determine the potential for harmful interference to the monitoring station. Depending on the theoretical field strength value and existing root-sum-square or other ambient radio field signal levels at the indicated coordinates, a clause protecting the monitoring station may be added to the station license.

(2) Advance consultation with the Commission is suggested prior to filing an initial application for station license if the proposed station will be located within one mile of any of the above-referenced monitoring station coordinates and is to be operated on frequencies below 1000 MHz. Such consultations are also suggested for proposed stations operating above 1000 MHz if they are to be located within one mile of any monitoring station designated in § 0.121(c) as a satellite monitoring facility.

(3) Regardless of any coordination prior to filing initial applications, it is suggested that licensees within one mile of a monitoring station consult the Commission before initiating any changes in the station which would increase the field strength produced over the monitoring station.

(4) Applicants and licensees desiring such consultations should communicate with: Chief, Field Operations Bureau, Federal Communications Commission, Washington, D.C. 204554, Telephone (202) 632-6980.

(5) The Commission will not screen applications to determine whether advance consultation has taken place. However, applicants are advised that such consultation can avoid objections from the Federal Communications Commission or modification of any authorization which will cause harmful interference.

PROPOSED RULE

§ 97.24 (AR Rule 24) Are there any special restrictions on the location of my AR station?

(a) If your AR station will be constructed on land of environmental or historical importance (such as a location significant in American history, architecture or culture), you may be required to provide additional information with your license application and to comply with §§ 1.1305–1.1319 of the FCC's Rules.

(b) If your AR station is located on land controlled by the Department of Defense, you may be required to comply with additional regulations imposed by the commanding officer of the installation.

(c) If your station will be located within 1.6 kilometers (1 mile) of an FCC monitoring station (see Appendix E for protection of monitoring stations and Appendix D for their locations), a special restriction may be added to your station license. You should consult with:

Chief, Field Operations Bureau, FCC,
Washington, DC 20554

prior to—

(1) Filing an application for a station license; *AND/OR*

(2) Changing anything in your station which would increase the field strength over the monitoring station.

EXPLANATION

While the information contained in this rule is covered more extensively in other FCC rule parts, we thought it would be helpful to include a separate rule here that warns licensees of these restrictions.

EXISTING RULE

§ 97.45 Limitations on antenna structures.

(a) Except as provided in paragraph (b) of this section, an antenna for a station in the Amateur Radio Service which exceeds the following height limitations may not be erected or used unless notice has been filed with both the FAA on FAA Form 7460-1 and with the Commission on Form 714 or on the license application form, and prior approval by the Commission has been obtained for:

* * * * *

(c) Further details as to whether an aeronautical study and/or obstruction marking and lighting may be required, and specifications for obstruction marking and lighting when required, may be obtained from Part 17 of this

chapter, "Construction, Marking, and Lighting of Antenna Structures." Information regarding the inspection and maintenance of antenna structures requiring obstruction marking and lighting is also contained in Part 17 of this chapter.

PROPOSED RULE

§ 97.25 (AR Rule 25) How do I get permission to put my antenna higher than normally allowed (over height)?

If you want to get permission from the FCC to put your AR station antenna over height (see AR Rule 30), you must—

(a) Notify the FCC (FCC Form 714) that your antenna will be over height when applying for your AR station license; *and*

(b) Notify—

(1) The Federal Aviation Administration (FAA Form 7460–1) that your antenna will be over height; *or*

(2) The FCC that your antenna will not adversely affect air navigation safety. You must include a detailed explanation in your notification. (See Part 17 of the FCC's Rules for more information.)

EXPLANATION

We rewrote the existing rule subsections so that licensees know exactly what they must do to obtain permission to increase antenna heights.

EXISTING RULES

§ 97.7 Privileges of operator licenses.

(a) *Amateur Extra Class and Advanced Class.* All authorized amateur privileges including exclusive frequency operating authority in accordance with the following table:

Frequencies	*Class of license authorized*
3500–3525 kHz	
3775–3800 kHz	
7000–7025 kHz	
14,000–14,025 kHz	Amateur Extra Only.
21,000–21,025 kHz	
21,250–21,270 kHz	
3800–3890 kHz	
7150–7225 kHz	
14,200–14,275 kHz	Amateur Extra and advanced.
21,270–21,350 kHz	

(b) *General Class.* All authorized amateur privileges except those exclusive operating privileges which are reserved to the Advanced Class and/or Amateur Extra Class.

(c) *Conditional Class.* Same privileges as General Class. New conditional Class licenses will not be issued. Present Conditional Class licensees will be issued General Class licenses at time of renewal or modification.

(d) *Technician Class.* All authorized amateur privileges on the frequencies 50.0 MHz and above. Technician Class licenses also convey the full privileges of Novice Class licenses.

(e) *Novice Class.* Radiotelegraphy in the frequency bands 3700–3750 kHz, 7100–7150 kHz (7050–7075 kHz when the terrestrial station location is not within Region 2), 21,100–21,200 kHz, and 28,100–28,200 kHz, using only Type A1 emission.

§ 97.311 Operating conditions.

(a) The alien amateur may not under any circumstances begin operation until he has received a permit issued by the Commission.

(b) Operation of an amateur station by an alien amateur under a permit issued by the Commission must comply with all of the following:

(1) The terms of the bilateral agreement between the alien amateur's government and the government of the United States;

(2) The provisions of this subpart and of Subparts A through E of this part;

(3) The operating terms and conditions of the license issued to the alien amateur by his government; and

(4) Any further conditions specified on the permit issued by the Commission.

PROPOSED HEADING

How to operate your station.

PROPOSED RULE

§ 97.26 (AR Rule 26) On what frequencies may I transmit?

(a) You may be the control operator of an AR station transmitting within any of the following frequency bands for the International Telecommunication Union (ITU) region indicated, if—

You have an AR operator license of:	And the Ar station is in:			Meter band
	ITU region 1	ITU region 2	ITU region 3	
	(Kilohertz)			
Novice class	3700–3750	3700–3750	3700–3750	80
	7050–7075	7100–7150	7100–7150	40
	21,100–21,200	21,100–21,200	21,100–21,200	15
	28,100–28,200	28,100–28,200	28,100–28,200	10
	All of the above, plus: (megahertz)			
Technician class		50–54	50–54	6
	144–148	144–148	144–148	2
		220–225		1.25
	430–440	420–450	420–450	0.70
	1215–1300	1215–1300	1215–1300	
	2300–2450	2300–2450	2300–2450	
	5650–5850	5650–5925	5650–5925	
	(Gigahertz)			
	10.00–10.50	10.00–10.50	10.00–10.50	
	24.00–24.25	24.00–24.25	24.00–24.25	
	48.00–50.00	48.00–50.00	48.00–50.00	
	71.00–76.00	71.00–76.00	71.00–76.00	
	165.00–170.00	165.00–170.00	165.00–170.00	
	240.00–250.00	240.00–250.00	240.00–250.00	
	Above 300	Above 300	Above 300	
	All of the above, plus: (kilohertz)			
General class		1800–2000	1800–2000	160
	3525–3700	3525–3700	3525–3700	80
	3750–3775	3750–3775	3750–3775	80
		3890–4000	3890–3900	75
	7025–7050	7025–7100	7025–7050	40
	7075–7100	7225–7300	7075–7100	40
	14,025–14,200	14,025–14,200	14,025–14,200	40
	14,275–14,350	14,275–14,350	14,275–14,350	20
	21,025–21,100	21,025–21,100	21,025–21,100	15
	21,200–21,250	21,200–21,250	21,200–21,250	15
	21,350–21,450	21,350–21,450	21,350–21,450	15
	28,000–28,100	28,000–28,100	28,000–28,100	10
	28,200–29,700	28,200–29,700	28,200–29,700	10
	All of the above, plus: (kilohertz)			
Advanced class		3800–3890	3800–3890	80
		7150–7225	7150–7200	40
	14,200–14,275	14,200–14,275	14,200–14,275	20
	21,270–21,350	21,270–21,350	21,270–21,350	15
	All of the above, plus: (kilohertz)			
Amateur extra class	3500–3525	3500–3525	3500–3525	80
	3775–3800	3775–3800	3775–3800	75
	7000–7025	7000–7025	7000–7025	40
	14,000–14,025	14,000–14,025	14,000–14,025	20
	21,000–21,025	21,000–21,025	21,000–20,225	15
	21,250–21,270	21,250–21,270	21,250–21,270	15

(b) If you have an Alien Amateur Permit, or an Amateur Experimental Service Certificate from the Government of Canada, your frequency privileges are—

(1) The same as you have in the country that issued your license, *BUT*

(2) No more than the Amateur Extra Class.

EXPLANATION

This rule replaces § 97.7 and § 97.311. We rewrote these rules in simpler language and included a more detailed table of frequencies. This new table tells the reader exactly what his/her frequency privileges are depending upon his/her operator class and the location of the station.

EXISTING RULES

§ 97.61 Authorized frequencies and emissions.

* * * * *

(b) Limitations:

(1) The use of frequencies in this band is on a shared basis with the LORAN–A radionavigation system and is subject to cancellation or revision, in whole or in part, by order of the Commission, without hearing, whenever the Commission shall determine such action is necessary in view of the priority of the LORAN–A radionavigation system. The use of these frequencies by amateur stations shall not cause harmful interference to LORAN–A system. If an amateur station causes such interference, operation on the frequencies involved must cease if so directed by the Commission.

* * * * *

(3) Where, in adjacent regions or subregions, a band of frequencies is allocated to different services of the same category, the basic principle is the equality of right to operate. Accordingly, the stations of each service in one region or subregion must operate so as not to cause harmful interference to services in the other regions or subregions (No. 117, the Radio Regulations, Geneva, 1959).

* * * * *

(5) Amateur stations shall not cause interference to the Government radiolocation service.

* * * * *

(8) No protection in the band 2400–2500 MHz is afforded from interference due to the operation of industrial, scientific, and medical devices on 2450 MHz.

(9) No protection in the band 5725–5875 MHz is afforded from interference due to the operation of industrial, scientific and medical devices on 5800 MHz.

(10) No protection in the band 24.00–24.25 GHz is afforded from interference due to the operation of industrial, scientific and medical devices on 24.125 GHz.

* * * * *

(12) Amateur stations shall not cause interference to the Fix-Satellite Service operating in the band 3400–3500 MHz.

* * * * *

§ 97.85 Repeater operation.

* * * * *

(b) Except for operation under automatic control, as provided in paragraph (e) of this section, the transmitting and receiving frequencies used by a station in repeater operation shall be continuously monitored by a control operator immediately before and during periods of operation.

* * * * *

§ 97.63 Selection and use of frequencies.

(a) An amateur station may transmit on any frequency within any authorized amateur frequency band.

* * * * *

(c) The frequencies available for use by a control operator of an amateur station are dependent on the operator license classification of the control operator and are listed in § 97.7.

PROPOSED RULE

§ 97.27 (AR Rule 27) How do I select the frequency to transmit on?

(a) Your AR station may transmit on any frequency authorized for the AR operator class of the control operator (see AR Rule 26) and the location of your station (see AR Rule 31 and Article IV, Section 2 of the ITU's rules).

(b) You must be sure that transmissions from any AR station you are the control operator of do not interfere with—

(1) Other AR stations already operating on the frequency;

(2) Stations in other radio services in the adjacent ITU regions (see AR Rule 28) or subregions where a band of frequencies is allocated to different services of the same category;

(3) The Loran-A radionavigation system in the frequency band 1800–2000 MHz;

(4) The government radiolocation system; *OR*

(5) Stations in the Fixed Satellite Service operating in the frequency band 3400–3500 MHz.

(c) The FCC does not give any protection to your AR station from interference caused by an industrial, scientific or medical device when—

Your AR station is operating in the band—	And the device is operating on—
2400–2500 MHz	2,450 MHz.
5725–5,875 MHz	5,800 MHz.
24.00–24.25GHz	24.125GHz.

EXPLANATION

This rule replaces portions of existing §§ 97.61, 97.63 and 97.85. The proposed rule emphasizes that in selecting a frequency, control operators must be sure that transmissions from their station do not interfere with other stations. It also informs them of frequencies where they may encounter interference from industrial, scientific and medical devics.

EXISTING RULE

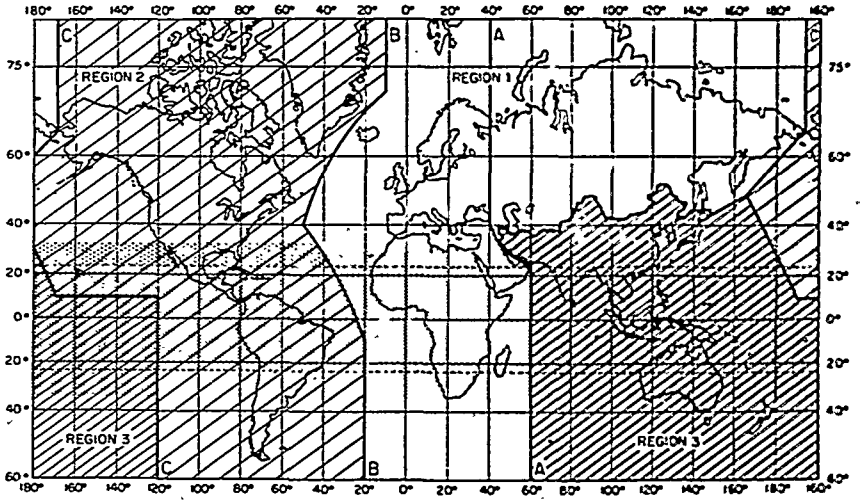
§ 97.95 (Chart).

PROPOSED RULE

§ 97.28 (AR Rule 28) Where are the ITU Regions?

(a) The ITU has jurisdiction to allocate frequencies worldwide. The ITU has divided the world into three Regions for frequency allocation pruposes.

(b) The following is a chart of the three ITU Regions:



(c) See Appendix A for further details on the areas of the world included in each ITU Region.

EXPLANATION

This rule replaces the chart in § 97.95. While the chart in the proposed rule is the same as the chart in the existing rule section, we included introductory text explaining the jurisdiction of ITU. We also included a reference to Appendix A for details on the areas included in each ITU Region.

EXISTING RULES

§ 93.3 Definitions.

* * * * *

(y) *External radio frequency power amplifier.* Any device which, (1) when used in conjunction with a radio transmitter as a signal source, is capable of amplification of that signal, and (2) is not an integral part of the transmitter as manufactured.

* * * * *

§ 97.75 Use of external radio frequency (RF) power amplifiers.

(a) Until April 28, 1981, any external radio frequency (RF) power amplifier used or attached at any amateur radio station shall be type accepted in accordance with Subpart J of Part 2 of the FCC's Rules for operation in the Amateur Radio Service, unless one or more of the following conditions are met:

(1) The amplifier is not capable of operation on any frequency or frequencies below 144 MHz (the amplifier shall be considered incapable of operation below 144 MHz if the mean output power decreases, as frequency decreases from 144 MHz to a point where 0 decibels or less gain is exhibited at 120 MHz and below and the amplifier is not capable of being easily modified to provide amplification below 120 MHz);

(2) The amplifier was originally purchased before April 28, 1978;

(3) The amplifier was—

(i) Constructed by the licensee, not from an external RF power amplifier kit, for use at his amateur radio station;

(ii) Purchased by the licensee as an external RF power amplifier kit before April 28, 1978 for use at his amateur radio station; or

(iii) Modified by the licensee for use at his amateur radio station in accordance with § 2.1001 of the FCC's Rules;

(4) The amplifier was purchased by the licensee from another amateur radio operator who—

(i) Constructed the amplifier, but not from an external RF power amplifier kit;

(ii) Purchased the amplifier as an external RF power amplifier kit before April 28, 1978 for use at his amateur radio station; or

(iii) Modified the amplifier for use at his amateur radio station in accordance with § 2.1001 of the FCC's Rules;

(5) The external RF power amplifier was purchased from a dealer who obtained it from an amateur radio operator who—

(i) Constructed the amplifier, but not from an external RF power amplifier kit;

(ii) Purchased the amplifier as an external RF power amplifier kit before April 28, 1978 for use at his amateur radio station; or

(iii) Modified the amplifier for use at his amateur radio station in accordance with § 2.1001 of the FCC's Rules; or

(6) The amplifier was originally purchased after April 27, 1978 and has been issued a marketing waiver by the FCC.

(b) A list of type accepted equipment may be inspected at FCC headquarters in Washington, D.C. or at any FCC field office. Any external RF power amplifier appearing on this list as type accepted for use in the Amateur Radio Service may be used in the Amateur Radio Service.

Note.—No more than one unit of one model of an external RF power amplifier shall be

constructed or modified during any calendar year by an amateur radio operator for use in the Amateur Radio Service without a grant of type acceptance.

PROPOSED RULE

§ 97.29 (AR Rule 29) What transmitter or amplifier may I use at my AR station?

(a) You must only use a transmitter or external radio frequency power amplifier at your AR station which meets the requirements of Part 97, Subpart D, Technical Standards.

(b) You may build your transmitter or amplifier or you may get it from someone else. You may make repairs, modifications and adjustments to your transmitter or amplifier. If you build two or more external radio frequency power amplifiers of the same type within a calendar year, you must obey the type acceptance rule for manufacturers. (See TEC Rule 12).

(c) "External radio frequency power amplifier" means any device which can amplify the signal from a radio transmitter. It is not an integral part of the transmitter.

EXPLANATION

This rule replaces § 97.75. We greatly simplified the existing section and rewrote it in simpler language. We also moved the definition of "external radio frequency power amplifier" to this rule for the convenience of licensees. Rather than listing in this rule all the technical requirements a transmitter or amplifier must meet, we referred readers to Subpart D, Technical Standards, where those requirements are covered in greater detail.

EXISTING RULE

§ 97.3 Definitions.

* * * * *

(q) *Antenna structures.* Antenna structures include the radiating system, its supporting structures, and any appurtenances mounted thereon.

* * * * *

§ 97.45 Limitations on antenna structures.

(a) Except as provided in paragraph (b) of this section, an antenna for a station in the Amateur Radio Service which exceeds the following height limitations may not be erected or used unless notice has been filed with both the FAA on FAA Form 7460–1 and with the Commission on Form 714 or on the license application form, and prior approval by the Commission has been obtained for:

(1) Any construction or alteration of more than 200 feet in height above ground level at its site (§ 17.7(a) of this chapter).

(2) Any construction or alteration of greater height than an imaginary surface extending outward and upward at one of the following slopes (§ 17.7(b) of this chapter):

(i) 100 to 1 for a horizontal distance of 20,000 feet from the nearest point of the nearest runway of each airport with at least one runway more than 3,200 feet in length, excluding heliports and seaplane bases without specified boundaries, if that airport is either listed in the Airport Directory of the current Airman's Information Manual or is operated by a Federal military agency.

(ii) 50 to 1 for a horizontal distance of 10,000 feet from the nearest point of the nearest runway of each airport with its longest runway no more than 3,200 feet in length, excluding heliports and seaplane bases without specified boundaries, if that airport is either listed in the Airport Directory or is operated by a Federal military agency.

(iii) 25 to 1 for a horizontal distance of 5,000 feet from the nearest point of the nearest landing and takeoff area of each heliport listed in the Airport Directory or operated by a Federal military agency.

(3) Any construction or alteration on an airport listed in the Airport Directory of the Airman's Information Manual (§ 17.7(c) of this chapter).

(b) A notification to the Federal Aviation Administration is not required for any of the following construction or alteration:

(1) Any object that would be shielded by existing structures of a permanent and substantial character or by natural terrain or topographic features of equal or greater height, and would be located in the congested area of a city, town, or settlement where it is evident beyond all reasonable doubt that the structure so shielded will not adversely affect safety in air navigation. Applicants claiming such exemption shall submit a statement with their application to the Commission explaining the basis in detail for their finding (§ 17.14(a) of this chapter).

(2) Any antenna structure of 20 feet or less in height except one that would increase the height of another antenna structure (§ 17.14(b) of this chapter).

(c) Further details as to whether an aeronautical study and/or obstruction marking and lighting may be required, and specifications for obstruction marking and lighting when required, may be obtained from Part 17 of this chapter, "Construction, Marking, and Lighting of Antenna Structures." Information regarding the inspection and maintenance of antenna structures requiring obstruction marking and lighting is also contained in Part 17 of this chapter.

PROPOSED RULE

§ 97.30 (AR Rule 30) How high may I put my antenna?

(a) Your AR station antenna must not be so high as to be a hazard to flying aircraft. You must get permission from the FCC (see AR Rule 25) before you may put the highest point of your antenna higher than the following rules allow.

(b) "Antenna" means the radiating system (for transmitting, receiving or both) and the structure holding it up (tower, pole or mast). It also means everthing else attached to the radiating system and the structure.

(c) Regardless of any other rule in this section, you may always put your antenna as high as, but not higher than—

(1) 6.1 meters (20 feet) above a building you mount your antenna on; *OR*

(2) An existing antenna you attach your antenna to. Your antenna must not be higher than the existing antenna.

(d) If you put your antenna near an airport or heliport listed in the *FAA's Airport Facilities Directory,* or operated by a Federal military agency, your antenna may be as high as, but not higher than—

(1) *One* meter higher than the airport elevation for every *100* meters from the nearest runway *longer* than one kilometer (3281 feet), within 6.1 kilometers (20,000 feet); *OR*

(2) *Two* meters higher than the airport elevation for every *100* meters from the nearest runway *no longer* than one kilometer, within 3.1 kilometers; *OR*

(3) *Four* meters higher than the heliport elevation for every *100* meters from the nearest landing pad, within 1.5 kilometers (5,000 feet).

(e) If the FCC gives you permission to put your antenna higher than normally allowed, you may have to mark it with bright paint and light it up at night. (See Part 17 of the FCC Rule for information on construction, marking and lighting of antennas.)

Explanation: Thus rule replaces § 97.3(q) and § 97.45. We rewrote the proposed rule in simpler language to explain more clearly the antenna height restrictions. We converted distances to the metric system, and updated the name of the airport directory.

§ 97.67 Maximum authorized power.

(a) Except for power restrictions as set forth in § 97.61 and paragraph (d) of this section each amateur transmitter may be operated with a power input not exceeding one kilowatt to the plate circuit of the final amplifier stage of an amplifier oscillator transmitter or to the plate circuit of an oscillator transmitter. An amateur transmitter operating with a

power input exceeding 900 watts to the plate circuit shall provide means for accurately measuring the plate power input to the vacuum tube or tubes supplying power to the antenna.

(b) Notwithstanding the provisions of paragraph (a) of this section, amateur stations shall use the minimum amount of transmitter power necessary to carry out the desired communications.

(c) Within the limitations of paragraphs (a) and (b) of this section, the effective radiated power of an amateur radio station in repeater operation shall not exceed the power specified for the antenna height above average terrain in the following table:

Antenna height above Average terrain	Maximum effective radiated power for frequency bands above:			
	52 MHz	144.5 MHz	420 MHz	1215 MHz
Below 50 feet	100	800 watts	Paragraphs (a) and (b)	Paragraphs (a) and (b).
50–99 feet	100 watts	400 watts	do	Do.
100–499 feet	50 watts	400 watts	800 watts	Do.
500–999 feet	25 watts	200 watts	800 watts	Do.
Above 1,000 feet	25 watts	100 watts	400 watts	Do.

(d) In the frequency bands 3700–3750 kHz, 7100–7150 kHz (7050–7075 kHz when the terrestrial location of the station is not within Region 2), 21,100–21,200 kHz and 28,100–28,200 kHz, the power input to the transmitter final amplifying stage supplying radio frequency energy to the antenna shall not exceed 250 watts, exclusive of power for heating the cathode of a vacuum tube(s).

(7) In the following areas the d.c. plate input power to the final transmitter stage shall not exceed 50 watts, except when authorized by the appropriate Commission Engineer in Charge and the appropriate Military Area Freqency Coordinator.

(i) Those portions of Texas and New Mexico bounded by latitude 33°24′ N., 31°53′ N., and longitude 105°40′ W. and 106°40′ W.

(ii) The State of Florida, including the Key West area and the areas enclosed within circles of 200-mile radius centered at 28°21′ N., 80°43′ W. and 30°30′ N., 86°30′ W.

(iii) The State of Arizona.

(iv) Those portions of California and Nevada south of latitude 37°10′ N. and the area within a 200-mile radius of 34°09′ N., 119°11′ W.

* * * * *

§ 97.61 Authorized frequencies and emissions.

* * * * *

(b) Limitations:

* * * * *

(2) Operation shall be limited to:

Area	Maximum DC plate input power in watts							
	1800–1825 kHz	1825–1850 kHz	1850–1875 kHz	1875–1900 kHz	1900–1925 kHz	1925–1950 kHz	1950–1975 kHz	1975–2000 kHz
	Day/night	Day/night	Day/night	Day/night	Day/night	Day/night	Day/night	Day/night
Alabama	500/100	100/25	0	0	0	0	100/25	500/100
Alaska	1000/200	500/100	500/100	100/25	0	0	0	0
Arizona	1000/200	500/100	500/100	0	0	0	0	0
Arkansas	1000/200	500/100	100/25	0	0	100/25	100/25	500/100
California	1000/200	500/100	500/100	100/25	0	0	0	0
Colorado	1000/200	500/100	200/50	0	0	0	0	200/50
Connecticut	500/100	100/25	0	0	0	0	0	0
Delaware	500/100	100/25	0	0	0	0	0	100/25
District of Columbia	500/100	100/25	0	0	0	0	0	100/25
Florida	500/100	100/25	0	0	0	0	100/25	500/100
Georgia	500/100	100/25	0	0	0	0	0	200/50
Hawaii	0	0	0	0	200/50	100/25	100/25	500/100
Idaho	1000/200	500/100	500/100	100/25	100/25	100/25	100/25	500/100
Illinois	1000/200	500/100	100/25	0	0	0	0	200/50
Indiana	1000/200	500/100	100/25	0	0	0	0	200/50
Iowa	1000/200	500/100	200/50	0	0	100/25	100/25	500/100
Kansas	1000/200	500/100	100/25	0	0	100/25	100/25	500/100
Kentucky	1000/200	500/100	100/25	0	0	0	0	200/50
Louisiana	500/100	100/25	0	0	0	0	100/25	500/100
Maine	500/100	100/25	0	0	0	0	0	0
Maryland	500/100	100/25	0	0	0	0	0	100/25
Massachusetts	500/100	100/25	0	0	0	0	0	0
Michigan	1000/200	500/100	100/25	0	0	0	0	100/25
Minnesota	1000/200	500/100	500/100	100/25	100/25	100/25	100/25	500/100
Mississippi	500/100	100/25	0	0	0	0	100/25	500/100
Missouri	1000/200	500/100	100/25	0	0	100/25	100/25	500/100
Montana	1000/200	500/100	500/100	100/25	100/25	100/25	100/25	500/100
Nebraska	1000/200	500/100	200/50	0	0	100/25	100/25	500/100
Nevada	1000/200	500/100	500/100	100/25	0	0	0	0
New Hampshire	500/100	100/25	0	0	0	0	0	0
New Jersey	500/100	100/25	0	0	0	0	0	0
New Mexico	1000/200	500/100	100/25	0	0	100/25	500/100	1000/200
New York	500/100	100/25	0	0	0	0	0	0
North Carolina	500/100	100/25	0	0	0	0	0	100/25
North Dakota	1000/200	500/100	500/100	100/25	100/25	100/25	100/25	500/100
Ohio	1000/200	500/100	100/25	0	0	0	0	100/25
Oklahoma	1000/200	500/100	100/25	0	0	100/25	100/25	500/100
Oregon	1000/200	500/100	500/100	100/25	0	0	0	0
Pennsylvania	500/100	100/25	0	0	0	0	0	0
Rhode Island	500/100	100/25	0	0	0	0	0	0
South Carolina	500/100	100/25	0	0	0	0	0	200/50
South Dakota	1000/200	500/100	500/100	100/25	100/25	100/25	100/25	500/100
Tennessee	1000/200	500/100	100/25	0	0	0	0	200/50
Texas	500/100	100/25	0	0	0	0	0	200/50
Utah	1000/200	500/100	500/100	100/25	100/25	0	0	100/25
Vermont	500/100	100/25	0	0	0	0	0	0
Virginia	500/100	100/25	0	0	0	0	0	100/25
Washington	1000/200	500/100	500/100	100/25	0	0	0	0
West Virginia	1000/200	500/100	100/25	0	0	0	0	100/25
Wisconsin	1000/200	500/100	200/50	0	0	0	0	200/50
Wyoming	1000/200	500/100	500/100	100/25	100/25	0	0	200/50

Area	Maximum DC plate input power in watts							
	1800–1825 kHz	1825–1850 kHz	1850–1875 kHz	1875–1900 kHz	1900–1925 kHz	1925–1950 kHz	1950–1975 kHz	1975–2000 kHz
	Day/night	Day/night	Day/night	Day/night	Day/night	Day/night	Day/night	Day/night
Puerto Rico	500/100	100/25	0	0	0	0	0	200/50
Virgin Islands	500/100	100/25	0	0	0	0	0	200/50
Swan Island	500/100	100/25	0	0	0	0	100/25	500/100
Serrana Bank	500/100	100/25	0	0	0	0	100/25	500/100
Roncador Key	500/100	100/25	0	0	0	0	100/25	500/100
Navassa Island	500/100	100/25	0	0	0	0	0	200/50
Baker, Canton, Enderbury, Howland	100/25	0	0	100/25	100/25	0	0	100/25
Guam, Johnston, Midway, North Marianas	0	0	0	0	100/25	0	0	100/25
American Samoa	200/50	0	0	200/50	200/50	0	0	200/50
Wake	100/25	0	0	100/25	0	0	0	0
Palmyra, Jarvis	0	0	0	0	200/50	0	0	200/50

PROPOSED RULE

§ 97.31 (AR Rule 31) How much power may I use?

(a) Your AR station must use the minimum transmitter power necessary to carry out your communications.

(b) Your AR station must never use more than 1,000 watts PEP (peak envelope power) input to the final amplifying stage when transmitting the following emissions (see TEC Rule 3):

A0, A1 (key down), F0, F1, F2, F3, F4 and F5.

(c) Your AR station must never use more than 2,000 watts PEP input to the final amplifying stage when transmitting the following emissions:

A2, A3, A4, A5 and P.

(d) Your AR station must never use more than 250 watts PEP input to the final amplifying stage when transmitting on any of the frequencies where the Novice AR operator class has privileges (see AR Rule 26).

(e) Power input includes all of the electrical power to the final amplifying stage of your AR station supplying radio frequency energy to your antenna, except power to meet the cathode of a vacuum tube(s).

(f) When your AR station is in repeater operation (see AR Rule 44), it must never transmit with more effective radiated power (ERP) than permitted for the antenna height above average terrain (AHAAT). (See AR Rule 44 for ERP/AHAAT limits.)

(g) If your AR station is transmitting in the 0.70 meter band near certain military areas, you must get permission from the nearest FCC Field Office and the Military Area Frequency Coordinator for your AR station to use more than 50 watts (peak) power input to the final amplifying stage when transmitting. These are the military areas:

(1) Those portions of the States of Texas and New Mexico bounded by 33° 24′ N., 31° 53′ N., and 105° 40′ W., 108° 40′ W.;

(2) The State of Florida, including the Key West area, and the areas enclosed within circles of 200-mile radius centered at 28° 21′ N., 80° 43′ W. and 30° 30′ N., 86° 30′ W.;

(3) The State of Arizona; *AND*

(4) Those portions of the States of California and Nevada south of latitude 37° 10′ N. and the area within a 200-mile radius of 34° 09′ N., 119° 11′ W.

(h) Your AR station must never use more PEP input to the final amplifying stage than is listed in the following table, when transmitting in the 160 meter band:

Area	1800–1825 kHz	1825–1850 kHz	1850–1875 kHz	1875–1900 kHz	1900–1925 kHz	1925–1950 kHz	1950–1975 kHz	1975–2000 kHz
	Day/night	Day/night	Day/night	Day/night	Day/night	Day/night	Day/night	Day/night
Alabama	500/100	100/25	0	0	0	0	100/25	500/100
Alaska	1000/200	500/100	500/100	100/25	0	0	0	0
Arizona	1000/200	500/100	500/100	0	0	0	0	0
Arkansas	1000/200	500/100	100/25	0	0	100/25	100/25	500/100
California	1000/200	500/100	500/100	100/25	0	0	0	0
Colorado	1000/200	500/100	200/50	0	0	0	0	200/50
Connecticut	500/100	100/25	0	0	0	0	0	0
Delaware	500/100	100/25	0	0	0	0	0	100/25
District of Columbia	500/100	100/25	0	0	0	0	0	100/25
Florida	500/100	100/25	0	0	0	0	100/25	500/100
Georgia	500/100	100/25	0	0	0	0	0	200/50
Hawaii	0	0	0	0	200/50	100/25	100/25	500/100
Idaho	1000/200	500/100	500/100	100/25	100/25	100/25	100/25	500/100
Illinois	1000/200	500/100	100/25	0	0	0	0	200/50
Indiana	1000/200	500/100	100/25	0	0	0	0	200/50
Iowa	1000/200	500/100	200/50	0	0	100/25	100/25	500/100
Kansas	1000/200	500/100	100/25	0	0	100/25	100/25	500/100
Kentucky	1000/200	500/100	100/25	0	0	0	0	200/50
Louisiana	500/100	100/25	0	0	0	0	100/25	500/100
Maine	500/100	100/25	0	0	0	0	0	0
Maryland	500/100	100/25	0	0	0	0	0	100/25
Massachusetts	500/100	100/25	0	0	0	0	0	0
Michigan	1000/200	500/100	100/25	0	0	0	0	100/25
Minnesota	1000/200	500/100	500/100	100/25	100/25	100/25	100/25	500/100
Mississippi	500/100	100/25	0	0	0	0	100/25	500/100
Missouri	1000/200	500/100	100/25	0	0	100/25	100/25	500/100
Montana	1000/200	500/100	500/100	100/25	100/25	100/25	100/25	500/100
Nebraska	1000/200	500/100	200/50	0	0	100/25	100/25	500/100
Nevada	1000/200	500/100	500/100	100/25	0	0	0	0
New Hampshire	500/100	100/25	0	0	0	0	0	0
New Jersey	500/100	100/25	0	0	0	0	0	0
New Mexico	1000/200	500/100	100/25	0	0	100/25	500/100	1000/200
New York	500/100	100/25	0	0	0	0	0	0
North Carolina	500/100	100/25	0	0	0	0	0	100/25
North Dakota	1000/200	500/100	500/100	100/25	100/25	100/25	100/25	500/100
Ohio	1000/200	500/100	100/25	0	0	0	0	100/25

Area	1800–1825 kHz	1825–1850 kHz	1850–1875 kHz	1875–1900 kHz	1900–1925 kHz	1925–1950 kHz	1950–1975 kHz	1975–2000 kHz
	Day/night	Day/night	Day/night	Day/night	Day/night	Day/night	Day/night	Day/night
Oklahoma	1000/200	500/100	100/25	0	0	100/25	100/25	500/100
Oregon	1000/200	500/100	500/100	100/25	0	0	0	0
Pennsylvania	500/100	100/25	0	0	0	0	0	0
Rhode Island	500/100	100/25	0	0	0	0	0	0
South Carolina	500/100	100/25	0	0	0	0	0	200/50
South Dakota	1000/200	500/100	500/100	100/25	100/25	100/25	100/25	500/100
Tennessee	1000/200	500/100	100/25	0	0	0	0	200/50
Texas	500/100	100/25	0	0	0	0	0	200/50
Utah	1000/200	500/100	500/100	100/25	100/25	0	0	100/25
Vermont	500/100	100/25	0	0	0	0	0	0
Virginia	500/100	100/25	0	0	0	0	0	100/25
Washington	1000/200	500/100	500/100	100/25	0	0	0	0
West Virginia	1000/200	500/100	100/25	0	0	0	0	100/25
Wisconsin	1000/200	500/100	200/50	0	0	0	0	200/50
Wyoming	1000/200	500/100	500/100	100/25	100/25	0	0	200/50
Puerto Rico	500/100	100/25	0	0	0	0	0	200/50
Virgin Islands	500/100	100/25	0	0	0	0	0	200/50
Swan Island	500/100	100/25	0	0	0	0	100/25	500/100
Serrana Bank	500/100	100/25	0	0	0	0	100/25	500/100
Roncador Key	500/100	100/25	0	0	0	0	100/25	500/100
Navassa Island	500/100	100/25	0	0	0	0	0	200/50
Baker, Canton, Enderbury, Howland	100/25	0	0	100/25	100/25	0	0	100/25
Guam, Johnston, Midway, North Mariana	0	0	0	0	100/25	0	0	100/25
American Samoa	200/50	0	0	200/50	200/50	0	0	200/50
Wake	100/25	0	0	100/25	0	0	0	0
Palmyra, Jarvis	0	0	0	0	200/50	0	0	200/50

EXPLANATION

This proposed rule replaces § 97.67 and portions of § 97.61.

We indicated in the Third Report and Order, Docket 20282 (44 FR 16460) released March 14, 1979, "* * * the state of present-day amateur communications warrants the use of better procedures to determine transmitter power than the 'plate voltage times current' method. We intend to revisit this matter at a later time, and we encourage amateurs, in the interim, to develop and disseminate data which could be used as the basis for a workable and state-of-the-art measurement technique * * *".

It is very tempting to revisit the power matter in this proceeding. However, it is a complex issue which may require a lengthy proceeding to resolve satisfactorily. For that reason we are not attempting to go beyond our limited objective or rewriting current requirements into plain language. Our revisit of the power matter must await a future rulemaking proceeding.

Nevertheless, rewriting the current requirements into plain language is not a straightforward task in itself. The current rules are so far out of date with modern design practices in the AR Service, and with present FCC station inspection practices, more than reworking is called for. Hence we are proposing in AR Rule 31(b), (c), (d) and (h), rules which we believe are reasonably consistent with policies that have evolved over the years. These policies attempted to apply § 97.67(a) to transmitters using modulation types for which the rule is not very well suited.

First, we are proposing in AR Rule 31(b), (c), (d) and (h) to state power input limits in terms of peak envolope power. This method eliminates the uncertainties associated with readings taken of rapidly fluctuating currents with a milliameter, such as encountered in single sideband transmitters.

Secondly, we are proposing in AR Rule 31(b), and (c) to specify the allowable peak envelope power input at 1,000 watts for emissions where the envelope is steady; and at 2,000 watts where the envelope fluctuates. The 2,000 watts limit is based upon single sideband operation. Although higher peak envelope powers could be developed with various combinations of emissions and equipments, we believe additional complexity in the rules is not justified. Refer to TEC Rule 10 for information on how our field representatives make these measurements.

Finally, we are proposing in AR Rule 31 (e) that all three levels of power imput (250, 1,000 and 2,000 watts) include all of the electrical power to the final amplifying state except filament. The 250 watt requirement in the present rule is stated in those terms. Our intent, in that instance, as well as for the 1,000 and 2,000 watt requirement, is to provide a requirement applicable to all types of amplifier designs, including those that do not utilize vacuum tubes. It is not evident, considering the solid state devices available, that higher transmitter power levels are practical without the use of vacuum tubes. Furthermore, this approach to determining power input eliminates the need, as has been the case, for supplementary rule interpretation policies for designs where a high level of drive power also appears in the output.

We believe the above "plain language" approach to stating power requirements should have little, if any, impact upon the power output levels of AR stations now operating within the present rules. It should serve as a satisfactory interim step until such time as the matter of transmitter power can be more fully addressed.

§ 97.85 Repeater operation.

* * * * *

(d) A station in repeater operation shall be operated in a manner ensuring that it is not used for one-way communications, except as provided in § 97.91.

* * * * *

§ 97.89 Points of communications.

(a) Amateur stations may communicate with:

(1) Other amateur stations, excepting those prohibited by Appendix 2.

(2) Stations in other services licensed by the Commission and with U.S. Government stations for civil defense purposes in accordance with Subpart F of this part, in emergencies and, on a temporary basis, for test purposes.

(3) Any station which is authorized by the Commission to communicate with amateur stations.

(b) Amateur stations may be used for transmitting signals, or communications, or energy, to receiving apparatus for the measurement of emissions, temporary observation of transmission phenomena, radio control of remote objects, and similar experimental purposes and for the purposes set forth in § 97.91.a

§ 97.91 One-way communications.

In addition to the experimental one-way transmission permitted by § 97.89, the following kinds of one-way communications addressed to amateur stations, are authorized and will not be

construed as broadcasting: (a) Emergency communications, including bona fide emergency drill practice transmissions, (b) Information bulletins consisting solely of subject matter having direct interest to the amateur radio service as such; (c) Round-table discussions or net-type operations where more than two amateur stations are in communication, each station taking a turn at transmitting to other stations(s) of the group; and (d) Code practice transmissions intended for persons learning or improving proficiency in the international Morse code.

§ 97.113 Broadcasting prohibited.

Subject to the provisions of § 97.91, an amateur station shall not be used to engage in any form of broadcasting, that is, the dissemination of radio communications intended to be received by the public directly or by the intermediary of relay stations, nor for the retransmission by automatic means of programs or signals emanating from any class of station other than amateur. The foregoing provisions shall not be construed to prohibit amateur operators from giving their consent to the rebroadcast by broadcast stations of the transmissions of their amateur stations, provided, that the transmissions of the amateur stations shall not contain any direct or indirect reference to the rebroadcast.

PROPOSED RULE

§ 97.32 (AR Rule 32) What communications may I transmit?

(a) You may use your AR station to transmit two-way plain language communications to—

(1) Other AR stations licensed by the FCC;

(2) Other AR stations licensed by other United States government agencies; *AND*

(3) Any station authorized by the FCC, or by any other United States government agency, to communicate with AR stations.

(b) You may use your AR station to transmit two-way plain language communications to AR stations in other countries if—

(1) The other country does not object to United States AR stations communicating with AR stations in the other country. (The FCC will issue news releases listing any countries which do object to communications between AR stations); *AND*

(2) Your messages are:

(i) About technical matters relating to tests only; *OR*

(ii) Unimportant personal remarks not worth sending by public telephone or telegraph.

(c) You may use your AR station to transmit one-way plain language communications for—

(1) Informing other AR operators, through bulletin type messages, of matters concerning the AR service; *AND*

(2) Helping other persons improve their skills in receiving telegraphy by listening to practice messages.

(3) Informing other AR operators of emergencies (see AR Rule 36).

(d) You may use your AR station to transmit one-way non-verbal communications for—

(1) Measuring emissions;

(2) Measuring propagation characteristics;

(3) Remotely controlling an AR station;

(4) Turning remote devices on and off;

(5) Telemetering results of measurements; *AND*

(6) Transferring data and programs to and from a computer.

(e) You may consent to the retransmission, either live or delayed, of your AR station transmissions by a radio or television broadcast station. You must not mention during the transmission that your messages are being retransmitted.

EXPLANATION

This rule replaces § 97.85(d), § 97.89, § 97.91 and § 97.113. We rewrote these existing rule sections to give licensees one rule covering communications they are allowed to transmit.

Paragraph (b)(2) of the proposed rule is new to Part 97. This subsection is based upon Article 41 of the ITU rules. Article 41 says, "When transmissions between amateur stations of different countries are permitted, they shall be made in plain language and shall be limited to messages of a technical nature relating to tests and to remarks of a personal character for which, for reasons of their unimportance, recourse to the public telecommunications service is not justified."

§ 97.99 Stations used only for radio control of remote model crafts and vehicles.

* * * * *

(b) Transmissions containing only control signals directed only to a remote model craft or vehicle are not considered to be codes or ciphers in the context of the meaning of § 97.117.

* * * * *

EXISTING RULES

§ 97.112 No remuneration for use of station.

(a) An amateur station shall not be used to transmit or receive messages for hire, nor for communication for material compensation, direct or indirect, paid or promised.

* * * * *

§ 97.113 Broadcasting prohibited.

Subject to the provisions of § 97.91, an amateur station shall not be used to engage in any form of broadcasting, that is, the dissemination of radio communications intended to be received by the public directly or by the intermediary of relay stations, nor for the retransmission by automatic means of programs or signals emanating from any class of station other than amateur. The foregoing provisions shall not be construed to prohibit amateur operators from giving their consent to the rebroadcast by broadcast stations of the transmissions of their amateur stations: *Provided,* That the transmissions of the amateur stations shall not contain any direct or indirect reference to the rebroadcast.

§ 94.114 Third party traffic.

* * * * *

(c) Except for an emergency communication as defined in this part, third party traffic consisting of business communications on behalf of any party. For the purpose of this section business communication shall mean any transmission or communication the purpose of which is to facilitate the regular business or commercial affairs of any party.

§ 97.115 Music prohibited.

The transmission of music by an amateur station is forbidden.

§ 97.116 Amateur radiocommunication for unlawful purposes prohibited.

The transmission of radiocommunication or messages by an amateur radio station for any purpose, or in connection with any activity, which is contrary to Federal, State or local law is prohibited.

§ 97.117 Codes and ciphers prohibited.

The transmission by radio of messages in codes or ciphers in domestic and international communicatios to or between amateur stations is prohibited. All communications regardless of type of emission employed shall be in plain language except that generally recognized abbreviations established by regulation or custom and usage are permissible as are any other abbreviations or signals where the intent is not to obscure the meaning but only to facilitate communications.

§ 97.119 Obscenity, indecency, profanity.

No licensed radio operator or other person shall transmit communications

containing obscene, indecent, or profane words, language, or meaning.

§ 97.121 False signals.

No licensed radio operator shall transmit false or deceptive signals or communications by radio, or any call letter or signal which has not been assigned by proper authority to the radio station he is operating.

§ 97.123 Unidentified communications.

No licensed radio operator shall transmit unidentified radio communications or signals.

§ 97.125 Interference.

No licensed radio operator shall willfully or maliciously interfere with or cause interference to any radio communication or signal.

§ 97.126 Retransmitting radio signals.

(a) An amateur radio station, except a station in repeater operation or auxiliary operation, shall not automatically retransmit the radio signals of other amateur radio stations.

(b) A remotely controlled station, other than a remotely controlled station in repeater operation or auxiliary operation, shall automatically retransmit only the radio signals of stations in auxiliary operation shown on the remotely controlled station's system network diagram.

PROPOSED RULE

§ 97.33 (AR Rule 33) What communications are prohibited?

(a) You must not use an AR station—

(1) In connection with any activity which is against federal, state or local law;

(2) To transmit any type of business message;

(3) To transmit any message for which you, or anyone else, gets any kind of pay (See AR Rule 35);

(4) To advertise or solicit the sale of any good or services;

(5) To advertise a political candidate or political campaign;

(6) To retransmit, either live or delayed, transmissions of any station other than an AR station;

(7) To retransmit, either live or delayed, transmissions of any AR station, except when your station is in repeater operation or auxiliary operation;

(8) To broadcast to the general public;

(9) to transmit one-way communications, except those listed in AR Rule 32;

(10) To transmit music;

(11) To transmit messages with hidden meanings;

(12) To deliberately interfere with any other radio communications;

(13) To transmit obscene, indecent or profane words, language or meaning;

(14) To transmit a false or deceptive communication or call sign;

(15) To communicate with an unlicensed station; *NOR*

(16) To transmit messages for third parties, except those listed in AR Rule 34.

(b) You must not use your AR station to transmit communications for rebroadcast on a radio or television station, except as allowed in AR Rule 32.

EXPLANATION

For the convenience of licensees, we reorganized a number of short, existing sections into one proposed rule on prohibited communications. The proposed rule replaces the following sections: § 97.99(b), § 97.112, § 97.113, § 97.114(c), § 97.115, § 97.116, § 97.117, § 97.119, § 97.121, § 97.123, § 97.125 and § 97.126. We rewrote the proposed rule in simpler language.

EXISTING RULE

§ 97.79 Control operator requirements.

* * * * *

(d) The licensee of an amateur radio station may permit any third party to participate in amateur radio communication from his station, provided that a control operator is present and continuously monitors and supervises the radio communication, to insure compliance with the rules

§ 97.114 Third party traffic.

The transmission or delivery of the following amateur radiocommunication is prohibited

(a) International third party traffic except with countries which have assented thereto.

(b) Third party traffic involving material compensation either tangible or intangible, direct or indirect, to a third party, a station licensee, a control operator, or any other person

* * * * *

PROPOSED RULE

§ 97.34 (AR Rule 34) May I transmit communications for third parties?

(a) Your AR station may transmit third party messages only under certain conditions. A third party message is one the control operator (first party) of your station sends to another station (second party) for anyone else (third party).

(b) Third party messages include those which are spoken, written, keystroked, keyed, photographed or otherwise originated by or for a third party, and transmitted by your AR station live or delayed.

(c) Your AR station may only transmit third party messages to AR Service stations located within—

(1) Places where the AR Service is regulated by the FCC (see AR Rule 42);

(2) Places where the AR Service is regulated by another Agency of the United States Government; *AND*

(3) Places where the AR Service is regulated by a country which has a treaty with the United States allowing AR Service stations to exchange messages for third parties.

(d) You can get a list of countries which have a third party agreement with the United States from the FCC, Washington, DC 20554.

(e) Your AR station must not transmit third party messages while it is being automatically controlled (see AR Rule 47).

EXPLANATION

This rule replaced § 97.114 (a) and (b), and § 97.79(d). We simplified the existing rules and included an explanation of third party messages in the proposed rule. We also added information on transmitting one-way communications for third parties. The basis for this addition is that one-way communications do not meet the definition of third party messages. We deleted the reference to "delivery" of third party communications in the proposed rule to make it consistent with Article 41 of the ITU rules. Article 41 refers only to the transmisson of third party communications being prohibited.

EXISTING RULES

§ 97.112 No remuneration for use of station.

(a) An amateur station shall not be used to transmit or receive messages for hire, nor for communication for material compensation, direct or indirect, paid or promised.

(b) Control operators of a club station may be compensated when the club station is operated primarily for the purpose of conducting amateur radiocommunication to provide telegraphy practice transmissions intended for persons learning or improving proficiency in the international Morse code, or to disseminate information bulletins consisting solely of subject matter having direct interest to the Amateur Radio Service provided:

(1) The station conducts telegraphy practice and bulletin transmission for at least 40 hours per week.

(2) The station schedules operations on all allocated medium and high frequency amateur bands using reasonable measures to maximize coverage.

(3) The schedule of normal operating times and frequencies is published at

least 30 days in advance of the actual transmissions.

Control operators may accept compensation only for such periods of time during which the station is transmitting telegraphy practice or bulletins. A control operator shall not accept any direct or indirect compensation for periods during which the station is transmitting material other than telegraphy practice or bulletins.

PROPOSED RULE

§ 97.35 (AR Rule 35) May I be paid to use my AR station?

(a) You must not accept direct or indirect payment for transmitting or receiving messages with your AR station.

(b) You must not use your AR station to help you provide a service for which you receive direct or indirect payment.

(c) You may accept pay for being the control operator of an AR Club station if—

(1) The AR Club station transmits telegraphy practice and information bulletins for at least 40 hours each week;

(2) The transmissions are on the AR Service frequency bands 160, 80, 75, 40, 20, 15, and 10 meters (see AR Rule 26).

(3) The schedule of transmissions and frequencies is made public at least 30 days in advance; *AND*

(4) The pay is only for the times when the AR Club station is transmitting telegraphy practice and information bulletins.

EXPLANATION

This rule replaces § 97.112. We rewrote this rule in language that is easier for readers to understand.

EXISTING RULES

§ 97.61 Authorized frequencies and emissions.

* * * * *

(b) Limitations:

* * * * *

(13) The frequency 4383.8 kHz, maximum power 150 watts, may be used by any station authorized under this part to communicate with any other station authorized in the State of Alaska for emergency communications. No airborne operations will be permitted on this frequency. Additionally, all stations operating on this frequency must be located in or within 50 nautical miles of the State of Alaska.

* * * * *

§ 97.107 Operation in emergencies.

In the event of an emergency disrupting normally available communication facilities in any widespread area or areas, the Commission, in its discretion, may declare that a general state of communications emergency exists, designate the area or areas concerned, and specify the amateur frequency bands, or segments of such bands, for use only by amateurs participating in emergency communication within or with such affected area or areas. Amateurs desiring to request the declaration of such a state of emergency should communicate with the Commission's Engineer in Charge of the area concerned. Whenever such declaration has been made, operation of and with amateur stations in the area concerned shall be only in accordance with the requirements set forth in this section, but such requirements shall in nowise affect other normal amateur communication in the affected area when conducted on frequencies not designated for emergency operation.

(a) All transmissions within all designated amateur communications bands other than communications relating directly to relief work, emergency service, or the establishment and maintenance of efficient amateur radio networks for the handling of such communications shall be suspended. Incidental calling, answering, testing or working (including casual conversations, remarks or messages) not pertinent to constructive handling of the emergency situation shall be prohibited within these bands.

(b) The Commission may designate certain amateur stations to assist in the promulgation of information relating to the declaration of a general state of communications emergency, to monitor the designated amateur emergency communications bands, and to warn non-complying stations observed to be operating in those bands. Such station, when so designated, may transmit for that purpose on any frequency or frequencies authorized to be used by that station, provided such transmissions do not interfere with essential emergency communications in progress; however, such transmissions shall preferably be made on authorized frequencies immediately adjacent to those segments of the amateur bands being cleared for the emergency. Individual transmissions for the purpose of advising other stations of the existence of the communications emergency shall refer to this section by number (§ 97.107) and shall specify, briefly and concisely, the date of the Commission's declaration, the area and nature of the emergency, and the amateur frequency bands or segments of such bands which constitute the amateur emergency communications bands at the time. The designated stations shall not enter into discussions with other stations beyond furnishing essential facts relative to the emergency, or acting as advisors to stations desiring to assist in the emergency, and the operators of such designated stations shall report fully to the Commission the identity of any stations failing to comply, after notice, with any of the pertinent provisions of this section.

(c) The special conditions imposed under the provisions of this section shall cease to apply only after the Commission or its authorized representative, shall have declared such general state of communications emergency to be terminated: however, nothing in this paragraph shall be deemed to prevent the Commission from modifying the terms of its declaration from time to time as may be necessary during the period of a communications emergency, or from removing those conditions with respect to any amateur frequency band or segment of such band which no longer appears essential to the conduct of the emergency communications.

§ 97.91 One-way communications.

In addition to the experimental one-way transmission permitted by § 97.89, the following kinds of one-way communications, addressed to amateur stations, are authorized and will not be construed as broadcasting; (a) Emergency communications, including bona fide emergency drill practice transmissions; (b) Information bulletins consisting solely of subject matter having direct interest to the amateur radio service as such; (c) Round-table discussions or net-type operations where more than two amateur stations are in communications, each station taking a turn at transmitting to other station(s) of the group; and (d) Code practice transmissions intended for persons learning or improving proficiency in the international Morse code.

PROPOSED RULE

§ 97.36 (AR Rule 36) How I use my AR station in an emergency?

(a) You may use your AR station in any way possible to help a vehicle or ship in distress. When your station is on a vehicle or ship in distress, you may use it in any way possible to get help.

(b) You must, at all times on all frequencies, give priority to emergency communications. Messages concerning the immediate safety of life or the immediate protection or property are emergency communications.

(c) The FCC may declare a Communications Emergency (CE)

whenever normal public communications are disrupted. The CE declaration will—

(1) Give the dates and times the CE is to start and end;

(2) Give the CE area;

(3) List the frequencies to be cleared of all communications except emergency communications during the CE;

(4) Grant temporary waivers to the AR Service rules.

(d) During a CE, your station may not transmit on any cleared frequency, unless it is transmitting emergency communications to or from, or within the CE area. Other AR Service frequencies may also be used for emergency communications during the CE, but will not be cleared of other communications.

(e) If you want the FCC to declare a CE, you must ask the FCC Field Office in the area where communications have been disrupted to declare it.

(f) Within the State of Alaska, or within 92.6 kilometers (50 nautical miles) of the State of Alaska, your AR station may transmit emergency communications on the frequency 4383.8 kHz if—

(1) The control operator has an AP General, Advanced, or Amateur Extra operator class license;

(2) The transmissions are directed to another station within the State of Alaska authorized for emergency communications;

(3) The emission is single sideband;

(4) The transmitter power output is not more than 150 watts PEP; *AND*

(5) Your station is not transmitting from an aircraft.

EXPLANATION

This rule replaces § 97.107 and portions of § 97.61 and 97.91. We rewrote the proposed rule in simpler language to make more clear the procedures for using an AR station in an emergency. We also added paragraphs (a) and (b) to the proposed rule. They are based on Article 36, Section 2 of the ITU rules.

EXISTING RULE

§ 97.79 Control operator requirements.

* * * * *

(b) Every amateur radio station, when in operation, shall have a control operator at an authorized control point. The control operator shall be on duty, except where the station is operated under automatic control. The control operator may be the station licensee, if a licensed amateur radio operator, or may be another amateur radio operator with the required class of license and designated by the station licensee. The control operator shall also be responsible, together with the station licensee, for the proper operation of the station.

* * * * *

PROPOSED RULE

§ 97.37 (AR Rule 37) Does my AR station need a control operator?

(a) You, or a control operator you choose, normally must be at the control point (see AR Rule 62) whenever your AR station is transmitting.

(b) Under certain conditions your AR station may be automatically controlled. During times when your AR station is being automatically controlled, the control operator does not have to be at the control point.

Note.—(Only an AR station in repeater operation or in a limited type of auxiliary operation may be automatically controlled. See AR Rule 47.)

EXPLANATION

This rule replaces § 97.79(b). We simplified the language in the existing rule to make it easier for licensees to understand. We also included a reference to AR Rule 47 for a more complete discussion of operation by automatic control.

EXISTING RULE

§ 97.79 Control operator requirements.

* * * * *

(d) The licensee of an amateur radio station may permit any third party to participate in amateur radio communication from his station: *Provided,* That a control operator is present and continuously monitors and supervises the radio communication to insure compliance with the rules.

PROPOSED RULE

§ 97.38 (AR Rule 38) Who may operate under my license?

(a) You are the only person authorized to be the control operator of an AR station under your AR operator license.

(b) You may permit, if you so choose, any other person with an AR operator license to be the control operator of your AR station.

(c) Any person with an AR station license may permit you to be the control operator of his/her AR station, if you have an AR operator license or other authorization (see AR Rule 3).

EXPLANATION

This rule replaces § 97.79(d). We thought it would be helpful to readers to have a rule devoted exclusively to who may operate under an AR license.

EXISTING RULE

§ 97.79 Control operator requirements.

(a) The licensee of an amateur station shall be responsible for its proper operation.

(b) Every amateur radio station, when in operation, shall have a control operator at an authorized control point. The control operator shall be on duty, except where the station is operated under automatic control. The control operator may be the station licensee, if a licensed amateur radio operator, or may be another amateur radio operator with the required class of license and designated by the station licensee. The control operator shall also be responsible, together with the station licensee, for the proper operation of the station.

* * * * *

PROPOSED RULE

§ 97.39 (AR Rule 39) Who is responsible for transmissions made under the authority of my license?

(a) You are responsible for all transmissions which are made by you and others under the authority of your AR station license. Because you are responsible for all transmissions, you should be certain that each control operator of your AR station understands and obeys the rules.

(b) You are responsible for all transmissions which are made from any station during times when you are the control operator under the authority of your AR operator license. Because you are responsible you should be certain that the AR station complies with these rules.

(c) You are responsible for all transmissions from your AR station. When the control operator of your AR station is someone else, you both are responsible.

EXPLANATION

This rule replaces § 97.79(a) and (b). We rewrote the rule to emphasize who is responsible for transmissions made under the authority of an AR license.

EXISTING RULE

§ 97.79 Control operator requirements.

(a) The licensee of an amateur station shall be responsible for its proper operation.

(b) Every amateur radio station, when in operation, shall have a control operator at an authorized control point. The control operator shall be on duty except where the station is operated under automatic control. The control operator may be the station licensee, if a licensed amateur radio operator, or may be another amateur radio operator with the required class of license and designated by the station licensee. The control operator shall also be responsible, together with the station

licensee, for the proper operation of the station.

PROPOSED RULE

§ 97.40 (AR Rule 40) Who must not operate under my license?

(a) You must not permit anyone who does not have AR operator authority (see AR Rule 3) to be the control operator of your AR station.

(b) You must not permit anyone to be the control operator of your AR station if he/she does not comply with these rules.

(c) You must not permit anyone to be the control operator of your AR station if—

(1) His/her AR operator authority was suspended by the FCC for less than the remainder of the license term and the suspension has not expired;

(2) His/her AR operator authority was suspended by the FCC for the remainder of the license term unless he/she has been relicensed;

(3) His/her AR operator authority was surrendered for cancellation following a notice of apparent liability to monetary forfeiture by the FCC unless he/she has been relicensed; *OR*

(4) He/she was issued a Cease and Desist Order by the FCC that relates to the AR Service and that is still in effect.

EXPLANATION

This proposed rule replaces § 97.79 (a) and (b). We devoted an entire rule to unauthorized operators to help licensees understand their responsibilities to deny operating privileges to certain persons.

While paragraph (b) of the proposed rule might appear repetitive, we included it because licensees often ask us about this subject. We included paragraph (c) of the proposed rule because we believe that the addition of these restrictions will make the FCC's enforcement program more effective.

EXISTING RULES

§ 97.32 Interim Amateur Permits.

* * * * *

(c) The transmissions of amateur radio stations operated under the authority of Interim Amateur Permits shall be identified in the manner specified in § 97.84.

* * * * *

§ 97.84 Station identification.

(a) An amateur station shall be identified by the transmission of its call sign at the beginning and end of each single transmission or exchange of transmissions and at internals not to exceed 10 minutes during any single transmission or exchange of transmissions of more than 10 minutes duration Additionally, at the end of an exchange of telegraphy (other than teleprinter) or telephony transmission between amateur stations, the call sign (or the generally accepted network identifier) shall be given for the station, or for at least one of the group of stations, with which communication was established.

(b) Under conditions when the control operator is other than the station licensee, the station identification shall be the assigned call sign for that station. However, when a station is operated within the privileges of the operator's class of license but which exceeds those of the station licensee, station identification shall be made by following the station call sign with the operator's primary station call sign (i.e. WN4XYZ/W4XX).

(c) An amateur radio station in repeater operation or a station in auxiliary operation used to relay automatically the signals of other stations in a system of stations shall be identified by radiotelephony or radiotelegraphy at a level of modulation sufficient to be intelligible through the repeated transmission at intervals not to exceed ten minutes.

(d) When an amateur radio station is in repeater or auxiliary operation, the following additional identifying information shall be transmitted:

(1) When identifying by radiotelephony, a station in repeater operation shall transmit the word "repeater" at the end of the station call sign. When identifying by radiotelegraphy, a station in repeater operation shall transmit the fraction bar DN followed by the letters "RPT" or "R" at the end of the station call sign. (The requirements of this subparagraph do not apply to stations having call signs prefixed by the letters "WR".)

(2) When identifying by radiotelephony, a station in auxiliary operation shall transmit the word "auxiliary" at the end of the station call sign. When identifying by radiotelegraphy, a station in auxiliary operation shall transmit the fraction bar DN followed by the letters "AUX" or "A" at the end of the station call sign.

(e) A station in auxiliary operation may be identified by the call sign of its associated station.

(f) When operating under the authority of an Interim Amateur Permit with privileges authorized by the Permit, but which exceed the privileges of the licensee's permanent operator license, the station must be identified in the following manner:

(1) On radiotelephony, by the transmission of the station call sign, followed by the word "interim," followed by the special identifier shown on the Interim Permit;

(2) On radiotelegraphy, by the transmission of the station call sign, followed by the fraction bar DN, followed by the special identifier shown on the interim permit.

(g) The identification required by this section shall be given on each frequency being utilized for transmission and shall be transmitted either by telegraphy using the international Morse code, or by telephony, using the English language. If the identification required by this section is made by an automatic device used only for identification by telegraphy, the code speed shall not exceed 20 words per minute. The Commission encourages the use of a nationally or internationally recognized standard phonetic alphabet as an aid for correct telephone identification.

§ 97.313 Station identification.

(a) The alien amateur shall identify his station as follows:

(1) Radio telegraph operation: The amateur shall transmit the call sign issued to him by the licensing country followed by a slant (/) sign and the United States amateur call sign prefix letter(s) and number appropriate to the location of his station.

(2) Radiotelephone operation: The amateur shall transmit the call sign issued to him by the licensing country followed by the words "fixed", or "portable" or "mobile", as appropriate, and the United States amateur call sign prefix letter(s) and number appropriate to the location of his station. The identification shall be made in the English language.

(b) At least once during each contact with another amateur station, the alien amateur shall indicate, in English, the geographical location of his station as nearly as possible by city and state, commonwealth, or possession.

PROPOSED RULE

§ 97.41 (AR RULE 41) How do I identify my communications?

(a) You must identify your AR communications by transmitting the AR station call sign at the end of each communication, and every ten minutes or less during a communication.

(b) At the end of an exchange of two-way AR communications, you must also transmit the call sign of the station you were communicating with. (See note following explanation of this proposed rule)

(c) When identifying your communications, you must transmit the call sign of the AR station using either telegraphy or voice.

(d) When identifying your communications with an automatic telegraphy device used only for

identification, you must send at a speed of 16.67 baud (20 wpm) or slower.

(e) When identifying your communications with frequency shift telegraphy, your frequency must shift at least 100 Hertz.

(f) When identifying your communications using voice, you must speak in the English language. You may use phonetic alphabets to help others understand the AR station call sign.

(g) If you have an Interim Amateur Permit, and your AR station is transmitting on frequencies not authorized by your previous AR operator class, your call sign identification must include DN (use "interim" on voice) followed by the FCC office identifier shown on your Permit.

(h) If you have an Alien Amateur Permit, or an Amateur Experimental Service certificate issued by Canada, your call sign identification must include DN (use "portable" on voice) followed by the letter K, N or W.

(i) If your station is in repeater operation, your call sign identification must include DN (use "operating" on voice) followed by R or RPT (use "repeater" on voice).

(j) If your station is in auxiliary operation, your call sign identification must include DN (use "operating" on voice) followed by A or AUX (use "auxiliary" on voice).

(k) If the control operator of your station has an AR operator license of a higher class than yours, and your AR station is transmitting on frequencies not authorized by your operator class, the identification must include the call signs of both your station and the station of the control operator.

EXPLANATION

This rule replaces § 97.32, § 97.84 and § 97.313. We reorganized the existing rules into one rule that covers station identification.

We also added the 100 Hertz requirement in paragraph (d) of the proposed rule to make monitoring more practical. This paragraph reflects what the FCC policy is at present. We added this information to the rules to better inform licensees of our policy.

Note.—The FCC proposed amendment of the requirement in paragraph (b) in Docket 80-136.

EXISTING RULES

§ 97.95 Operation away from the authorized fixed station location.

(a) Operation within the United States, its territories or possessions is permitted as follows:

(1) When there is no change in the authorized fixed operation station location, an amateur radio station, other than a military recreation station, may be operated portable or mobile under its station license anywhere in the United States, its territories or possessions, subject to § 97.61.

(2) When the authorized fixed station location is changed, the licensee shall submit an application for modification of the station license in accordance with § 97.47.

(b) When outside the continental limits of the United States, its territories, or possessions, an amateur radio station may be operated as portable or mobile only under the following conditions:

(1) Operation may not be conducted within the jurisdiction of a foreign government except pursuant to, and in accordance with express authority granted to the licensee by such foreign government. When a foreign government permits Commission licensees to operate within its territory, the amateur frequency bands which may be used shall be as prescribed or limited by that government. (See Appendix 4 of this Part for the text of treaties or agreements between the United States and foreign governments relative to reciprocal amateur radio operation.)

(2) When outside the jurisdiction of a foreign government, amateur operation may be conducted within ITU Region 2 subject to the limitations of, and on those frequency bands listed in, § 97.61.

(3) When outside the jurisdiction of a foreign government, amateur operation may be conducted within ITU Regions 1 and 3 on the following frequencies, subject to the limitations and provisions of Section IV of Article 5 of the Radio Regulations of the ITU:

(i) REGION 1:	REGION 3:
3.5–3.8 MHz	1.8–2.0 MHz
7.0–7.1 MHz	3.5–3.9 MHz
14.0–14.35 MHz	7.0–7.1 MHz
21.0–21.45 MHz	14.0–14.35 MHz
28.0–29.7 MHz	21.0–21.45 MHz
144–146 MHz	28.0–29.7 MHz
430–440 MHz	50.0–54.0 MHz
1215–1300 MHz	144–148 MHz
2300–2450 MHz	420–450 MHz
	1215–1300 MHz
	2300–2450 MHz

(ii) Operation on amateur frequency bands above 2450 MHz may be conducted subject to the limitations and provisions of Section IV of Article 5 of the Radio Regulations of the ITU.

(4) Except as otherwise provided, amateur operation conducted outside the jurisdiction of a foreign government shall comply with all requirements of Part 97 of this chapter.

§ 97.101 Mobile stations aboard ships or aircraft.

In addition to complying with all other applicable rules, an amateur mobile station operated on board a ship or aircraft must comply with all of the following special conditions: (a) The installation and operation of the amateur mobile station shall be approved by the master of the ship or captain of the aircraft; (b) The amateur mobile station shall be separate from and independent of all other radio equipment, if any, installed on board the same ship or aircraft; (c) The electrical installation of the amateur mobile station shall be in accord with the rules applicable to ships or aircraft as promulgated by the appropriate government agency; (d) The operation of the amateur mobile station shall not interfere with the efficient operation of any other radio equipment installed on board the same ship or aircraft; and (e) The amateur mobile station and its associated equipment, either in itself or in its method of operation, shall not constitute a hazard to the safety of life or property.

PROPOSED RULE

§ 97.42 (AR Rule 42) Where may I operate my AR station?

(a) Your AR station may transmit from within or over any area of the world where the AR Service is regulated by the FCC.

(1) In ITU Region 2, the AR Service is regulated by the FCC within the territorial limits of—

(i) The fifty United States
(ii) The District of Columbia

Caribbean Sea

(iii) Navassa Island
(iv) Puerto Rico
(v) Quita Sueno Bank
(vi) Roncador Bank
(vii) Serranilla Bank
(viii) Serrana Bank
(ix) United States Virgin Islands

Pacific Ocean

(x) Johnston Atoll
(xi) Midway Islands (Sand Island, Eastern Island)

(2) In ITU Region 3, the AR Service is regulated by the FCC within the territorial limits of—

Pacific Ocean

(i) American Samoa
(ii) Baker Island
(iii) Canton Island
(iv) Commonwealth of the Northern Marianas Islands
(v) Enderbury Island
(vi) Guam
(vii) Howland Island
(viii) Jarvis Island
(ix) Kingman Reef
(x) Palmyra Atoll
(xi) Peale Island
(xii) Wake Island
(xiii) Wilkes Island
(xiv) Swain Island

(3) In ITU Region 1, there are no territorial limits where the AR Service is regulated by the FCC.

(b) Your AR station may transmit from any other area of the world, except within the territorial limits of places where the AR Service is regulated by—

(1) An agency of the United States other than the FCC. Your AR station may be authorized by that regulating agency to transmit from within or over those territorial limits. You must obey their rules.

(2) A foreign government. Your AR station may be authorized by the regulating agency of that government to transmit from within or over those territorial limits. You must obey their rules.

(c) The Government of Canada recognizes AR operator authority from the FCC. If your AR station transmits from Canada, you must obey its rules.

(d) Your AR station may transmit from an aircraft or ship, with the permission of the captain, from within or over any area of the world where the AR Service is regulated by the FCC or within or over international waters. It may not transmit within or over territorial limits regulated by another agency or country, except Canada.

EXPLANATION

We combined two existing rule sections—§ 97.95 and § 97.101—into this proposed rule. Our purpose was to create one rule devoted to where an AR station could be operated. We rewrote the proposed rule in simpler language and included a detailed list, by ITU Region, of areas regulated by the FCC. We also simplified the requirements for operating an AR station aboard an aircraft or ship.

EXISTING RULE

§ 97.88 Operation of a station by remote control.

An amateur radio station may be operated by remote control only if there is compliance with the following:

(a) A photocopy of the remotely controlled station license shall be—

(1) Posted in a conspicuous place at the remotely controlled transmitter location, and

(2) Placed in the log of each authorized control operator.

(b) The name, address, and telephone number of the remotely controlled station licensee and at least one control operator shall be posted in a conspicuous place at the remotely controlled transmitter location.

(c) Except for operation under automatic control, a control operator shall be on duty when the station is being remotely controlled. Immediately before and during the periods the remotely controlled station is in operation, the frequencies used for emission by the remotely controlled station shall be monitored by the control operator. The control operator shall terminate all transmissions upon any deviation from the rules.

(d) Provisions must be incorporated to limit transmission, a period of no more than 3 minutes in the event of malfunction in the control link.

(e) A station in repeater operation shall be operated by radio remote control only when the control link uses frequencies other than the input (receiving) frequencies of the station in repeater operation.

§ 97.103 Station log requirements.

* * * * *

(c) In addition to the other information required by this section, the log of a remotely controlled station shall have entered the names, addresses, and call signs of all authorized control operators and a functional block diagram of, and a technical explanation sufficent to describe the operation of the control link. Additionally, the following information shall be entered:

(1) A description of the measures taken for protection against access to the remotely controlled station by unauthorized persons;

* * * * *

PROPOSED RULE

§ 97.43 (AR Rule 43) How do I operate my AR station by remote control?

(a) Your AR station may be remotely controlled only if the control operator can perform his/her duties at the remote control point. You must obey the rules the same as when the control operator is at the control point located in your AR station.

(b) The control link between the remote control point and your remotely controlled AR station must be protected against intruders. Only persons of your choosing who have AR operating authority from the FCC may be the control operator of your station (see AR Rule 38).

(c) If the control link between the remote control point and your AR station fails to work, your AR station must stop transmitting within three minutes.

(d) When your AR station is being remotely controlled, you must have posted at an easily seen place at the AR station—

(1) A photocopy of your AR station license; *AND*

(2) Names, addresses, and telephone numbers of persons you permit to be control operators.

(e) You must not remotely control your AR station, when it is in repeater operation, by transmitting control emissions on the repeated (repeater input) frequencies. You may transmit tones (see TEC Rule 3) on the repeated frequencies for—

(1) Causing the repeater to accept your (user) transmissions; *AND*

(2) Dialing to inteconnect the repeater into the public telephone system (see AR Rule 55); *AND*

(3) Dialing to place a telephone call.

EXPLANATION

This rule replaces § 97.88 and § 97.103(c)(1). We rewrote these rules in simpler language to make it easier for licensees to understand how to operate an AR station by remote control.

EXISTING RULE

§ 95.85 Repeater operation.

(a) Emissions from a station in repeater operation shall be discontinued within five seconds after cessation of radiocommunications by the user station. Provisions to limit automatically the access to a station in repeater operation may be incorporated but are not mandatory.

* * * * *

(c) A station in repeater operation shall not concurrently retransmit amateur radio signals on more than one frequency in the same amateur frequency band, from the same location.

* * * * *

§ 97.61 Authorized frequencies and emissions.

* * * * *

(c) All amateur frequency bands above 29.5 MHz are available for repeater operation, except 50.0–52.0 MHz, 144.0–144.5 MHz, 145.5–146.0 MHz, 220.0–220.5 MHz, 431.0–433.0 MHz, and 435.0–438.0 MHz. Both the input (receiving) and output (transmitting) frequencies of a station in repeater operation shall be frequencies available for repeater operation.

* * * * *

§ 97.67 Maximum authorized power.

(c) * * *

Antenna height above average terrain	Maximum effective radiated power for frequency bands above:			
	52MHz	144.5 MHz	420 MHz	1215 MHz
Below 50 feet	100 watts	800 watts	Paragraphs (a) and (b)	Paragraphs (a) and (b).
50–99 feet	100 watts	400 watts	do	Do.
100–499 feet	50 watts	400 watts	800 watts	Do.
500–999 feet	25 watts	200 watts	800 watts	Do.
Above 1,000 feet	25 watts	100 watts	400 watts	Do.

* * * * * * *

Proposed rule:

§ 97.44 (AR Rule 44) How do I operate my AR station as a repeater?

(a) Your AR station is in repeater operation whenever it is retransmitting communications of other AR stations, live or delayed.

(b) When in repeater operation, your AR station—

(1) May only repeat (receive from and retransmit on) the following frequency sub-bands:

29.5–29.7 MHz
52.0–54.0
144.5–145.5
146.0–148.0
220.5–225.0
420.0–431.0
433.0–435.0
Any AR Service frequency above 438 MHz.

(2) May not retransmit with more ERP for the antenna height above average terrain (AHAAT) as follows:

Antenna height above average terrain	Maximum effective radiated power for frequency bands above:			
	52 MHz	144.5 MHz	420 MHz	1215 MHz
Below 50 feet	100 watts	800 watts	Note	Note.
50–99 feet	100 watts	400 watts	do	Do.
100–499 feet	50 watts	400 watts	800 watts	Do.
500–999 feet	25 watts	200 watts	800 watts	Do.
Above 1,000 feet	25 watts	100 watts	400 watts	Do.

NOTE.—AR Rule 31 (a) and (b) apply.

(3) May retransmit communications only from AR stations you want to repeat.

(4) Must discontinue retransmitting whenever the person operating the repeated station does not obey the rules.

(5) Records must have a calculation of your AR station ERP and AHAAT (see Appendix F for how to calculate AHAAT and Appendix G for how to calculate ERP).

(c) You may presume that an AR station transmitting on frequencies normally used for repeater operation is intended to be repeated.

Explanation: This rule replaces § 97.61(c), § 97.85 and the table in § 97.67. In rewriting this proposed rule, we deleted § 97.85(a) and (c) because they are unnecessary to accomplish any regulatory purpose. The remaining portions of § 97.85 are covered in other proposed rules.

We are proposing to include new AR Rule 44(c). While Part 97 does permit other types of operation in the frequency subbands where repeater operation is permitted, we believe that any AR station transmitting on frequencies designated as repeater input frequencies by widely-accepted band plans must either intend for their transmissions to be repeated, or are harassing the repeater operation. This proposed new rule should help eliminate potential harassment.

EXISTING RULES

§ 97.61 Authorized frequencies and emissions.

* * * * *

(d) All amateur frequency bands above 220.5 MHz, except 431–433 MHz, and 435–438 MHz, are available for auxiliary operation.

§ 97.86 Auxiliary operation.

* * * * *

(b) If a station in auxiliary operation is relaying signals of another amateur radio station(s) to a station in repeater operation, the station in auxiliary operation may use an input (receiving) frequency in frequency bands reserved for auxiliary operation, repeater operation, or both.

(c) A station in auxiliary operation shall be used only to communicate with stations shown in the system network diagram.

PROPOSED RULE

§ 97.45 (AR Rule 45) How do I operate my AR station as an auxiliary?

(a) Your AR station is in auxiliary operation whenever it is transmitting communications between two points as a—

(1) Control link between the remote control point and your remotely controlled AR station (see AR Rule 43);

(2) Relay link between the remote control point and your remotely controlled AR station; *OR*

(3) Relay link between a receiving point and your AR station;

(b) When in auxiliary operation, your AR station may only transmit on the following frequency sub-bands:

220.5–225.0 MHz
420.0–431.0 MHz
433.0–435.0 MHz
Any AR Service frequency above 438 MHz.

EXPLANATION

This proposed rule replaces existing § 97.86 and § 97.61(d). We included an explanation of when an AR station is in auxiliary operation in the proposed rule. We deleted paragraph (c) of existing § 97.86 since we are no longer requiring that AR stations in auxiliary operation keep a network station diagram (see proposed AR Rule 57) Paragraph (b) of § 97.86 is covered elsewhere in the proposed rules.

EXISTING RULE

§ 97.99 Stations used only for radio control of remote model crafts and vehicles.

An amateur transmitter when used for the purpose of transmitting radio signals intended only for the control of a remote model craft or vehicle and having mean output power not exceeding one watt may be operated under the special provisions of this section provided an executed Transmitter Identification Card (FCC Form 452–C) or a plate made of a durable substance indicating the station call sign and licensee's name and address is affixed to the transmitter.

(a) Station identification is not required for transmissions directed only to a remote model craft or vehicle.

* * * * *

(c) Station logs need not indicate the times of commencing and terminating each transmission or series of transmissions.

PROPOSED RULE

§ 97.46 (AR Rule 46) How do I operate AR station to remotely control a model craft?

(a) Your AR station may transmit one-way non-verbal communications for remotely controlling a model craft.

(b) When your AR station is remotely controlling a model craft, you do not have to identify your communications (see AR Rule 41), if—

(1) The mean power output of your AR station is no more than one watt; *AND*

(2) Your AR station call sign, your name, and your address are clearly marked on your transmitter.

EXPLANATION

This rule replaces portions of § 97.99. In rewriting this proposed rule, we deleted paragraph (c). The information contained in that subsection is no longer relevant since we are not requiring licensees to keep station logs. Paragraph (b) of the existing rule is covered elsewhere in the proposed rules.

EXISTING RULE

§ 97.85 Repeater operation.

* * * * *

(e) A station in repeater operation, either locally controlled or remotely controlled, may also be operated by automatic control when devices have been installed and procedures have been implemented to ensure compliance with the rules when a duty control operator is not present at a control point of the station. Upon notification by the Commission of improper operation of a station under automatic control, operation under automatic control shall be immediately discontinued until all deficiencies have been corrected.

§ 97.86 Auxiliary operation.

(a) A station in auxiliary operation, either locally controlled or remotely controlled, may be operated by automatic control when it is operated as part of a system of stations in repeater operation operated under automatic control.

* * * * *

PROPOSED RULE

§ 97.47 (AR Rule 47) When may I operate my AR station by automatic control?

(a) You may only operate your AR station by automatic control if you obey the rules the same as when the control operator is at the control point.

(b) You may only operate an AR station by automatic control when the AR station is in—

(1) Repeater operation; *OR*

(2) Auxiliary operation and is part of a system of stations in repeater operation by automatic control.

(c) If the FCC notifies you that your station is being operated improperly while it is being automatically controlled, you must immediately stop using automatic control.

EXPLANATION

This rule replaces § 97.85(e) and § 97.86(a). We combined these sections to give licensees one rule on operating an AR station by automatic control. We simplified the proposed rule by telling licensees that when they operate an AR station by automatic control, they must obey the rules the same as when the control operator is at the control point.

EXISTING RULES

§ 97.82 Availability of operator license.

Each amateur radio operator must have the original or a photocopy of his or her operator license in his or her personal possession when serving as the control operator of an amateur radio station. The original license shall be available for inspection by any authorized Government official upon request made by an authorized representative of the Commission, except when such license has been filed with application for modification or renewal thereof, or has been mutilated, lost or destroyed, and request has been made for a duplicate license in accordance with § 97.57.

§ 97.83 Availability of station license.

The original license of each amateur station or a photocopy thereof shall be posted in a conspicuous place in the room occupied by the licensed operator while the station is being operated at a fixed location or shall be kept in his personal possession. When the station is operated at other than a fixed location, the original station license or a photocopy thereof shall be kept in the personal possession of the station licensee (or a licensed representative) who shall be present at the station while it is being operated as a portable or mobile station. The original station license shall be available for inspection by any authorized Government official at all times while the station is being operated and at other times upon request made by an authorized representative of the Commission, except when such license has been filed with application for modification or renewal thereof, or has been mutilated, lost, or destroyed, and request has been made for a duplicate license in accordance with § 97.57.

PROPOSED HEADING

Other things you need to know.

PROPOSED RULE

§ 97.48 (AR Rule 48) How long must I keep my license?

You must keep your license (or other authorization) until it expires, or until it is terminated, or until you get a new one. If you no longer want it, you should send it to the FCC, Gettysburg, PA 17325. Include instructions to cancel it.

EXPLANATION

These existing sections have been greatly simplified to require that the AR license (or other authorization) be kept until it expires, until it is terminated or until the licensee gets a new one.

EXISTING RULES

§ 97.32 Interim Amateur Permits.

(d) The original Interim Amateur Permit of an amateur radio operator shall be kept in the personal possession of or posted in a conspicuous place in the room occupied by such operator when operating an amateur radio station under the authority of an Interim Amateur Permit.

* * * * *

§ 97.82 Availability of operator license.

Each amateur radio operator must have the original or a photocopy of his or her operator license in his or her personal possession when serving as the control operator of an amateur radio station. The original license shall be available for inspection by any authorized Government official upon request made by an authorized representative of the Commission, except when such license has been filed with application for modification or renewal thereof, or has been multilated, lost or destroyed, and request has been made for a duplicate license in accordance with § 97.57.

§ 97.83 Availability of station license.

The original license of each amateur station or a photocopy thereof shall be posted in a conspicuous place in the room occupied by the licensed operator while the station is being operated at a fixed location or shall be kept in his personal possession. When the station is operated at other than a fixed location, the original station license or a photocopy thereof shall be kept in the personal possession of the station licensee (or a licensed representative) who shall be present at the station while it is being operated as a portable or mobile station. The original station license shall be available for inspection by an authorized Government official at all times while the station is being operated and at other times upon request made by an authorized representative of the Commission, except when such license has been filed with application for modification or renewal thereof, or has been multilated, lost, or destroyed, and request has been made for a duplicate license in accordance with § 97.57.

PROPOSED RULE

§ 97.49 (AR Rule 49) Where must I keep my license?

(a) You must have your AR operator license (or other authorization), or a photocopy, with you when you are the control operator of an AR station.

(b) You must have the AR station license (or other authorization), or a

photocopy, with you when you are the control operator of an AR station.

EXPLANATION

We simplified the requirements of § 97.32(d) § 97.82 and § 97.83. We reorganized them into one rule devoted to the availability of both AR operator and AR station licenses.

EXISTING RULE

§ 97.57 Duplicate license.

Any licensee requesting a duplicate license to replace an original which has been lost, mutilated, or destroyed, shall submit a statement setting forth the facts regarding the manner in which the original license was lost, mutilated, or destroyed. If, subsequent to receipt by the licensee of the duplicate license, the original license is found, either the duplicate or the original license shall be returned immediately to the Commission.

PROPOSED RULE

§ 97.50 (AR Rule 50) What must I do if I misplace my license?

If you misplace your license, you must request a duplicate license from the FCC, Gettysburg, PA. 17326. Your request must include your name, your address and your AR primary station license call sign.

EXPLANATION

This rule replaces § 97.57. We simplified the requirements for obtaining a duplicate license and rewrote the proposed rule in language that is easier to understand.

EXISTING RULE

None.

PROPOSED RULE

§ 97.51 (AR) Rule 51) Do I need to have a copy of the Amateur Telecommunications Services Rules?

(a) You must keep a current copy of Part 97, FCC Rules for the Amateur Telecommunications Services, in your AR station records. The Amateur Telecommunications Services Rules are published periodically by the Government Printing Office.

(b) You must stay up to date with changes to the Amateur Telecommunications Services Rules. Changes are found in the Federal Register and in other publications.

EXPLANATION

We are proposing to add this new rule because we thought it was important that each AR operator have a copy of the Amateur Telecommunications Services Rules. We think this requirement will help licensees know and understand the rules better and will help promote self-regulation by licensees. This in turn will result in better radio operation and more efficient use of the limited radio spectrum.

EXISTING RULE

None.

PROPOSED RULE

§ 97.52 (AR Rule 52) What are the penalties for violating these rules?

(a) If the FCC finds that you have willfully or repeatedly violated the Communications Act, FCC Rules or 18 U.S.C. 1464 (which prohibits the transmission of obscene, indecent or profane language), you may have to pay as much as $2,000. (See Section 503(b) of the Communications Act.)

(b) If the FCC finds that you have willfully or repeatedly violated the Communications Act or FCC Rules, it may revoke your license. (Other grounds for revoking a license are listed in Section 312(a) of the Communications Act.)

(c) If the FCC finds that you have violated any section of the Communications Act or the FCC Rules, you may be ordered to stop whatever action caused the violation (see Section 312(b) of the Communications Act).

(d) If a federal court finds that you have willfully and knowingly violated any FCC rule, you may be fined up to $500 for each day you committed the violation. (See Section 502 of the Communications Act.)

(e) If a federal court finds that you have willfully and knowingly violated any provision of the Communications Act, you may be fined up to $10,000, or you may be imprisoned for one year, or both. (See Section 501 of the Communications Act.)

(f) If the FCC finds that you have violated any section of the Communication Act or the FCC Rules, your AR operator license may be suspended (see Section 303(m)(1)(A) of the Communications Act.

EXPLANATION

Although the penalties for violation of the Communications Act are listed in that Act, they are not listed in the existing rules. We added this proposed rule to list those penalties and to emphasize how serious violations of the Communications Act are.

EXISTING RULES

§ 97.133 Second notice of same violation.

In every case hwere an amateur station licensee is cited within a period of 12 consecutive months for the second violation of the provisions of §§ 97.61, 97.63, 97.65, 97.71 or § 97.73, the station licensee, if directed to do so by the commission, shall not operate the station and shall not permit it to be operated from 6 p.m. to 10:30 p.m, local time, until written notice has been received authorizing the resumption of full-time operation. This notice will not be issued until the licensee has reported on the results of tests which he has conducted with at least two other amateur stations at hours other than 6 p.m. to 10:30 p.m., local time. Such tests are to be made for the specific purpose of aiding the licensee in determining whether the emissions of the station are in accordance with the Commission's rules. The licensee shall report to the Commission the observations made by the cooperating amateur licensee in relation to reported violations. This report shall include a statement as to the corrective measures taken to insure compliance with the rules.

§ 97.135 Third notice of same violation.

In every case where an amateur station licensee is cited within a period of 12 consecutive months for the third violation of §§ 97.61, 97.63, 97.65, 97.71, or § 97.73, the station licensee, if directed by the Commission, shall not operate the station and shall not permit it to be operated from 8 a.m. to 12 midnight, local time, except for the purpose of transmitting a prearranged test to be observed by a monitoring station of the Commission to be designated in each particular case. The station shall not be permitted to resume operation during these hours until the licensee is authorized by the Commission, following the test, to resume full-time operation. The results of the test and the licensee's record shall be considered in determining the advisability of suspending the operator license or revoking the station license, or both.

§ 97.137 Answers to notices of violations

Any licensee receiving official notice of a violation of the terms of the Communications Act of 1934, as amended, any legislative act, Executive order, treaty to which the United States is a party, or the rules and regulations of the Federal Communications Commission, shall, within 10 days from such receipt, send a written answer direct to the office of the Commission originating the official notice: *Provided however,* That if an answer cannot be sent or an acknowledgement made within such 10-day period by reason of illness or other unavoidable circumstances, acknowledgement and answer shall be made at the earliest practicable date with a satisfactory explanation of the delay. The answer to each notice shall be complete in itself and shall not be abbreviated by reference to other communications or answers to other notices. If the notice

relates to some violation that may be due to the physical or electrical characteristics of transmitting apparatus, the answer shall state fully what steps, if any, are taken to prevent future violations, and if any new apparatus is to be installed, the date such apparatus was ordered, the name of the manufacturer, and promised date of delivery. If the notice of violation relates to some lack of attention to or improper operation of the transmitter, the name of the operator in chare shall be given.

PROPOSED RULE

§ 97.53 (AR Rule 53) How do I answer discrepancy notifications?

(a) If it appears to the FCC that you have violated the Communications Act, these rules or any other law, order or treaty, the FCC may send you a discrepancy notification.

(b) Within the time period stated in the notification you must provide—

(1) A complete written statement about the apparent discrepancy;

(2) A complete written statement about any action you have taken to correct the apparent discrepancy to prevent it from happening again; *AND*

(3) The name and station call sign of the person operating at the time of the apparent discrepancy.

(c) You must not shorten your response by references to other communications or notices.

(d) You must send your response to the FCC office which sent you the notice.

(e) If you cannot answer a discrepancy notification within the time stated in the notification, because of illness or other unavoidable circumstances, you must answer at the earliest possible time and explain the reason for your delay.

(f) If the notification covers a discrepancy related to technical transmitter standards, you must stop transmitting immediately, except for necessary tests and adjustments; and you must not transmit again until all technical problems with the transmitter have been corrected. The FCC may require you to have specific tests conducted and to report the results of those tests.

(g) You must keep a copy of your response as a part of your station records.

EXPLANATION

We combined § 97.133, § 97.135 and § 97.137 in this one, simplified rule. The term "discrepancy notification" is new to these proposed rules. We coined this term to enable FCC field offices to send a letter to licensees concerning a discrepancy rather than a formal notice of violation.

EXISTING RULE

§ 97.131 Restricted operation.

(a) If the operation of an amateur station causes general interference to the reception of transmissions from stations operating in the domestic broadcast service when receivers of good engineering design including adequate selectivity characteristics are used to receive such transmission and this fact is made known to the amateur station licensee, the amateur station shall not be operated during the hours from 8 p.m. to 10:30 p.m., local time, and on Sunday for the additional period from 10:30 a.m. until 1 p.m., local time, upon the frequency or frequencies used when the interference is created.

(b) In general, such steps as may be necessary to minimize interference to stations operating in other services may be required after investigation by the Commission.

PROPOSED RULE

§ 97.54 (AR Rule 54) What must I do if the FCC tells me that my AR station is causing interference?

(a) If the FCC tells you that your AR station is causing interference, you must follow all instructions the FCC sends you.

(b) You must comply with any restricted hours of AR station operation which may be included in those instructions.

EXPLANATION

This rule replaces § 97.131. We simplified the existing rule by telling licensees to follow any instructions the FCC sends to them. We are proposing in this rule to delete the specific "quiet hours" referred to in the existing rule and to replace them with a simple requirement that licensees comply with any restricted hours of operation included in the instructions they receive from the FCC. This proposal will enable the FCC to deal more effectively with interference problems.

EXISTING RULE

None.

PROPOSED RULE

§ 97.55 (AR Rule 55) May I interconnect my AR station transmitter to a telephone?

(a) You may interconnect your AR station transmitter with a public telephone system to—

(1) Use as a wireline control link between your AR station and the remote control point (see AR Rule 43).

(2) Get messages from third parties for your AR station to transmit (see AR Rule 34). You must not let a caller activate transmissions from your AR station. The control operator must receive incoming calls from the public telephone system and screen them before your AR station may transmit them.

(b) You must obey any restriction that the telephone company places on the interconnection of an AR station transmitter to a telephone. Your interconnection ("phone patch") device must be registered with the FCC.

(c) You may not interconnect your AR station with a mobile radiotelephone system (see AR Rule 33(a)(6).)

EXPLANATION

Although there is no existing rule on interconnecting an AR station transmitter to a telephone, the proposed rule states what the FCC policy on this subject has always been. We think that including this policy in the proposed rules will help readers know and understand the restrictions on interconnecting an AR station transmitter to a telephone. AR Rule 55(a)(2) was included to provide information on the use of "reverse autopatch".

EXISTING RULE

§ 97.105 Retention of logs.

The station log shall be preserved for a period of at least 1 year following the last date of entry and retained in the possession of the licensee. Copies of the log, including the sections required to be transcribed by § 97.103, shall be available to the Commission for inspection.

PROPOSED RULE

§ 97.56 (AR Rule 56) Do I have to make my AR station and its records available for inspection?

(a) If an authorized FCC representative requests to inspect your AR station and its records, you or the control operator must make the station and its records available for inspection.

(b) The FCC may inspect your station and its records at reasonable times. The FCC considers that a reasonable time to inspect your station is any time during the business day or any time your station is transmitting or has just finished transmitting.

EXPLANATION

While there is an existing rule on inspection of AR station records in Part 97, the proposed rule on inspection of AR stations is new to this part. We are proposing to add this for the Amateur Telecommunication Services because the FCC believes that the addition is necessary to encourage compliance with these rules. We have similar station inspection rules for our other radio services.

EXISTING RULES

§ 97.103 Station log Requirements.

An accurate legible account of station operation shall be entered into a log for each amateur radio station. The following items shall be entered as a minimum:

(a) The call sign of the station, the signature of the station licensee, or a photocopy of the station license.

(b) The locations and dates upon which fixed operation of the station was initiated and terminated. If applicable, the location and dates upon which portable operation was initiated and terminated at each location.

(1) The date and time periods the duty control operator for the station was other than the station licensee, and the signature and primary station call sign of that duty control operator.

(2) A notation of third party traffic sent or received, including names of all third parties, and a brief description of the traffic content. This entry may be in a form other than written, but one which can be readily transcribed by the licensee into written form.

(3) Upon direction of the Commission, additional information as directed shall be recorded in the station log.

(c) In addition to the other information required by this section, the log of a remotely controlled station shall have entered the names, addresses, and call signs of all authorized control operators and a functional block diagram of, and a technical explanation sufficient to describe the operation of the control link. Additionally, the following information shall be entered:

(1) A description of the measures taken for protection against access to the remotely controlled station by unauthorized persons;

(2) A description of the measures taken for protection against unauthorized station operation, either through activation of the control link, or otherwise;

(3) A description of the provisions for shutting down the station in the case of control link malfunction; and

(4) A description of the means used for monitoring the transmitting frequencies.

(d) When a station has one or more associated stations, that is, stations in repeater or auxiliary operation, a system network diagram shall be entered in the station log.

(e) In addition to the other information required by this section, the log of a station in repeater operation transmitting with an effective radiated power greater than the minimum effective radiated power listed in § 97.67(c) for the frequency bank in use shall contain the following:

(1) The location of the station transmitting antenna, marked upon a topographic map having a scale of 1:250,000 and countour intervals [1];

(2) The antenna transmitting height above average terrain [2];

(3) The effective radiated power in the horizontal plane for the main lobe of the antenna pattern, calculated for maximum transmitter output power;

(4) The transmitter output power;

(5) The loss in the transmission line between the transmitter and the antenna, expressed in decibels;

(6) The relative gain in the horizontal plane of the transmitting antenna; and

(7) The horizontal and vertical radiation patterns of the transmitting antenna, with reference to true north (for horizontal pattern only), upon polar coordinate graph paper, and the method used in determining these patterns.

(f) In addition to the other information required by this section, the log of a station in auxiliary operation shall have the following information entered:

(1) A system network diagram for each system with which the station is associated;

(2) The station transmitting band(s);

(3) The transmitter input power; and

(4) If operated by remote control, the information required by paragraph (c) of this section.

(g) Notwithstanding the provisions of § 97.105, the log entries required by paragraphs (c), (d), (e), and (f) of this section shall be retained in the station log as long as the information contained in those entries is accurate.

§ 97.105 Retention of logs.

The station log shall be preserved for a period of at least 1 year following the last date of entry and retained in the possession of the licensee. Copies of the log, including the sections required to be transcribed by § 97.103, shall be available to the Commission for inspection.

PROPOSED RULE

§ 97.57 (AR Rule 57) What do I have to keep in my station records?

(a) You must keep the following items in your station records for all types of operation:

(1) A copy of each letter telling the FCC of your name or address change;

(2) Your license (or other authorization) or a photocopy;

(3) A current copy of the Amateur Telecommunications Services Rules, with amendments;

(4) A copy of each response to an FCC discrepancy notification;

(5) Each written permission you receive from the FCC; and

(6) A copy of any other correspondence to or from the FCC about your AR station license or your license (or other authorization).

(b) When your AR station is in repeater operation, you must keep a computation of its AHAAT and ERP (see AR Rule 44) in your station records.

(c) When your AR station is being remotely controlled (see AR Rule 43), you must keep the following items in your station records:

(1) The names, addresses and AR station call signs of all control operators you have authorized;

(2) A functional block diagram and a technical explanation that describe operation of the control link; ("Control link" is the equipment that accomplishes remote control between a control point and a remotely controlled station.)

(3) A description of measures taken to protect the station from access by unauthorized persons;

(4) A description of the measures taken to prevent unauthorized operation by activating the control link or by some other means;

(5) A description of the measures for shutting down the station if the control link stops working correctly; and

(6) A description of the means used to monitor the transmitting frequencies.

(d) You must keep your station records for the term of your license (or other authorization).

EXPLANATION

We propose to eliminate all logging requirements in the existing rule. Eliminating these requirements will ease an unnecessary recordkeeping burden imposed on licensees. We have replaced the existing rule with a proposed rule requiring that licensees keep certain items in their station records for the term of their licenses. In replacing the existing rule, we deleted the items that stations in repeater and auxiliary operation must keep in their station logs. However, we are still requiring that licensees who operate stations by remote control or in repeater operation keep certain items needed for compliance verification in their station records (rather than in log books). We are also requiring that licensees keep their station records for the terms of their licenses.

EXISTING RULE

None.

[1] Indexes and ordering information for suitable maps are available from the U.S. Geological Survey, Washington, D.C. 20242, or from the Federal Center, Denver, Colorado 80255.

[2] See Appendix 5.

PROPOSED RULE

§ 97.58 (AR Rule 58) How do I contact the FCC?

(a) Send any AR application and questions about your application to the following address:

FCC, Licensing Division, Private Radio Bureau, Gettysburg, PA 17325

(b) Send any questions about the Amateur Telecommunications Service Rules to the following address:

FCC, Rules Division, Private Radio Bureau, Washington, DC 20554

(c) Write to any of the FCC field offices if you want to file an interference complaint. (See Appendix C for a list of FCC field offices.)

EXPLANATION

Although the existing rules do not include a section on how to contact the FCC, we thought that such a section would be helpful to applicants and licensees.

EXISTING RULES

§§ 1.3 and 1.401

PROPOSED RULES

§ 97.59 (AR Rule 59) Can I get these rules changed?

(a) You may ask the FCC to change these rules by submitting a petition (see § 1.401 of the FCC's rules) to the following address:

Secretary FCC, Washington, D.C. 20554.

(b) You may ask the FCC for a waiver of these rules by submitting your request (see § 1.3 of the FCC's rules) to the following address:

FCC, Box 1020, Gettysburg, PA 17325.

EXPLANATION

We are proposing to add this information as an aid to persons wanting to request a change in the rules or to request a waiver of the rules.

EXISTING RULES

§ 97.49 Commission modification of station license.

(a) Whenever the Commission shall determine that public interest, convenience, and necessity would be served, or any treaty ratified by the United States will be more fully compiled with, by the modification of any radio station license either for a limited time, or for the duration of the term thereof, it shall issue an order for such licensee to show cause why such license should not be modified.

(b) Such order to show cause shall contain a statement of the grounds and reasons for such proposed modification, and shall specify wherein the said license is required to be modified. It shall require the licensee against whom it is directed to appear at a place and time therein named, in no event to be less than 30 days from the date of receipt of the order, to show cause why the proposed modification should not be made and the order of modification issued.

(c) If the licensee against whom the order to show cause is directed does not appear at the time and place provided in said order, a final order of modification shall issue forthwith.

§ 97.309 Modification, suspension, or cancellation of permit.

At any time the Commission may, in its discretion, modify, suspend or cancel any permit issued under this subpart. In this event, the permittee will be notified of the Commission's action by letter mailed to his mailing address in the United States and the permittee shall comply immediately. A permittee may, within 90 days of the mailing of such letter, request the Commission to reconsider its action. The filing of a request for reconsideration shall not stay the effectiveness of that action, but the Commission may stay its action on its own motion.

PROPOSED RULE

§ 97.60 (AR Rule 60) Can the FCC modify my AR licenses?

If the FCC finds it is in the public interest, it may modify your AR licenses. However, before they do, you will have a chance to explain why you think your AR licenses should not be modified. The FCC may modify your Amateur Alien Permit by written notice at any time.

EXPLANATION

We combined existing § 97.49 and 97.309 into this proposed rule that covers modification of all AR licenses. In rewriting this proposed rule, we greatly simplified the two existing rules and deleted much of their language that is no longer necessary. Instructions on how to show cause that your license should not be modified are contained in the Order proposing modification.

EXISTING RULE

§ 97.41 Operation of Canadian Amateur Stations in the United States.

(a) An amateur radio station licensed by the Government of Canada may be operated in the United States without the prior approval of the Federal Communications Commission.

(b) Operation of a Canadian amateur station in the United States must comply with all of the following:

(1) The terms of the Convention Between the United States and Canada (TIAS No. 2508) Relating to the Operation by Citizens of Either Country of Certain Radio Equipment or Stations in the Other Country. (See Appendix 4 to Part 97.)

(2) The operating terms and conditions of the amateur station license issued by the Government of Canada.

(3) The provisions of Subparts A through E of Part 97.

(4) Any further conditions the Commission may impose upon the privilege of operating in the United States.

(c) At any time the Commission may, in its discretion, modify, suspend, or cancel the privilege of any Canadian licensee operating an amateur radio station in the United States.

PROPOSED RULE

§ 97.61 (AR Rule 61) May I operate an AR station in the United States under Canadian authority?

(a) If you are a Canadian citizen and have an Amateur Experimental Service Certificate from Canada, you may operate an AR station in the United States without getting any other FCC authorization.

(b) If your operate an AR station in the United States under the Canadian Certificate, your operating privileges are the same as you have in Canada. However, your operating privileges in the United States must never exceed those of the Amateur Extra AR operator class.

(c) The FCC may at any time modify, suspend or cancel your privilege to operate an AR station in the United States under the Canadian Certificate.

EXPLANATION

This rule replaces § 97.41. Although much of the information contained in this rule is covered elsewhere in this subpart, we thought it would be helpful to Canadian citizens to have one rule explaining what their operating privileges are in the United States.

EXISTING RULE

§ 97.3 Definitions.

(a) *Amateur radio service.* A radio communication service of self-training, intercommunication, and technical investigation carried on by amateur radio operators.

(b) *Amateur radio communication.* Noncommercial radio communication by or among amateur radio stations solely with a personal aim and without pecuniary or business interest.

(c) *Amateur radio operator* means a person holding a valid license to operate an amateur radio station issued by the Federal Communications Commission.

(d) *Amateur radio license.* The instrument of authorization issued by the Federal Communications Commission comprised of a station license, and in the case of the primary station, also incorporating and operator license.

Operator license. The instrument of authorization including the class of operator privileges.

Interim Amateur Permit. A temporary operator and station authorization issued to licensees successfully completing Commission supervised examination for higher class operator licenses.

Station license. The instrument of authorization for a radio station in the Amateur Radio Service.

(e) *Amateur radio station.* A station licensed in the amateur radio service embracing necessary apparatus at a particular location used for amateur radio communication.

(f) *Primary station.* The principal amateur radio station at a specific land location shown on the station license.

(g) *Military recreation station.* An amateur radio station licensed to the person in charge of a station at a land location provided for the recreational use of amateur radio operators, under military auspices of the Armed Forces of the United States.

(h) *Club station.* A separate Amateur radio station licensed to an amateur radio operator acting as a station trustee for a bona fide amateur radio organization or society. A bona fide Amateur radio organization or society shall be composed of at least two persons, one of whom must be a licensed Amateur operator, and shall have:

(1) A name,

(2) An instrument of organization (e.g., constitution),

(3) Management, and

(4) A primary purpose which is devoted to Amateur radio activities consistent with § 97.1 and constituting the major portion of the club's activities.

(i) *Space radio station.* An amateur radio station located on an object which is beyond, is intended to go beyond, or has been beyond the major portion of the earth's atmosphere. (Regulations governing this type of station have not yet been adopted and all applications will be considered on an individual basis.)

(j) *Terrestrial location.* Any point within the major portion of the earth's atmosphere, including aeronautical, land, and maritime locations.

(k) *Space location.* [Reserved]

(l) *Amateur radio operation.* Amateur radio communication conducted by amateur radio operators from amateur radio stations, including the following:

Fixed operation. Radio communication conducted from the specific geographical land location shown on the station license.

Portable operation. Radio communication conducted from a specific geographical location other than that shown on the station license.

Mobile operation. Radio communication conducted while in motion or during halts at unspecified locations.

Repeater operation. Radiocommunication, other than auxiliary operation, for retransmitting automatically the radio signals of other amateur radio stations.

Auxiliary operation. Radiocommunication for remotely controlling other amateur radio stations, for automatically relaying the radio signals of other amateur radio stations in a system of stations, or for intercommunicating with other amateur radio stations in a system of amateur radio stations.

(m) *Control* means techniques used for accomplishing the immediate operation of an amateur radio station. Control includes one or more of the following:

(1) *Local control.* Manual control, with the control operator monitoring the operation on duty at the control point located at a station transmitter with the associated operating adjustments directly accessible. (Direct mechanical control, or direct wire control of a transmitter from a control point located on board any aircraft, vessel, or on the same premises on which the transmitter is located, is also considered local control.)

(2) *Remote control.* Manual control, with the control operator monitoring the operation on duty at a control point located elsewhere than at the station transmitter, such that the associated operating adjustments are accessible through a control link.

(3) *Automatic control* means the use of devices and procedures for control so that a control operator does not have to be present at the control point at all times. (Only rules for automatic control of stations in repeater operation have been adopted.)

(n) *Control link.* Apparatus for effecting remote control between a control point and a remotely controlled station.

(o) *Control operator.* An amateur radio operator designated by the licensee of an amateur radio station to also be responsible for the emissions from that station.

(p) *Control point.* The operating position of an amateur radio station where the control operator function is performed.

(q) *Antenna structures.* Antenna structures include the radiating system, its supporting structures, and any appurtenances mounted thereon.

(r) *Antenna height above average terrain.* The height of the center of radiation of an antenna above an averaged value of the elevation above sea level for the surrounding terrain.

(s) *Transmitter.* Apparatus for converting electrical energy received from a source into radio-frequency electromagnetic energy capable of being radiated.

(t) *Effective radiated power.* The product of the radio-frequency power, expressed in watts, delivered to an antenna, and the relative gain of the antenna over that of a half-wave dipole antenna.

(u) *System network diagram.* A diagram showing each station and its relationship to the other stations in a network of stations, and to the control point(s).

(v) *Third-party traffic.* Amateur radio communication by or under the supervision of the control operator at an amateur radio station to another amateur radio station on behalf of anyone other than the control operator.

(w) *Emergency communication.* Any amateur radio communication directly relating to the immediate safety of life of individuals or the immediate protection of property.

(x) *Automatic retransmission.* Retransmission of signals by an amateur radio station whereby the retransmitting station is actuated solely by the presence of a received signal through electrical or electro-mechanical means, i.e., without any direct, positive action by the control operator.

(y) *External radio frequency power amplifier.* Any device which, (1) when used in conjunction with a radio transmitter as a signal source, is capable of amplification of that signal, and (2) is not an integral part of the transmitter as manufactured.

(z) *External radio frequency power amplifier kit.* Any number of electronic parts, usually provided with a schematic diagram or printed circuit board, which, when, assembled in accordance with instructions, results in an external radio frequency power amplifier, even if additional parts of any type are required to complete assembly.

PROPOSED RULE

§ 97.62 (AR Rule 62) How are the key words in these rules defined?

AR operator means a person who has a valid authorization from the FCC that allows him/her to operate an AR station.

AR station means a radio station that the FCC authorizes in the AR Service. It includes all the equipment you use for transmitting radio emissions.

Control means the technique used to properly operate an AR station.

Control point means the position of an AR station where the control operator performs his/her duties.

Transmitter means the equipment that converts electrical energy into radio frequency electromagnetic energy that can be received.

EXPLANATION

This rule replaces § 97.3 of the existing rules. We reorganized and rewrote some of the existing definitions to make them more clear. We deleted a number of terms that we did not use in the proposed rules and defined a number of them in the rules where they appear.

Subpart B—Radio Amateur Civil Emergency Service (RACES)

EXISTING RULE

§ 97.161 Basis and purpose.

The Radio Amateur Civil Emergency Service provides for amateur radio operation for civil defense communications purposes only, during periods of local, regional or national civil emergencies, including any emergency which may necessitate invoking of the President's War Emergency Powers under the provisions of section 606 of the Communications Act of 1934, as amended.

§ 97.163 Definitions.

For the purposes of this Subpart, the following definitions are applicable:

(a) *Radio Amateur Civil Emergency Service.* A radiocommunication service conducted by volunteer licensed amateur radio operators, for providing emergency radiocommunications to local, regional, or state civil defense organizations.

* * * * *

PROPOSED HEADING

General information on RACES.

PROPOSED RULE

§ 97.101 (RACES Rule 1) What is the Radio Amateur Civil Emergency Service (RACES)?

RACES is a service of AR operators who volunteer their time and their AR stations to assist local, regional and state civil defense organizations with their radiocommunications during emergencies.

EXPLANATION

This rule replaces § 97.161 and § 97.163(a). We rewrote this rule to give a simple explanation of what RACES is.

EXISTING RULE

§ 97.165 Applicability of rules.

In all cases not specifically covered by the provisions contained in this subpart, amateur radio stations and RACES stations shall be governed by the provisions of the rules governing amateur radio stations and operators (Subpart A through E of this part).

PROPOSED RULE

§ 97.102 (RACES Rule 2) How do I use these rules?

(a) Read and obey the rules. (See AR Rule 52 for the penalties for violation of these rules).

(b) In every case not specifically covered by this Subpart, you must obey Subpart A (Amateur Radio Service Rules) and Subpart D (Technical Standards).

EXPLANATION

We included this section on proper use of the rules to help licensees understand their responsibilities under these rules.

EXISTING RULE

§ 97.175 Amateur radio station registration in civil defense organization.

No amateur radio station shall be operated in the Radio Amateur Civil Emergency Service unless it is certified as registered in a civil defense organization by that organization.

§ 97.177 Operator requirements.

No person shall be the control operator of a RACES station, or shall be the control operator of an amateur radio station conducting communications in the Radio Amateur Civil Emergency Service unless that person holds a valid amateur radio operator license and is certified as enrolled in a civil defense organization by that organization.

PROPOSED RULE

§ 97.103 (RACES Rules 3) Do I need a license?

Before operating a transmitter in the RACES, you must—

(a) Get station authority (see RACES Rule 4);

(b) Get AR operator authority; (see AR Rule 3); *AND*

(c) Get a certificate of enrollment from a civil defense organization.

EXPLANATION

This proposed rule replaces §§ 97.175 and 97.177. We combined these sections in one rule for reader convenience. We coined the term "certificate of enrollment" for these rules. This term replaces the phrases "certified as enrolled" and "certified as registered" in the two existing sections. We especially invite comments on the use of this term. The form of these certificates is left to the civil defense organizations wishing to issue them.

EXISTING RULE

§ 97.169 Station license required.

No transmitting station shall be operated in the Radio Amateur Civil Emergency Service unless:

(a) The station is licensed as a RACES station by the Federal Communications Commission, or

(b) The station is an amateur radio station licensed by the Federal Communications Commission, and is certified by the responsible civil defense organization as registered with that organization.

PROPOSED RULE

§ 97.104 (RACES Rule 4) Is my station eligible for RACES station authority?

Your station may transmit in RACES if you have—

(a) A certificate of enrollment from a civil defense organization (see RACES Rule 6); *AND*

(b) AR station authority (see AR Rule 3); *OR*

(c) A RACES station license.

Note.—only a civil defense organization may get a RACES station license.

EXPLANATION

We rewrote this rule in simpler language to emphasize when a station is eligible for RACES station authority. This proposed rule replaces § 97.169.

EXISTING RULES

§ 97.163 Definitions.

For the purposes of this Subpart, the following definitions are applicable:

(a) *Radio amateur Civil Emergency Service.* A radiocommunication service conducted by volunteer licensed amateur radio operators, for providing emergency radiocommunications to local, regional, or state civil defense organizations.

(b) *RACES station.* An amateur radio station licensed to a civil defense organization, at a specific land location, for the purpose of providing the facilities for amateur radio operators to conduct amateur radiocommunications in the Radio Amateur Civil Emergency Service.

§ 97.171 Eligibility for RACES station license.

(a) A RACES station will only be licensed to a local, regional, or state civil defense organization.

(b) Only modification and/or renewal station licenses will be issued for RACES stations. No new licenses will be issued for RACES stations.

PROPOSED RULE

§ 97.105 (RACES Rule 5) Am I eligible to get a RACES station license?

(a) You are eligible to get a RACES station license, as custodian of the RACES station for your organization, if—

(1) You are the official responsible for all civil defense activities in your locality, region or state; *AND*

(2) Your organization already has a RACES station license. (No new RACES stations licenses are being issued. Only applications for renewal and modification are being accepted).

EXPLANATION

This proposed rule replaces § 97.171 and § 97.163. This rule explains in simple language who is eligible for a RACES station license.

EXISTING RULE

None.

PROPOSED RULE

§ 97.106 (RACES Rule 6) How do I get a certificate of enrollment?

You may contact your local, regional or state civil defense organization and offer your services. If you are accepted, you should ask them for a certificate of enrollment in their organization.

EXPLANATION

There is no existing rule that covers this subject. We added this information because we thought it would be helpful to licensees.

EXISTING RULE

§ 97.173 Application for RACES station license.

(a) Each application for a RACES station license shall be made on the FCC Form 610–B.

* * * * *

PROPOSED HEADING

How to get your RACES license.

PROPOSED RULE

§ 97.107 (RACES Rule 7) How do I apply for a RACES station license?

You apply for a RACES station license by filling out an application (FCC Form 610–B) and sending it to the FCC, Gettysburg, PA 17325.

EXPLANATION

This rule replaces § 97.173(a). We added the address for sending RACES station applications to the FCC.

EXISTING RULE

§ 97.173 Application for RACES station license.

(a) Each application for a RACES station license shall be made on the FCC Form 610–B.

(b) The application shall be signed by the civil defense official responsible for the coordination of all civil defense activities in the area concerned.

(c) The application shall be countersigned by the responsible official for the governmental entity served by the civil defense organization.

(d) If the application is for a RACES station to be in any special manner covered by § 97.41, those showings specified for non-RACES stations shall also be submitted.

PROPOSED RULE

§ 97.108 (RACES Rule 8) What information must I furnish on my application?

You must furnish the following information on your application for a RACES station license:

(a) Your name (civil defense official);

(b) Your current mailing address in the United States;

(c) Your station location;

(d) Your birth date;

(e) Information about your present RACES station license;

(f) Your signature;

(g) Name of your civil defense organization;

(h) Certification by the official responsible for the governmental entity served by your civil defense organization;

(i) Environmental information (see AR Rule 24);

(j) Antenna height information (see AR Rule 25); *AND*

(k) A photocopy, or the original, of your present RACES station license.

EXPLANATION

We rewrote § 97.173 to include more detail on what information must be furnished on the application for a RACES station license.

EXISTING RULE

§ 97.189 Point of communications.

(a) RACES stations may only be used to communicate with:

(1) Other RACES stations;

(2) Amateur radio stations certified as being registered with a civil defense organization, by that organization;

(3) Stations in the Disaster Communications Service;

(4) Stations of the United States Government authorized by the responsible agency to exchange communications with RACES stations;

(5) Any other station in any other service regulated by the Federal Communications Commission, whenever such station is authorized by the Commission, to exchange communications with stations in the Radio Amateur Civil Emergency Service.

(b) Amateur radio stations registered with a civil defense organization may only be used to communicate with:

(1) RACES stations licensed to the civil defense organization with which the amateur radio station is registered;

(2) Any of the following stations upon authorization of the responsible civil defense official for the organization in which the amateur radio station is registered:

(i) Any RACES station licensed to other civil defense organizations;

(ii) Amateur radio stations registered with the same or another civil defense organization;

(iii) Stations in the Disaster Communications Service;

(iv) Stations of the United States Government authorized by the responsible agency to exchange communications with RACES stations;

(v) Any other station in any other service regulated by the Federal Communications Commission, whenever such station is authorized by the Commission to exchange communications with stations in the Radio Amateur Civil Emergency Service.

PROPOSED RULE

§ 97.109 (RACES Rule 9) What kind of operation does my RACES authorization allow?

(a) During periods when your AR station is being operated under RACES authorization (see RACES Rule 3), you may use it only for two-way communications with:

(1) RACES stations licensed to the civil defense organization you are enrolled in; *AND*

(2) Any of the following classes of stations when you are authorized by the civil defense official for the organiztion you are enrolled in:

(i) RACES stations licensed to other civil defense organizations;

(ii) AR stations enrolled in the same civil defense organization as you are:

(iii) Stations licensed in the Disaster Communications Service;

(iv) United States Government stations authorized by the responsible agency to communicate with RACES stations; *AND*

(v) ANY station authorized by the FCC to communicate with RACES stations.

(b) You may use a RACES station only for two-way communications with:

(1) Other RACES stations;

(2) AR stations enrolled in civil defense organizations;

(3) Stations in the Disaster Communications Service;

(4) United States Government stations authorized by the responsible agency to communicate with RACES stations; *AND*

(5) Any station authorized by the FCC to communicate with RACES stations.

EXPLANATION

This rule replaces § 97.189. We reorganized the existing rule section and rewrote it in language that is easier for licensees to understand. We recently issued a Notice of Proposed Rulemaking in Gen. Docket No. 80-7 to abolish the Disaster Communication Service. If this proposal is adopted as a final rule, we will delete the reference to this service.

EXISTING RULES

§ 97.179 Operator privileges.

Operator privileges in the Radio Amateur Civil Emergency Service are dependent upon, and identical to, those for the class of operator license held in the Amateur Radio Service.

§ 97.185 Frequencies available.

(a) All of the authorized frequencies and emissions allocated to the Amateur Radio Service are also available to the Radio Amateur Civil Emergency Service on a shared basis.

(b) In the event of an emergency which necessitates the invoking of the President's War Emergency Powers under the provisions of § 606 of the Communications Act of 1934 as amended, unless otherwise modified or directed, RACES stations and amateur radio stations participating in RACES will be limited in operation to the following:

Frequency or Frequency Bands

	Limitations
KHz:	
1800-1825	1
1975-2000	1
3500-3510	
3510-3516	4
3516-3550	2, 4
3984-4000	
3997	3
7097-7103	4
7103-7125	2, 4
7245-7255	2, 4
14047-14053	4
14220-14230	2, 4
21047-21053	4
MHz	
28.55-28.75	
29.45-29.65	
50.35-50.75	
53.30	3
53.35-53.75	
145.17-145.71	
146.79-147.33	
220.225	5

* * * * *

PROPOSED HEADING

How to operate your station in RACES.

PROPOSED RULE

§ 97.110 (RACES Rule 10) On what frequencies may I transmit?

(a) Your frequency privileges in RACES are the same as the frequency privileges of your AR operator license class in the AR Service (see AR Rule 26).

(b) During an emergency where the President's War Emergency Powers are evoked (see Section 606 of the Communications Act of 1934, as amended), RACES stations may only transmit on the following frequency bands:

kHz

1800-1825
1975-2000
3500-3550
3984-4000
7097-7125
7245-7255
14047-14053
14220-14230
21047-21053
28550-28750
29450-29650

MHz

50.35-50.75
53.30
53.35-53.75
145.17-145.71
146.79-147.33
220.0-225.0

EXPLANATION

We combined existing §§ 97.179 and 97.185 (a) and (b) into this one proposed rule concerning frequencies which may be used in RACES. We thought it would be helpful to licensees to have one rule outlining these frequencies.

EXISTING RULE

§ 97.185 Frequencies available.

* * * * *

(c) *Limitations.* (1) Use of frequencies in the band 1800-2000 kHz is subject to the priority of the LORAN system of radionavigation in this band and to the geographical, frequency, emission, and power limitations contained in § 97.61 governing amateur radio stations and operators (Subparts A through E of this part).

(2) The availability of the frequency bands 3515-3550 kHz, 7103-7125 kHz, 7245-7247 kHz, 7253-7255 kHz, 14220-14222 kHz, and 14228-14230 kHz for use during periods of actual civil defense emergency is limited to the initial 30 days of such emergency, unless otherwise ordered by the Commission.

(3) For use in emergency areas when required to make initial contact with a military unit; also, for communications with military stations on matters requiring coordinations.

(4) For use by all authorized stations only in the continental United States, except that the bands 7245-7255 kHz and 14220-14230 kHz are also available in Alaska, Hawaii, Puerto Rico, and the Virgin Islands.

(5) Those stations operating in the band 220-225 MHz shall not cause harmful interference to the government radiolocation service.

PROPOSED RULE

§ 97.111 (RACES Rule 11) What are the limitations on the use of these frequencies?

(a) You may use the following frequency bands only during the first 30 days of the civil defense emergency:

kHz

3515-3550
7103-7125
7245-7247
14220-14222
14228-14230

Note.—At the end of the 30 days, you must not use these frequencies.

(b) You may use only the following frequencies:

(1) In emergency areas for making initial contact with military units; *AND*

(2) For communications with military stations on matters requiring coordinations;

3997 kHz
53.30 MHz

(c) The following frequencies may only be used in the 48 contiguous states:

kHz

3510-3516
7097-7103
7245-7255
14047-14053
14220-14230
21047-21053

(d) The following frequencies are also available for Alaska, Hawaii, Puerto Rico and the Virgin Islands:

7245-7255 kHz
14220-14230

(e) If you are using the frequency 220-225 MHz, you must not cause harmful interference to stations in the Government radiolocation service.

EXPLANATION

This rule replaces § 07.185(c). We reorganized the information in the existing subsection to make it more clear to users of these rules. We rewrote the rule in simpler language.

EXISTING RULES

§ 97.191 Permissible communications.

All communications in the Radio Amateur Civil Emergency Service must be specifically authorized by the civil defense organization for the area served. Stations in this service may transmit only civil defense communications of the following types:

(a) Communications concerning impending or actual conditions jeopardizing the public safety, or affecting the national defense or security during periods of local, regional, or national civil emergencies:

(1) Communications directly concerning the immediate safety of life or individuals, the immediate protection of property, maintenance of law and order, alleviation of human suffering and need, and the combating of armed attack or sabotage;

(2) Communications directly concerning the accumulation and dissemination of public information or instructions to the civilian population essential to the activities of the civil defense organization or other authorized governmental or relief agencies.

(b) Communications for training drills and tests necessary to ensure the establishment and maintenance of orderly and efficient operation of the Radio Amateur Civil Emergency Service as ordered by the responsible civil defense organization served. Such tests and drills may not exceed a total time of one hour per week.

(c) Brief one way transmissions for the testing and adjustment of equipment.

§ 97.193 Limitations on the use of RACES stations.

* * * * *

(b) All messages which are transmitted in connection with drills or tests shall be clearly identified as such by use of the words "drill" or "test", as appropriate, in the body of the messages.

PROPOSED RULE

§ 97.112 (RACES Rule 12) What communications may I transmit?

(a) You may only transmit civil defense communications directly concerning—

(1) Immediate safety of life;

(2) Immediate protection of property;

(3) Maintenance of law and order;

(4) Alleviation of human suffering and need;

(5) Combatting armed attack and sabotage;

(6) Collection and dissemination of public information or instructions to the civilian population for defense and relief organizations.

(b) You may transmit civil defense communications for training drills and tests ordered by the civil defense organization in which you are enrolled. Such drills and tests must not exceed one hour per week. You must include the words "DRILL" or "TEST" in your messages.

(c) You may transmit brief one-way transmissions for testing and adjustment of your station equipment.

EXPLANATION

We combined existing §§ 97.191 and 97.193(b) into this rule on communications that may be transmitted.

EXISTING RULE

§ 97.193 Limitations on the use of RACES stations.

(a) No station in the Radio Amateur Civil Emergency Service shall be used to transmit or to receive messages for hire, nor for communications for material compensation, direct or indirect, paid or promised.

* * * * *

PROPOSED RULE

§ 97.113 (RACES Rule 13) What communications are prohibited?

(a) You must not transmit any communications unless your civil defense organization authorizes it.

(b) You must not transmit any communications for pay (see AR Rule 35).

EXPLANATION

This rule replaces § 97.193(a). We added to the proposed rule a prohibition against transmitting communications not authorized by the civil defense organization served.

Subpart C—Amateur Satellite (ASAT) Service

EXISTING RULE

§ 97.401 Purposes.

The Amateur-Satellite Service is a radiocommunication service using stations on earth satellites for the same purposes as those of the Amateur Radio Service.

PROPOSED HEADING

General Information on the ASAT Service

PROPOSED RULE

§ 97.201 (ASAT Rule 1) What is the Amateur Satellite (ASAT) Service?

The ASAT Service is for amateur radio operators. They operate their AR stations on earth satellites, and on earth, for the same purposes they use the Amateur Radio Service (see AR Rule 1). An earth satellite is a body which revolves around the planet earth. It has motion determined by the force of attraction of the earth.

EXPLANATION

This rule replaces § 97.401. We rewrote the rule in plain language, and added an explanation of the term "earth satellite", based upon the definition given in Article 1, I.T.U. Radio Regulations. We also included the phrase "and on earth", since these rules do provide for operation of amateur stations on the earth as well as in space.

EXISTING RULE

§ 97.405 Applicability of rules.

The rules contained in this subpart apply to radio stations in the Amateur-Satellite Service. All cases not specifically covered by the provisions of this subpart shall be governed by the provisions of the rules governing amateur radio stations and operators (Subpart A through E of this part).

PROPOSED RULE

§ 97.202 (ASAT Rule 2) How do I use these rules?

(a) Read and obey the rules. (See AR Rule 52 for the penalties for violation of these rules).

(b) In every case not specifically covered by this Subpart, you must obey Subpart A (Amateur Radio Service Rules) and Subpart D (Technical Standards).

EXPLANATION

We included this section on proper use of the rules to help licensees understand their responsibilities under these rules.

EXISTING RULES

§ 97.407 Eligibility for space operation.

Amateur radio stations licensed to Amateur Extra Class operators are eligible for space operation (see § 97.403(a)). The station licensee may permit any amateur radio operator to be the control operator, subject to the privileges of the control operator's class of license (see § 97.7).

§ 97.409 Eligibility for earth operation.

Any amateur radio station is eligible for earth operation (see § 97.403(b)), subject to the privileges of the control operator's class of license (see § 97.7).

§ 97.411 Eligibility for telecommand operation.

Any amateur radio station designated by the licensee of a station in space operation is eligible to conduct telecommand operation with the station in space operation, subject to the privileges of the control operator's class of license (see § 97.7).

PROPOSED RULE

§ 97.203 (ASAT Rule 3) Do I need a license?

(a) Before you may put your AR station in earth operation (see ASAT Rule 4), you must get AR station authority (see AR Rule 4).

(b) Before you may put your AR station in telecommand operation (see ASAT Rule 5), you must—

(1) Get AR station authority (see AR Rule 4); *AND*

(2) Get permission from the person whose AR station in space operation you wish to telecommand.

(c) Before you may put your AR station in space operation (see ASAT Rule 6), you must—

(1) Get an Amateur Extra AR operator class license (see AR Rule 6); *AND*

(2) Get an AR primary station license (see AR Rule 4); *AND*

(3) Notify the FCC (see ASAT Rule 16).

(d) Before you may be the control operator of an AR station either in earth operation, telecommand operation, or space operation you must—

(1) Get AR operator authority (see AR Rule 3); *AND*

(2) Get permission from the person whose AR station you want to operate.

EXPLANATION

This rule replaces § 97.407, § 97.409, and § 97.411. The requirements have been organized for better clarity.

EXISTING RULE

§ 97.403 Definitions

* * * * *

(b) *Earth operation.* Earth-to-space-to-earth amateur radiocommunication by means of radio signals automatically retransmitted by stations in space operation.

PROPOSED RULE

§ 97.204 (ASAT Rule 4) What is earth operation?

Earth operation is earth-to-space transmission, by an AR station, of messages intended to be retransmitted space-to-earth by an AR station, or stations, in space operation.

EXPLANATION

We rewrote the definition for earth operation for improved clarity.

EXISTING RULE

§ 97.403 Definitions.

* * * * *

(c) *Telecommand operation.* Earth-to-space amateur radio communication to initiate, modify, or terminate functions of a station in space operation.

PROPOSED RULE

§ 97.205 (ASAT Rule 5) What is telecommand operation?

Telecommand operation is earth-to-space transmission by an AR station of control messages intended to turn-on, change, or turn-off functions of a station in space operation.

EXPLANATION

We rewrote the definition of telecommand operation for improved clarity.

EXISTING RULE

§ 97.403 Definitions.

(a) *Space operation.* Space-to-earth, and space-to-space, amateur radio communication from a station which is beyond, is intended to go beyond, or has been beyond the major portion of the earth's atmosphere.

PROPOSED RULE

§ 97.206 (ASAT Rule 6) What is space operation?

Space operation is space-to-earth and space-to-space transmission by an AR station which is, or is on, an earth satellite.

EXPLANATION

We rewrote the definition of space operation for improved clarity.

EXISTING RULE

§ 97.415 Frequencies available.

The following frequency bands are available for space operation, earth operation, and telecommand operation:

Frequency Bands

kHz

7000–7100
14000–14250

MHz

21.00–21.45
28.00–29.70
144–146
435–438

GHz

24–24.05

PROPOSED RULE

How to Operate Your AR Station in the ASAT Service

§ 97.207 (ASAT Rule 7) On what frequencies may I transmit?

(a) Your frequency privileges in the ASAT Service are the same as the frequency privileges of your AR operator license class in the AR Service (see AR Rule 26).

(b) AR stations in either earth operation, telecommand operation, or space operation may only transmit on the following frequency bands:

kHz

7000–7100
14000–14250

MHz

21.00–21.45
28.00–29.70
144.00–146.00
435–438.00

GHz

24.00–24.05

EXPLANATION

We rewrote this rule to include information on the frequency privileges being dependent upon the license class held by the control operator.

EXISTING RULE

§ 97.415 Frequencies available.[1]

PROPOSED RULE

§ 97.208 (ASAT Rule 8) What are the limitations on the use of these frequencies?

Your AR station in either earth operation, telecommand operation, or space operation must not cause harmful interference to stations in other radio services operating between 435–438 MHz.

EXPLANATION

We have rewritten the footnote to § 97.415 as a separate rule.

EXISTING RULE

None.

PROPOSED RULE

§ 97.209 (ASAT Rule 9) How do I use my AR station in earth operation?

If your AR station in earth operation transmits in the 435–438 MHz frequency band near a Military Area listed in AR Rule 31, you must get permission from the nearest FCC Field Office and the Military Area Frequency Coordinator.

EXPLANATION

We included the information on using a station in earth operation in a separate rule for the convenience of the user.

EXISTING RULE

§ 97.421 Telecommand operation.

(a) Stations in telecommand operation may transmit special codes intended to obscure the meaning of command messages to the station in space operation.

(b) Stations in telecommand operation are exempt from the station identification requirements of § 97.87.

[1] Stations operating in the Amateur-Satellite Service shall not cause harmful interference to other stations between 435 and 438 MHz (See International Radio Regulations, RR MOD 3644/320A).

(c) Stations in telecommand operation may transmit from within the military areas designated in § 97.61(b)(7) in the frequency band 435–438 MHz with a maximum of 611 watts effective radiated power (1,000 watts effective isotropic radiated power). The transmitting antenna elevation angle between the lower half-power (—3 decibels relative to the peak or antenna bore sight) point and the horizon must always be greater than 10°.

PROPOSED RULE

§ 97.210 (ASAT Rule 10) How do I use my AR station in telecommand operation?

(a) Your AR station in telecommand operation may transmit one-way control messages to an AR station in space operation using special codes intended to obscure the meaning of the messages.

(b) You do not have to identify your communications (AR Rule 41) with your AR station call sign when it is in telecommand operation.

(c) Your AR station in telecommand operation may transmit in the 435–438 MHz frequency band near the Military Areas listed in AR Rule 31 without obtaining permission from the nearest FCC Field Office and the Military Area Frequency Coordinator; *IF,*

(1) The elevation angle between the lower half-power point of your AR station transmitting antenna and the horizon is at lease 10 degrees; *AND,*

(2) The effective radiated power (ERP) of your AR station does not exceed 611 watts.

EXPLANATION

We have rewritten this rule for improved clarity.

EXISTING RULE

§ 97.417 Space operation.

(a) Stations in space operation are exempt from the station identification requirements of § 97.87 on each frequency band when in use.

(b) Stations in space operation may automatically retransmit the radio signals of other stations in earth operation, and space operation.

(c) Stations in space operation are exempt from the control operator requirements of § 97.79 and from the provisions of § 97.88 pertaining to the operation of a station by remote control.

(d) Stations in space operation are exempt from the station log requirements of § 97.103.

PROPOSED RULE

Information on Requirements for Space Operation

§ 97.211 (ASAT Rule 11) When may my AR station be in space operation?

Your AR station may be in space operation if:

(a) You have notified the FCC about your AR station in space operation (see ASAT Rule 16); *AND*

The FCC has not ordered your AR station to stop transmitting; *AND*

(c) If the transmissions can be stopped by command messages transmitted by AR station(s) in telecommand operation; *AND*

(d) There are in place AR station(s) authorized by the FCC (see AR Rule 3) which are capable of being in telecommand operation. These AR stations must be able to stop your AR station in space operation from transmitting if the FCC orders you to stop it.

EXPLANATION

We rewrote this rule for improved clarity.

EXISTING RULE

§ 97.413 Space operations requirements.

An amateur radio station may be in space operation where:

(a) The station has not been ordered by the Commission to cease radio transmissions.

(b) The station is capable of effecting a cessation of radio transmissions by commands transmitted by station(s) in telecommand operation whenever such cessation is ordered by the Commission.

(c) There are, in place, sufficient amateur radio stations licensed by the Commission capable of telecommand operation to effect cessation of space operation, whenever such is ordered by the Commission.

(d) The notifications required by § 97.423 are on file with the Commission.

PROPOSED RULE

§ 97.212 (ASAT Rule 12) How do I use my AR station in space operation?

(a) Your AR station in space operation may—

(1) Transmit from anywhere beyond the major portion of the earth's atmosphere; AND

(2) Transmit telemetry messages; AND

(3) Retransmit communications of AR stations in earth operation, live or delayed; AND

(4) Retransmit communications of other AR stations in space operation, live or delayed.

(b) When your AR station is in space operation—

(1) You do not have to identify its communications (AR Rule 41) with your AR station call sign; AND

(2) The control operator (AR Rule 37) does not have to be at the control point; AND

(3) You do not have to post information (AR Rule 43).

EXPLANATION

We wrote this rule to include all of the specialized information about operating a station in space operation.

EXISTING RULE

§ 97.403 Definitions.

* * * * *

(d) *Telemetry.* Space-to-earth transmissions, by a station in space operation, of results of measurements made in the station, including those relating to the function of the station.

PROPOSED

§ 97.213 (ASAT Rule 13) What are telemetry messages?

Telemetry messages are space-to-earth transmissions by an AR station in space operation about results of measurements made in the AR station. The measurements must be about the electrical and mechanical condition of the station, and about the AR station environment.

EXPLANATION

We have expanded the definition of telemetry to include more information given in Article 1, ITU Radio Regulations.

EXISTING RULE

§ 97.419 Telemetry.

(a) Telemetry transmission by stations in space operation may consist of specially coded messages intended to facilitate communications.

PROPOSED RULE

§ 97.214 (ASAT Rule 14) May telemetry messages be coded?

Your AR station in space operation may transmit telemetry messages using special codes to simplify their transmission and reception.

EXPLANATION

We rewrote this rule to make clear the conditions under which special codes can be used for telemetry.

EXISTING RULE

None.

How to Notify the FCC of Space Operation

PROPOSED RULE

§ 97.215 (ASAT Rule 15) Why must I notify the FCC?

(a) You must send the FCC pre-space operation notifications (see ASAT Rule 18) of your intention to put your AR station in space operation. The information you send will be used for:

(1) The international advance publication procedure; *AND*

(2) International coordination (if your space operation is to be in geostationary orbit); *AND*

(3) Maintaining records of space operation conducted under FCC authorization.

(b) You must send the FCC an in-space operation notification (see ASAT Rule 22) after you put your AR station in space operation. The information you send will be used to maintain records of space operation conducted under FCC authorization.

(c) You must send the FCC a post-space operation notification (see ASAT Rule 23) after you take your AR station out of space operation. The information you send will be used to maintain records of space operation under FCC authorization.

EXPLANATION

We included this rule to explain the notifications required and the uses of the information.

EXISTING RULE

§ 97.423 Notification required.

* * * * *

(b) *Pre-space operation notification.* (1) Three notifications are required prior to initiating space operation. They are:

First notification. Required no less than twenty-seven months prior to initiating space operation.

Second notification. Required no less than fifteen months prior to initiating space operation.

Third notification. Required no less than three months prior to initiating space operation.

PROPOSED RULE

§ 897.216 (ASAT Rule 16) When do I send the FCC my notifications?

(a) You must send the FCC your first pre-space operation notification (see ASAT Rule 18) at least 27 months before you put your AR station in space operation.

(b) You must send the FCC your second pre-space operation notification at least 15 months before you put your AR station in space operation.

(c) You must send the FCC our third pre-space operation notification at least 90 days before you put your AR station in space operation.

(d) You must send the FCC your in-space operation notification (see ASAT Rule 33) within seven days after you place your AR station in space operation.

(e) You must send the FCC your post-space operation notification (see ASAT Rule 23) within ninety days after you have taken your AR station from space operation. You must send your post-space operation notification within 24-hours after you have taken your station from space operation, if the FCC orders you to stop your space operation.

EXPLANATION

We rewrote this rule for improved clarity.

EXISTING RULE

§ 97.423 Notification required.

(a) The licensee of every station in space operation shall give written notifications to the Private Radio Bureau, Federal Communications Commission, Washington, DC 20554.

PROPOSED RULE

§ 97.217 (ASAT Rule 17) Where do I send my notifications?

You must send your space operation notifications to:

Private Radio Bureau, Federal Communications Commission, Washington, DC 20554

EXPLANATION

We rewrote this rule for improved clarity.

EXISTING RULE

§ 97.423 Notification required

* * * * *

(b) * * *. (2) The pre-space operation notification shall consist of:

Space operation date. A statement of the expected date space operations will be initiated, and a prediction of the duration of the operation.

Identity of satellite. The name by which the satellite will be known.

Service area. A description of the geographic area on the Earth's surface which is capable of being served by the station in space operation. Specify for both the transmitting and receiving antennas of this station.

PROPOSED RULE

§ 97.218 (ASAT Rule 18) What information must I furnish in my pre-space operation notifications?

(a) You must furnish the following information in your first pre-space notifications:

(1) Your name, address, AR operator class and AR station call sign;

(2) The date you expect to put your AR station in space operation;

(3) The length of time you expect to have your AR station in space operation;

(4) The name by which your AR station in space operation will be known;

(5) A description of the geographic area on the earth's surface where your AR station in space operation may be used by AR stations in earth operation (service area);

(6) Specifications for the type of receiving and transmitting antennas necessary for AR stations in earth operation to use your station in space operation;

(7) A description of the orbital parameters (see ASAT Rule 19) you expect for your AR station in earth operation;

(8) A description of the technical parameters (see ASAT Rule 20) for—

(i) Your AR station in space operation; *AND*

(ii) An AR station suitable for earth operation with your AR station in space operation; *AND*

(iii) An AR station suitable for telecommand operation with your AR station in space operation.

(b) You must furnish the same type of information in your second pre-space operation notification that is required for your first notification. You must explain any information in your second notification that is different from your first notification.

(c) You must furnish the same type of information in your third pre-space operation notification that is required for your first and second pre-space operation notifications. You must explain any information that is different from your first and second notifications.

EXPLANATION

We have reorganized the notification requirements for improved clarity.

EXISTING RULE

§ 97.423 Notification required.

* * * * *

(b) * * *

(2) *Orbital Parameters.* A description of the anticipated orbital parameters as follows:

Non-Geostationary Satellite

(1) Angle of inclination
(2) Period
(3) Apogee (kilometers)
(4) Perigee (kilometers)
(5) Number of satellites having the same orbital characteristics

Geostationary Satellite

(1) Nominal geographical longitude
(2) Longitudinal tolerance
(3) Inclination tolerance
(4) Geographical longitudes marking the extremities of the orbital arc over which the satellite is visible at a minimum angle of elevation of 10° at points within the associated service area
(5) Geographical longitudes marking the extremities of the orbital arc within which the satellite must be located to provide communications to the specified service area
(6) Reason when the orbital arc of (5) is less than that of (4)

PROPOSED RULE

§ 97.219 (ASAT Rule 19) What orbital parameters must I furnish?

(a) If your AR station in space operation will be a non-geostationary satellite, you must furnish the following orbital parameters in your prespace operation notifications (see ASAT Rule 18)

(1) Angle of inclination;
(2) Period;
(3) Apogee (in kilometers);
(4) Perigee (in kilometers);
(5) Number of satellites having the same characteristics.

(b) If your AR station in space operation will be a geostationary satellite, you must furnish the following orbital parameters:

(1) Nominal geographical longitude;
(2) Longitudinal tolerance;
(3) Inclination tolerance;
(4) Geographical longitudes marking the extremities of the orbital arc—
(i) Over which the satellite is visible at a minimum angle of 10 degrees at points within the service area (see ASAT Rule 18);
(ii) Within which the satellite must be located to provide communications to the service area. (If the orbital arc of (ii) is less than (i), you must furnish a reason.)

EXPLANATION

This rule was revised to state as simply as possible what information must be furnished.

EXISTING RULE

§ 97.423 Notification required.

* * * * *

(b) * * *

(2) *Technical Parameters.* A description of the proposed technical parameters for:

(1) the station in space operation; and
(2) a station in earth operation suitable for use with the station in space operation; and
(3) a station in telecommand operation suitable for use with the station in space operation.

The description shall include:

(1) Carrier frequencies if known; otherwise give frequency range where carrier frequencies will be located
(2) Necessary bandwidth
(3) Class of emission
(4) Total Peak Power
(5) Maximum power density (watts/Hz)
(6) Antenna radiation pattern [1]
(7) Antenna gain (main beam)[1]
(8) Antenna pointing accuracy (geostationary satellites only)[1]
(9) Receiving system noise temperature [2]
(10) Lowest equivalent satellite link noise temperature [3]

PROPOSED RULE

§ 97.220 (ASAT Rule 20) What technical parameters must I furnish?

You must furnish the following technical parameters in your pre-space operation notifications (see ASAT Rule 18):

(a) Transmitting reference frequencies, if known; *OR*

(1) Frequency bands where transmitting reference frequencies will be located; *AND*

(b) Transmitting bandwidth;
(c) Transmitting emissions;
(d) Transmitting effective radiated power;
(e) Spectrum power density (in watts per Hertz)
(f) Transmitting and receiving antenna radiation patterns;
(g) Transmitting and receiving antenna main beam gain (over an isotropic antenna);
(h) Transmitting and receiving antenna pointing accuracy (for a geostationary satellite only);
(i) Receiving system noise temperature (for your AR station in space operation only);
(j) Lowest equivalent satellite link noise temperature (see ASAT Rule 21).

EXPLANATION

This rule was revised to state as simply as possible what information must be furnished.

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[1] These antenna characteristics shall be provided for both transmitting and receiving antennas.

[2] For a station in space operation.

[3] The total noise temperature at the input of a typical amateur radio station receiver shall include the antenna noise (generated by external sources (ground, sky, etc.) peripheral to the receiving antenna and noise re-radiated by the satellite), plus noise generated internally to the receiver. The additional receiver noise is above thermal noise, kT_oB.

Referred to the antenna input terminals, the total system noise temperature is given by

$$T_s = T_a + (L-1)T_o + LT_r$$

where:

T_a: antenna noise temperature

L: line losses between antenna output terminals and receiver input terminals

T_o: ambient temperature, usually given as 290°K

T_r: receiver noise temperature, this is also given as $(NF-1)T_o$, where NF is receiver noise figure.

EXISTING RULE

§ 97.423 Notification required.

PROPOSED RULE

§ 97.221 (ASAT Rule 21) How do I determine the lowest equivalent satellite link noise temperature?

You must determine the lowest equivalent satellite link noise temperature is in your pre-space operation notification (see ASAT Rule 18) as follows:

(a) You may calculate the lowest equivalent satellite pink noise temperature using this formula:

LESLNT=TNDP+TNUP+IMDN÷T
NDP×ESNT
where:
LESLNT is the Lowest Equivalent Satellite Link Noise Temperature
TNUP is the Thermal Noise (up-path)
TNDP is the Thermal Noise (down-path)
IMDN is the Intermodulation Noise
ESNT is the AR station in earth operation's Noise Temperature

(b) You may contact the Office of Science and Technology, FCC, Washington, DC for help in determining your LESLNT.

EXPLANATION

This rule is a plain language version of the information required by Appendix 1A, Section C, Item 9 of the International Radio Regulations.

EXISTING RULE

§ 97.423 Notification required.

* * * * *

(c) *In-space operation notification.* Notification is required after space operation has been initiated. The notification shall update the information contained in the pre-space operation notification. In-space operation notification is required no later than seven days following initiation of space operation.

PROPOSED RULE

§ 97.222 (ASAT Rule 22) What information must I furnish in my in-space operation notification?

In your in-space operation notification, you must up-date the information you furnished the FCC before you began space operation. (See ASAT Rules 18, 19, 20, and 21).

EXPLANATION

This rule was revised to simplify its wording and to make clear what information must be furnished.

EXISTING RULE

§ 97.423 Notification required

* * * * *

(d) *Post-space operation notification.* Notification of termination of space operation is required no later than three months after termination is complete. If the termination is ordered by the Commission, notification is required no later than twenty-four hours after termination is complete.

PROPOSED RULE

§ 97.223 (ASAT Rule 23) What information must I furnish in my post-space operation notification?

In your post-space operation notification, you must inform the FCC that your AR station in space operation has stopped transmitting.

EXPLANATION

This rule was revised to simplify its wording and to make clear what information must be furnished.

Subpart D—Technical (TEC) Standards

EXISTING RULE

None.

PROPOSED HEADING

General Information on Technical Standards

PROPOSED RULE

§ 97.301 (TEC Rule 1) What are technical standards?

Technical standards are rules. They list the minimum performance the FCC will allow for transmissions from your station.

EXPLANATION

We included this proposed rule to give readers a brief summary of what technical standards are.

EXISTING RULE

None.

PROPOSED RULE

§ 97.302 (TEC Rule 2) How do I use these rules?

(1) Read and follow these technical standards.

(2) You must make sure that your AR station, and any other AR station when you are the control operator, transmits only radio signals which at least meet these technical standards.

(3) If the FCC monitors your AR station's transmissions, and determines that they do not at least meet these technical standards, you will receive a discrepancy notification.

(4) If an FCC representative inspects your AR station, you must cooperate with him/her. If he/she determines that your station transmissions do not at least meet these technical standards, you will receive a discrepancy notification.

EXPLANATION

We included this proposed rule to help licensees understand their responsibilities to comply with these technical standards.

EXISTING RULES

§ 97.65 Emission limitations.

(a) Type A0 emission, where not specifically designated in the bands listed in § 97.61, may be used for short periods of time when required for authorized remote control purposes or for experimental purposes. However, these limitations do not apply where type A0 emission is specifically designated.

(b) Whenever code practice, in accordance with § 97.91(d), is conducted in bands authorized for A3 emission, tone modulation of the radiotelephone transmitter may be utilized when interpersed with appropriate voice instructions.

(c) On frequencies below 29.0 MHz, the bandwidth of an F3 emission (frequency or phase modulation) shall not exceed that of an A3 emission having the same audio characteristics.

(d) On frequencies below 50 MHz, the bandwidth of A5 and F5 emissions shall not exceed that of an A3 single sideband emission.

(e) On frequencies between 50 MHz and 225 MHz, single sideband or double sideband A5 emission may be used and the bandwidth shall not exceed that of an A3 single sideband or double sideband signal respectively. The bandwidth of F5 emission shall not exceed that of an A3 single sideband emission.

(f) Below 225 MHz, A3 and A5 emissions may be used simultaneously on the same carrier frequency provided the total bandwidth does not exceed that of an A3 double sideband emission.

Appendix 3.—Classification of emissions

For convenient reference the tabulation below is extracted from the classification of typical emissions in Part 2 of the Commission's Rules and Regulations and in the Radio Regulations, Geneva, 1959, and it includes only those general classifications which appear most applicable to the Amateur Radio Service.

Type of modulation	Type of transmission	Symbol
Amplitude	With no modulation	A0
	Telegraph without the use of modulating audio frequency (by on-off keying).	A1
	Telegraphy by the on-off keing of an amplitude modulating audio frequency or audio frequencies or by the on-off keying of the modulated emission (special case; an unkeyed emission amplitude modulated).	A2
	Telephony	A3[1]
	Facsimile	A4
	Television	A5
Frequency (or phase)	Telegraphy by frequency shift keying without the use of a modulating audio frequency.	F1
	Telgraphy by the on-off keying of a frequency modulating audio frequency or by the on-off keying of frequency modulated emission (special case; an unkeyed emission frequency modulated).	F2
	Telephony	F3
	Facsimile	F4
	Television	F5
Pulse		P

[1] (In part 97) Unless specified otherwise, A3 includes single and double sideband with full, reduced, or suppressed carrier.

PROPOSED HEADING

Information on Requirements.

PROPOSED RULE

§ 97.303 (TEC Rule 3) What are emissions?

(a) Radio emissions are transmissions of energy from your AR station. These rules use symbols for the various types of emissions allowed in the Amateur Telecommunications Services.

(b) Emission symbols indicate how your transmitter reference frequency (sometimes called "carrier") is modulated. For the Amateur Telecommunications Services, the symbols are as follows:

If your transmitter reference frequency is—	Symbol
Unmodulated	A0; F0
Keyed on and off	A1
Switched between two frequencies (frequency shift keying).	F1
Amplitude modulated by:	
Tone(s) keyed on and off	A2
Voice	A3
Facsimile (images for viewing in a permanent form).	A4
Television (images for viewing in a temporary form).	A5
Frequency or phase modulated by:	
Tone(s) keyed on and off	F2
Switched tones (audio frequency shift keying)	F2
Voice	F3
Facsimile	F4
Television	F5
Pulse modulated in:	
Amplitude	P
Width	P
Phase	P

(c) Amplitude modulation includes both single and double sideband, with full, reduced (at least 16 decibels below the PEP of the total emission), and suppressed (at least 40 decibels below the PEP of the total emission) reference frequency.

(d) Tones used with voice are considered A3 or F3 emissions.

(e) Emissions used for turning remote devices on and off are considered A1, F1, A2 or F2, as appropriate.

(f) When your single sideband (suppressed reference frequency) is modulated with a single tone of a constant level, you may consider the emission to be as follows:

If the tone is—	Symbol
Keyed on and off	A1
Switched between two frequencies	F1
Varied by television	F5

(g) "Tones" are frequencies between 15 Hertz and 20,000 Hertz.

EXPLANATION

This proposed rule includes an explanation of radio emissions, as the terms are used in these rules. In the interest of simplification, we have taken certain liberties with the terms. We believe the more complex definitions are inappropriate for the Amateur Telecommunications Services, and our simplified definitions are sufficient.

EXISTING RULES

§ 97.93 Modulation of carrier.

Except for brief tests or adjustments, an amateur radiotelephone station shall not emit a carrier wave on frequencies below 51 megahertz unless modulated for the purpose of communication. Single audiofrequency tones may be transmitted for test purposes of short duration for the development and perfection of amateur radio telephone equipment.

§ 97.61 Authorized frequencies and emissions.

(a) The following frequency bands and associated emissions are available to amateur radio stations for amateur radio operation, other than repeater operation and auxiliary operation, subject to the limitations of § 97.65 and paragraph (b) of this section:

Frequency band	Emissions	Limitations (see paragraph (b))
kHz:		
1800–2000	A1, A3	1,2
3500–4000	A1	
3500–3775	F1	
3775–3890	A5, F5	
3775–4000	A3, F3	4
4383.8	A3J/A3A	13
7000–7300	A1	3, 4
7000–7150	F1	3, 4
7075–7100	A3, F3	11
7150–7225	A5, F5	3, 4
7150–7300	A3, F3	3, 4
14000–14350	A1	
14000–14200	F1	
14200–14275	A5, F5	
14200–14350	A3, F3	
MHz:		
21.000–21.450	A1	
21.000–21.250	F1	
21.250–21.350	A5, F5	
21.250–21.450	A3, F3	
28.000–29.700	A1	
28.000–28.500	F1	
28.500–29.700	A3, F3, A5, F5	
50.0–54.0	A1	
50.1–54.0	A2, A3, A4, A5, F1, F2, F3, F5	
51.0–54.0	A0	
144–148	A1	
144.1–148.0	A0, A2, A3, A4, A5, F0, F1, F2, F3, F5	
220–225	A0, A1, A2, A3, A4, A5, F0, F1, F2, F3, F4, F5	
420–450	A0, A1, A2, A3, A4, A5, F0, F1, F2, F3, F4, F5	5,7
1215–1300	A0, A1, A2, A3, A4, A5, F0, F1, F2, F3, F4, F5	5
2300–2450	A0, A1, A2, A3, A4, A5, F0, F1, F2, F3, F4, F5	5, 8
3300–3500	A0, A1, A2, A3, A4, A5, F0, F1, F2, F3, F4, F5, P	5, 12
5650–5925	A0, A1, A2, A3, A4, A5, F0, F1, F2, F3, F4, F5, P	5, 9
GHz:		
10.000–10.500	A0, A1, A2, A3, A4, A5, F0, F1, F2, F3, F4, F5	5
24.000–24.250	A0, A1, A2, A3, A4, A5, F0, F1, F2, F3, F4, F5, P	5, 10
48.000–50.000	A0, A1, A2, A3, A4, A5, F0, F1, F2, F3, F4, F5, P	
71.000–76.000	A0, A1, A2, A3, A4, A5, F0, F1, F2, F3, F4, F5, P	
165.000–170.000	A0, A1, A2, A3, A4, A5, F0, F1, F2, F3, F4, F5, P	
240.000–250.000	A0, A1, A2, A3, A4, A5, F0, F1, F2, F3, F4, F5, P	
Above 300.000	A0, A1, A2, A3, A4, A5, F0, F1, F2, F3, F4, F5, P	

PROPOSED RULE

§ 97.304 (TEC Rule 4) On what frequencies may my station transmit the various emissions?

(a) Your station may transmit the emissions listed in the following table within the frequency bands indicated.

Frequency band	Emissions
kHz:	
1800–2000	A1, A3
3500–4000	A1
3500–3775	F1
3775–3890	A5, F5
3775–4000	A3, F3
4383.8	A3J/A3A
7000–7300	A1
7000–7150 [1]	F1, F3
7075–7100	A3, F3
7150–7225	A5, F5
7150–7300	A3, F3
14000–14350	A1
14000–14200	F1, F5
14200–14275	A5, F5
14200–14350	A3, F3
MHz:	
21.000–21.450	A1
21.000–21.250	F1, F5
21.250–21.350	A5, F5
21.250–21.450	A3, F3
28.000–29.700	A1
28.000–28.500	F1, F3, A5, F5
28.500–29.700	A3, F3, A5, F5
50.0–54.0	A1, A3, A4, A5, F1, F2, F3, F5
50.1–54.0	A2, A3, A4, A5, F1, F2, F3, F5
51.0–54.0	A0
144–143	A1, A2, A3, A4, A5, F0, F1, F2, F3, F5
144.1–148.0	A0, A1, A2, A3, A4, A5, F0, F1, F2, F3, F4, F5
220–225	A0, A1, A2, A3, A4, A5, F0, F1, F2, F3, F4, F5
420–450	A0, A1, A2, A3, A4, A5, F0, F1, F2, F3, F4, F5
1215–1300	A0, A1, A2, A3, A4, A5, F0, F1, F2, F3, F4, F5
2300–2450	A0, A1, A2, A3, A4, A5, F0, F1, F2, F3, F4, F5, P
3300–3500	A0, A1, A2, A3, A4, A5, F0, F1, F2, F3, F4, F5, P
5650–5925	A0, A1, A2, A3, A4, A5, F0, F1, F2, F3, F4, F5, P
GHz:	
10.000–10.500	A0, A1, A2, A3, A4, A5, F0, F1, F2, F3, F4, F5
24.000–24.250	A0, A1, A2, A3, A4, A5, F0, F1, F2, F3, F4, F5, P
49.000–50.000	A0, A1, A2, A3, A4, A5, F0, F1, F2, F3, F4, F5, P
71.000–76.000	A0, A1, A2, A3, A4, A5, F0, F1, F2, F3, F4, F5, P
165.000–170.000	A0, A1, A2, A3, A4, A5, F0, F1, F2, F3, F4, F5, P
240.000–250.000	A0, A1, A2, A3, A4, A5, F0, F1, F2, F3, F4, F5, P
Above 300.000	A0, A1, A2, A3, A4, A5, F0, F1, F2, F3, F4, F5, P

[1] Within ITU Regions 1 and 3 only.

(b) Type A0 emissions may also be used for up to one full minute during any five minute period while making adjustments or measurements on frequencies where A0 is not listed.

EXPLANATION

This proposed rule replaces portions of § 97.61 and all of § 97.93. We reorganized these existing sections to create one proposed rule that covers what frequencies licensees can use to transmit the various emissions.

EXISTING RULE

§ 97.63 Selection and use of frequencies.

* * * * *

(b) Sideband frequencies resulting from keying or modulating a carrier wave shall be confined within the authorized amateur band.

PROPOSED RULE

§ 97.305 (TEC Rule 5) What are the technical standards for sideband emissions?

Transmissions from your station, including the reference frequency and

information sidebands, must all be within the authorized frequency band (see TEC Rule 4).

EXPLANATION

We replaced § 97.63(b) with this proposed rule. We thought it would be helpful to licensees to have a separate rule on technical standards for sideband emissions.

§ 97.71 Transmitter power supply.

The licensee of the amateur station using frequencies below 144 megahertz shall use adequately filtered direct-current plate power supply for the transmitting equipment to minimize modulation from this source.

EXISTING RULES

§ 97.73 Purity of emissions.

(a) Except for a transmitter or transceiver built before April 15, 1977 or first marketed before January 1, 1978, the mean power of any spurious emission or radiation from an amateur transmitter, transceiver, or external radio frequency power amplifier being operated with a carrier frequency below 30 MHz shall be at least 40 decibels below the mean power of the fundamental without exceeding the power of 50 milliwatts. For equipment of mean power less than five watts, the attenuation shall be at least 30 decibels.

(b) Except for a transmitter or transceiver built before April 15, 1977 or first marketed before January 1, 1978, the mean power of any spurious emission or radiation from an amateur transmitter, transceiver, or external radio frequency power amplifier being operated with a carrier frequency above 30 MHz but below 235 MHz shall be at least 60 decibels below the mean power of the fundamental. For a transmitter having a mean power of 25 watts or less, the mean power of any spurious radiation supplied to the antenna transmission line shall be at least 40 decibels below the mean power of the fundamental without exceeding the power of 25 microwatts, but need not be reduced below the power of 10 microwatts.

(c) Paragraphs (a) and (b) of this section notwithstanding, all spurious emissions or radiation from an amateur transmitter, transceiver, or external radio frequency power amplifier shall be reduced or eliminated in accordance with good engineering practice.

(d) If any spurious radiation, including chassis or power line radiation, causes harmful interference to the reception of another radio station, the licensee may be required to take steps to eliminate the interference in accordance with good engineering practice.

Note.—For the purposes of this section, a spurious emission or radiation means any emission or radiation from a transmitter, transceiver, or external radio frequency power amplifier which is outside of the authorized Amateur Radio Service frequency band being used.

PROPOSED RULE

§ 97.306 (TEC Rule 6) What are the technical standards for spurious emissions?

(a) Spurious emissions are unwanted transmissions from your station which are outside the authorized frequency band (see TEC Rule 4) in which your AR station is transmitting.

(b) You must reduce or eliminate any spurious emissions from your station which cause harmful interference to reception at another radio station.

(c) If your AR station transmitter, or radio frequency power amplifier, was built after April 14, 1977 or first marketed after December 31, 1977, and is transmitting on frequencies—

(1) Below 29.7 MHz, the mean power (MP) of any spurious emissions must—

(i) Never be more than 50 milliwatts;

(ii) Be at least 30 decibels below the MP of the fundamental emission, if the MP output is less than 5 watts; *AND*

(iii) Be at least 40 decibels below the MP of the fundamental emission, if the MP output is 5 watts or more.

(2) Between 50 and 235 MHz, any spurious emission must—

(i) Never be more than 25 microwatts MP;

(ii) Be at least 40 decibels below the MP of the fundamental emission, if the MP output is less than 25 watts, but may be as much as 10 microwatts; *AND*

(iii) Be at least 60 decibels below the MP of the fundamental emission if the MP output is 25 watts or more, but may be as much as 10 micro-watts.

EXPLANATION

This rule replaces § 97.73. We rewrote and reorganized the existing rule to make it easier for licensees to read and understand. We deleted § 97.71 because it is obsolete.

EXISTING RULE

§ 97.65 Emission limitations.

* * * * *

(c) On frequencies below 29.0 MHz, the bandwidth of an F3 emission (frequency or phase modulation) shall not exceed that of an A3 emission having the same audio characteristics.

* * * * *

(f) Below 225 MHz, A3 and A5 emissions may be used simultaneously on the same carrier frequency provided the total bandwidth does not exceed that of an A3 double sideband emission.

PROPOSED RULE

§ 97.307 (TEC Rule 7) What are the technical standards for voice transmissions?

(a) The bandwidth of an A3 emission may not be more than 7 kHz.

(b) On frequencies below 29.0 MHz, the bandwidth of an F3 emission may not be more than 7 kHz.

EXPLANATION

This rule replaces § 97.65 (c) and (f). We devoted an entire rule to this subject to stress the importance of licensees complying with technical standards for voice transmissions. We are proposing to simplify the bandwidth limitations in this rule by referring to an actual bandwidth rather than to another measurement. We are proposing the 7 kHz bandwidth to make it agree with our measurement technique in Tec Rule 11.

EXISTING RULE

§ 97.65 Emission limitations.

* * * * *

(d) On frequencies below 50 MHz, the bandwidth of A5 and F5 emissions shall not exceed that of an A3 single sideband emission.

(e) On frequencies between 50 MHz and 225 MHz, single sideband or double sideband A5 emission may be used and the bandwidth shall not exceed that of an A3 single sideband or double sideband signal respectively. The bandwidth of F5 emission shall not exceed that of an A3 single sideband emission.

(f) Below 225 MHz, A3 and A5 emissions may be used simultaneously on the same carrier frequency provided the total bandwidth does not exceed that of an A3 double sideband emission.

PROPOSED RULE

§ 97.308 (TEC Rule 8) What are the technical standards for video transmissions?

(a) On frequencies below 50 MHz, the bandwidth of A5 and F5 emissions may not be more than 3.5 kHz.

(b) On frequencies between 50 MHz and 225 MHz, you may use single or double sideband A5 emissions. The bandwidth may not be more than 7 kHz. The bandwidth of an F5 emission may not be more than 3.5 kHz.

(c) Below 225 MHz, you may use A3 and A5 emission simultaneously with the same reference frequency, if the total bandwidth is not more than 7 kHz.

EXPLANATION

This rule replaces § 97.65(d)-(f). We organized this material into a single rule to emphasize its importance. We are proposing in this rule, as we proposed in TEC Rule 7, to refer to an actual bandwidth limitation rather than to another measurement.

EXISTING RULE

§ 97.69 Digital transmissions.

Subject to the special conditions contained in paragraphs (a) and (b) of this section, the use of the International Telegraphic Alphabet No. 2 (also known as the Baudot Code) and the American Standard Code for Information Interchange (ASCII) may be used for such purposes as (but not restricted to) radio teleprinter communications, control of amateur radio stations, models and other objects, transfer of computer programs or direct computer-to-computer communications, and communications in various types of data networks (including so-called "packet switching" systems); provided that such operation is carried out in accordance with the other regulations set forth in this Part.

(a) Use of the International Telegraphic Alphabet No. 2 (Baudot Code) is subject to the following requirements:

(1) Transmission shall consist of a single channel, five-unit (start-stop) teleprinter code conforming to International Telegraphic Alphabet No. 2 with respect to all letters and numerals (including the slant sign or fraction bar); however, in "figures" positions not utilized for numerals, special signals may be employed for the remote control of receiving printers, or for other purposes indicated in this section.

(2) The transmitting speed shall be maintained within 5 words per minute of one of the following standard speeds: 60 (45 bauds), 67 (50 bauds), 75 (56.25 bauds) or 100 (75 bauds) words per minute.

(3) When frequency shift keying (type F1 emission) is utilized, the deviation in frequency from the mark signal to the space signal, or from the space signal to the mark signal, shall be less than 900 Hertz.

(4) When audio frequency shift keying (type A2 or F2 emission) is utilized, the highest fundamental modulating frequency shall not exceed 3000 Hertz, and the difference between the modulating audio frequency for the mark signal and that for the space signal shall be less than 900 Hertz.

(b) Use of the American Standard Code for Information Interchange (ASCII) is subject to the following requirements:

(1) The code shall conform to the American Standard Code for Information Interchange (ASCII) as defined in American National Standard Institute (ANSI) Standard X3.4–1968.

(2) F1 emission shall be utilized on those frequencies between 3.5 and 21.25 MHz where its use is permissible; and the sending speed shall not exceed 300 bauds.

(3) F1, F2 and A2 emissions may be utilized on those frequencies between 28 and 225 MHz where there use is permissible; and the sending speed shall not exceed 1200 bauds.

(4) F1, F2 and A2 emissions may be utilized on those frequencies above 420 MHz where their use is permissible; and the sending speed shall not exceed 19.6 kilobauds.

PROPOSED RULE

§ 97.309 (TEC Rule 9) What are the technical standards for digital transmissions?

(a) Your AR station may transmit messages using a single channel, five-unit (start-stop) teleprinter ("RTTY") code if you use—

(1) The International Telegraphic Alphabet No. 2 (Baudot code) for letters, numerals and slant bar (You may also use the remaining positions in the code);

(2) The following transmitting speeds (plus or minus 5 words per minute):

(i) 60 words per minute (45 baud);

(ii) 67 words per minute (50 baud);

(iii) 75 words per minute (56.25 baud); *AND*

(iv) 100 words per minute (75 baud);

(3) No more than 900 Hertz difference between the mark and space signals, when using F1 emission (see TEC Rule 3); *OR*

(4) No more than 3000 Hertz for either the mark or space tones when using A2 or F2 emission (see TEC Rule 3, and no more than 900 Hertz difference between the mark and space tones.

(b) Your AR station may transit messages using the American Standard Code for Information Interchange (ASCII) if you use—

(1) The American National Standard Institute Standard X3.4–1968;

(2) No more than the following maximum transmitting speeds:

(i) 300 baud on AR Service frequency band between 3.5 and 21.25 MHz (see AR Rule 26);

(ii) 1200 baud on AR Service frequency bands between 28 and 225 MHz (see AR Rule 26); *AND*

(iii) 19600 baud on AR Service frequency bands above 420 MHz.

EXPLANATION

We replaced § 97.69 with this proposed rule. We rewrote and reorganized the existing section to make it easier for licensees to understand.

EXISTING RULE

None.

PROPOSED HEADING

Information on Measurements.

PROPOSED RULE

§ 97.310 (TEC Rule 10) How does the FCC measure transmitter power?

(a) If your AR station is inspected by an FCC representative, he/she may determine if your transmitter power complies with AR Rule 31. He/she may make electrical measurements in your AR station while it is transmitting. If your AR station is in repeater operation, he/she may also check your computations (see AR Rule 57) for ERP and AHAAT (see AR Rule 44 and Appendixes F and G).

(b) To determine if your AR station complies with AR Rule 31, he/she may attach a calibrated radio frequency power meter in your antenna transmission line, and make power output measurements.

(c) To determine PEP input, he/she may multiply PEP output measurements (above) by a factor of 1.25. The product will be considered the power input unless the following alternative method is used. In this case, he/she will connect calibrated measurement instruments to the final amplifying stage of your AR station and make measurements. He/she will then calculate the power input using these measurements and the technical characteristics of the circuit and its components.

(d) For measurements to determine the power input/output while your AR station is transmitting a pulse modulated emission, he/she will use peak indicating measurement instruments.

(e) To determine ERP, he/she will first make power output measurements (above). Then he/she will calculate the ERP using these measurements and the technical characteristics of your antenna, transmission line, and devices in the line.

EXPLANATION

We are proposing to add TEC Rule 10. While it does not require each licensee to make measurements of their transmitter power, it does explain the present methods used by the FCC to determine if an amateur radio station is in compliance with the power rules.

§ 97.74 Frequency measurement and regular check.

EXISTING RULE

The licensee of an amateur station shall provide for measurement of the emitted carrier frequency or frequencies and shall establish procedures for making such measurement regularly. The measurement of the emitted carrier frequency or frequencies shall be made by means independent of the means used to control the radio frequency or frequencies generated by the

transmitting apparatus and shall be of sufficient accuracy to assure operation within the amateur frequency band used.

PROPOSED RULE

§ 97.311 (TEC Rule 11) How does the FCC measure levels of transmitter emissions?

(a) An FCC representative may use a calibrated receiver, together with a spectrum analyzer and an oscilloscope to determine the bandwidth of emissions from your AR station. The power level of each sideband emission which is outside the maximum bandwidth allowed (see TEC Rule 5) must be at least 26 decibels below the power level of the total emission.

(b) An FCC representative may use a calibrated receiver, a frequency counter, a spectrum analyzer, a wideband power meter and/or a frequency selective voltmeter to determine the spurious emissions (see TEC Rule 6) from your AR station.

EXPLANATION

This rule replaces § 97.74. While the proposed rule does not require each licensee to make measurements, as the existing rule does, the proposed rule does explain in practical terms how the FCC will determine if a licensee's station is in compliance with the emission rule.

EXISTING RULE

§ 97.76 Requirements for type acceptance of external radio frequency (RF) power amplifiers and external radio frequency power amplifier kits.

(a) Until April 28, 1981, any external radio frequency (RF) power amplifier or external RF power amplifier kit marketed (as defined in § 2.815), manufactured, imported or modified for use in the Amateur Radio Service shall be type accepted for use in the Amateur Radio Service in accordance with Subpart J or Part 2 of the FCC's Rules. This requirement does not apply if one or more of the following conditions are met:

(1) The amplifier is not capable of operation on any frequency or frequencies below 144 MHz (the amplifier shall be considered incapable of operation below 144 MHz if the mean output power decreases, as frequency decreases from 144 MHz, to a point where 0 decibels or less gain is exhibited at 120 MHz and below and the amplifier is not capable of being easily modified to provide amplification below 120 MHz).

(2) The amplifier was originally purchased before April 28, 1978 by an amateur radio operator for use at his amateur radio station;

(3) The amplifier was constructed or modified by an amateur radio operator for use at his amateur radio station in accordance with § 2.1001 of the FCC's Rules;

(4) The amplifier was constructed or modified by an amateur radio operator in accordance with § 2.1001 of the FCC's Rules and sold to another amateur radio operator or to a dealer;

(5) The amplifier was constructed or modified by an amateur radio operator in accordance with § 2.1001 of the FCC's Rules and sold by a dealer to an amateur radio operator for use at his amateur radio station; or

(6) The amplifier was manufactured before April 28, 1978 and has been issued a marketing waiver by the FCC.

(b) No more than one unit of one model of an external RF power amplifier shall be constructed or modified during any calendar year by an amateur radio operator for use in the Amateur Radio Service without a grant of type acceptance.

(c) A list of type accepted equipment may be inspected at FCC headquarters in Washington, D.C. or at any FCC field office. Any external RF power amplifier appearing on this list as type accepted for use in the Amateur Radio Service may be marketed for use in the Amateur Radio Service.

§ 97.3 Definitions.

(y) *External radio frequency power amplifier.* Any device which, (1) when used in conjunction with a radio transmitter as a signal source, is capable of amplification of that signal, and (2) is not an integral part of the transmitter as manufactured.

(z) *External radio frequency power amplifier kit.* Any number of electronic parts, usually provided with a schematic diagram or printed circuit board, which, when assembled in accordance with instructions, results in an external radio frequency power amplifier, even if additional parts of any type are required to complete assembly.

PROPOSED HEADING

Other Things you Need to Know.

PROPOSED RULE

§ 97.312 (TEC RULE 12) What amplifiers may I manufacture or market for use in the Amateur Telecommunications Services?

(a) Until April 28, 1981, you must *not* manufacture any external radio frequency power amplifier which can amplify signals below 120 MHz, unless it has been type accepted by the FCC.

(b) Until April 28, 1981, you must *not* market any external radio frequency power amplifier (either assembled or as a kit) unless—

(1) It can not amplify signals below 120 MHz;

(2) You are a licensed AR operator and you are selling it to another licensed AR operator for use at a licensed AR station;

(3) You are a licensed AR operator and you are selling it to an equipment dealer;

(4) You are an equipment dealer and you bought it from a licensed AR operator and you are selling it to a licensed AR operator for use at a licensed AR station; *OR*

(5) It has been type accepted by the FCC.

(c) You can find the requirements for type accepting an external radio frequency power amplifier in Part 2, Subpart J of the FCC's Rules. You can see a list of the radio equipment that is currently type accepted by the FCC at any FCC Field Office or at the FCC, Washington, DC.

(d) "Manufacture" means you build two or more of the same type of amplifier within a calendar year.

(e) "Market" means you—

(1) Sell or lease;

(2) Offer to sell or lease; *OR*

(3) Import, ship, or distribute in order to sell or lease or offer to sell or lease.

(f) "External radio frequency power amplifier" means any device which can amplify the signal from a radio transmitter. It is not an integral part of the transmitter.

(g) "Kit" means a set of parts which can be assembled into an amplifier following the instructions. Other parts, in addition to those provided by the kit supplier, may also be required to finish assembly.

EXPLANATION

This rule replaces §§ 97.3(y), 97.3(z), and 97.76. We rewrote these rules in simpler language to make them more understandable. We included the definitions of "market" and "manufacture" from Part 2 of the rules to clarify the difference between these activities and building and selling. We moved the definition of "kit" to this section and repeated the definition of "external radio frequency power amplifier". We wrote separate sections for marketing and manufacturing. We believe this more clearly shows amateur radio operators, dealers, manufacturers, and others what they can or cannot do with external radio frequency amplifiers.

EXISTING RULE

§ 97.77 Standards for type acceptance of external radio frequency (RF) power amplifiers and external radio frequency power amplifier kits.

(a) An external radio frequency (RF) power amplifier or external RF power amplifier kit will receive a grant of type

acceptance under this Part only if a grant of type acceptance would serve the public interest, convenience or necessity.

(b) To receive a grant of type acceptance under this part, an external RF power amplifier shall meet the emission limitations of § 97.73 when the amplifier is—

(1) Operated at its full output power;

(2) Placed in the "standby" or "off" positions, but still connected to the transmitter; and

(3) Driven with at least 50 watts mean radio frequency input power (unless a higher drive level is specified).

(c) To receive a grant of type acceptance under this part, an external RF power amplifier shall not be capable of operation on any frequency or frequencies between 24.00 MHz and 35.00 MHz. The amplifier will be deemed incapable of operation between 24.00 MHz and 35.00 MHz if—

(1) The amplifier has no more than 6 decibels of gain between 24.00 MHz and 26.00 MHz and between 28.00 MHz and 35.00 MHz. (This gain is determined by the ratio of the input RF driving signal (mean power measurement) to the mean RF output power of the amplifier.); and

(2) The amplifier exhibits no amplification (0 decibels of gain) between 26.00 MHz and 28.00 MHz.

(d) Type acceptance of external radio frequency power amplifiers or amplifier kits may be denied when denial serves the public interest, convenience or necessity by preventing the use of these amplifiers in services other than the Amateur Radio Service. Other uses of these amplifiers, such as in the Citizens Band Radio Service, is prohibited § 95.509). Examples of features which may result in dismissal or denial of an application for type acceptance of an external RF power amplifier include, but are not limited to, the following:

(1) Any accessible wiring which, when altered, would permit operation of the amplifier in a manner contrary to the FCC's Rules;

(2) Circuit boards or similar circuitry to facilitate the addition of components to change the amplifier's operating characteristics in a manner contrary to the FCC's Rules;

(3) Instructions for operation or modification of the amplifier in a manner contrary to the FCC's Rules;

(4) Any internal or external controls or adjustments to facilitate operation of the amplifier in a manner contrary to the FCC's Rules.

(5) Any internal radio frequency sensing circuitry or any external switch, the purpose of which is to place the amplifier in the transmit mode;

(6) The incorporation of more gain in the amplifier than is necessary to operate in the Amateur Radio Service. For purposes of this paragraph, an amplifier must meet the following requirements:

(i) No amplifier shall be capable of achieving designed output (or designed d.c. input) power when driven with less than 50 watts mean radio frequency input power;

(ii) No amplifier shall be capable of amplifying the input RF driving signal by more than 13 decibels. (This gain limitation is determined by the ratio of the input RF driving signal (mean power) to the mean RF output power of the amplifier). If the amplifier has a designed d.c. input power of less than 1000 watts, the gain allowance is reduced accordingly. (For example, an amplifier with a designed d.c. input power of 500 watts shall not be capable of amplifying the input RF driving signal (mean power measurement) by more than 10 decibels, compared to the mean RF output power of the amplifier.);

(iii) The amplifier shall not exhibit more gain than permitted by paragraph (d)(6)(ii) of this section when driven by a radio frequency input signal of less than 50 watts mean power; and

(iv) The amplifier shall be capable of sustained operation at its designed power level.

(7) Any attenuation in the input of the amplifier which, when removed or modified, would permit the amplifier to function at its designed output power when driven by a radio frequency input signal of less than 50 watts mean power.

PROPOSED RULE

§ 97.313 (TEC Rule 13) What are the standards for amplifier type acceptance?

(a) The FCC will grant type acceptance of an external radio frequency power amplifier only if the grant serves the public interest, convenience, or necessity.

(b) The FCC may deny type acceptance of an external radio frequency power amplifier to prevent it from being used in radio services other than the Amateur Telecommunications Services.

(c) The FCC may deny type acceptance of an external radio frequency power amplifier if it has more power gain than is needed to operate at the maximum legal power permitted in the Amateur Telecommunications Services.

(d) The FCC may deny type acceptance of an external radio frequency power amplifier unless it meets the emission limitations of TEC Rule 6 when it is—

(1) Operated at its full output power;

(2) Placed in the "standby" or "off" conditions, but is still being driven by the transmitter;

(3) Driven with 50 watts mean radio frequency power (unless a higher driving power is specified by the manufacturer)

(e) The FCC may deny type acceptance of an external radio frequency power amplifier if it—

(1) has more than 0 decibels power gain between 26.00 and 28.00 MHz;

(2) has more than 6 decibels power gain between 24.00 and 35.00 MHz.

(3) has more than 13 decibels power gain on any frequency

(i) Amplifiers designed to operate at less than 1000 watt PEP final stage input power with A0, A1, F0, F1, F2, F3, F4 or F5 emissions and amplifiers designed to operate at less than 2000 watt PEP final stage input power with A2, A3, A4, A5 or P emissions must use less gain. The decibel decrease in gain must be at least as much as the decrease in power below the maximum authorized levels, measured in decibels.

(ii) Amplifiers shall not be able to produce higher power gains when driven with less than 50 watts mean radio frequency input power.

(4) is able to reach its designed radio frequency output power or its designed d.c. input power when driven with less than 50 watts mean radio frequency input power;

(5) is not capable of sustained operation at its designed power level;

(6) has parts which, if removed or modified, will cause it to be able to reach its designed radio frequency output power or its designed d.c. input power when driven with less than 50 watts mean radio frequency power;

(7) has an internal radio frequency sensing circuit or an external control, the purpose of which is to switch it from receive to transmit;

(8) has accessible wiring which, if changed, would cause it to be able to function in a way which would violate FCC Rules;

(9) has a circuit board or other provision for adding parts which could cause it to be able to function in a way which would violate FCC Rules; *OR*

(10) comes with instructions for operation or modification, which, if followed, could cause it to be able to function in a way which would violate FCC Rules.

(f) "Power gain" means the logarithmic ratio of the output radio frequency signal to the mean power of the radio frequency signal driving the amplifier.

EXPLANATION

This rule replaces § 97.77. We reorganized and rewrote this rule to make it easier for manufacturers to determine what standards their amplifiers must meet in order to get type accepted.

APPENDIXES

Appendix A—What Areas of the World Are Included in Each ITU Region?

For the allocation of frequencies the world has been subdivided into three Regions (see AR Rule 28 for a chart of these regions).

Region 1

Region 1 includes the area limited on the East by line A (lines A, B and C are defined below) and on the West by line B, excluding any of the territory of Iran which lies between these limits. It also includes that part of the territory of Turkey and the Union of Soviet Socialist Republics lying outside of these limits, the territory of the Mongolian People's Republic, and the area to the North of the U.S.S.R. which lies between lines A and C.

Region 2

Region 2 includes the area limited on the East by line B and on the West by line C.

Region 3

Region 3 includes the area limited on the East by line C and on the West by line A, except the territories of the Mongolian People's Republic, Turkey, the territory of the U.S.S.R. and the area to the North of the U.S.S.R. It also includes that part of the territory of Iran lying outside of of those limits.

The lines A, B, and C are defined as follows:

Line A

Line A extends from the North Pole along meridian 40° East of Greenwich to parallel 40° North; thence by great circle arc to the intersection of meridian 60° East and the Tropic of Cancer; thence along the meridian 60° East to the South Pole.

Line B

Line B extends from the North Pole along meridian 10° West of Greenwich to its intersection with parallel 72° North; thence by great circle arc to the intersection of meridian 50° West and parallel 40° North; thence by great circle arc to the intersection of meridian 20° West and parallel 10° South; thence along meridian 20° West to the South Pole.

Line C

Line C extends from the North Pole by great circle arc to the intersection of parallel 65°30' North with the international boundary in Behring Strait; thence by great circle arc to the intersection of meridian 165° East of Greenwich and parallel 50° North; thence by great circle arc to the intersection of meridian 170° West and parallel 10° North; thence along parallel 10° North to its intersection with meridian 120° West; thence along meridian 120° West to the South Pole.

Appendix B—What Are the ITU Rules Governing the Amateur Telecommunications Services?

The ITU rules governing the Amateur Telecommunications Services are contained in Article 41, as follows:

Article 41

Amateur Stations

Sec. 1 Radiocommunications between amateur stations of different countries shall be forbidden if the administration of one of the countries concerned has notified that it objects to such radiocommunications.

Sec. 2 When transmissions between amateur stations of different countries are permitted, they shall be made in plain language and shall be limited to messages of a technical nature relating to tests and to remarks of a personal character for which, by reason of their unimportance, recourse to the public telecommunications service is not justified. It is absolutely forbidden for amateur stations to be used for transmitting international communications on behalf of third parties.

(2) The preceding ge a19de2.168provisions may be modified by special arrangements between the administrations of the countries concerned.

Sec. 3 (1) Any person operating the apparatus of an amateur station shall have proved that he is able to send corectly by hand and to receive correctly by ear, texts in Morse code signals. Administrations concerned may, however, waive this requirement in the case of stations making use exclusively of frequencies above 144 MHz.

(2) Administration shall take such measures as they judge necessary to verify the technical qualifications of any person operating the apparatus of an amateur station.

Sec. 4 The maximum power of amateur stations shall be fixed by the administrations concerned, having regard to the technical qualifications of the operators and to the conditions under which these stations are to work.

Sec. 5 (1) all the general rules of the Convention and of these Regulations shall apply to amateur stations. In particular, the emitted frequency shall be as stable and as free from spurious emissions as the state of technical development for such stations permits.

(2) During the course of their transmissions, amateur stations shall transmit their call sign at short intervals.

Sec. 6 Space stations in the amateur-satellite service operating in bands shared with other services shall be fitted with appropriate devices for controlling emissions in the event that harmful interference is reported in accordance with the procedure laid down in Article 15. Administrations authorizing such space stations shall inform the I.F.R.B., and shall ensure that sufficient earth command stations are established before launch to guarantee that any harmful interference that might be reported can be terminated by the authorizing Administration.

Appendix C.—Where Are the FCC Field Offices Located?

The FCC Field Offices are in the following locations:

Anchorage District Office, Engineer In Charge, Federal Communications Commission, 1011 E. Tudor Rd., Room 240, P.O. Box 2955, Anchorage, Alaska 99510 (907) 276-7455, (907) 276-5255 [1]

Atlanta District Office, Engineer In Charge, Federal Communications Commission, Room 440, Massell Building, 1365 Peachtree Street, NE, Atlanta, Georgia 30309 (404) 881-3084/5, (404) 881-7381 [1]

Baltimore District Office, Engineer In Charge, Federal Communications Commission, 1017 Federal Building, 31 Hopkins Plaza, Baltimore, Maryland 21201 (301) 962-2726/9, (301) 962-2727 [1]

Beaumont Office, Engineer In Charge, Federal Communications Commission, Jack Brooks Federal Building, Rm. 323, 300 Willow Street, Beaumont, Texas 77701 (713) 838-0271

Boston District Office, Engineer In Charge, Federal Communications Commission, 1800 Customhouse, 165 State Street, Boston, Massachusetts 02109 (617) 223-6609, (617) 223-0689, (617) 223-6607/8 [1]

Buffalo District Office, Engineer In Charge, Federal Communications Commission, 1307 Federal Building, 111 West Huron Street, Buffalo, New York 14202 (716) 846-4511/2, (716) 856-5950 [1]

Chicago District Office, Engineer In Charge, Federal Communications Commission, 230 S. Dearborn St.,,Room 3935, Chicago, Illinois 60604 (312-0195/6, (312) 353-0197 [1]

Cincinnati Office, Engineer In Charge, Federal Communications Commission, 3620 Winton Road, Cincinnati, Ohio 45231 (513) 521-1790, (513) 521-1716 [1]

Dallas District Office, Engineer In Charge, Federal Communications Commission, Earle Cabell Federal Building, U.S. Courthouse, Room 13E7, 1100 Commerce Street, Dallas, Texas 75242 (214) 767-0761, (214) 767-0764 [1]

Denver District Office, Engineer In Charge, Federal Communications Commission, The Executive Tower, Room 2925, 1405 Curtis Street, Denver, Colorado 80202 (303) 837-5137/8, (303) 837-4053 [1]

Detroit District Office, Engineer In Charge, Federal Communications Commission, 1054 Federal Building, 231 W. LaFayette Street, Detroit, Michigan 4826 (313) 226-6078/9, (313) 226-6077 [1]

Honolulu District Office, Engineer In Charge, Federal Communications Commission, Prince Kuhio Federal Bldg., 300 Ala Moana Blvd., Room 7304, P.O. Box 50223, Honolulu, Hawaii 96850 (808) 546-5640

Houston District Office, Engineer In Charge, Federal Communications Commission, New Federal Office Building, 515 Rusk Ave., Room 5636, Houston, Texas 77002 (713) 226-5624. (713) 226-4306 [1]

Kansas City District Office, Engineer In Charge, Federal Communications Commission, Brywood Office Tower, Room 320, 8800 East 63rd Street, Kansas City, Missouri 64133 (816) 926-5111. (816) 356-4050

[1] Recorded information.

Long Beach District Office, Engineer in Charge, Federal Communications Commission, 3711 Long Beach Blvd., Room 501, Long Beach, California 90807 (213) 426-4451, (213) 426-7886 [1], (213) 426-7955 [1]
Miami District Office, Engineer in Charge, Federal Communications Commission, 51 S.W. First Ave., Room 919, Miami, Florida 33130 (305) 350-5542, (305) 350-5541 [1]
New Orleans District Office, Engineer in Charge, Federal Communications Commission, 1007 F. Edward Hebert Federal Bldg., 600 South Street, New Orleans, Louisiana 70130 (504) 589-2095/6, (504) 589-2094 [1]
New York District Office, Engineer in Charge, Federal Communications Commission, 201 Varick Street, New York, New York 10014 (212) 620-3437/8, (212) 620-3435 [1], (212) 620-3436 [1]
Norfolk District Office, Engineer in Charge, Federal Communications Commission, Military Circle, 870 N. Military Highway, Norfolk, Virginia 23502 (804) 441-6472, (804) 461-4000 [1]
Philadelphia District Office, Engineer in Charge, Federal Communications Commission, 11425 James A. Byrne Federal Courthouse, 601 Market Street, Philadelphia, Pennsylvania 19106 (215) 597-4411/2, (215) 597-4410 [1]
Pittsburgh Office, Engineer in Charge, Federal Communications Commission, 3755 William Penn Highway, Monroeville, Pennsylvania 15146 (412) 823-3380, (412) 823-3553 [1]
Portland District Office, Engineer in Charge, Federal Communications Commission, 1782 Federal Building, 1220 S.W. Third Avenue, Portland, Oregon 97204 (503) 221-4114. (503) 221-3097 [1]
St. Paul District Office, Engineer in Charge, Federal Communications Commission, 691 Federal Bldg., & U.S. Courthouse, 316 North Robert Street, St. Paul, Minnesota 55101 (612) 725-7810, (612) 725-7819 [1]
San Diego Office, Engineer in Charge, Federal Communications Commission, 7840 El Cajon Blvd., Room 405, La Mesa, California 92041 (714) 293-5478, (714) 293-5460 [1]
San Francisco District Office, Engineer in Charge, Federal Communications Commission, 323-A Customhouse, 555 Battery Street, San Francisco, California 94111 (415) 556-7701/2, (415) 556-7700 [1]
San Juan District Office, Engineer in Charge, Federal Communications Commission, San Juan Field Office, 747 Federal Building, Hato Rey, Puerto Rico 00918 (809) 753-4006, (809) 753-4567
Savannah Office, Engineer in Charge, Federal Communications Commission, 238 Post Office Building and Courthouse, P.O. Box 8004, (125 Bull Street), Savannah, Georgia 31412 (912) 232-4321
Seattle District Office, Engineer in Charge, Federal Communications Commission, 3256 Federal Building, 915 Second Avenue, Seattle, Washington 98174 (206) 442/7653/4, (206) 442-7610 [1]
Tampa Office, Engineer in Charge, Federal Communications Commission, ADP Building, Room 601, 1211 N. Westshore Blvd., Tampa, Florida 33607 (813) 226-2872, (813) 228-2605 [1]
Washington District Office, Engineer in Charge, 6525 Belcrest Road, Room 901-B, P.O. Box 1789, Hyattsville, Maryland 20788 (301) 436-7591, (301) 436-7590 [1]

Appendix D.—Where Are the FCC Monitoring Stations Located?

FCC monitoring stations are located at the following addresses and geographical coordinates:

Allegan, Michigan 48010, 42°36'20"N. Latitude 85°57'20"W. Longitude
Anchorage, Alaska 99502, 61°09'43"N. Latitude 149°59'55"W. Longitude
Belfast, Maine 04915, 44°26'42"N. Latitude 69°04'58"W. Longitude
Douglas, Arizona 85807, 31°30'06"N. Latitude 109°39'10"W. Longitude
Ferndale, Washington 98240, 48°57'21"N. Latitude 122°33'13"W. Longitude
Fort Lauderdale, Florida 33314, 26°06'08"N. Latitude 80°16'42"W. Longitude
Grand Island, Nebraska 68801, 40°55'24"N. Latitude 98°25'59"W. Longitude
Kingsville, Texas 78363, 27°26'29"N. Latitude 97°53'00"W. Longitude
Laurel, Maryland 20810*, 39°09'54"N. Latitude 76°49'17"W. Longitude
Livermore, California 94550, 37°43'30"N. Latitude 121°45'12"W. Longitude
Powder Springs, Georgia 30073, 33°51'44"N. Latitude 84°43'26"W. Longitude
Sabana Seca, Puerto Rico 00749, 18°27'23"N. Latitude 66°13'37"W. Longitude
Waipahu, Hawaii 96797, 21°22'45"N. Latitude 157°59'54"W. Longitude

Appendix E.—What Are the Procedures for Protecting FCC Monitoring Stations?

(1) Applicants for an amateur radio station license to operate in the vicinity of an FCC monitoring station are advised to give consideration, prior to filing applications, to the possible need to protect the FCC stations from harmful interference. Geographical coordinates of the facilities which require protection are listed in Section 0.121(c) of the Commission's Rules. Applications for stations (except mobile stations) in the vicinity of monitoring stations may be reviewed by Commission staff on a case-by-case basis to determine the potential for harmful interference to the monitoring station. Depending on the theoretical field strength value and existing root-sum-square or other ambient radio field signal levels at the indicated coordinates, a clause protecting the monitoring station may be added to the station license.

(2) Advance consultation with the Commission is suggested prior to filing an initial application for station license if the proposed station will be located within one mile of any of the above-referenced monitoring station coordinates and is to be operated on frequencies below 1000 MHz. Such consultations are also suggested for proposed stations operating above 1000 MHz if they are to be located within one mile of any monitoring station designated in Section 0.121(c) as a satellite monitoring facility.

(3) Regardless of any coordination prior to filing initial applications, it is suggested that licensees within one mile of a monitoring station consult the Commission before initiating any changes in the station which would increase the field strength produced over the monitoring station.

(4) Applicants and licensees desiring such consultations should communicate with: Chief, Field Operations Bureau, Federal Communications Commission, Washington, D.C. 20554, Telephone (202) 632-6980.

(5) The Commission will not screen applications to determine whether advance consultation has taken place. However, applicants are advised that such consultation can avoid objections from the Federal Communications Commission or modification of any authorization which will cause harmful interference.

Appendix F—How Do I Determine Antenna Height Above Average Terrain (AHAAT)?

The effective height of the transmitting antenna is the height of the antenna's center of radiation above "average terrain." For this purpose, you establish "effective height" as follows:

(1) On a U.S. Geological Survey Map having a scale of 1:250,000, lay out eight evenly spaced radials, extending from the transmitter site to a distance of 10 miles and beginning at 0°, 45°, 90°, 135°, 180°, 225°, 270°, 315° True North. If you prefer, you may use a map of greater scale.

(2) By referring to the map contour lines, establish the ground elevation above mean sea level (AMSL) at 2, 4, 6, 8 and 10 miles from the antenna along each radial. If there is no elevation figure or contour line for any particular point, you must use the nearest contour line of elevation.

(3) Calculate the arithmetic average of these 40 elevation points (5 points for each of 8 radials).

(4) The antenna height above average terrain is therefore the height AMSL of the antenna's center of radiation, minus the height of average terrain as calculated above.

(5) If your transmitter is located near a large body of water, certain points of established elevation may fall over water. If you expect that service would be provided to land areas beyond the body of water, you should include the points at water level in your average.

(6) If use of this procedure might provide unreasonable figures because of the unusual nature of local terrain, the FCC will consider additional data you provide.

Appendix G—How Do I Determine Effective Radiated Power (ERP)?

The effective radiated power (ERP) of your AR station is the average radio frequency power that would be needed at the feedpoint of a half-wave dipole antenna in order to radiate a signal just as strong as the strongest signal your AR station radiates. ERP is stated in watts. It can be used to predict how far away your ground wave signals can be received.

You can calculate the ERP of your AR station by multiplying the radio frequency power you measure by a "gain factor." This "gain factor" depends upon the gain of your antenna and the losses you have in your feedline and other equipment between your power meter and your antenna.

To determine your ERP, follow these steps:

Step 1

Measure the average radio frequency power at a convenient point in the feedline between your transmitter and your antenna.

Step 2

Find out what the gain of your antenna is, relative to a *half-wave dipole.* If you got your antenna from a commercial manufacturer, you will probably find the gain listed on the specification sheet. If you built your antenna, you can estimate the gain by finding an antenna of the same type in an antenna reference book and using the gain for that type.

Step 3

Find out how much loss there is in your feedline and other equipment (such as duplexers, couplers, etc.) between the point where you made the power measurement and your antenna feedpoint. If you know what type of feedline you have, and how long it is, you can look up the loss in an electronics data book or radio handbook. You will probably find the insertion loss of your duplexer or other equipment on the manufacturer's specification sheet. If you built this equipment, you can estimate the loss it has or measure it directly.

Step 4

Subtract the loss you determined in STEP 3 from the gain you determined in STEP 2, to find your "net gain." Look up this "net gain" in the table below to find the corresponding "gain factor."

Net gain (dB)	Gain factor
10	10.0
9	7.9
8	6.3
7	5.0
6	4.0
5	3.2
4	2.5
3	2.0
2	1.6
1	1.3
0	1.0
−1	0.79
−2	0.63
−3	0.50
−4	0.40
−5	0.32
−6	0.25
−7	0.20
−8	0.16
−9	0.13
−10	0.10

Step 5

Multiply the "gain factor" you got from the chart in STEP 4 by the power you measured in STEP 1. This is your station's ERP.

Note.—You can figure your AR station's ERP by applying this formula:

$ERP = P \times 10^{(G-L)/10}$

where:

P=average power, measured in watts, STEP 1
G=antenna gain, reference half-wave dipole, in dB, STEP 2
L=system losses, in dB, STEP 3, and
ERP=effective radiated power, in watts

[FR Doc. 80-39317 Filed 12-18-80; 8:45 am]
BILLING CODE 6712-01-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1056

[Ex Parte No. MC-19 (Sub-No. 36)]

Practices of Motor Common Carriers of Household Goods (Revision of Operations Regulations)

AGENCY: Interstate Commerce Commission.

ACTION: Extension of Time to Notice of Proposed Rulemaking.

SUMMARY: The Commission intends to cancel the operational regulations now appearing in 49 CFR Part 1056 applicable to motor common carriers of household goods and to adopt new regulations in conformity with the Household Goods Transportation Act of 1980. It is intended to eliminate all regulation of household goods transportation cost estimating which pertains to the procedure or form of estimates or which require the final charges for the transportation of a shipment to be determined by an estimate. Further changes to the regulations are also intended.

Public notice of this proceeding was served October 16, 1980 and published at 45 FR 70923, October 27, 1980. In that notice, it was provided that comments by interested persons were scheduled as due 30 days from the date of publication in the Federal Register. That November 26, 1980 date was extended to December 11, 1980, at 45 FR 76718, November 20, 1980. A further extension of the time for filing comments in this proceeding is being granted by this decision.

DATES: Comments in this proceeding are due on or before December 31, 1980.

ADDRESS: An original and 15 copies, if possible, of comments should be sent to: Ex Parte No. MC-19 (Sub-No. 36), Room 7205, Office of Consumer Protection, Interstate Commerce Commission, Washington, D.C. 20423.

FOR FURTHER INFORMATION CONTACT: W. F. Sibbald, Jr., (202) 275-7148.

SUPPLEMENTARY INFORMATION: The National Council of Moving Associations and the Mayflower Warehouseman's Association have requested a 60-day extension of time for filing comments. North American Van Lines requests a 30-day extension. The requests are denied, however, the time for filing of comments will be extended for 20 days.

It is ordered

The requests for 60-day extension of time for the filing of comments are denied. A 20-day extension is granted. The deadline for submitting written comments in this proceeding is extended to December 31, 1980.

Decided: December 11, 1980.

By the Commission. Darius W. Gaskins, Jr., Chairman

Agatha L. Mergenovich,

Secretary.

[FR Doc. 80-39438 Filed 12-18-80; 8:45 am]
BILLING CODE 7035-01-M

Notices

Federal Register
Vol. 45, No. 246
Friday, December 19, 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.

DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

1981 Upland Cotton Program; Determinations Regarding Proclamation of the 1981 Crop Established (Target) Price, National Program Acreage, and Other Provisions for Upland Cotton

AGENCY: Agricultural Stabilization and Conservation Service, USDA.

ACTION: Notice of Determination of the 1981 Crop Established (Target) Price, National Program Acreage, and Other Provisions for Upland Cotton.

SUMMARY: The purpose of this notice is to determine and proclaim with respect to the 1981 crop of upland cotton: (1) Preliminary estimate of established (target) price; (2) national program acreage; (3) national recommended reduction percentage; (4) no normal crop acreage requirement; (5) no set-aside requirement; (6) no land diversion payments; and (7) no limitation on planted acreage. These determinations are required to be made by the Secretary in accordance with provisions of Section 103 (f) of the Agricultural Act of 1949, as amended, and Section 1001 of the Food and Agriculture Act of 1977, as amended. The 1949 Act, as amended, requires that the national program acreage for the 1981 crop of upland cotton be announced no later than December 15, 1980. This notice is needed to satisfy statutory requirements.

EFFECTIVE DATE: December 15, 1980.

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

FOR FURTHER INFORMATION CONTACT: Charles V. Cunningham, Chief, Program Analysis Branch, Production Adjustment Division, USDA–ASCS, P.O. Box 2415, Washington, D.C. 20013, (202) 447–7873.

The Final Impact Statement describing the options considered in developing this Notice of Determination and the impact of implementing each option is available on request from the above-named individual.

SUPPLEMENTARY INFORMATION: This Notice of Determinations has been reviewed under USDA procedures established in Secretary's Memorandum Number 1955 to implement Executive Order 12044 and has been classified "significant."

The title and number of the federal assistance program that this notice applies to are: Title—Cotton Production Stabilization; Number 10.052; as found in the Catalog of Federal Domestic Assistance. This action will not have a significant impact specifically on area and community development. Therefore, review as established under OMB Circular A–95 was not used to assure that units of local government are informed of this action.

A notice that the Secretary was preparing to make determinations with respect to these provisions was published in the Federal Register on October 3, 1980 (45 FR 65643), in accordance with 5 U.S.C. 553 and Executive Order 12044. A total of sixty eight comments were received, thirty two from individual producers, twenty seven from farm organizations, six from commercial concerns or associations, one from a U.S. Senator, one from a member of Congress, and one from the chairperson of the Texas State Agricultural Stabilization and Conservation Committee. A summary of responses with respect to the 1981 crop of upland cotton is as follows:

1. *Target Price:* Eleven respondents commented on the target price for the 1981 crop of upland cotton. Two favored a target price of 70 cents per pound, three favored a target price of 73 to 76 cents per pound, and two favored a target price of 84 to 85 cents per pound. Two respondents supported a target price adequate to cover the cost of production for the 1981 crop of upland cotton. One respondent requested the target price be established at the maximum permitted by statute while another respondent requested that the target price be established at 100 percent of parity.

2. *National Program Acreage:* Ten commented on the national program acreage. Six respondents favored the establishment of the national program acreage for upland cotton within the proposed range of 13.5 to 14.5 million acres. One favored 12 million acres and one favored 10.5 million acres. One respondent suggested a national program acreage that would generate an ending stock of four million bales, rather than five million bales. One respondent was opposed to any national program acreage.

3. *National Recommended Reduction Percentage:* Two respondents commented on the national recommended reduction percentage for upland cotton. Both respondents favored the proposed national reduction percentage of zero.

4. *Normal Crop acreage:* Fifty nine commented on the proposed normal crop acreage requirement as a condition of eligibility for loans and payments under the upland cotton program. Seven were in favor of the normal crop acreage requirement and fifty two opposed the requirement.

5. *Set-Aside:* Twenty-five comments on the establishment of a set-aside requirement for upland cotton were received. Eighteen were opposed to any set-aside requirement; three favored the establishment of a set-aside of 10 percent of cropland; one was in favor of a 20 percent set-aside; and three requested that a paid set-aside requirement be established.

6. *Land Diversion:* Ten comments were received on the proposed voluntary paid diversion. Two were in favor of a diversion of 10 percent and eight were opposed to any diversion.

7. *Limitation on Planted Acreage:* Three respondents commented on the establishment of a planting limitation of 1981 crop upland cotton acreage. Two respondents were opposed to a limitation while one respondent favored a limitation not to exceed the national program acreage.

All comments received were duly considered by the Secretary. It is essential that these decisions be made effective as soon as possible since the proclamation of the national program acreage is required to be made not later than December 15, 1980, and farmers need to know the other provisions as soon as possible so that they can make their farming and marketing plans. Accordingly, the Secretary has made the following determinations with respect to the 1981 crop of upland cotton:

Final Determinations

1. *Established (Target) Price.* Based on the formula prescribed by section 103 (f)(4) of the Agricultural Act of 1949, as amended, (hereinafter referred to as the 1949 Act), the 1981 established (target) price for upland cotton is expected to be between 68.5 and 75.5 cents per pound. The 1981 target price will be announced next spring when more precise estimates of 1980 crop costs of production and the final 1980 upland cotton yield per acre are available.

2. *National Program Acreage.* In accordance with Section 103 (f)(7) of the 1949 Act, it is hereby proclaimed that the national program acreage for the 1981 crop of upland cotton shall be 14,021,538 acres based on the following data:

a. Estimated domestic consumption, 1981–82 (480-lb. net wt. bales)	6,100,000
b. Plus estimated exports, 1981–82 (480-lb. net wt. bales)	6,700,000
c. Minus estimated imports, 1981–82 (480-lb. net wt. bales)	10,000
d. Plus adjustment to increase stocks to desired level (480-lb. net wt. bales)	2,400,000
e. Times 480 lbs. per bale (lbs.)	7,291,200,000
f. Divided by estimated weighted national average of farm program yields (lbs./acre)	520
g. Equals: 1981 National Program Acreage (acres)	14,021,538

3. *Recommended Reduction from 1980 Planting for 1981 Crop of Upland Cotton.* In accordance with Section 103 (f)(9) of the 1949 Act, it is hereby determined and proclaimed that a zero percent reduction in acreage from that planted to upland cotton in 1980 shall be applicable to the acreage planted to upland cotton in 1981. The 1980 upland planted acreage will include the sum of the following:

a. The 1980 planted acreage of upland cotton, excluding any acreage that failed and was not replanted during the normal planting period;

b. the approved prevented planted acreage of upland cotton in 1980;

c. the upland cotton acreage voluntarily reduced in 1980 from 1979 (total of planted and approved prevented planted acreage), not to exceed the 1980 recommended reduction of 10 percent.

With a zero percent reduction, producers who plant no more upland cotton in 1981 than was planted in 1980 will be eligible for any deficiency payments on the entire 1981 planted acreage.

This determination is based on the following data:

1. Estimated 1980 national harvested acreage	13,011,900
2. Plus acreage credited as harvested	50,000
3. Equals: 1980 considered harvested acreage	13,061,900
4. Minus 1981 national program acreage	14,021,538
5. Equals: Acreage reduction needed in 1981 from 1980	0
6. Divided by 1980 considered harvested acreage	13,061,900
7. Equals: 1981 recommended reduction percentage	0

4. *Normal Crop Acreage Requirement.* It is hereby determined that there will be no normal crop acreage requirement under the 1981-crop upland cotton program.

5. *Set-Aside Requirement.* Section 103 (f)(11)(A) of the 1949 Act provides that the Secretary shall provide for a set-aside of cropland if the Secretary determines that the total supply of upland cotton is, in the absence of such a set-aside, likely to be excessive taking into account the need for an adequate carryover to maintain reasonable and stable supplies and prices and to meet a national emergency. Accordingly, it is hereby determined and proclaimed that there will be no set-aside requirement under the 1981-crop upland cotton program. In making this determination, the Secretary took into consideration the following data:

Without a set-aside, it is expected that upland cotton acreage in 1981 will be around 13.9 million acres—0.4 million (3 percent) below 1980. With normal weather and yields of around 485 pounds per harvested acre, production would likely total 13.2 million bales—2.4 million (22) percent above 1980. With adverse weather conditions and yields of around 440 pounds per harvested acre, production would total around 11.6 million bales—0.8 million (7 percent) above 1980. With very favorable weather and yields of around 530 pounds per harvested acre, production would total around 14.8 million bales—4.0 million (37 percent) above 1980.

Stock build-up at the end of the 1981–82 season is not expected to be excessive because of the relatively low level of beginning stocks, now projected to be around 2.6 million bales. Domestic use plus exports are expected to fall within the range of 12.0 and 12.8 million bales. Under these conditions, stocks could range from 2.3 to 5.2 million bales on July 31, 1982 with a most likely level of 3.1 million bales. Except with very favorable weather, stocks would still be less than the desired level of 5.0 million bales.

Given this outlook for upland cotton, it is determined that no set-aside is needed for the 1981 crop of upland cotton. A set-aside program to reduce upland cotton production could aggravate and already tight supply-demand situation.

6. *Land Diversion.* In view of the decision not to require a set-aside of cropland as a condition of eligibility for loans and payments and in view of the fact that land diversion payments are not necessary to assist in adjusting the total national acreage of upland cotton to desirable goals, no land diversion program as provided for by section 103 (f)(11)(B) of the 1949 Act will be implemented for the 1981 crop of upland cotton.

7. *Limitation on Planted Acreage.* Section 103 (f)(11)(A) provides that the Secretary may limit the acreage planted to upland cotton if a set-aside is in effect. It is hereby determined that there will be no limitation on acreage planted to upland cotton in 1981 since there is no set-aside requirement.

Signed at Washington, D.C., on December 15, 1980.

Bob Bergland,

Secretary.

[FR Doc. 80-39365 Filed 12-15-80; 4:46 pm]

BILLING CODE 3410-05-M

Animal and Plant Health Inspection Service

Specific Approval of Stockyards; Supplemental Listing

The regulations in 9 CFR Part 78, as amended, contain restrictions on the interstate movement of cattle, other domestic animals and bison to prevent the spread of brucellosis. This document adds certain stockyards to the list of those specifically approved for purposes of the regulations, on the basis of a determination of their eligibility for such approval under § 78.25(b) of the regulations and removes from the list certain other stockyards which have been found no longer to qualify for such approval. Name changes are also made with respect to certain stockyards.

The following stockyards preceded by an asterisk are specifically approved for the purposes of §§ 78.7, 78.8, and 78.12a, Title 9, Code of Federal Regulations, concerning brucellosis reactors, exposed cattle, and cattle from quarantined areas, and for the purposes of §§ 78.9, 78.10, and 78.11 of said Title 9, concerning cattle not known to be affected with brucellosis, cattle from qualified herds, and cattle from herds of unknown status. The following stockyards not preceded by an asterisk are specifically approved for the purposes of §§ 78.9, 78.10, and 78.11 concerning cattle only from herds not known to be affected, cattle from qualified herds, and cattle from herds of unknown status, because these markets entered into a Memorandum of Understanding with the State and Veterinary Services containing standards which prohibit the handling of

brucellosis reactors, exposed cattle, and cattle from quarantined areas. The approved stockyards not preceded by an asterisk are prohibited from handling brucellosis reactors, exposed cattle, and cattle from quarantined areas because of a restriction imposed by the State or because the approved stockyard does not have adequate facilities to assure that the various classes of cattle can be kept adequately segregated to prevent the spread of brucellosis.

Alabama

*Agricultural Marketing Association of Alabama, Inc., Louisville
*Atmore Truckers Association, Inc., Atmore
*Casey's Stockyard, Inc., Montgomery
*Farmers Livestock Auction, Russellville
*Jackson County Stockyard, Larkinsville
*W. G. Mercer Livestock Company, Chancellor

Arkansas

*Richardson Livestock Commission Company, North Little Rock
*White County Livestock Auction, Searcy

Colorado

*Demmler Livestock Auction, Pueblo
*Greeley Producers Livestock Marketing Association, Greeley

Florida

*Arcadia State Livestock Market, Arcadia
*Cow Palace, Inc., Lakeland
*Gerald Darroh, Inc., Zolfo Springs
*Hardee Livestock Market, Inc., Wauchula
*Monticello Stockyards, Inc., Monticello
*North Florida Farmers Co-op, Inc., Ellisville
*Sumter County Farmers Market, Webster
*Trenton Livestock Market, Trenton

Georgia

*Gainesville Livestock Market, Gainesville
*Tri-County Livestock Auction Company, Social Circle

Indiana

*Hilltop Auction, Hanover

Iowa

*Baxter Sale Company, Baxter
*Edgewood Livestock Auction, Inc., Edgewood
*Maquoketa Livestock Corp., Maquoketa

Kentucky

*R. B. Berry & Son Livestock Co., Inc., Clinton
*Blue Grass Stockyards Co., Inc., Lexington
*Brown Livestock Company, Clinton
*Clark County Stockyard, Winchester
*Clay-Wachs Stockyard, Inc., Lexington
*Elizabethtown N.F.O. Collection Point, Glendale
*Faire Stockyards, Bardwell
*Farmers Stockyard, Inc., Flemingsburg
*Glasgow Livestock Auction, Inc., Glasgow
*Mantle Stockyards, Bardwell
*New Farmers Stockyard, Inc., Mt. Sterling
*Henry County Stockyard, Inc., Pendleton
*Paducah Livestock Auction, Ledbetter
*John R. Riley Livestock, Mayfield
*Lee Schneider Sales Barn, Walton
*Walton N.F.O. Sales, New Walton Stockyard, Walton

Louisiana

*Vermilion Livestock Co., Inc., Abbeville

Maine

Massow's Livestock Sales, Corinna

Maryland

*Grantsville Livestock Auction, Inc., Grantsville

Minnesota

Harmony Livestock Sales, Harmony

Mississippi

*The Central Mississippi Livestock Exchange, Inc., Bay Springs
*Ed Eaton Farms, Okolona

Missouri

*Fruitland Livestock, Inc., Jackson
*Interstate Livestock Market, Inc., Bethany
Ozark County Cattle Company, Gainesville
*Public Auction Yards, Lewistown
Roberts Brothers Livestock Commission Co., Bolivar

New Mexico

*Artesia Livestock Commission Company, Artesia

North Carolina

FCX, Inc., Hillsborough
Farmers Livestock Barn, Harrisburg

Ohio

Middendorff Stockyard Company, d.b.a. Kenton Farmers Market Company, Kenton

Oklahoma

*Beeline Stockyards, Glenpool

South Carolina

Piedmont Livestock Center, Laurens

Tennessee

*Troy Livestock Exchange, Troy

Texas

Milano Livestock Market, Inc., Milano

Vermont

Morrisville Commission Sale, Inc., Morrisville
Orleans Commission Sales, Orleans
St. Albans Commission Sale, St. Albans

Virginia

*Charlottsville Livestock Market, Charlottesville
*Victoria Stockyards, Victoria

Wisconsin

Barron Livestock Sales Barn, Barron
*Beetown Livestock Exchange, Beetown
Coon Valley Sale Barn, Coon Valley

Wyoming

*Greybull Livestock Auction, Inc., Greybull

The following livestock markets are deleted from the list specifically approved to handle interstate shipments of cattle:

Alabama

*Hodges Stockyard, Inc., Montgomery
*Jasper Livestock Auction, Jasper
*Northwest Alabama Livestock Auction, Russellville

Arkansas

*Montgomery Livestock Auction, Searcy
*Shantz Livestock Auction, North Little Rock

Colorado

*Greeley Producers Association, Greeley

Georgia

Lanierland Livestock Auction, Gainesville
*North Georgia Farmers Livestock Canton
Southwest Georgia Livestock Market, Inc., Camilla
Tri-County Livestock Company, Social Circle

Iowa

Edgewood Sales Barn, Inc., Edgewood
Maquoketa Sales Co., Inc., Maquoketa

Kentucky

R. B. Berry & Son Livestock Co., Inc., Clinton
Brown Livestock Company, Clinton
*Blue Grass Stockyards, Inc., Lexington
Carnes Livestock Market, Leitchfield
*Clark County Livestock Market, Winchester
*Clay-Wachs Stockyard, Lexington
*Elizabethtown N.F.O. Reload, Glendale
Faire Stockyards, Bardwell
*Farmers Stockyard, Flemingsburg
*Farmers Livestock Marketing Co-op., Russellville
*Glasgow Livestock Market, Glasgow
*Good Day Stockyards, Princeton
*Henry County Stockyard, Inc., Sulphur
Mantle Stockyards, Bardwell
*New Farmers Stockyard, Mt. Sterling
*NFO Collection Point, Walton
*Paducah Livestock Auction, Paducah
*Schneider & Colston Sales Barn, Walton
*Shoemaker Livestock Company, Mayfield

Louisiana

*Guilbeau-Kennedy Stockyards, Opelousas
*W. H. Hodges & Co., Inc., Crowley
*Jennings Tate Commission Barn, Inc., Ville Platte

Maine

Crosman's Livestock Sales, Corinna

Minnesota

Rush City Livestock Market, Inc., Rush City

Missouri

*Fruitland Livestock Market, Inc., Jackson
Interstate Livestock Market, Inc., Bethany
*Lewis County Auction Company, Lewistown
Roberts Brothers Auction, Bolivar

Nebraska

*Farmers Livestock Sales Company, Benkelman

North Carolina

Central Carolina Farmers Livestock Market, Hillsborough
William A. Crofton Livestock, Lumberton
Farmers Livestock Barn, Kannapolis
Shelby Sales Barn, Shelby

Ohio

Kenton Farmers Marketing Company, Kenton
Producers Livestock Association, Circleville
Tri-State Farms, Inc., d.b.a. Interstate Farmers Livestock Company, Oxford
Woodsfield Livestock Sales, Inc., Woodsfield
Zanesville Community Sales Co., Inc., Zanesville

Virginia

*Albemarle Livestock Market, Inc., Charlottesville

*Victoria Livestock Market, Victoria

Wyoming

*Prosser Livestock Market, Inc., d.b.a. Greybull Commission Co., Greybull.

Effective Date: The foregoing notice shall become effective December 19, 1980.

Done at Washington, D.C., this 15 day of December 1980.

J. K. Atwell,

Acting Deputy Administrator, Veterinary Services.

[FR Doc. 80-39336 Filed 12-18-80; 8:45 am]

BILLING CODE 3410-34-M

Rural Electrification Administration

Tex-La Electric Cooperative of Texas, Inc.; Proposed Loan Guarantee

Under the authority of Public Law 93-32 (87 Stat. 65) and in conformance with applicable agency policies and procedures as set forth in REA Bulletin 20-22 (Guarantee of Loans for Bulk Power Supply Facilities), notice is hereby given that the Administrator of REA will consider providing a guarantee supported by the full faith and credit of the United States of America for a loan in the approximate amount of $135,000,000 to Tex-La Electric Cooperative of Texas, Inc. of San Augustine, Texas. These funds will be used to finance a 4.333 percent undivided ownership interest in the Comanche Peak Nuclear Steam Electric Station, Units 1 and 2, and an approximate 12 percent undivided ownership interest in the 45.5 mile Everman 345 kV transmission line.

Legally organized lending agencies capable of making, holding and servicing the loan proposed to be guaranteed may obtain information on the proposed program, including the engineering and economic feasibility studies and the proposed schedule for the advances to the borrower of the guaranteed loan funds from Mr. John H. Butts, Manager, Tex-La Electric Cooperative of Texas, Inc., P.O. Box 479, San Augustine, Texas 20250.

In order to be considered, proposals must be submitted on or before January 19, 1981, to Mr. Butts. The right is reserved to give such consideration and make such evaluation or other disposition of all proposals received as Tex-La Electric Cooperative of Texas, Inc. and REA deem appropriate. Prospective lenders are advised that the guaranteed financing for this project is available from the Federal Financing Bank under a standing agreement with the Rural Electrification Administration.

Copies of REA Bulletin 20-22 are available from the Director, Office of Information and Public Affairs, Rural Electrification Administration, U.S. Department of Agriculture, Washington, D.C. 20250.

(This program is listed in the Catalog of Federal Domestic Assistance as 10.850—Rural Electrification Loans and Loan Guarantees.)

Dated at Washington, D.C., this 10th day of December, 1980.

Susan T. Shepherd,

Acting Administrator, Rural Electrification Administration.

[FR Doc. 80-39223 Filed 12-18-80; 8:45 am]

BILLING CODE 3410-15-M

DEPARTMENT OF COMMERCE

Economic Development Administration

Petitions by Producing Firms for Determinations of Eligibility To Apply for Trade Adjustment Assistance

Petitions have been accepted for filing from the following firms: (1) Boman Industries, Inc., 9300 Hall Road, Downey, California 90241, a producer of automotive radios and other sound equipment (accepted November 24, 1980); (2) Cove Manufacturing, Inc., 331 Bonney Street, New Bedford, Massachusetts 02744, a producer of women's dresses, jackets and vests (accepted November 28, 1980); (3) Fulop Manufacturing Company, 1530 W. 25th Street, Cleveland, Ohio 44113, a producer of industrial fasteners (accepted December 1, 1980); (4) Metlox Manufacturing Company, 1200 Morningside Drive, Manhattan Beach, California 90266, a producer of ceramic dinnerware and giftware (accepted December 1, 1980); (5) Hawthorne Sportswear, Inc., 25 Foster Street, Worcester, Massachusetts 01608, a producer of women's skirts, pants and shorts (accepted December 3, 1980); (6) Maddalozzo Mushroom Farms, 101 Old Kennett Road, Kennett Square, Pennsylvania 19348, a producer of mushrooms (accepted December 3, 1980); (7) United States Crystal Corporation, 3605 McCart Street, Fort Worth, Texas 76110, a producer of quartz crystals (accepted December 3, 1980); (8) Vinnie Blouse Company, Wind Gap, Pennsylvania 18091, a producer of women's blouses (accepted December 3, 1980); (9) Pivot Metal Works, Inc., 100 Alabama Avenue, Brooklyn, New York 11207, a producer of handbag frames and ornaments (accepted December 3, 1980); (10) Ned J. Fashions, Inc., 4350 Commerce Circle, S.W., Atlanta, Georgia 30336, a producer of women's blouses, pants, jackets, vests and skirts (accepted December 4, 1980); (11) Phoenix Iron Works, P.O. Box 24123, Oakland, California 94623, a producer of iron castings (accepted December 4, 1980); (12) Flower Handbag Manufacturing Company, 25-39 Hall Street, Brooklyn, New York 11205, a producer of handbags (accepted December 9, 1980); (13) Arthur J. Clark Greenhouses, Inc., 4570 St. Paul Boulevard, Rochester, New York 14617, a producer of cut flowers and plants (accepted December 9, 1980); (14) Rockford Corporation, 328 South Rockford Drive, Tempe, Arizona 85281, a producer of car stereo power amplifiers (accepted December 9, 1980); (15) Toland Tool, Inc., 1523 Cascade Street, Erie, Pennsylvania 16502, a producer of plastic and die-cast molds (accepted December 9, 1980); and (16) Youngquist Farms, 1374 McLean Road, Mount Vernon, Washington 98273, a producer of fruits, vegetables and grain (accepted December 9, 1980).

The petitions were submitted pursuant to Section 251 of the Trade Act of 1974 (P.L. 93-618) and § 315.23 of the Adjustment Assistance Regulations for Firms and Communities (13 CFR Part 315).

Consequently, the United States Department of Commerce has initiated separate investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each firm contributed importantly to total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

Any party having a substantial interest in the proceedings may request a public hearing on the matter. A request for a hearing must be received by the Chief, Trade Act Certification Division, Economic Development Administration, U.S. Department of Commerce, Washington, D.C. 20230, no later than the close of business of the tenth calendar day following the publication of this notice.

The *Catalogue of Federal Domestic Assistance* official program number and title of the program under which these petitions are submitted is 11.309, Trade Adjustment Assistance. Insofar as this notice involves petitions for determining eligibility under the Trade Act of 1974, the requirements of Office of Management and Budget Circular No.

A–95 regarding review by clearinghouses do not apply.

Jack W. Osburn, Jr.,

Chief, Trade Act Certification Division, Office of Eligibility and Industry Studies.

[FR Doc. 39401 Filed 12–18–80; 8:45 am]

BILLING CODE 3510–24–M

Maritime Administration

U.S. Merchant Marine Academy Advisory Board; Meeting Cancellation

Summary: The scheduled meeting of the Advisory Board to the U.S. Merchant Marine Academy (the Board) on December 16 published in the Federal Register December 1, 1980 (45 FR 79525), is cancelled. The Board meeting is to be postponed to January 13, 1980, 1:00 p.m. and will be held in the Elliot M See Room, Wiley Hall, U.S. Merchant Marine Academy, Kings Point, New York.

Dated: December 12, 1980.

So Ordered by Assistant Secretary of Commerce for Maritime Affairs Maritime Administration.

Robert J. Patton,

Secretary.

[FR Doc. 80–39387 Filed 12–18–80; 8:45 am]

BILLING CODE 3510–15–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcing Import Levels for Certain Cotton, Wool and Man-Made Fiber Textile Products From India, Effective January 1, 1981

December 16, 1980.

AGENCY: Committee for the Implementation of Textile Agreements.

ACTION: Establishing import levels for certain cotton, wool and man-made fiber textile products imported from India, effective on January 1, 1981.

SUMMARY: The Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of December 30, 1977, as amended, between the Governments of the United States and India establishes, among other things, specific ceilings for cotton, wool and man-made fiber textile products in Categories 330–369, 431–469, and 630–669, as a group, and individual Categories 336, 338/339/340, 341 and 347/348 during the agreement year which begins on January 1, 1981 and extends through December 31, 1981. The agreement also provides consultation levels for categories, such as Categories 318, 335, 342, 351, 359, 447, 636, 640, 641, and 666, which are not subject to specific ceilings and which may be increased during the year upon agreement between the two governments. In the letter published below the Chairman, Committee for the Implementation of Textile Agreements, directs the Commissioner of Customs to prohibit entry into the United States for consumption or withdrawal from warehouse for consumption of textile products in the foregoing categories, produced or manufactured in India and exported during the twelve-month period which begins on January 1, 1981, in excess of the designated levels. The level of restraint for Category 341 has been reduced to account for 128,079 dozen in carryforward that was applied to that level during the 1980 agreement year.

(A detailed description of the textile categories in terms of T.S.U.S.A. numbers was published in the Federal Register on February 28, 1980 (45 FR 13172), as amended on April 23, 1980 (45 FR 27463), and August 12, 1980 (45 FR 53506).)

This letter and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

EFFECTIVE DATE: January 1, 1981.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, Washington, D.C. 20230 (202/377–5423).

Paul T. O'Day,

Chairman, Committee for the Implementation of Textile Agreements.

December 16, 1980.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury,
Washington, D.C.

Dear Mr. Commissioner: Under the terms of the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of December 30, 1977, as amended, between the Governments of the United States and India; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended by Executive Order 11951 of January 6, 1977, you are directed to prohibit, effective on January 1, 1981 and for the twelve-month period extending through December 31, 1981, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products in the following categories accompanied by a visa, produced or manufactured in India, in excess of the indicated twelve-month levels of restraint.

Category	12-month level of restraint
330–369, 431–469 and 630–669.	43,370,197 square yards equivalent.
318	1,000,000 square yards.
335	16,949 dozen.
342	33,326 dozen.
351	13,462 dozen.
359	152,174 pound.
447	5,556 dozen.
636	15,453 dozen.
640	29,167 dozen.
641	49,276 dozen.
666	256,410 dozen.

Apparel products in Categories 330–359, 431–459 and 630–659 which are certified by the elephant certification shall be permitted entry up to a level of 3 million dozen for the twelve-month period beginning on January 1, 1981 and extending through December 31, 1981 and shall not be charged to the foregoing levels.

You are further directed to prohibit, effective on January 1, 1981 and for the twelve-month period extending through December 31, 1981, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton textile products in Categories 336, 338/339/340, 341 and 347/348, produced or manufactured in India, whether accompanied by a visa or an elephant-shaped certification, in excess of the following levels of restraint:

Category	12-month level of restraint
336	206,040 dozen.
338/339/340	1,004,600 dozen.
341	2,070,616 dozen.
347/348	122,880 dozen.

Cotton textile products in Categories 336, 338/339/34, 341 and 347/348 are also chargeable to the level of restraint established for Categories 330–369, 431–469 and 630–669, as a group, unless accompanied by an elephant certification in which case they shall be chargeable to the level of 3 million dozen established for apparel products in Categories 330–359, 431–459 and 630–659.

Floor coverings in Categories 369 (only T.S.U.S.A. numbers 360.7600 and 361.5420), 465 (only T.S.U.S.A. numbers 360.0500, 360.1015, 360.1515, 361.4200 and 361.4400), and 665 (only T.S.U.S.A. number 360.7800), shall not be subject to this directive.

In carrying out this directive, cotton, wool and man-made fiber textile products in all of the foregoing categories, including products accompanied by the elephant certification, produced or manufactured in India and exported to the United States on and after January 1, 1980 and extending through December 31, 1980, shall, to the extent of any unfilled balances, be charged against the levels of restraint established for such goods during the twelve-month period beginning on January 1, 1980 and extending through December 31, 1980. In the event that the levels of restraint established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The levels of restraint set forth above are subject to adjustment in the future, as

applicable, according to the provisions of the bilateral agreement of December 30, 1977, as amended, between the Governments of the United States and India which provide, in part, that: (1) Within the aggregate, group limits may be exceeded by designated percentages; (2) specific limits may be exceeded by various percentages subject to various provisions of the agreement; (3) consultation levels may be increased upon agreement between the two governments; and (4) administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of the agreement. Any appropriate adjustments under the provisions of the bilateral agreement referred to above will be made to you by letter.

A detailed description of the textile categories in terms of T.S.U.S.A. numbers was published in the Federal Register on February 28, 1980 (45 FR 13172) as amended on April 23, 1980 (45 FR 27463), and August 12, 1980 (45 FR 53506).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The actions taken with respect to the Government of India and with respect to imports of cotton, wool and man-made fiber textile products from India have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, these directions to the Commissioner of Customs, which are necessary for the implementation of such actions, fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553. This letter will be published in the Federal Register.

Sincerely,

Paul T. O'Day,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 80-39464 Filed 12-18-80; 8:45 am]

BILLING CODE 3510-25-M

Announcing Import Restraint Levels for Certain Cotton and Man-Made Fiber Textile Products from Mexico Effective January 1, 1981

December 16, 1980.

AGENCY: Committee for the Implementation of Textile Agreements.

ACTION: Establishing import restraint levels for certain cotton, wool and man-made fiber textile products imported from Mexico, effective on January 1, 1981.

SUMMARY: The Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of February 26, 1979, as amended, between the Governments of the United States and Mexico, establishes specific levels for restraint for certain cotton, wool and man-made fiber textile products, among others, in Categories 335, 338/339, 347/348, 633, 634/635, 638/639, 641, 647/648 and 649, produced or manufactured in Mexico and exported during the twelve-month period beginning on January 1, 1981. The agreement also establishes consultation levels for certain categories, such as Categories 336, 341, 345, 352, 436, 604 (only T.S.U.S.A. 310.5049) and 650, which are not subject to specific ceilings and which may be adjusted during the year upon agreement between the two governments. In the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to prohibit entry into the United States for consumption, or withdrawal from warehouse for consumption, of cotton, wool and man-made fiber textile products in the foregoing categories in excess of the designated twelve-month levels of restraint. The level of restraint for Category 641 has been reduced by 53,850 dozen to account for overshipment charges being made according to a settlement between the two governments.

(A detailed description of the textile categories in terms of T.S.U.S.A. numbers was published in the Federal Register on February 28, 1980 (45 FR 13172), as amended on April 23, 1980 (45 FR 27463), and August 12, 1980 (45 FR 53506)).

This letter and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

EFFECTIVE DATE: January 1, 1981.

FOR FURTHER INFORMATION CONTACT: William J. Boyd, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, Washington, D.C. 20230 (202/377-4212).

Paul T. O'Day,

Chairman, Committee for the Implementation of Textile Agreements.

December 16, 1980.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury,
Washington, D.C.

Dear Mr. Commissioner: Under the terms of the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of February 26, 1979, as amended, between the Governments of the United States and Mexico; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended by Executive Order 11951 of January 6, 1977, you are directed to prohibit, effective on January 1, 1981 and for the twelve-month period extending through December 31, 1981, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products in the following categories, produced or manufactured in Mexico, in excess of the following levels of restraint:

Category	12-month level of restraint
335	36,731 dozen.
336	22,075 dozen.
338/339	421,387 dozen.
341	68,966 dozen.
345	19,022 dozen.
347/348	602,934 dozen of which not more than 361,761 dozen shall be in Cat. 347 and not more than 361,761 dozen shall be in Cat. 348.
352	181,818 dozen.
436	2,033 dozen.
604 (only T.S.U.S.A. 310.5049).	914,634 pounds.
633	53,766 dozen.
634/635	306,501 dozen of which not more than 183,901 dozen shall be in Cat. 634 and not more than 183,901 dozen shall be in Cat. 635.
638/639	14,738,793 square yards equivalent of which not more than 491,293 dozen shall be in Cat. 638 and not more than 589,552 dozen shall be in Cat. 639.
641	276,728 dozen.
647/648	1,498,886 dozen of which not more than 899,332 dozen shall be in Cat. 647 and not more than 899,332 dozen shall be in Cat. 648.
649	2,606,250 dozen.
650	13,725 dozen.

In carrying out this directive, entries of cotton, wool and man-made fiber textile products in the foregoing categories, except Categories 335, 341 and 345, produced or manufactured in Mexico, which have been exported on and after January 1, 1980 and extending through December 31, 1980, shall to the extent of any unfilled balances, be charged against the levels of restraint established for such goods during the period which began on January 1, 1980 and extends through December 31, 1980. In the event the levels of restraint established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this notice.

Textile products in Categories 335, 341 and 345 which have been exported to the United States prior to January 1, 1981 shall not be subject to this directive.

The levels set forth above are subject to adjustment in the future according to the provisions of the bilateral agreement of February 26, 1979, as amended, between the Governments of the United States and Mexico, which provide, in part, that: (1) Specific limits or specific sublimits may be exceeded by not more than seven percent for swing in any agreement period; (2) these same limits may be adjusted for carryover and carryforward up to 11 percent of the applicable category limit or sublimit; and (3) administrative arrangements or ajustments may be made to resolve problems arising in the implementation of the agreement. Any appropriate adjustments under the provisions

of the bilateral agreement, referred to above, will be made to you by letter.

A detailed description of the textile categories in terms of T.S.U.S.A. numbers was published in the Federal Register on February 28, 1980 (45 FR 13172), as amended on April 23, 1980 (45 FR 27463) and August 12, 1980 (45 FR 53506).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The actions taken with respect to the Government of Mexico and with respect to imports of cotton, wool and man-made fiber textile products from Mexico have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, these directions to the Commissioner of Customers, which are necessary for the implementation of such actions, fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553. This letter will be published in the Federal Register.

Sincerely,

Paul T. O'Day,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 80-39465 Filed 12-18-80; 8:45 am]

BILLING CODE 3510-25-M

Announcing Import Restraint Levels for Certain Cotton, Wool and Man-Made Fiber Textile Products From Singapore; Effective January 1, 1981

December 16, 1980.

AGENCY: Committee for the Implementation of Textile Agreements.

ACTION: Establishing import restraint levels for certain cotton, wool and man-made fiber textile products imported from Singapore, effective on January 1, 1981.

SUMMARY: The Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of September 21 and 22, 1978, as amended, between the Governments of the United States and the Republic of Singapore, establishes specific levels of restraint for cotton and man-made fiber textile products in Categories 333/334/335 (cotton coats), 340 (men's and boys' woven cotton shirts), 347/348 (cotton trousers), and 638/639 (knit shirts of man-made fibers) produced or manufactured in Singapore and exported to the United States during the twelve-month period beginning on January 1, 1981. It also provides consultation levels for certain categories, such as Categories 317 (cotton twil and sateens), 331 (cotton gloves and mittens), 341 (women's, girls' and infants' woven cotton blouses), 445/446 (wool sweaters), 604 (other man-made fiber yarn, wholly of non-cellulosic filament), and 641 (woven blouses of man-made fibers), among others.

The letter published below from the Chairman of the Committee for the Implementation of Textile Agreements to the Commissioner of Customs directs that entry into the United States for consumption, or withdrawal from warehouse for consumption, of cotton, wool and man-made fiber textile products in Categories 317, 331, 333/334/335, 340, 341, 347/348, 445/446, 604, 638/639 and 641 be limited to the designated levels of restraint during the twelve-month period which began on January 1, 1981 and extends through December 31, 1981.

(A detailed description of the textile categories in terms of T.S.U.S.A. numbers was published in the Federal Register on February 28, 1980 (45 FR 13172), as amended on April 23, 1980 (45 FR 27463), and August 12, 1980 (45 FR 53506)).

This letter and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

EFFECTIVE DATE: January 1, 1981.

FOR FURTHER INFORMATION CONTACT:

Ronald Sorini, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, Washington, D.C. 20230 (202/377-5423).

Paul T. O'Day,

Chairman, Committee for the Implementation of Textile Agreements.

December 16, 1980.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury,
Washington, D.C.

Dear Mr. Commissioner: Under the terms of the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of September 21 and 22, 1978, as amended, between the Governments of the United States and the Republic of Singapore; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended by Executive Order 11951 of January 6, 1977, you are directed to prohibit, effective on January 1, 1981 and for the twelve-month period extending through December 31, 1981, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products in the following categories, produced or manufactured in Singapore, in excess of the indicated twelve-month levels of restraint:

Category	12-month level of restraint
317	8,000,000 square yards.
331	221,429 dozen pairs.
340	405,169 dozen.
333/334/335	173,644 dozen of which not more than 9,985 dozen shall be in Cat. 333; not more than 52,718 dozen shall be in Cat. 334; and not more than 136,988 dozen shall be in Cat. 335.
341	49,276 dozen.
347/348	451,738 dozen of which not more than 438,502 dozen shall be in Cat. 347 and not more than 225,013 dozen shall be in Cat. 348.
445/446	20,000 dozen.
604	700,000 pounds.
638/639	2,972,217 dozen of which not more than 371,527 dozen shall be in Cat. 638.
641	77,276 dozen.

In carrying this directive, entries of cotton, wool and man-made fiber textile products in the foregoing categories, produced or manufactured in the Republic of Singapore, which have been exported to the United States on and after January 1, 1980 and extending through December 31, 1980, shall, to the extent of any unfilled balances, be charged against the levels of restraint established for such goods during the twelve-month period beginning on January 1, 1980 and extending through December 31, 1980. In the event the levels of restraint established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this letter.

The levels set forth above are subject to adjustment in the future according to those provisions of the bilateral agreement of September 21 and 22, 1978, as amended, between the Governments of the United States and the Republic of Singapore, which provide, in part, that: (1) Within the aggregate and applicable group limits, specific limits and sublimits, may be exceeded by designated percentages; (2) specific levels may be increased for carryover and carryforward up to 11 percent of the applicable category limit; and (3) administrative arrangements for adjustments may be made to resolve problems arising in the implementation of the agreement. Any appropriate adjustments under the provisions of the bilateral agreement, referred to above, will be made to you by letter.

A detailed description of the textile categories in terms of T.S.U.S.A. numbers was published in the Federal Register on February 28, 1980 (45 FR 17172), as amended on April 23, 1980 (45 FR 27463), and August 12, 1980 (45 FR 53506).

In carrying out the above directions, the Commissioner of Customs should contrue entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The actions taken with respect to the Government of the Republic of Singapore and with respect to imports of cotton, wool and man-made fiber textile products from Singapore have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, these directions to the Commissioner of

Customs, which are necessary for the implementation of such actions, fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the Federal Register.

Sincerely,

Paul T. O'Day,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 80-39463 Filed 12-18-80; 8:45 am]

BILLING CODE 3510-25-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1981 Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Additions to procurement list.

SUMMARY: This action adds to Procurement List 1981 commodities to be produced by and a service to be provided by workshops for the blind and other severely handicapped.

EFFECTIVE DATE: December 19, 1980.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, 2009 14th Street North, Suite 610, Arlington, Virginia 22201.

FOR FURTHER INFORMATION CONTACT: C. W. Fletcher (703) 557-1145.

SUPPLEMENTARY INFORMATION: On July 3, 1980, July 18, 1980, and July 11, 1980, the Committee for Purchase from the Blind and Other Severely Handicapped published notices (45 FR 45342, 45 FR 48180, and 45 FR 46841) of proposed additions to Procurement List 1981, November 12, 1980 (45 FR 74836).

After consideration of the relevant matter presented, the Committee has determined that the commodities and service listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46-48c, 85 Stat. 77.

Accordingly, the following commodities and service are hereby added to Procurement List 1981:

Class 6530

Pad, Litter
6530-00-137-3016

Class 6645

Clock, Wall
6645-00-514-3523 (All GSA Regions)
6645-00-530-3342 (GSA Regions 4, 6, 7)

SIC 7349

Janitorial/Custodial
Base Education Trailers
Fairchild Air Force Base
Spokane, Washington

C. W. Fletcher,

Executive Director.

[FR Doc. 80-39461 Filed 12-18-80; 8:45 am]

BILLING CODE 6820-33-M

Procurement List 1981 Proposed Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed additions to procurement list.

SUMMARY: The Committee has received proposals to add to Procurement List 1981 commodities to be produced by and services to be provided by workshops for the blind and other severely handicapped.

COMMENTS MUST BE RECEIVED ON OR BEFORE: January 21, 1981.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, 2009 14th Street North, Suite 610, Arlington, Virginia 22201.

FOR FURTHER INFORMATION CONTACT: C. W. Fletcher (703) 557-1145

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2), 85 Stat. 77. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed action.

If the Committee approves the proposed additions, all entities of the Federal Government will be required to procure the commodities and services listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following commodities and services to Procurement List 1981, November 12, 1980 (45 FR 74836):

Class 7520

Pencil, Mechanical
7520-00-590-1878

Class 8470

Strap, Chin, Parachutist
8470-00-032-2737

Class 6540

Case, Spectacle
6540-00-42-8752

SIC 0782

Grounds Maintenance
U.S. Customs House
6 World Trade Center
New York, New York

SIC 7331

Mailing Services
Environmental Protection Agency
401 M Street, S.W.
Washington, D.C.
National Oceanic & Atmospheric Administration, Rockville, Maryland, for the following Offices:
Procurements & Grants Management Division
National Marine Fisheries Service, Fisheries, Development Division—F21
6010 Executive Boulevard
Public Affairs Administration, Public Affairs
Printing and Distribution Branch
11400 Rockville Pike
Distribution Section
12227 Wilkins Avenue

SIC 7349

Janitorial Services
U.S. Post Office and Customs House/ Courthouse
10 Broad Street
Utica, New York
Federal Building
815 Airport Way
Seattle, Washington

SIC 9199

Administrative Services to include Managing Supply Room and Operating Copying Machines
Environmental Protection Agency, General Services Branch
230 South Dearborn
Chicago, Illinois

C. W. Fletcher,

Executive Director.

[FR Doc. 80-39462 Filed 12-18-80; 8:45 am]

BILLING CODE 6820-33-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Task Force on Water in Southwest Asia; Advisory Committee Meeting

The Defense Science Board Task Force on Water in Southwest Asia will meet in closed session on 14-15 January 1981 at the Pentagon, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Research and Engineering on overall research and engineering policy and to provide long-range guidance to the Department of Defense in these areas.

At the meeting on 14-15 January the Task Force will review the current and future capability of the U.S. to provide water support to military forces in Southwest Asia and make recommendations concerning improvements and other associated programmatic actions.

In accordance with 5 U.S.C. App. 1 10(d)(1976), it has been determined that this Defense Science Board Task Force meeting concerns matters listed in 5 U.S.C. 552b(c)(1)(1976), and that accordingly this meeting will be closed to the public.

December 15, 1980.

M. S. Healy,

OSD Federal Register Liaison Officer, Washington Headquarters Services, Department of Defense.

[FR Doc. 80-39433 Filed 12-18-80; 8:45 am]

BILLING CODE 3810-70-M

DEPARTMENT OF ENERGY

Exercise of Contract Option; Booz, Allen & Hamilton

AGENCY: Department of Energy.

ACTION: Notice of exercise of contract option.

SUMMARY: In accordance with the Department of Energy Procurement Regulations, DOE gives public notice that a contract option is being exercised, after taking into account the existence of potential organizational conflicts of interest, because this procurement action is determined to be in the best interest of the United States.

FOR FURTHER INFORMATION CONTACT: Ronald Toms, U.S. Department of Energy, Office of Electric Energy Systems (RA-35), Room 7149, (202) 633-8111.

Determination and Findings

Upon the basis of the following findings and determination, the contract option described below is being exercised, after taking into account the existence of potential Organizational Conflicts of Interest, because this procurement action is determined to be in the best interest of the United States pursuant to the authority of Department of Energy Procurement Regulation 41 CFR 9-1.5409(a)(3).

(1) The Department of Energy (DOE), Office of Resource Applications is currently developing a plan for the industrialization of Fuel Cells for Utility Applications.

(2) In order to provide a data base for the plan it is necessary for the Office of Resource Applications to retain skilled and experienced professionals to collect information and perform analyses on an appropriate cross-section of the energy industry and the utilities and to develop the analytical base for DOE goal setting, strategy planning and implementation. Through normal competitive practice DOE had solicited proposals to the then—Fossil Energy's Division of Commercial Applications. A contract was awarded to Booz Allen and Hamilton Inc. in November 1977, for two years with two one-year option periods. The first option was exercised on November 1979, and it is the second option that is the subject of these determination and findings. The planned work comes within the scope of the original contract.

(3) In accordance with 41 CFR 9-1.5405, Booz Allen and Hamilton Inc. has provided disclosure of information concerning its interests related to the contract work to be performed. Specifically DOE was furnished with information concerning whether possible organizational conflicts of interest exist with respect to: (1) a contractor's ability to render impartial technically sound and objective assistance or advice, or (2) whether an unfair competitive advantage may be conferred on a contractor as a result of performing specific tasks. It has been judged that a potential conflict of interest exists because Booz Allen and Hamilton Inc. has business relationships with the energy industry and derives income thereform. In particular, Booz Allen & Hamilton discloses that they have rendered in the past and are presently providing technical advice on potentially competing energy technologies as well as the projections of energy needs and applications.

Booz Allen and Hamilton Inc. has made several assessments for the Federal Government over the past years which have shown their ability to be abjective and perform without bias. Since Booz Allen and Hamilton Inc. serves a number of potential and actual organizations in the energy and utility industry it is potentially in their best interest to be unbiased in conducting this work. The nature of the study and its results, which will be in the public domain, are not anticipated to provide Booz Allen and Hamilton Inc. with an unfair competitive advantage based on the performance of the contract work.

Mitigation, to the extent feasible, under § 9-1.5409(a)(3), will be obtained by (1) independent staff review by DOE officials; (2) use of established practices to evaluate and verify the material developed by Booz Allen & Hamilton Inc.; (3) administrative procedures through which peer review and public distribution allow mitigation of potential conflicts in the data and analysis.

Determination

In light of the above findings, I hereby determine in accordance with 41 CFR 9-1.409(a)(3) that award of this contract would be in the best interest of the United States.

Issued in Washington, D.C., December 17, 1980.

Rudolph A. Black,

Acting Assistant Secretary, Resource Applications.

[FR Doc. 80-39714 Filed 12-18-80; 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

[ERA Case No. 55023-9053-01-12 and 55023-9053-02-12; Docket No. ERA-FC-79-001]

Anheuser-Busch, Inc.; Request for Modification of Order

AGENCY: Department of Energy, Economic Regulatory Administration.

ACTION: Request for Modification of Order Issued Under the Powerplant and Industrial Fuel Use Act of 1978.

SUMMARY: On November 20, 1980, Anheuser-Busch, Incorporated (Anheuser-Busch), requested that the Economic Regulatory Administration (ERA) modify one of the terms and conditions of an Order issued to Anheuser-Busch on December 14, 1979 granting permanent exemptions from the prohibitions of Title II of the Powerplant and Industrial Fuel Use Act of 1978 (FUA or the Act) (42 U.S.C 8301 *et seq.*) so as to permit Anheuser-Busch to operate on either natural gas or petroleum two boilers being installed at their Los Angeles, California brewery. Anheuser-Busch requested that ERA modify the order by rescinding Condition No. 15 of the terms and conditions contained in the order, pursuant to which Anheuser-Busch agreed to the installation of a demonstration solar energy system.

ERA has proposed to modify this term and condition and requests interested persons to submit public comments on this proposed modification to the order issued to Anheuser-Busch.

DATE: Written comments are due on or before January 2, 1981.

ADDRESS: Fifteen copies of written comments shall be submitted to: Department of Energy, Case Control Unit, Box 4629, Room 3108, 2000 M street, NW, Washington, D.C. 20461.

Docket No. ERA-FC-79-001 should be printed clearly on the outside of the envelope and the document contained therein.

FOR FURTHER INFORMATION CONTACT: Ellen Russell, Case Manager, New MFBI Branch, Office of Fuels Conversion, Economic Regulatory Administration, Department of Energy, 2000 M Street, NW, Room 3128, Washington, D.C. 20461, Phone (202) 653-4236.

Edward L. Lublin, Esq., Office of General Counsel, Department of Energy, 1000 Independence Avenue, SW, Room 6B178, Washington, D.C. 20585, Phone (202) 252–2967.
William L. Webb, Office of Public Information, Economic Regulatory Administration, Department of Energy, 2000 M Street, NW, Room B–110, Washington, D.C. 20461.

SUPPLEMENTARY INFORMATION: On December 14, 1979, ERA issued an order granting permanent exemptions from the prohibitions of the FUA to Anheuser-Busch so as to permit Anheuser-Busch to operate two boilers being installed at their Los Angeles, California brewery. The order became effective on April 25, 1980. A copy of the order was published in the Federal Register on December 20, 1979 (44 FR 75448).

Section 214(a) of the Act gives ERA the authority to include in any order granting an exemption, appropriate terms and conditions. Condition 15 of the Anheuser-Busch order noted that Anheuser-Busch agreed to the installation of a solar energy system for hot water and heating and cooling to be installed at either the present administration building at the Los Angeles Brewery or a new hospitality center should Anheuser-Busch decide to build such a facility at the Los Angeles brewery.

Subsequent to the issuance of the final order, Anheuser-Busch prepared a technical and economic study with respect to the solar energy project, on the basis of which, Anheuser-Busch concluded that the project would not be cost effective. This study was submitted as a part of Anheuser-Busch's request for modification. As a result, Anheuser-Busch requested ERA to rescind Condition 15.

On May 30, 1980, ERA issued final rules pursuant to which exemptions from the prohibitions of FUA would be granted to new facilities. Under the final rules (published at 45 FR 38302, June 6, 1980), ERA provided for a petitioner to identify, describe and document conservation measures which have been taken by the petitioner or for which studies have been undertaken as well as the conservation goals of the petitioner. In general, the implementation of effective fuel conservation measures, required as terms and conditions of a granted exemption, has been left up to the petitioner, including the determination as to whether such measures are appropriate and economical to implement.

ERA is proposing to modify Condition No. 15 of its order issued to Anheuser-Busch so as to leave the implementation of this fuel conservation measure, as modified, up to Anheuser-Busch. ERA has made no determination on the merits of whether the project should be carried out. On the basis of the request for modification submitted by Anheuser-Busch, a copy of which is in the public record, it is assumed by ERA that the project will be abandoned by Anheuser-Busch as uneconomic if the modification is made.

ERA proposes to modify Condition No. 15 to read as follows:

In addition to the above conditions, the Company has voluntarily agreed to consider and study the technical and economic feasibility of the installation of a solar energy system for hot water and heating and cooling at either the present administrative building at the Los Angeles brewery or a new hospitality center should Anheuser-Busch decide to build such a facility at the Los Angeles brewery. The Company shall notify ERA of the results of its study and of its decision to build or abadon the project."

This notice does not constitute a determination on the part of ERA to modify Condition 15. That decision will be based on the entire record of this proceeding, including any comments received.

Issued in Washington, D.C., on December 12, 1980.

Robert L. Davies,

Assistant Administrator, Office of Fuels Conversion, Economic Regulatory Administration.

[FR Doc 80-39494 Filed 12-18-80; 8:45 am]
BILLING CODE 6450-01-M

[ERA Case No. 51186-2063-02-42]

Greenwood Utilities; Acceptance of Petition

AGENCY: Economic Regulatory Administration.

ACTION: Notice of Acceptance of Petition for an Order Granting a Permanent Exemption for the use of Natural Gas by a Powerplant with Capacity of less than 250 million Btu's per hour Filed Pursuant to the Final Rules Implementing the Powerplant and Industrial Fuel Use Act,

SUMMARY: On October 16, 1980, Greenwood Utilities (Greenwood) of Greenwood, Mississippi petitioned the Economic Regulatory Administration (ERA) of the Department of Energy for an order exempting its Wright Unit #2 powerplant from the provisions of the Powerplant and Industrial Fuel Use Act of 1978 (FUA) which prohibit natural gas use in certain exsiting electric powerplants. ERA's final rules implementing FUA, including criteria to be used in petitioning for exemptions from the prohibitions of FUA, were issued on May 30, 1980 and August 1, 1980, and were published in the Federal Register on June 6, 1980 (45 FR 38276) and August 12, 1980 (45 FR 53682). Greenwood has requested a permanent exemption under Section 312(h) of FUA for use of natural gas by a powerplant with capacity of less than 250 million Btu's per hour for its Wright Unit #2 (Unit W–2), and certifies that Unit W–2 has a design capability of consuming fuel at a fuel heat input rate of less than 250 million Btu's per hour.

In addition, Greenwood certifies that Unit W–2 was a baseload powerplant on April 20, 1977; that Unit W–2 is not capable of burning solid coal, and not suitable coal derivative is available; and that use of a mixture of an alternate fuel and natural gas or petroleum for which and exemption would be available is not technically or economically feasible in Unit W–2.

Section 301(a)(1) of FUA imposes prohibitions against natural gas use as a primary energy source in an existing electric powerplant on or after January 1, 1990. Sections 301(a)(2) and (3) of FUA prohibit the use of natural gas as a primary energy source in an existing electric powerplant before January 1, 1990 unless such powerplant burned natural gas as a primary energy source in 1977, and then in no proportion greater than the average yearly proportion which the powerplant used in calendar years 1974 through 1976, unless an exemption has been granted by ERA. Wright Unit #2 is subject to the prohibitions in both Section 301(a)(1) and Sections 301(a)(2) and (3) of FUA. ERA's decision in this matter will determine whether Greenwood's Wright Unit #2 will be granted an exemption. In accordance with the provisions of Sections 701(c) and (d) of FUA and 10CFR 501.31 and 10 CFR 501.33, interested persons are invited to submit written comments in regard to this matter. Any interested person may also submit a written request that ERA convene a public hearing.

DATES: Written comments and requests for a public hearing are due on or before February 2, 1981. A request for a public hearing may be made by any interested person within this same 45 day period.

ADDRESSES: Fifteen copies of written comments shall be submitted to: Department of Energy, Case Control Unit, Box 4629, Room 3214, 2000 M Street, N.W., Washington, D.C. 20461.

Case Number ERA–FC–51186–2063–02–42 should be printed clearly on the

outside of the envelope and the document contained therein.

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

James W. Workman, Director, Powerplants Conversion Division, Office of Fuels Conversion, Economic Regulatory Administration, Department of Energy, 2000 M Street, N.W., Room 3128, Washington, D.C. 20461, (202) 653-4268.

Henry K. Garson, Acting Assistant General Counsel for Coal Regulations, Office of General Counsel, Department of Energy, 1000 Independence Avenue, S.W., Room 6B-178, Washington, D.C. 20585, (202) 252-2967.

SUPPLEMENTARY INFORMATION: The Economic Regulatory Administration (ERA) published final rules on June 6, 1980 and August 12, 1980, implementing provisions of Title III of the powerplant and Industrial Fuel Use Act of 1978 (FUA). Title III of FUA prohibits the use of natural gas as a primary energy source in an existing electric powerplant on or after January 1, 1990, and currently prohibits the use of natural gas as a primary energy source in an existing electric powerplant unless such powerplant burned natural gas as a primary energy source in 1977, and then in no proportion greater than the average yearly proportion which the powerplant used in calendar years 1974 through 1976, unless an exemption has been granted by ERA. Wright Unit #2 is a 5.0 MW electric powerplant that uses natural gas and is subject to the Title III prohibitions on natural gas use.

Wright Unit #2 (Unit W-2) is currently allowed to burn natural gas until October 31, 1981 under a special temporary public interest exemption which ERA granted to Greenwood Utilities (Greenwood) pursuant to 10 CFR 508. ERA, at the request of Greenwood, conducted a prepetition conference to discuss the filing of petitions for exemptions for existing powerplants pursuant to 10 CFR Part 504. Greenwood subsequently petitioned for a permanent exemption for the use of natural gas by a powerplant with capacity of less than 250 million Btu's per hour for its Unit W-2. It is Greenwood's intention that if such a permanent exemption is granted to Unit W-2, the permanent exemption would go into effect upon the expiration of the present special temporary public interest exemption. In its petition, Greenwood has certified that Unit W-2 has a design capability of consuming fuel at a fuel heat input rate of less than 250 million Btu's per hour; Unit W-2 was a baseload powerplant on April 20, 1977; Unit W-2 is not capable of burning solid coal, and no suitable coal derivative is available; and use of a mixture of an alternate fuel and natural gas or petroleum for which and exemption woudl be available is not technically or economically feasible in Unit W-2.

Greenwood has stated that if such a permanent exemption is granted to Unit W-2 it will accept the terms and conditions of 10 CFR 504.60(b) which are that all steam pipes on Unit W-2 must be insulated, and all steam traps on Unit W-2 must be properly maintained; and that this exemption for Unit W-2 may only apply to prohibitions under Section 301 of FUA and prohibitions established by final rules or orders issued before January 1, 1990.

ERA hereby accepts Greenwood's petition as adequate for filing pursuant to 10 CFR 501.3(d); however, ERA retains the right to request additional relevant information from Greenwood at any time during the pendency of these proceedings where circumstances or procedural requirements may so require.

The public file, containing documents on these proceedings and supporting material, is available for inspection upon request at: Economic Regulatory Administration, Room B-110, 2000 M Street, N.W., Washington, D.C., Monday-Friday, 8:00 a.m.-4:30 p.m.

Issued in Washington, D.C., on December 15, 1980.

Robert L. Davies,

Assistant Administrator, Office of fuels Conversion, Economic Regulatory Administration.

[FR Doc. 80-39495 Filed 12-18-80; 8:45 am]

BILLING CODE 6450-01-M

[ERA Docket No. 80-Cert-042]

Anchor Hocking Corp.; Application for Recertification of the Use of Natural Gas To Displace Fuel Oil

On August 20, 1979, Anchor Hocking Corporation (Anchor Hocking), 109 North Broad Street, Lancaster, Ohio 43130, was granted a certificate of an eligible use of natural gas to displace fuel oil by the Administrator of the Economic Regulatory Administration (ERA) (Docket No. 79-CERT-070). The certification involved the purchase of natural gas from Gas Transport, Inc. and Carl E. Smith, Inc., for use by Anchor Hocking at its glass manufacturing plant in Winchester, Indiana. That certificate expired on August 19, 1980.

Anchor Hocking did not file an application until November 25, 1980, for recertification of an eligible use of natural gas to displace fuel oil at its Winchester Plant pursuant to 10 CFR Part 595 (44 FR 47920, August 16, 1979). More detailed information is contained in the application on file with the ERA and available for public inspection at the ERA, Division of Natural Gas Docket Room, Room 7108, RG-55, 2000 M Street, NW., Washington, D.C. 20461, from 8:30 a.m. to 4:30 p.m. Monday through Friday, except Federal holidays.

In its application, Anchor Hocking states that the volume of natural gas for which it requests recertification is up to 3,200 Mcf per day. It is estimated that approximately 198,400 barrels of Nos. 2, 4, and 6 fuel oil (0.3 to 2.7 percent sulfur) will be displaced at the Winchester Plant per year. The eligible seller of the natural gas is Gas Transport, Inc., 109 North Broad Street, Lancaster, Ohio 43130, an Anchor Hocking subsidiary. The gas will be transported by Gas Transport, Inc. (address same as above); Columbia Gas Transmission Corporation, P.O. Box 1273, Quarren and Dunbar Streets, Charleston, West Virginia 25325; and Panhandle Eastern Pipe Line Company, P.O. Box 1642, 3000 Bisonnet Avenue, Houston, Texas 77001, all of which are interstate pipelines.

In order to provide the public with as much opportunity to participate in this proceeding as is practicable under the circumstances, we are inviting any person wishing to comment concerning this application to submit comments in writing to the Economic Regulatory Administration, Room 7108, RG-55, 2000 M Street, NW., Washington, D.C. 20461 Attention: Albert F. Bass, on or before December 29, 1980.

An opportunity to make an oral presentation of data, views, and arguments either against or in support of this application may be requested by any interested person in writing within the ten (10) day comment period. The request should state the person's interest, and if appropriate, why the person is a proper representative of a group or class of persons that has such an interest. The request should include a summary of the proposed oral presentation and a statement as to why an oral presentation is necessary. If ERA determines that an oral presentation is necessary, further notice will be given to Anchor Hocking and any persons filing comments and will be published in the Federal Register.

Issued in Washington, D.C., on December 12, 1980.

F. Scott Bush,

Assistant Administrator, Office of Regulatory Policy; Economic Regulatory Administration.

[FR Doc. 80-39442 Filed 12-19-80; 8:45 am]

BILLING CODE 6450-01-M

[ERA Docket No. 80-Cert-021A]

Arizona Public Service Co.; Amendment to a Certification of the Use of natural Gas to Displace Fuel Oil

On July 31, 1980, the Economic Regulatory Administration (ERA) issued to Arizona Public Service Company (Arizona Public) a certification (80-CERT-021, 45 FR 52198, August 6, 1980) of an eligible use of natural gas to displace fuel oil at Arizona Public's Ocotillo Plant, Tempe, Arizona; West Phoenix Plant, Phoenix, Arizona; Saguaro Plant, Red Rock, Arizona; and Yuma Plant, Yuma, Arizona, pursuant to 10 CFR Part 595 (44 FR 37920, August 16, 1979). Based upon information submitted in Arizona Public's application, the ERA certification issued listed Delhi Gas Pipeline Corporation and Bixco, Inc. as eligible sellers. The transporter of this natural gas was indicated to be El Paso Natural Gas Company.

On October 22, 1980, Arizona Public filed a request with ERA to amend its certification to include the following additional eligible sellers: Consumers Power Company, 212 W. Michigan Ave., Jackson, Michigan 49201; and Gas Company of New Mexico, a division of Southern Union Company, Suite 1800, First National Building, Dallas, Texas 75270. Arizona Public also requested that the following additional interstate pipelines be added as transporters in order to accommodate gas purchases from these additional sellers: Panhandle Eastern Pipe Line Company, P.O. Box. 1642, Houston, Texas 77001; Trunkline Pipe Line Company, P.O. Box 1642, Houston, Texas 77001; and Natural Gas Pipeline Company of America, 122 South Michigan Avenue, Chicago, Illinois 60603.

Notice of the requested amendment was published in the Federal Register (45 FR 76509, November 19, 1980) and an opportunity for public comment was provided for a period of ten (10) calendar days from the date of publication. No comments were received.

The ERA has carefully reviewed Arizona Public's request for amendment 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 Arizona Public's application for amendment satisfies the criteria enumerated in 10 CFR Part 595, and, therefore, has granted an amendment to the certification and transmitted that amendment to the Federal Energy Regulatory Commission. More detailed information, including a copy of Arizona Public's application, request for amendment, transmittal letter, and the actual amendment to the certification are available for public inspection at the ERA, Division of Natural Gas Docket Room, Room 7108, RG-55, 2000 M Street, N.W., Washington, D.C. 20461, from 8:30 a.m. to 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, D.C. on December 12, 1980.

F. Scott Bush,

Assistant Administrator, Office of Regulatory Policy; Economic Regulatory Administration.

[FR Doc. 80-39443 Filed 12-19-80; 8:45 am]

BILLING CODE 6450-01-M

W. R. Childress Oil Co.; Action Taken on Consent Order

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of action taken and opportunity for comment on consent order.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) announces action taken to execute a Consent Order and provides an opportunity for public comment on the Consent Order.

DATES: Effective date: December 9, 1980.

COMMENTS BY: January 19, 1981.

ADDRESS: Send comments to: Wayne I. Tucker, Southwest District Manager of Enforcement, U.S. Department of Energy, Economic Regulatory Administration, P.O. Box 35228, Dallas, Texas 75235.

FOR FURTHER INFORMATION CONTACT: Wayne I. Tucker, Southwest District Manager of Enforcement, U.S. Department of Energy, Economic Regulatory Administration, P.O. Box 35228, Dallas, Texas 75235 (phone) 214/767-7745.

SUPPLEMENTARY INFORMATION: On December 9, 1980, the Office of Enforcement of the ERA executed a Consent Order with W. R. Childress Oil Company, of Fort Worth, Texas. Under 10 CFR 205.199J(b), a Consent Order which involves a sum of less than $500,000 in the aggregate, excluding penalties and interest, may be made effective upon its execution.

Because the DOE and W. R. Childress, wish to expeditiously resolve this matter as agreed, the DOE has determined that it is in the public interest to make the Consent Order with W. R. Childress, effective as of the date of its execution by the DOE and W. R. Childress.

I. The Consent Order

W. R. Childress, with its home office in Fort Worth, Texas, is a firm engaged in the resale of motor gasoline, and is subject to the Mandatory Petroleum Price and Allocation Regulations at 10 CFR Parts 210, 211, 212. To resolve certain civil actions which could be brought by the Office of Enforcement of the Economic Regulatory Administration as a result of its audit of sales of motor gasoline the Office of Enforcement, ERA, and W. R. Childress entered into a Consent Order, the significant terms of which are as follows:

1. The period covered by the Consent Order was March 1, 1979 through August 31, 1979, and it included all sales of motor gasoline which were made during that period.
2. W. R. Childress incorrectly applied the provisions of 10 CFR 212.93 when determining maximum lawful sales prices for motor gasoline.
3. W. R. Childress has agreed to refund $17,250 through a rollback of $.02 per gallon in sales at company owned retail outlets.
4. W. R. Childress has agreed to pay a penalty of $500.
5. The provisions of 10 CFR 205.199J, including the publication of this Notice, are applicable to the Consent Order.

II. Submission of Written Comments

The ERA invites interested persons to comment on the terms, conditions, or procedural aspects of this Consent Order.

You should send your comments or written notification of a claim to Wayne I. Tucker, Southwest District Manager, U.S. Department of Energy, Economic Regulatory Administration, P.O. Box 35228, Dallas, Texas 75235. You may obtain a free copy of this Consent Order by writing to the same address or by calling 214/767-7745.

You should identify your comments or written notification of a claim on the outside of your envelope and on the documents you submit with the designation, "Comments on W. R. Childress Oil Company Consent Order." We will consider all comments we receive by 4:30 p.m. local time, on January 19, 1981. You should identify any information or data which, in your opinion, is confidential and submit it in accordance with the procedures in 10 CFR 205.9(f)

Issued in Dallas, Texas on the 12th day of December, 1980.

Wayne I. Tucker,

Southwest District Manager, Economic Regulatory Administration.

[FR Doc. 80-39445 Filed 12-19-80; 8:45 am]

BILLING CODE 6450-01-M

[ERA Docket No. 80-Cert-038]

Energy Systems Co., Division of InterNorth, Inc.; Application for Recertification of the Use of Natural Gas To Displace Fuel Oil

On January 18, 1980, Energy Systems Company, Division of InterNorth, Inc. (Energy Systems), formerly Energy Systems Division of Northern Natural Gas Company, 25 Main Place, Council Bluffs, Iowa 51501, was granted a certificate of eligible use of natural gas to displace fuel oil by the Administrator of the Economic Regulatory Administration (ERA) (Docket No. 79-CERT-106). The certification involved the purchase of natural gas from Peoples Natural Gas Division of Northern Natural Gas Company, for use by Energy Systems at its Howard Street Plant facility in Omaha, Nebraska. The ERA certificate expires on January 17, 1981.

On October 27, 1980, Energy Systems filed an application for recertification of an eligibile use of natural gas to displace fuel oil at the same facility pursuant to 10 CFR Part 595 (44 FR 47920, August 16, 1979). This application was filed too early, before the 60-day period prior to the expiration date of the original certificate, and ERA and the applicant agreed to postpone this notice of the application until it was eligible. More detailed information is contained in the application on file with the ERA and available for public inspection at the ERA, Division of Natural Gas Docket Room, Room 7108, 2000 M Street, N.W., Washington, D.C. 20461, from 8:30 a.m. to 4:30 p.m. Monday through Friday, except Federal holidays.

In its application, Energy Systems states that the volume of natural gas for which it requests recertification is 550,000 Mcf per year. The use of this gas is estimated to displace the use of approximately 4 million gallons (95,238 barrels) of No. 2 home heating oil (0.2 to 0.3 percent sulfur) per year at the Howard Street Plant facility.

The eligible seller of the natural gas is the same as in the original certificate, but its name has been changed to Peoples Natural Gas Company, Division of InterNorth, Inc., 25 Main Place, Council Bluffs, Iowa 51501. The gas will be transported by Northern Natural Gas Company (Northern), 2223 Dodge Street, Omaha, Nebraska 68102, an interstate pipeline company, and Metropolitan Utilities District, 1723 Harney Street, Omaha, Nebraska 68102, a local distribution company. Incidental transportation of the natural gas to Northern will be provided by Panhandle Eastern Pipeline Company, an interstate pipeline company.

In order to provide the public with as much opportunity to participate in this proceeding as is practicable under the circumstances, we are inviting any person wishing to comment concerning this application to submit comments in writing to the Economic Regulatory Administration, Room 7108, RG-55, 2000 M Street, N.W., Washington, D.C. 20461, Attention: Albert F. Bass, on or before December 29, 1980, the date of publication of this notice in the Federal Register.

An opportunity to make an oral presentation of data, views, and arguments either against or in support of this application may be requested by any interested person in writing within the ten (10) day comment period. The request should state the person's interest, and if appropriate, why the person is a proper representative of a group or class of persons that has such an interest. The request should include a summary of the proposed oral presentation and a statement as to why an oral presentation is necessary. If ERA determines that an oral presentation is necessary, further notice will be given to Energy Systems and any persons filing comments and will be published in the Federal Register.

Issued in Washington, D.C. on December 12, 1980.

F. Scott Bush,

Assistant Administrator, Office of Regulatory Policy, Economic Regulatory Administration.

[FR Doc. 80-39444 Filed 12-19-80; 8:45 am]

BILLING CODE 6450-01-M

Proposed Contract Award

AGENCY: U.S. Department of Energy.

ACTION: Notice of proposed contract award.

SUMMARY: In accordance with U.S. Department of Energy (DOE) Procurement Regulations, Title 41, Subpart 9-1.5409, DOE gives public notice that a contract award, recognizing the existence of potential organizational conflicts of interest, is in the best interests of the United States.

FOR FURTHER INFORMATION CONTACT:

Priscilla Thomas, U.S. Department of Energy, Office of Procurement Operations, 1000 Independence Avenue, SW., PR-535, 1J-009, Forstl, Washington, D.C. 20585, (202) 252-1031.

Richard E. Weiner, U.S. Department of Energy, Office of Utility Systems, 2000 M Street, NW., RG-74, 4002, M Street, Washington, D.C. 20461, (202) 653-3899.

SUPPLEMENTARY INFORMATION: Upon the basis of the following findings, mitigation, and determination, the proposed contract described below is being awarded, recognizing the existence of potential organizational conflicts of interest pursuant to the authority of 41 CFR 9-1.5409(a)(3).

1. Findings

Over the past several years, a major dispute has arisen over the costs and benefits of interconnecting the Texas electrical network with the eastern interconnected network. In 1979, Central and Southwest Corporation, a holding company, filed an application with the Federal Energy Regulatory Commission (FERC) requesting that Texas utilities be ordered to interconnect with utilities outside Texas. Their application was based on provisions contained in the Public Utility Regulatory Policies Act of 1978 (PURPA).

The Department of Energy (DOE) intervened in the case and argued that a fully coordinated study, with the participation of parties representiang all sides would be required in order to resolve this complex and controversial issue. Following extensive discussions among the participants in the FERC hearings, an agreement was indeed reached to initiate a voluntary joint technical and economic study apart from the FERC adversary process. The study is being supported by the FERC Administrative Law Judge, who has admonished the parties to proceed as rapidly as possible.

The value of a study of this type is heavily dependent on the cooperative effort of all involved parties. The goal of the study is to provide technical and economic comparisons of alternative interconnections between Texas and the Southwest Power Pool. Both alternating current (AC) and direct current (DC) interconnections will be examined and compared to a baseline "no interconnection".

Study tasks will be performed under the direction of a Technical Study Steering Committee (TSSC), which consists of the following parties:

- U.S. Department of Energy
- Texas Power and Light Company
- Brownsville Public Utilities Board
- Arkansas Public Utility Commission
- Middle South Utilities System
- Middle South Services
- Texas Utilities Services, Inc.

- Federal Energy Regulatory Commission
- Committee on Power for the Southwest
- Lower Colorado River Authority
- Gulf States Utilities Company
- Medina Electric Cooperative, Inc.
- Dallas Power and Light Company
- City of Austin
- City Public Service Board San Antonio
- South Texas Electric Cooperative, Inc.
- Texas Electric Service Company
- Houston Lighting and Power Company
- Texas Public Utility Commission
- Central and South West Services, Inc.
- Central Power and Light Company
- Southwestern Electric Power Company
- West Texas Utilities
- Public Service Company of Oklahoma

To coordinate the activities of the TSSC, it has been necessary to find someone of sufficient stature and objectivity to pull these conflicting interests together. In fact, a major issue in the formation of the TSSC was the choice of coordinator.

This person needed the stature and qualifications to be accepted as a peer in discussing controversial issues with the chief executive officers of the affected utilities, as well as an objective viewpoint, so as not to be perceived to be biased in any way. Moreover, the credibility of this voluntary study could be assured only by *unanimous* agreement on selection of a coordinator by the parties on both sides of the question of interconnection.

As a former Administrator of the Bonneville Power Administration and former President of the National Electric Reliability Council, Dr. Donald P. Hodel of Hodel Associates, Inc., (HAI) possessed unique qualifications for this candidacy. He is widely respected by both the public and private sectors of the industry as well as regulatory bodies. Dr. Hodel's demonstrated ability to gain the support of the chief executive officers, on both sides of the interconnection issue, uniquely qualifies him for choice as coordinator of the TSSC, and indeed he was chosen by unanimous agreement of the participants.

2. Specific Need

The deliverable from ERA's proposed contract is to be part of the overall study analysis required to provide a basis for ERA's recommendation (as an intervenor on the interconnection issue) to the FERC's Administrative Law Judge.

Specifically, the deliverable is needed to carry out ERA's mandate to advance national energy goals through increased efficiency in electric power utility operation. The potential, through stronger interconnections, for fuel savings and enhanced system reliability will be explored via benefit/cost analysis of interconnection options.

3. Funding and Performance of the Study

The study to be partly funded by ERA is part of an overall examination of the question of interconnecting Texas-based utilities with the Southwest Power Pool. This study is expected to cost up to $500,000 of which ERA will contribute up to $100,000. The non-ERA portion will be allocated among Arkansas Public Utility Commission; Texas Public Utility Commission; Central and South West Companies, Inc.; Texas Utilities Companies; Houston Lighting and Power Company; Gulf States Utilities Company; Middle South Utilities System; City Public Service Board (San Antonio); Lower Colorado River Authority; City of Austin; and Committee on Power for the Southwest, (representing several cooperative and municipal utilities).

The ERA study will be performed by HAI under subcontracts yet to be determined. ERA will outline all work to be performed and will select all subcontractors.

4. Disclosure and Conclusion

In accordance with 41 CFR 9–1.5405, HAI and Dr. Hodel have provided statements disclosing relevant information concerning their interests related to the work to be performed, and bearing on whether HAI has possible organizational conflicts of interest (1) with respect to being able to render impartial, technically sound and objective assistance or advice, or (2) which may give it an unfair competitive advantage.

Based on an evaluation of the facts contained in the disclosure statement, which indicates that the clientele of HAI includes energy concerns as defined by Section 601(b) of PL 95–91, it has been determined that HAI may have potential organizational conflicts of interest with regard to the work required by ERA, in accordance with 41 CFR 9–1.5409(a).

Because HAI has the exclusive capability to perform this work for ERA within the time constraints imposed by the FERC proceeding, it is neither feasible nor desirable to disqualify that firm from award pursuant to 41 CFR 9–1.5409(a)(1). Furthermore, it is not possible to avoid the potential organizational conflicts of interest by the inclusion of appropriate conditions in the resulting contract, pursuant to 41 CFR 9–1.5409(a)(2).

Mitigation

The major issue in the formation of the TSSC was the choice of a coordinator, who had to be perceived to be completely objective by parties on both sides of the interconnection question. Dr. Hodel of HAI was selected precisely for this reason. Hodel is a past Administrator of the Bonneville Power Administration, has served on the Board of Directors of the Electric Power Research Institute, and is a past President of the National Electric Reliability Council. He has been retained as a consultant by both public and private power companies. Hodel is, therefore, a well-known and respected figure in the utility industry, and was chosen by unanimous agreement of the TSSC. His actions will be viewed throughout the contract period by parties on both sides of the interconnection question, mitigating any potential bias. Further mitigation will be provided by the unique circumstances in which Dr. Hodel will act, as follows:

- Dr. Hodel will function purely as a coordinator for the study, which will be performed for the members of the TSSC;
- Dr. Hodel is not a member of the TSSC, nor does he have any decision making authority. Decisions are made by consensus among the members of the TSSC;
- The study has high visibility. HAI's efforts will be scrutinized for their objectivity by the TSSC members representing both sides of the interconnection issue.

ERA will provide absolute constraints within which the contractor will operate. The nature and extent of the contractor's performance will be clearly defined and all conclusions and recommendations will be made independently by ERA. In addition, all pertinent contractor analysis will become a part of the public record and thus will be subject to close third-party scrutiny for the validity of the data and technical findings presented.

The contract award under this procurement will include the Organizational Conflicts of Interest Special Clause (41 CFR 9–1.5408–2(b)), which will apply to both prime and subcontractors. The primary purpose of this clause is to aid in ensuring that the contractor is not biased because of its past, present, or currently planned interests (financial, contractual, organizational, or otherwise) which relate to the work under this contract, and does not obtain any unfair competitive advantage over other parties by virtue of its performance of this contract.

Conflict of interest determinations for subcontractors will be made by DOE prior to award to any potential subcontractors.

Determination

In light of the above Findings and Mitigation, and in accordance with 41 CFR 9-1.5409(a)(3), the proposed contract award is in the best interest of the United States.

Dated: December 9, 1980.

Hazel R. Rollins,

Administrator, Economic Regulatory Administration.

[FR Doc. 80-39441 Filed 12-19-80; 8:45 am]

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 January 1, 1981. These prices are based on the prices of alternative fuels.

FOR FURTHER INFORMATION CONTACT: Leroy Brown, Jr., Energy Information Administration, Federal Building, 12th & Pa. 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). Th emethod used to determine the price ceilings is described in Section III.

State	Dollars per million Btu's
Alabama	4.03
Arizona	3.67
Arkansas	4.24
California	3.59
Colorado	3.34
Connecticut	4.42
Delaware	4.48
Florida	4.12
Georgia	4.35
Idaho	3.34
Illinois	2.83
Indiana	3.40
Iowa	3.93
Kansas	3.79
Kentucky	4.35
Louisiana	3.91
Maine	4.17
Maryland	4.37
Massachusetts	4.03
Michigan	3.94
Minnesota	3.91
Mississippi	3.63
Missouri	3.85
Montana	3.44
Nebraska	3.94
Nevada	3.67
New Hampshire	4.28
New Jersey	4.30
New Mexico	3.84
New York	3.93
North Carolina	4.26
North Dakota	4.23
Ohio	2.87
Oklahoma	4.06
Oregon	4.01
Pennsylvania	4.24
Rhode Island	4.18
South Carolina	4.41
South Dakota	3.92
Tennessee	4.19
Texas	3.23
Utah	3.83
Vermont	4.56
Virginia	4.19
Washington	3.79
West Virginia	3.74
Wisconsin	3.53
Wyoming	3.23

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 October 1980 was $33.96 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 January 1, 1981, is $7.61 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. 81, issued in the same docket on May 7, 1980, 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, 1981.

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 percent sulfur content by weight) residual fuel oil: for each selling price, the number of gallons sold to large industrial users in the months of August 1980, September 1980, and October 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 January 1, 1981, (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, August 1980, September 1980, and October 1980. Reported prices for sales in August 1980 were adjusted by the percent change in the nationwide volume-weighted average price from August to October 1980. Prices for September 1980 were similarly adjusted by the percent change in the nationwide volume-weighted average price from September to October 1980. The volume-weighted 3-month average of the adjusted August 1980 and September 1980, and the reported October prices were then computed for each State.

(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

[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.

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 price 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 December 12, 1980, and dividing that price by the corresponding weighted average price computed from prices published by Platt's for the month of October 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: Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont.

Region B: Delaware, Maryland, New Jersey, New York, and Pennsylvania.

Region C: Alabama, Florida, Georgia, Mississippi, North Carolina, South Carolina, Tennessee, and Virginia.

Region D: Illinois, Indiana, Kentucky, Michigan, Ohio, West Virginia, and Wisconsin.

Region E: Iowa, Kansas, Missouri, Minnesota, Nebraska, North Dakota, and South Dakota.

Region F: Arkansas, Louisiana, New Mexico, Oklahoma, and Texas.

Region G: Colorado, Idaho, Montana, Utah, and Wyoming.

Region H: Arizona, California, Nevada, Oregon, and Washington.

Issued in Washington, D.C. on December 17, 1980.

Albert H. Linden, Jr.,

Acting Administrator, Energy Information Administration.

[FR Doc. 80-39576 Filed 12-18-80; 8:45 am]
BILLING CODE 6450-01-M

Office of Hearings and Appeals

Cases Filed; Week of November 21, Through November 28, 1980

During the week of November 21 through November 28, 1980, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20461.

George B. Breznay,

Director, Office of Hearings and Appeals.

December 12, 1980.

List of Cases Received by the Office of Hearings and Appeals

[Week of November 21 Through November 28, 1980]

Date	Name and Location of Applicant	Case No.	Type of Submission
Nov. 21, 1980	Chittick Oil Company, Greenville, Michigan	BEE-1539	Allocation Exception. If granted: Chittick Oil Company would receive an exception from the provisions of 10 C.F.R. Part 211, Subpart F which would permit the firm to receive an increased allocation of unleaded motor gasoline for the purpose of blending gasohol.
Nov. 21, 1980	Johnny's Petroleum Products, New Berlin, Wisconsin.	BEE-1540	Exception from the Reporting Requirements. If granted: Johnny's Petroleum Products would not be required to file Form EIA-9A ("No. 2 Distillate Price Monitoring Report").
Nov. 21, 1980	Office of Personnel, Washington, D.C.	BMR-0076	Request for Modification. If granted: The October 24, 1980 Decision and Order (Case No. BFA-0480) issued to Douglas L. Miller by the Office of Hearings and Appeals would be modified.
Nov. 21, 1980	Oklahoma Refining Company, Washington, D.C.	BST-0013	Request for Temporary Stay. If granted: Oklahoma Refining Company would receive a temporary stay of the November 11, 1980 Assignment Order issued to the firm by the Office of Petroleum Operations of the Economic Regulatory Administration, Region VI.
Nov. 21, 1980	Stephen M. Shaw, La Jolla, California	BFA-0529	Appeal of Information Request Denial. If granted: Stephen M. Shaw would receive access to certain DOE materials.
Nov. 24, 1980	Bachelder Oil Company, Athol, Massachusetts	BEE-1543	Exception from the Reporting Requirements. If granted: Bachelder Oil Company would not be required to file Form EIA-9A ("No. 2 Distillate Price Monitoring Report").
Nov. 24, 1980	Cochran Oil Company, Jefferson, Ohio	BEE-1544	Exception from the Reporting Requirements. If granted: Cochran Oil Company would not be required to file Form EIA-9A ("No. 2 Distillate Price Monitoring Report").
Nov. 24, 1980	Conoco, Inc., Houston, Texas	BEE-1542	Price Exception (Section 212.73). If granted: Conoco would be permitted to sell at market prices the crude oil produced from the Jeanerette Lumber & Shingle Co. #5 Well located in Iberia Parish, Louisiana
Nov. 24, 1980	The Daily Oklahoman, Oklahoma City, Oklahoma	BFA-0533	Appeal of Information Request Denial. If granted: The October 14, 1980 Information Request Denial issued by the Office of Regulatory Policy would be rescinded, and the Daily Oklahoman would receive access to information concerning oil distribution priorities during future crude oil shortages.
Nov. 24, 1980	E-Z Serve, Inc., Houston, Texas	BEE-1541	Price Exception. If granted: E-Z Serve, Inc. would receive an exception from the "single firm rule" contained in 10 C.F.R. § 212.82 of the DOE Mandatory Petroleum Price Regulations.

List of Cases Received by the Office of Hearings and Appeals

[Week of November 21 Through November 28, 1980]—Continued

Date	Name and Location of Applicant	Case No.	Type of Submission
Nov. 24, 1980	Nevaire M. Serrajian, Springfield, Virginia	BFA-0532	Appeal of Information Request Denial. If granted: Nevaire M. Serrajian would receive access to the DOE Office of Personnel position classification records for position #5401700 and position #52916100.
Nov. 24, 1980	T.N.T. Inc., New Orleans, Louisiana	BRH-1324	Request for Evidentiary Hearing. If granted: An evidentiary hearing would be convened in connection with the Statement of Objections submitted by T.N.T. Inc. in response to the September 23, 1980 Proposed Remedial Order (Case No. BRO-1324) issued to the firm by the Southwest District Office of Enforcement.
Nov. 24, 1980	Tulsa Daily World, Arlington, Virginia	BFA-0530	Appeal of Information Request Denial. If granted: The Tulsa Daily World would receive access to a cost proposal submitted by Fulton Energy Corporation under the Alternative Fuels Development Program.
Nov. 25, 1980	McMurrey Petroleum, Inc., Kilgore, Texas	BEE-1546	Price Exception (Section 212.73). If granted: McMurrey Petroleum, Inc. would be permitted retroactively to sell at market prices the crude oil produced from the B. D. Everett No. 1 Lease located in Chapel Hill Field, Smith County, Texas.
Nov. 26, 1980	Elk Trading Company, Inc., Washington, D.C	BFA-0535	Appeal of Information Request Denial. If granted: The October 20, 1980 Information Request Denial issued by the Office of Special Investigations Division would be rescinded, and Elk Trading Company, Inc. would receive access to agency records and information concerning the DOE Mandatory Petroleum Price Regulations.
Nov. 26, 1980	Hogan & Hartson, Washington, D.C	BFA-0534	Appeal of Information Request Denial. If granted: The October 23, 1980 Information Request Denial issued by the Southwest District Manager, Economic Regulatory Administration, would be rescinded, and Hogan & Hartson would receive access to certain DOE materials.
Nov. 26, 1980	Standard Oil Company of California (Chevron), Washington, D.C.	BRZ-0064	Interlocutory Order. If granted: The Office of Hearings and Appeals would issue an order to the Office of Special Counsel regarding OSC's response to Chevron's Motion for Discovery (Case No. DRD-0196).
Nov. 26, 1980	Twin-Tech Oil Compnay, Washington, D.C	BEZ-0063	Interlocutory Order. If granted: The Office of Hearings and Appeals would issue an order to Twin-Tech Oil Company requesting information which is necessary to permit implementation of the relief granted to the firm in a Supplemental Order (Case No. DEX-0212).
Nov. 28, 1980	Inter-Americas Oil Company, Pittsburgh, Pennsylvania.	BEE-1545	Exception from the Reporting Requirements. If granted: Inter-Americas Oil Company would not be required to file Form EIA-9A ("No. 2 Distillate Price Monitoring Report")

Notices of Objection Received

[Week of November 21 Through November 28, 1980]

Date	Name and Location of Applicant	Case No.
11/21/80	Haber Oil Products, Los Angeles, CA.	BEE-0382
11/24/80	American Petrofina Inc., Washington, D.C.	BEE-1316
11/24/80	O. K. Petroleum Products New York, N.Y.	BEE-6685
11/26/80	Dave G. Hunter Anaheim, CA	DEE-4151

[FR Doc. 80-39405 Filed 12-18-80; 8:45 am]

BILLING CODE 6450-01-M

Week of November 24 Through November 28, 1980

During the week of November 24 through November 28, 1980, the proposed decisions and orders summarized below were issued by the Office of Hearings and Appeals of the Department of Energy with regard to applications for exception.

Under the procedural regulations that apply to exception proceedings (10 CFR Part 205, Subpart D), any person who will be aggrieved by the issuance of a proposed decision and order in final form may file a written notice of objection within ten days of service. For purposes of the procedural regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date an aggrieved person receives actual notice, whichever occurs first.

The procedural regulations provide that an aggrieved party who fails to file a Notice of Objection within the time period specified in the regulations will be deemed to consent to the issuance of the proposed decision and order in final form. An aggrieved party who wishes to contest a determination made in a proposed decision and order must also file a detailed statement of objections within 30 days of the date of service of the proposed decision and order. In the statement of objections, the aggrieved party must specify each issue of fact or law that it intends to contest in any further proceeding involving the exception matter.

Copies of the full text of these proposed decisions and orders are available in the Public Docket Room of the Office of Hearings and Appeals, Room B-120, 2000 M Street, N.W., Washington, D.C. 20461, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays.

December 12, 1980.

George B. Breznay,

Director, Office of Hearings and Appeals.

Proposed Decisions and Orders

Astro, Inc., Camden, North Carolina; DEE-7495 gasohol

On July 25, 1979 Astro, Inc. filed an Application for Exception from the provisions of 10 C.F.R., Part 211. The exception request, if granted, would permit Astro to receive an increased allocation of motor gasoline for the purpose of blending and marketing gasohol. On November 25, 1980, the Department of Energy issued a Proposed Decision and Order in which it tentatively determined that the exception request should be granted.

Panasonic Company, Secaucus, New Jersey; BEE-1093 energy testing

Panasonic Company filed an Application for Exception from the provisions of 10 C.F.R., Part 430, the Energy Conservation Program for Consumer Products. The Panasonic application, if granted, would relieve the firm of the requirement to perform energy efficiency tests on its Model Nos. NR-202 and NR-302 small-capacity refrigerators. On November 26, 1980, the DOE issued a Proposed Decision and Order in which it tentatively determined that Panasonic should be granted an exception which would permit the firm to modify the test procedures applicable to its refrigerators.

Pride Refining, Inc., Washington, D.C.; Bee-0651 crude oil

Pride Refining, Inc. filed an Application for Exception from the provisions of 10 CFR § 211.65(c)(2). The exception request, if granted, would result in the issuance of an Order modifying the firm's base period crude oil runs to stills during the period January 1978 through October 1978 and thereby increasing the firm's ability to qualify for an allocation of crude oil in the Emergency Crude Oil Buy-Sell Program (10 CFR § 211.65(c)(2)) as a refiner-buyer. On November 25, 1980, the Department of Energy issued a Proposed Decision and Order in which it tentatively determined that the execption request be granted.

Quaker State Refining Corp., Oil City, Pennsylvania; Bee-0795 crude oil

Quaker State Oil Refining Corporation filed an Application for Exception from the provisions of 10 CFR § 211.67. The exception request, if granted, would permit Quaker State to receive additional entitlements under the DOE's Entitlements Program. On November 25, 1980, the Department of Energy issued a Proposed Decision and Order in which it tentatively determined that the exception request be denied.

Texaco, Inc., White Plains, New York; BEE-1323 crude oil

Texaco, Inc. filed an Application for Exception from the provisions of 10 CFR § 212.84(h). The exception request, if granted, would permit Texaco to accrue its costs for crude oil imported from the Persian Gulf on a loaded basis, rather than on a landed basis. On November 25, 1980, the Department of Energy issued a Proposed Decision and Order in which it tentatively determined that the exception request be granted.

Petitions Involving the Motor Gasoline Allocation Regulations

The following firm filed an Application for Exception from the provisions of the Motor Gasoline Allocation Regulations. The exception request, if granted, would result in an increase in the firm's base period allocation of motor gasoline. The DOE issued a Proposed Decision and Orders which determined that the exception request be denied.

Company Name, Case No. and Location

Bd. of School Comm. of The City of Indianapolis, Indiana DEE-7832; Indianapolis, Indiana

[FR Doc. 80-39403 Filed 12-18-80; 8:45 am]
BILLING CODE 6450-01-M

Issuance of Proposed Decisions and Orders; Week of November 17 Through November 21, 1980

During the week of November 17 through November 21, 1980, the proposed decisions and orders summarized below were issued by the Office of Hearings and Appeals of the Department of Energy with regard to applications for exception.

Under the procedural regulations that apply to exception proceedings (10 CFR Part 205, Subpart D), any person who will be aggrieved by the issuance of a proposed decision and order in final form may file a written notice of objection within ten days of service. For purposes of the procedural regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date an aggrieved person receives actual notice, whichever occurs first.

The procedural regulations provide that an aggrieved party who fails to file a Notice of Objection within the time period specified in the regulations will be deemed to consent to the issuance of the proposed decision and order in final form. An aggrieved party who wishes to contest a determination made in a proposed decision and order must also file a detailed statement of objections within 30 days of the date of service of the proposed decision and order. In the statement of objections, the aggrieved party must specify each issue of fact or law that it intends to contest in any further proceeding involving the exception matter.

Copies of the full text of these proposed decisions and orders are available in the Public Docket Room of the Office of Hearings and Appeals, Room B-120, 2000 M Street, NW., Washington, D.C. 20461, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays.

George B. Breznay,

Director, Office of Hearings and Appeals.

December 12, 1980.

Proposed Decisions and Orders

Champlin Petroleum Co., Washington, D.C.; BEE-1095 crude oil

The Champlin Petroleum Company filed an Application for Exception from the provisions of 10 C.F.R. §§ 211.10, 211.67, and 212.83. The exception request, if granted, would permit Champlin to treat its Wilmington, California refinery as a separate firm for the purposes of the allocation and pricing regulations set forth in 10 C.F.R. §§ 211.10 and 212.83. Champlin would also receive additional entitlements to compensate it for crude oil purchases for an increase in its permanent crude oil inventory at the Wilmington Facility. On November 19, 1980, the Department of Energy issued a Proposed Decision and Order in which it tentatively determined that the exception request should be granted in part.

Colberry Corporation, Austin, Texas; BEE-0977 gasohol

Colberry Corporation filed an Application for Exception from the provisions of 10 C.F.R. Part 211. The exception request, if granted, would permit Colberry to receive an allocation of unleaded gasoline for the purpose of producing alcohol and blending gasohol. On November 21, 1980, the Department of Energy issued a Proposed Decision and Order in which it tentatively determined that the exception request should be granted.

Gulf Oil Corporation, Tulsa, Oklahoma; BXE-1402 crude oil

Gulf Oil Corporation filed an Application for Exception from the provisions of 10 C.F.R. Part 212, Subpart D. The exception request, if granted, would result in an extension of exception relief previously granted and would permit the firm to sell at upper tier ceiling prices a certain portion of the crude oil which it produces from the Kiefer Unit. On November 21, 1980, the DOE issued a Proposed Decision and Order in which it tentatively determined that an extension of exception relief should be granted.

Hunt Oil Company, Dallas, Texas; BEE-0544 crude oil

Hunt Oil Company filed an Application for Exception from the provisions of 10 C.F.R. § 212.183. The exception request, if granted, would permit Hunt to change its base period for determining its permissible average markup for resales of crude oil from May 1973 to the second calendar quarter of 1973. On November 18, 1980, the Department of Energy issued a Proposed Decision and Order in which it tentatively determined that the exception request should be granted.

Freddie Hebert, d.b.a. Tungsten Farms, Inc., Gueydan, Louisiana; BEE-1483 gasohol

Freddie Hebert d/b/a/ Tungsten Farms, Inc. filed an Application for Exception from the provisions of 10 C.F.R. Part 211. The exception request, if granted would permit Tungsten to receive an allocation of unleaded gasoline for use in alcohol production and gasohol blending. On November 20, 1980, the Department of Energy issued a Proposed Decision and Order in which it tentatively determined that the exception request should be granted.

J.A. Nere Co., Inc., Fredericksburg, Virginia; DEE-8091 motor gasoline

J.A. Nere Co., Inc. filed an Application for Exception from the provisions of 10 C.F.R. Part 212. The exception request, if granted, would permit Nere to operate as a jobber rather than consignee-agent for purposes of the Mandatory Petroleum Price Regulations. On November 20, 1980, the Department of Energy issued a Proposed Decision and Order in which it tentatively determined that the exception request should be granted.

Robert H. Hart & Sons, Inc., Winter Haven, Florida; BEE-0722 Gasohol

Robert H. Hart & Sons, Inc. filed an Application for Exception from the provisions of 10 C.F.R. Part 211. The exception request, if granted would permit Hart to receive an additional allocation of unleaded gasoline for the purpose of blending gasohol. On November 20, 1980, the Department of Energy issued a Proposed Decision and Order in which it tentatively determined that the exception request should be granted.

Oahu Gas Service, Inc., Honolulu, Hawaii; BXE-1191 propane

Oahu Gas Service, Inc. filed an Application for Exception from the provisions of 10 C.F.R. § 212.93. The exception request, if granted, would permit the firm to charge a price for propane which is $.05 per gallon greater than the price it would otherwise be entitled to charge pursuant to DOE regulations. On November 20, 1980, the Department of Energy issued a Proposed Decision and Order in which it tentatively determined that the exception request should be granted.

Sigmor Refining Company, San Antonio, Texas; DEE-0757 motor gasoline

Sigmor Refining Company filed an Application for Exception from the provisions of 10 C.F.R. Part 212. The exception request, if granted, would permit Sigmor Refining Company to impute May 15, 1973 prices for motor gasoline produced at the firm's Three Rivers refinery, impute May 1973 nonproduct costs for the Three Rivers refinery; and impute May 1973 product costs for certain feedstocks. On November 18, 1980, the Department of Energy issued a Proposed Decision and Order in which it tentatively determined that the exception request should be granted.

Uni Refining, Inc., Houston, Texas; DEE-6684 crude oil

Uni Refining, Inc. filed an Application for Exception from the provisions of 10 C.F.R.

§ 211.65(c)(2). The exception request, if granted, would result in the issuance of an order authorizing the firm to participate in the Emergency Crude Oil Buy/Sell Program as a refiner-buyer. On November 21, 1980, the Department of Energy issued a Proposed Decision and Order in which it tentatively determined that the exception request should be denied.

Petitions Involving the Motor Gasoline Allocation Regulations

The following firms filed Applications for Exception from the provisions of the Motor Gasoline Allocation Regulations. The exception requests, if granted, would result in an increase in the firms' base period allocation of motor gasoline. The DOE issued Proposed Decision and Orders which determined that the exception requests be denied.

Company Name, Case No. and Location

John C. Manchester, Inc., DEE-4704; West Lebanon, NH

Smith Oil Co., Inc., BEE-0736; Weirton, WV

[FR Doc. 80-39402 Filed 12-18-80; 8:45 am]

Objection to Proposed Remedial Orders; Week of November 24 Through November 28, 1980

During the week of November 24 through November 28, 1980, the notices of objection to proposed remedial orders listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Any person who wishes to participate in the proceeding the Department of Energy will conduct concerning the proposed remedial orders described in the Appendix to this Notice must file a request to participate pursuant to 10 CFR § 205.194 within 20 days after publication of this Notice. The Office of Hearings and Appeals will then determine those persons who may participate on an active basis in the proceeding and will prepare an official service list, which it will mail to all persons who filed requests to participate. Persons may also be placed on the official service list as non-participants for good cause shown.

All requests to participate in these proceedings should be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20461.

December 12, 1980.

George B. Breznay,

Director, Office of Hearings and Appeals.

Proposed Remedial Order

Leese Oil Co., Pocatello, Indiana; Bro-1338 gasoline

On November 25, 1980, Leese Oil Co. 1100 South Second Avenue, Pocatello, Indiana 83201 filed a Notice of Objection to a Proposed Remedial Order which the DOE Western District Office of Enforcement issued to the firm on September 22, 1980. In the Proposed Remedial Order the Western District found that during the period August 1, 1979 through September 30, 1979, Leese committed pricing violations in the sale of motor gasoline in the State of Idaho. According to the Proposed Remedial Order the Leese violations resulted in $13,445.19 of overcharges.

[FR Doc. 80-39404 Filed 12-18-80; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-51182; TS FRL 1707-8]

Certain Chemicals; Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Section 5(d)(2) requires EPA to publish in the Federal Register certain information about each PMN within 5 working days after receipt. This Notice announces receipt of two PMN's and provides a summary of each:

DATES: Written comments by:
PMN 80-312, January 6, 1981.
PMN 80-319, January 6, 1981.

ADDRESS: Written comments to: Document Control Officer (TS-793), Management Support Division, Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E-447, 401 M St. SW., Washington, DC 20460 (202-755-8050).

FOR FURTHER INFORMATION CONTACT: Carolyn Brown, Chemical Control Division (TS-794), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E-221, 401 M St. SW., Washington, DC 20460 (202-426-3980).

SUPPLEMENTARY INFORMATION: Section 5(a)(1) of TSCA [90 Stat. 2012 (15 U.S.C. 2604)] requires any person who intends to manufacture or import a new chemical substance to submit a PMN to EPA at least 90 days before manufacture or import commences. A "new" chemical substance is any substance that is not on the Inventory of existing substances compiled by EPA under section 8(b) of TSCA. EPA first published the Initial Inventory on June 1, 1979. Notices of availability of the Inventory were published in the Federal Register of May 15, 1979 (44 FR 28558—Initial) and July 29, 1980 (45 FR 50544—Revised). The requirement to submit a PMN for new chemical substances manufactured or imported for commercial purposes became effective on July 1, 1979.

EPA has proposed premanufacture notification rules and forms in the Federal Register issues of January 10, 1979 (44 FR 2242) and October 16, 1979 (44 FR 59764). These regulations, however, are not yet in effect. Interested persons should consult the Agency's Interim Policy published in the Federal Register of May 15, 1979 (44 FR 28564) for guidance concerning premanufacture notification requirements prior to the effective date of these rules and forms. In particular, see page 28567 of the Interim Policy.

A PMN must include the information listed in section 5(d)(1) of TSCA. Under section 5(d)(2) EPA must publish in the Federal Register nonconfidential information on the identity and use(s) of the substance, as well as a description of any test data submitted under section 5(b). In addition, EPA has decided to publish a description of any test data submitted with the PMN and EPA will publish the identity of the submitter unless this information is claimed confidential.

Publication of the section 5(d)(2) notice is subject to section 14 concerning disclosure of confidential information. A company can claim confidentiality for any information submitted as part of a PMN. If the company claims confidentiality for the specific chemical identity or use(s) of the chemical, EPA encourages the submitter to provide a generic use description, a nonconfidential description of the potential exposures from use, and a generic name for the chemical. EPA will publish the generic name, the generic use(s), and the potential exposure descriptions in the Federal Register.

If no generic use description or generic name is provided, EPA will develop one and after providing due notice to the submitter, will publish an amended Federal Register notice. EPA immediateily will review confidentiality claims for chemical identity, chemical use(s), the identity of the submitter, and for health and safety studies. If EPA determines that portions of this information are not entitled to confidential treatment, the Agency will publish an amended notice and will place the information in the public file, after notifying the submitter and

complying with other applicable procedures.

After receipt, EPA has 90 days to review a PMN under section 5(a)(1). The section 5(d)(2) Federal Register notice indicates the date when the review period ends for each PMN. Under section 5(c), EPA may, for good cause, extend the review period for up to an additional 90 days. If EPA determines that an extension is necessary, it will publish a notice in the Federal Register.

Once the review period ends, the submitter may manufacture the substance unless EPA has imposed restrictions. When the submitter begins to manufacture the substance, he must report to EPA, and the Agency will add the substance to the Inventory. After the substance is added to the Inventory, any company may manufacture it without providing EPA notice under section 5(a)(1)(A).

Therefore, under the Toxic Substances Control Act, summaries of the data taken from the PMN's are published herein.

Interested persons may, on or before the dates shown under "Dates", submit to the Document Control Officer (TS-793), Management Support Division, Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E-447, 401 M St. SW., Washington, DC 20460, written comments regarding this notice. Three copies of all comments shall be submitted, except that individuals may submit single copies of comments. The comments are to be identified with the document control number "[OPTS-51182]" and the PMN number. Comments received may be seen in the above office between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

(Sec. 5, 90 Stat. 2012 (15 U.S.C. 2604))

Dated: December 12, 1980.

Edward A. Klein,

Director, Chemical Control Division.

PMN 80.312

The following summary is taken from data submitted by the manufacturer in the PMN.

Close of Review Period. January 29, 1981.

Manufacturer's Identity. Anchor Continental Inc., 2000 S. Beltline Blvd., Columbia, SC 29205.

Specific Chemical Identity. N-Isocyanatotolyl-abietamide.

Use. Reactive resin in a polyurethane coating applied to paper in the manufacture of masking tape.

Production Estimates

	Kilograms per year	
	Minimum	Maximum
1981	638,400	912,000
1982	684,000	980,000
1983	729,600	1,048,800

Physical/Chemical Properties. No data were submitted.

Toxicity Data. The PMN substance is a component of a cured polyurethane coating on tape. The polyurethane coating becomes an integral part of the tape. Tape with the polyurethane (PMN substance not present) has been tested that showed an oral LD_{50} (rats) at >1,000 mg/kg.

Exposure

Activity and exposure route(s)	Maximum number exposed	Maximum duration		Concentration (unit: ppm)	
		Hours/day	Days/year	Average	Peak
Manufacture: Reactor	1	1 hr	156	0-1	0-1
Processing: Coater	3	8	260	0-1	0-1
Disposals: Coater incinerator	2	2	100	0-1	0-1

Environmental Release/Disposal. The manufacturer states that less than 10 kilograms (kg) of the new substance will be released to the environment per year and that disposal of waste will be by landfill.

PMN 80-319

The followng summary is taken from data submitted by the manufacturer in the PMN.

Close of Review Period. February 5, 1981.

Manufacturer's Identity. B. F. Goodrich Co., 6100 Oak Tree Blvd., Cleveland, OH 44131.

Specific Chemical Identity. Claimed confidential business information. Generic name provided: Salt form of acrylic acidacrylate copolymer.

Use. Absorbent for body fluids.

Production Estimates

First Year—5,000 kg
Second year—70,000 kg
Third year—230,000 kg

Physical/Chemical Properties. No data were submitted.

Toxicity Data

Primary skin irritation (albino rabbits)—Non-irritant
Primary eye irritation (rabbits)—Non-irritant
Skin irritation and sensitzation (guinea pigs)—Non-irritant non-sensitizer.

Exposure. The manufacturer states that production will be by a self-sustaining automatic process and that the only exposure may occur during the process of changing the rolls. Dermal exposure to five workers of less than 1 minute duration may occur during the roll-changing process.

Environmental Release/Disposal. The submitter states that the amount of material requiring disposal will be minimal. Disposal will be by incineration and landfill.

[FR Doc. 80-39456 Filed 12-18-80 8:45 am]

BILLING CODE 6560-31-M

[OPTS-51187; TS FRL1708-1]

Certain Chemicals; Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Section 5(d)(2) requires EPA to publish in the Federal Register certain information about each PMN within 5 working days after receipt. This Notice announces receipt of two PMN's and provides a summary of each.

DATES: Written comments by:

PMN 80-313	January 16, 1981
PMN 80-323	January 18, 1981

ADDRESS: Written comments to: Document Control Officer (TS-793), Management Support Division, Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E-447, 401 M St., SW., Washington, DC 20460 (202-755-8050).

FOR FURTHER INFORMATION CONTACT: Rick Green, Chemical Control Division (TS-794), Office of Toxic Substances,

Environmental Protection Agency, Rm. E-221, 401 M St., SW., Washington, DC 20460 (202-426-8815).

SUPPLEMENTARY INFORMATION: Section 5(a)(1) of TSCA [90 Stat. 2012 (15 U.S.C. 2604)] requires any person who intends to manufacture or import a new chemical substance to submit a PMN to EPA at least 90 days before manufacture or import commences. A "new" chemical substance is any substance that is not on the Inventory of existing substances compiled by EPA under section 8(b) of TSCA. EPA first published the Initial Inventory on June 1, 1979. Notices of availability of the Inventory were published in the Federal Register of May 15, 1979 (44 FR 28558-Initial) and July 29, 1980 (45 FR 50544-Revised). The requirement to submit a PMN for new chemical substances manufactured or imported for commercial purposes became effective on July 1, 1979.

EPA has proposed premanufacture notification rules and forms in the Federal Register issues of January 10, 1979 (44 FR 2242) and October 16, 1979 (44 FR 59764). These regulations, however, are not yet in effect. Interested persons should consult the Agency's Interim Policy published in the Federal Register of May 15, 1979 (44 FR 28564) for guidance concerning premanufacture notification requirements prior to the effective date of these rules and forms. In particular, see page 28567 of the Interim Policy.

A PMN must include the information listed in section 5(d)(1) of TSCA. Under section 5(d)(2) EPA must publish in the Federal Register nonconfidential information on the identity and use(s) of the substance, as well as a description of any test data submitted under section 5(b). In addition, EPA has decided to publish a description of any test data submitted with the PMN and EPA will publish the identity of the submitter unless this information is claimed confidential.

Publication of the section 5(d)(2) notice is subject to section 14 concerning disclosure of confidential information. A company can claim confidentiality for any information submitted as part of a PMN. If the company claims confidentiality for the specific chemical identity or use(s) of the chemical, EPA encourages the submitter to provide a generic use description, a nonconfidential description of the potential exposures from use, and a generic name for the chemical. EPA will publish the generic name, the generic use(s), and the potential exposure descriptions in the Federal Register.

If no generic use description or generic name is provided, EPA will develop one and after providing due notice to the submitter, will publish an amended Federal Register notice. EPA immediately will review confidentiality claims for chemical identity, chemical use, the identity of the submitter, and for health and safety studies. If EPA determines that portions of this information are not entitled to confidential treatment, the Agency will publish an amended notice and will place the information in the public file, after notifying the submitter and complying with other applicable procedures.

After receipt, EPA has 90 days to review a PMN under section 5(a)(1). The section 5(d)(2) Federal Register notice indicates the date when the review period ends for each PMN. Under section 5(c), EPA may, for good cause, extend the review period for up to an additional 90 days. If EPA determines that an extension is necessary, it will publish a notice in the Federal Register.

Once the review period ends, the submitter may manufacture the substance unless EPA has imposed restrictions. When the submitter begins to manufacture the substance, he must report to EPA, and the Agency will add the substance to the Inventory. After the substance is added to the Inventory, any company may manufacture it without providing EPA notice under section 5(a)(1)(A).

Therefore, under the Toxic Substances Control Act, summaries of the data taken from the PMN's are published herein.

Interested persons may, on or before the dates shown under "Dates", submit to the Document Control Officer (TS-793), Management Support Division, Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E-447, 401 M St., SW., Washington, DC 20460, written comments regarding these notices. Three copies of all comments shall be submitted, except that individuals may submit single copies of comments. The comments are to be identified with the document control number "[OPTS-51187]" and the specific PMN number. Comments received may be seen in the above office between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

(Sec. 5, 90 Stat. 2012 (15 U.S.C. 2604))

Dated: December 12, 1980.

Edward A. Klein,

Director, Chemical Control Division.

PMN 80-313

The following summary is taken from the data submitted by the manufacturer in the PMN.

Close of Review Period. February 1, 1981.

Manufacturer's Identify. Proctor Chemical Co., Inc., P.O. Box 6091, Bridgewater, NJ 08807.

Specific Chemical Identity. 3-Chloro-2-sulfopropionic acid.

Use. The substance will be used as a captive, isolated intermediate in the production of modified starch products. It is not intended for general sale.

Production Estimates

First year—127,000 lb.
Second year—422,000 lb.
Third year—1,180,000 lb.

Physical Properties

Physical state—Liquid (approximately 85% aqueous solution).

Color—Brown.

Viscosity—Approximately 1400 cps at 20°C (Brookfield).

pH—>1.

Odor—Sharp, acrid.

Density—Approximately 13.0 lb/gal at 20°C.

Boiling point—>100°C.

Corrosivity—Corrosive to most metals. (Based upon metal corrosion tests, this material would be described as a corrosive liquid not otherwise specified, and classed as a corrosive Material under D.O.T. regulations.)

Toxicity Data

Acute oral toxicity, LD_{50}:
(male rats)—283 mg/kg. (19/20 confidence limits).
(female rats)—214 mg/kg. (19/20 confidence limits).

Acute dermal toxicity LD_{50} (rabbits)—>1.0 gm/kg.

Primary eye irritation—Serve eye irritant.

Exposure. The manufacturer states that there exists potential exposure by inhalation and through the skin to acrylic and chlorosulfonic acids at the time the reactor is loaded with the raw materials. One to two workers may be exposed, one to two hours each to the raw materials during this process. Workers will be required to wear full acid suits, rubber boots with steel toes, full acid cartridge face masks, and rubber gloves. An eyewash fountain and safety shower are located within 12 feet of the reactor. The submitter estimates that the reaction process will entail four to six days during the first year,

increasing to 26 days at maturity; that worker exposure will range from 8 hours per worker during the initial year to 56 hours per worker at maturity.

Environmental Release/Disposal. The manufacturer states that there will be no release of the reagent to the atomosphere during the manufacture of the starch product as the chemical will be added under the surface of the starch suspension in a closed reaction tank. The reagent will be neutralized during the starch reaction and the starch product will be washed and filtered. The effluent, with calcium salts or organic acids, will be diluted by adding fresh water and then sent to publicly owned treatment works.

PMN 80-323.

The following summary is taken from the data submitted by the manufacturer in the PMN.

Close of Review Period. February 10, 1981.

Manufacturer's Identity. Reliance Universal, Inc., Research & Development Center, 4730 Crittenden Dr., Louisville, KY 40221.

Specific Chemical Identity. Claimed confidential business information. Generic name provided: Acrylic emulsion.

Use. Polymer for industrial wood coating.

Production Estimates. Claimed confidential business information. No data were submitted.

	Kilograms per year	
	Minimum	Maximum
First year	225,000	300,000
Second year	235,000	320,000
Third year	245,000	340,000

Physical/Chemical Properties. Claimed confidential business information.

Toxicity Data. Claimed confidential business information.

Exposure

Activity and exposure route(s)	Maximum number exposed	Maximum duration		Concentration (unit: ppm)	
		Hours/day	Days/year	Average	Peak
Manufacture: Dermal	3	0.25	30	0-1	1-10
Processing: Dermal	3	.50	60	1-10	10-100
Use: Dermal	3	1	260	0-1	10-100

Environmental Release/Disposal. The submitter states that waste will be sealed in containers for disposal in a landfill.

[FR Doc. 80-39457 Filed 12-18-80; 8:45 am]
BILLING CODE 6560-31-M

[OPTS-51184; T5 FRL 1707-7]

Dimethyl Diallyl Ammonium Chloride-Acrylamide-Potassium Acrylate Terpolymer; Premanufacture Notice

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Section 5(d)(2) requires EPA to publish in the Federal Register certain information about each PMN within 5 working days after receipt. This Notice announces receipt of a PMN and provides a summary.

DATE: Written comments by January 6, 1981.

ADDRESS: Written comments to: Document Control Officer (TS-793), Management Support Division, Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E-447, 401 M St., SW., Washington, DC 20460, (202-755-8050).

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Chemical Control Division (TS-794), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E-206, 401 M St., SW., Washington, DC 20460, (202-426-2601).

SUPPLEMENTARY INFORMATION: Section 5(a)(1) of TSCA [90 Stat. 2012 (15 U.S.C. 2604)], requires any person who intends to manufacture or import a new chemical substance to submit a PMN to EPA at least 90 days before manufacture or import commences. A "new" chemical substance is any substance that is not on the Inventory of existing substances compiled by EPA under section 8(b) of TSCA. EPA first published the Initial Inventory on June 1, 1979. Notices of availability of the Inventory were published in the Federal Register of May 15, 1979 (44 FR 28558-Initial) and July 29, 1980 (45 FR 50544-Revised). The requirement to submit a PMN for new chemical substances manufactured or imported for commercial purposes became effective on July 1, 1979.

EPA has proposed premanufacture notification rules and forms in the Federal Register issues of January 10, 1979 (44 FR 2242) and October 16, 1979 (44 FR 59764). These regulations, however, are not yet in effect. Interested persons should consult the Agency's Interim Policy published in the Federal Register of May 15, 1979 (44 FR 28564) for guidance concerning premanufacture notification requirements prior to the effective date of these rules and forms. In particular, see page 28567 of the Interim Policy.

A PMN must include the information listed in section 5(d)(1) of TSCA. Under section 5(d)(2) EPA must publish in the Federal Register nonconfidential information on the identity and use(s) of the substance, as well as a description of any test data submitted under section 5(b). In addition, EPA has decided to publish a description of any test data submitted with the PMN and EPA will publish the identity of the submitter unless this information is claimed confidential.

Publication of the section 5(d)(2) notice is subject to section 14 concerning disclosure of confidential information. A company can claim confidentiality for any information submitted as part of a PMN. If the company claims confidentiality for the specific chemical identity or use(s) of the chemical, EPA encourages the submitter to provide a generic use description, a nonconfidential description of the potential exposures from use, and a generic name for the chemical. EPA will publish the generic name, the generic use(s), and the potential exposure descriptions in the Federal Register.

If no generic use description or generic name is provided, EPA will develop one and after providing due notice to the submitter, will publish an amended Federal Register notice. EPA immediately will review confidentiality claims for chemical identity, chemical use(s), the identity of the submitter, and for health and safety studies. If EPA determines that portions of this information are not entitled to confidential treatment, the Agency will publish an amended notice and will place the information in the public file, after notifying the submitter and

complying with other applicable procedures.

After receipt, EPA has 90 days to review a PMN under section 5(a)(1). The section 5(d)(2) Federal Register notice indicates the date when the review period ends for each PMN. Under section 5(c), EPA may, for good cause, extend the review period for up to an additional 90 days. If EPA determines that an extension is necessary, it will publish a notice in the Federal Register.

Once the review period ends, the submitter may manufacture the substance unless EPA has imposed restrictions. When the submitter begins to manufacture the substance, he must report to EPA, and the Agency will add the substance to the Inventory. After the substance is added to the Inventory, any company may manufacture it without providing EPA notice under section 5(a)(1)(A).

Therefore, under the Toxic Substances Control Act, a summary of the data taken from the PMN is published herein.

Interested persons may, on or before January 6, 1981, submit to the Document Control Officer (TS-793), Management Support Division, Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E-447, 401 M St., SW, Washington, DC 20460, written comments regarding this notice. Three copies of all comments shall be submitted, except that individuals may submit single copies of comments. The comments are to be identified with the document control number "[OPTS-51184]" and the PMN number. Comments received may be seen in the above office between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

(Sec. 5, 90 Stat. 2012 (15 U.S.C. 2604))

Dated: December 15, 1980.

Edward A. Klein,

Director, Chemical Control Division.

PMN 80-318

The following summary is taken from data submitted by the manufacturer in the PMN.

Close of Review Period. February 5, 1981.

Manufacturer's Identity. Calgon Corp., Subsidiary of Merck & Co. Inc., Box 1346, Pittsburgh, PA 15230.

Specific Chemical Identity. Dimethyl diallyl ammonium chloride-acrylamide-potassium acrylate terpolymer.

Use. Paper manufacture, solids/liquids separation.

Production Estimates

	Kilograms per year	
	Minimum	Maximum
1981	5,000	25,000
1982	5,000	50,000
1983	5,000	100,000

Physical/Chemical Properties

Melting point—None-chars at 320°C.

Solubility—Soluble in water at all proportions. Slightly soluble in ethyl alcohol and methyl alcohol. Insoluble in acetone, isopropyl alcohol, ethyl acetate, carbon tetrachloride, hexane, ether, and kerosene.

pH—Solutions containing 0.5%—5% of substance vary in pH from 4.5–4.7.

Ash—After ignition at 450°C, the ash content is 15.40% and at 900°C, it amounts to 2.76%.

Water content—Average is 6%.

Volatile matter—At 450°C, the volatile matter is 84.60% and at 900°C, 97.24%

Ether extractables—Ether soluble fraction is 0.48%.

Viscosity at 22°C and 60 rpm (Brookfield):

Concentration %

0.5—12 cps
1.0—22 cps
1.5—28 cps
2.0—48 cps
3.0—118 cps
4.0—300 cps
5.0—638 cps

Thermal stability—Turns gray at 210°C, light green and swells at 275°C, brown at 280°C, and chars at 320°C.

Toxicity Data

12/15/69, Oral LD_{50} (rats)—>4.64 gm/kg (highest level tested in male and female rats).

6/7/67, Draize eye irritation (albino rabbits)—Non-irritating.

6/7/67, Primary skin irritation (rabbits)—Variable results "precluded precise scoring for primary irritation".

6/7/67, Oral LD_{50} (rats)—>10 g/kg.

6/7/67, Primary skin irritation (rabbits)—5 of 6 rabbits showed no effect; 6th showed a "corrosive type" reaction.

Exposure

Activity and exposure route(s)	Maximum number exposed	Maximum duration		Concentration	
		Hours/day	Days/year	Average	Peak
Manufacture: Dermal inhalation	2/shift	8	2-30	Not known.	
Disposal: Dermal inhalation	2/shift	8	2-30	Not known.	

Environmental Release/Disposal

Manufacture:

Media—Amount/Duration of Chemical Release (kg/yr).

Air—< 10. 24 hr/da; 1–10 da/yr.

Water—<10.

Land—100–1,000.

Waste disposal will be by landfill, product dust is vacuumed from plant floor and sealed in plastic bags.

[FR Doc. 80-39450 Filed 12-18-80; 8:45 am]

BILLING CODE 6560-31-M

[OPP-180549; PH-FRL 1707-6]

New Jersey and West Virginia; Issuance of Specific Exemptions for Nemacur on Peach Trees

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted specific exemptions to the New Jersey Department of Environmental Protection and the West Virginia Department of Agriculture (hereinafter referred to as "New Jersey," "West Virginia," or the "Applicants") for the use of Nemacur to control nematodes on peach trees. The specific exemptions are issued under the Federal Insecticide, Fungicide, and Rodenticide Act.

DATES: New Jersey's specific exemption expires on December 1, 1980. West Virginia's specific exemption expires on April 11, 1981.

FOR FURTHER INFORMATION CONTACT: Edward Gross, Registration Division (TS-767), Office of Pesticide Programs, Environmental Protection Agency, Rm. E-124, 401 M St., SW., Washington, D.C. 20460, (202-426-0223).

SUPPLEMENTARY INFORMATION: According to the Applicants, several species of nematodes transmit viruses that attack the peach tree and its fruit. Aside from the direct loss of the crop itself, growers suffer a second and greater loss from the destruction of the tree. A disease called peach decline develops in the winter when the trees are susceptible to cold primarily

because they have been weakened by the virus, the Applicants report.

Now that DBCP nematocide registrations have been cancelled, there are no registered pesticides to combat the nematodes. Two available methods of nematode control are painting the trees with reflective paint and crop rotation. According to the Applicants, painting trees is effective only where peaches were not previously grown and crop rotation succeeds only in delaying peach decline but not in eliminating it. Data indicate that Nemacur is effective in controlling peach nematodes.

New Jersey projects that it will suffer $1.5 million in direct crop loss if the specific exemption is not granted and that another $5.6 million is expected to be lost in replacing dead trees. West Virginia indicates that untreated peach trees yield about 250 bushels of peaches per acre and the infected trees need to be replaced in 5–6 years. Treated peach trees yield about 470 bushels per acre in West Virginia.

The Applicants propose to use Nemacur which contains the active ingredient (a.i.) ethyl 3-methyl-4-(methylthio) phenyl (1-methylethyl)phosphoramidate). They will make a single application of Nemacur at a rate of 10 pounds a.i. per acre. New Jersey will make applications through November 1980; West Virginia will make application in the spring of 1981.

EPA has determined that combined residues of Nemacur and its sulfoxide and sulfone metabolites should not exceed 0.01 parts per million (ppm) in or on peaches from this use; residues of Nemacur's phenolic metabolites in or on peaches should not exceed 0.02 ppm. These residue levels have been judged adequate to protect the public health. EPA has imposed appropriate restrictions to safeguard the environment and anticipates no undue hazards from this and other use of Nemacur.

After reviewing the applications and other available information, EPA has determined that the criteria for exemptions have been met. Accordingly, New Jersey has been granted permission to use the pesticide noted above until December 1, 1980 and West Virginia until April 11, 1981, to the extent and in the manner set forth in the applications. The specific exemptions are also subject to the following conditions:

1. The product Nemacur 15% Granular Systemic Nematocide, EPA Reg. No. 3125-236, may be used by both Applicants. West Virginia may also use Nemacur 3 Emulsifiable Systemic Nematocide, EPA Reg. No. 3125-283. If unregistered labels are used in connection with these products, they must contain the identical applicable precautions and restrictions which appear on the registered labels.

2. Nemacur is to be applied by ground equipment at a rate of 10 pounds a.i. per acre or 3⅓ gallons of Nemacur per 43,560 square feet. No more than one application may be made per fall season in New Jersey; no more than one application may be made per spring season in West Virginia.

3. A 60-day preharvest interval is imposed.

4. A total of 36,000 pounds a.i. is authorized to treat peach-bearing trees in New Jersey. A total of 21,000 pounds a.i. is authorized to treat peach-bearing trees in West Virginia.

5. All applications will be made by State-certified commercial or private applicators or persons under their direct supervision.

6. Treated orchards are not to be grazed and cover crops are not to be fed to livestock.

7. Nemacur is highly toxic to bees exposed to direct treatment or to residues on crops or weeds. It may not be applied or allowed to drift to weeds or crops in bloom if bees are actively visiting the treatment area.

8. Nemacur is extremely toxic to fish and aquatic invertebrates. It may not be applied directly to any body of water and drift reduction precautions must be observed. It may not be applied where excessive runoff is likely to occur. Care must be taken to prevent contamination of water by the cleaning of equipment or disposal of wastes or excess pesticides.

9. Peaches with combined residues of Nemacur and its sulfoxide and sulfone metabolites not exceeding 0.01 ppm and peaches with residues of the phenolic metabolites of Nemacur not exceeding 0.02 ppm may enter interstate commerce. The Food and Drug Administration, U.S. Department of Health and Human Services, has been advised of this action.

10. The Applicants are required to coordinate their efforts with the appropriate Fish and Game Agencies to exclude treatment areas used by Peregrine falcons for nesting/feeding.

11. Each Applicant must establish a monitoring program to detect adverse effects on birds, fish, and aquatic invertebrates.

12. The EPA must be notified immediately of any adverse effect resulting from the use of Nemacur in this program.

13. The Applicants are each responsible for ensuring that all the provisions of its specific exemption are met and each must submit a report summarizing the results of this program. New Jersey must submit its report by May 1, 1981. West Virginia must submit its report by August 31, 1981.

(Sec. 18 as amended 92 Stat. 819; (7 U.S.C. 136))

Dated: December 11, 1980.

Edwin L. Johnson,

Deputy Assistant Administrator for Pesticide Programs.

[FR Doc. 80-39458 Filed 12-18-80; 8:45 am]

BILLING CODE 6560-32-M

[OPP-180536; PH FRL 1707-3]

Ohio; Issuance of Specific Exemption for Mesurol on Grapes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted a specific exemption to the Ohio Department of Agriculture (hereafter referred to as the "Applicant") to use Mesurol to control depredating birds on 2,000 acres of grapes in Ohio. The specific exemption is issued under the Federal Insecticide, Fungicide, and Rodenticide Act.

DATE: The specific exemption expires on November 30, 1980.

FOR FURTHER INFORMATION CONTACT: Donald R. Stubbs, Registration Division (TS-767), Office of Pesticide Programs, Environmental Protection Agency, Rm. E-124, 401 M St. SW., Washington, D.C. 20460, (202-426-0223).

SUPPLEMENTARY INFORMATION: According to the Applicant, birds can seriously reduce the crop of marketable grapes. The amount of injury varies from year to year, reflecting bird populations and availability of alternative food sources. Grapes are generally harvested after other berry crops and thus can become a major food source for birds. Grapes are subject to feeding at all times after the fruit has begun to ripen. Bird species observed in grape fields include robins, finches, starlings, sparrows, mourning doves, orioles, cedar waxwings, and blackbirds.

There are currently no pesticides registered for bird control in grapes. There are two types of alternative control available: (a) scare devices, and (b) exclusion devices. According to the Applicant, scare devices do not prevent, but only reduce, feeding injury; some birds quickly adapt to these devices. The Applicant claims that exclusion devices are prohibitively expensive. Mesurol is currently registered as a bird repellent on cherries.

The Applicant proposed to apply 2.67 pounds of Mesurol, which contains the active ingredient (a.i.) 3,5-dimethyl-4-(methylthio) phenyl methylcarbamate, per acre with up to three applications. The Applicant anticipates that grape growers in Ohio could lose up to $250,000 if Mesurol is not available.

EPA has determined that residues of the a.i. and its cholinesterase-inhibiting metabolites would not exceed 10 parts per million (ppm) in or on grapes, 20 ppm in or on raisins, and 50 ppm in or on grape pomace and raisin waste, from the proposed use. These residue levels have been judged adequate by EPA to protect the public health. EPA has also

determined that the proposed use should not present an undue hazard to the environment.

After reviewing the application and other available information, EPA has determined that the criteria for an exemption have been met. Accordingly, the Applicant has been granted a specific exemption to use the pesticide noted above until November 30, 1980, to the extent and in the manner set forth in the application. The specific exemption is also subject to the following conditions:

1. The product Mesurol 75% WP insecticide-bird repellent, EPA Reg. No. 3125–288, may be used.

2. Mesurol is to be applied by ground equipment at a rate of 2.67 pounds (2.0 pounds a.i.) per acre. No more than three applications may be made per season.

3. Application of Mesurol is restricted to those grape fields where damage from bird depredation will cause significant economic losses, as determined by Cooperative Extension or authorized State personnel.

4. Application is to begin at the first sign of major bird damage. A one-day pre-harvest interval is imposed.

5. A total of 3,851 pounds a.i. are authorized to treat up to 2,000 acres of grapes.

6. Mesurol is toxic to fish and other aquatic organisms. Precautions must be taken to avoid or minimize spray drift to aquatic areas.

7. Mesurol is highly toxic to bees exposed to direct treatment or residues on crops or blooming weeds. It may not be applied or allowed to drift to crops or weeds when bees are actively visiting the area.

8. All applicable precautions, restrictions, and directions on the registered label must be followed.

9. Residues of the a.i. and its cholinesterase-inhibiting metabolites not exceeding the following levels may enter into interstate commerce: grapes—10 ppm; raisins—20 ppm; raisin waste—50 ppm; grape pomace—50 ppm. The Food and Drug Administration, U.S. Department of Health and Human Services, has been advised of this action.

10. The Applicant is responsible for assuring that all of the provisions of this specific exemption are met and must submit a final report summarizing the results of this program by February 28, 1981.

(Sec. 18 as amended 92 Stat. 819; (7 U.S.C. 136))

Dated: December 11, 1980.

Edwin L. Johnson,

Deputy Assistant Administrator for Pesticide Programs.

[FR Doc. 80-39452 Filed 12-18-80; 8:45 am]

BILLING CODE 6560-32-M

[OPP-180544; PH FRL 1707-2]

Oregon; Issuance of Specific Exemption for Carbofuran on Pepperment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted a specific exemption to the Oregon Department of Agriculture (hereafter referred to as the "Applicant") for the use of carbofuran to control strawberry root weevil larvae on a maximum of 20,000 acres of peppermint in Oregon. The specific exemption is issued under the Federal Insecticide, Fungicide, and Rodenticide Act.

DATE: The specific exemption expires on November 30, 1980.

FOR FURTHER INFORMATION CONTACT: Jack E. Housenger, Registration Division (TS–767), Office of Pesticide Programs, Environmental Protection Agency, Rm. E–107, 401 M St., SW., Washington, D.C. 20460, (202–426–0223).

SUPPLEMENTARY INFORMATION: The larva of the strawberry root weevil, *Otiorhynchus ovatus,* has become one of the most serious arthropod pests in peppermint in western and central Oregon, according to the Applicant. These larvae feed on mint roots from September until early May. Together with larvae of the mint root borer, mint flea beetle, and garden symphylin, they contribute to a steady decline of plant stands, the Applicant reports. Fields infested with strawberry root weevils are estimated to have an average production life of 4 to 5 years compared to an average production life of 8 to 10 years for uninfested fields.

The Applicant claimed that production costs have been rising over the past four years; however, the number of pounds of mint oil per acre in fields infested with the strawberry root weevil has been declining. Use of carbonfuran in infected fields is expected to increase the yield by 20 pounds per acre. There is no pesticide registered for control of the strawberry root weevil.

The Applicant proposed a single post-harvest application using ground equipment. Application would be at the rate of 2.0 pounds of the active ingredient, carbofuran, per acre. The Applicant will use Furadan 4 Flowable.

EPA has determined that residues of carbofuran, its carbamate metabolite and its phenolic metabolite are not expected to exceed 0.2 part per million (ppm) in peppermint oil from this use. This level has been judged adequate to protect the public health. Although carbofuran is toxic to fish, birds, bees, and other wildlife, EPA anticipates that adverse effects to non-target organisms from this program can be minimized through adherence to precautionary labeling directions.

After reviewing the application and other available information, EPA has determined that the criteria for a specific exemption have been met. Accordingly, the Applicant has been granted a specific exemption to use the pesticide named above until November 30, 1980, to the extent and in the manner set forth in the application. The specific exemption is also subject to the following conditions:

1. The product Furadan 4 Flowable (EPA Reg. No. 279–2876) may be used.

2. A total of 20,000 acres of peppermint may be treated using a maximum of 10,000 gallons of product.

3. One post-harvest (after flaming) treatment may be made at a rate of 2.0 lbs. active ingredient per acre.

4. Applications will be made with ground equipment using a minimum of 20 gallons of water per acre.

5. One-half to one inch of irrigation water will be applied immediately after application to incorporate the carbofuran into the soil.

6. All applications will be made by or under the direct supervision of State-certified applicators.

7. This product is highly toxic to bees exposed to direct treatment or residues on crops or weeds. It may not be applied or allowed to drift to crops or weeds in bloom where bees are actively foraging. Protective information may be obtained from the Oregon Cooperative Agriculture Extension Service.

8. Precautions must be taken to avoid or minimize spray drift to non-target areas. It is recommended that pesticide applications be made when wind speeds are between 2 and 5 miles per hour. No pesticide applications are to be made when wind speeds exceed 10 miles per hour.

9. This product is toxic to fish, birds, and other wildlife. Birds feeding on treated areas may be killed. Carbofuran may not be applied directly to any body of water, and drift reduction precautions must be observed. It may not be applied where excessive runoff is likely to occur. Care must be taken to prevent contamination of water by the cleaning of equipment or disposing of waste or excess pesticides.

10. Carbofuran must not be applied on fields in proximity of waterfowl nesting areas and/or on fields where waterfowl are known to feed repeatedly.

11. Spent hay may not be fed to livestock.

12. Combined residues of carbofuran, its carbamate metabolite and its phenolic metabolite are not expected to exceed 0.2 ppm in peppermint oil from the above treatment. Mint oil with residues not exceeding this level may enter interstate commerce. The Food and Drug Administration, U.S. Department of Health and Human Services, has been advised of this action.

13. All applicable directions, restrictions, and precautions on the EPA-registered product label must be adhered to.

14. The EPA shall be immediately informed of any adverse effects resulting from this use of carbofuran.

15. The Applicant is responsible for ensuring that all provisions of this specific exemption are met and must submit a final report summarizing the results of this program by April 1, 1981.

(Sec. 18 as amended 92 Stat. 819; (7 U.S.C. 136))

Dated: December 11, 1980.

Edwin L. Johnson,

Deputy Assistant Administrator for Pesticide Programs.

[FR Doc. 80-39451 Filed 12-18-80 8:45 am]

BILLING CODE 6560-32-M

[OPP-180538; PH FRL 1707-4]

Commonwealth of Puerto Rico; Issuance of Specific Exemption for Lindane in Sugarcane Fields

AGENCY: Enviornmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted a specific exemption to the Puerto Rico Department of Agriculture (hereafter referred to as the "Applicant") to use lindane on a maximum of 14,000 acres of sugarcane fields in Puerto Rico to control larvae of the West Indian sugarcane root borer weevil and *Phyllophaga* species (known locally as white grubes). The specific exemption is issued under the Federal Insecticide, Fungicide, and rodenticide Act.

DATE: The specific exemptions expires on May 19, 1981.

FOR FURTHER INFORMATION CONTACT: Patricia Critchlow, Registration Division (TS-767), Office of Pesticide Programs, Environmental Protection Agency, Rm. E-107, 401 M St. SW., Washington, D.C. 20460 (202-426-0223)

SUPPLEMENTAL INFORMATION: Sugarcane is grown in two cycles in puerto Rico, Between July and November and between February and May. Ratoon crops, which grow from the cut stumps of the previously harvested cane, follow both cane crops. Due to low production costs, the ratoon crop can be the most profitable cycle of sugarcane cultivation.

The West Indian sugarcane root borer weevil (*Diaprepes abbreviatus*) and *Phyllophaga* spp., or white grubs, are major pests of sugarcane in Puerto Rico. Damage caused by the larvae can kill the plant, but usually results in stunted growth and reduced plant sugar production. Root damage also makes the plant more easily uprooted by mechanical harvesters and thus reduces future yields by removing cane stools which produce the ratoon crop. The root borer weevil larvae live in the soil and injure the cane by feeding on the plant's roots and, when more mature, by tunneling up into the cane stalk. Adult weevils emerge from the soil in large numbers in the early and late summer and feed on a wide variety of succulent weeds. *Phyllophaga* supp. are root pruners that feed on sugarcane plant roots. *Phyllphaga* supp. are also present year round with most adult beetles emerging in May or June.

According to the Applicant, aldrin was used extensively throughout the sugarcane-producing regions as a pre-plant treatment, until it was banned. The Applicant reported that registered pesticides are of adequate toxicity to control the larvae when applied as a soil-incorporated treatment; however, they do not prevent reinfestation because of insufficient residual activity under the conditions that exist in Puerto Rico. The only method currently being used for control of white grubs in sugarcane is soil cultivation, which is practical only during the time of planting. It lowers the larval populations but does not prevent their recovery.

Sugar cane and sugar production play an important role in Puerto Rico's economy. The Sugar Corporation is a publicly owned organization which produces and/or controls the production of most of the sugarcane grown on the island. It has reported millions of dollars of losses in the past few years. The Applicant estimates that white grub larvae cause an annual sugarcane yield reduction valued at $21.8 million.

The Applicant proposed to make a soil-incorporated application of lindane in sugarcane fields at the time of planting. A single application of a lindane 25 percent wettable powder formulation will be made at a maximum rate of 2.0 pounds active ingredient (a.i.) per acre. The Applicant plans to use an adulticide, probably carbofuran (a registered product), against the adult root borer weevil at times of peak emergence, as well as the one-time application of lindane. No adulticide program is planned for the *Phyllophaga* spp. since their feeding patterns do not allow effective large-scale pest measures. Once the larval populations are under control, a continuing adulticide program is expected to keep root borer weevil populations below economic injury levels by preventing egg laying by adults. Control of *Phyllophaga* spp. will depend upon the effectiveness of the soil-incorporated application of lindane.

EPA has determined that residues of lindane in molasses or sugar are not likely to exceed 0.01 part per million (ppm) from the proposed use. Tolerances for residues of lindane in or on raw agricultural commodities have been established, ranging from 7 parts per million (ppm) in or on the fat of meat from cattle, goats, horses, and sheep to 0.01 ppm (negligible residue) in or on pecans. Because of toxicological considerations and possible cancer risk to applicators and loaders/mixers, appropiate restrictions and clothing requirements have been imposed. No unreasonable adverse effects to the evironment are expected as a result of this program.

It should be noted that a rebuttable presumption against registration (RPAR) of pesticide products containing lindane was published in the Federal Register of February 17, 1977 (42 FR 9816). A Preliminary Determination on that RPAR was published in the Federal Register of July 3, 1980 (45 Fr 45362). It has been determined that this specific exemption would not be contrary to or at variance with that determination.

After reviewing the application and other available information, EPA has determined that the criteria for an exemption have been met. Accordingly, the Applicant has been granted a specific exemption to use the pesticide noted above until May 19, 1981, to the extent and in the manner set forth in the application. The specific exemption is also subject to the following conditions:

1. A lindane 25 percent wettable powder product will be applied at a maximum rate of 2.0 pounds a.i. per acre.

2. Application will be limited to a single pre-plant treatment with ground equipment. No field will be treated more than once.

3. A maximum of 14,100 acres may be treated.

4. A Maximum of 28,200 pounds a.i. is authorized for use.

5. Applicators and mixer/loaders will be trained employees of the Sugar Corporation.

6. Applicators and mixer/loaders will wear protective clothing which includes: gloves, helmets, longsleeve shirts, long pants, and boots. Applicators will not be involved with any phase of the mixing and loading operations. Paper masks will be worn during the mixing operations. Applicators and mixer/loaders will be required to shower and wash at the end of the workday.

7. Reentry workers will be required to wear protective gloves and boots.

8. Children and women of childbearing age will not participate in any phase of the mixing and loading or application of lindane. Use of this pesticide will be avoided near children or where children will be exposed.

9. All workers will be instructed as to the symptoms of lindane poisoning. Workers will be required to leave the exposure areas if symptoms become evident.

10. The Applicant must advise EPA of any changes in the proposed use of lindane.

11. Treated fields will not be planted with crops which do not have established tolerances within 12 months of application of lindane.

12. Data indicate that residues of lindane in runoff water after a heavy rain could reach a level of 37 parts per billion. Although this level of lindane exceeds the LC_{50}'s for species of freshwater fishes and aquatic invertebrates, an acute hazard is not anticipated, provided runoff is adequately diluted by surface water in drainage ditches, streams and rivers, and estuarine areas. A 370-fold dilution factor is necessary to protect (from acute effects) the most sensitive, aquatic invertebrate species tested, and a 10-fold dilution factor is necessary to protect freshwater fishes. These factors should be taken into consideration when lindane is being applied in areas where freshwater fishes and aquatic invertebrates are important natural resources.

13. Lindane may not be applied where excessive runoff will occur. Care must be taken to prevent contamination of water by cleaning of equipment or disposal of wastes.

14. All applicable directions, restrictions, and precautions on the product label must be followed.

15. The applicant is responsible for assuring that all of the provisions of this specific exemption are met and must submit a final report by April 1, 1981.

16. Sugarcane and sugar with residues of lindane not exceeding 0.01 ppm may enter interstate commerce. The Food and Drug Administration, U.S. Department of Health and Human Services, has been advised of this action.

17. The EPA shall be immediately informed of any adverse effects resulting from the use of lindane in connection with this exemption.

(Sec. 18 as amended 92 Stat. 819; (7 U.S.C. 136))

Dated: December 11, 1980.

Edwin L. Johnson,

Deputy Assistant Administrator for Pesticide Programs.

FR Doc. 80-39453 Filed 12-18-80; 8:45 am]

BILLING CODE 6560-32-M

[OPP-180539; PH FRL 1707-5]

Washington; Issuance of Specific Exemption for Chlorpyrifos on Mint

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted a specific exemption to the Washington State Department of Agriculture (hereafter referred to as the "Applicant") to use chlorpyrifos to control the mint root borer on 7,800 acres of peppermint in Adams, Grant, and Yakima Counties, Washington. The specific exemption is issued under the Federal Insecticide, Fungicide, and Rodenticide Act.

DATE: The specific exemption expires on November 30, 1980.

FOR FURTHER INFORMATION CONTACT: Donald R. Stubbs, Registration Division (TS-767), Office of Pesticide Programs, Environmental Protection Agency, Rm. E-124, 401 M St., SW., Washington, D.C. 20460, (202-426-0223).

SUPPLEMENTARY INFORMATION: The mint root borer (*Fumibotys fumalis* (Guenee)) causes damage to the rhizomes of the peppermint. The main damage occurs after the harvesting of the peppermint (August, September, October). Damage to the rhizomes severely weakens the peppermint plants and renders them extremely susceptible to winter injury, resulting in reduced stands the following season. The mint root borer has become a serious pest of peppermint in the United States. Washington reports it was first detected in that State in 1976 and is now established in 7,800 acres of peppermint. No pesticide is currently registered for control of the mint root borer. If there is not effective control of the mint root borer, Washington estimates a loss of $1.2 million.

The Applicant proposes to make a single post-harvest application of Lorsban 4 EC which contains the active ingredient (a.i.) chlorpyrifos. The proposed dosage rate is four pints product (2 pounds a.i.) in 20-40 gallons of water per acre per season.

EPA has determined that residues of chlorpyrifos and its metabolite, 3,5,6-trichloro-2-pyridinol, are not likely to exceed 0.1 part per million (ppm) in or on fresh or spent peppermint hay, and 0.35 ppm in mint oil from the proposed use. These levels have been judged adequate by EPA to protect the public health. EPA as imposed a restriction against feeding either the fresh or spent hay to livestock to avoid possible secondary chlorpyrifos residues in meat and milk. EPA anticipates no unreasonable adverse effect on the environment as a result of this program.

After reviewing the application and other available information, EPA has determined that the criteria for an exemption have been met. Accordingly, the Applicant has been granted a specific exemption to use the pesticide noted above until November 30, 1980, to the extent and in the manner set forth in the application. The specific exemption is also subject to the following conditions:

1. Use of the Dow Chemical U.S.A. insecticide, Lorsban 4 EC, (EPA Reg. No. 464-448) is authorized at a dosage rate of 4 pints of product (2 pounds a.i.) per acre. A total of 3,900 gallons of product (15,600 pounds a.i.) are authorized in Washington.

2. Applications are to be made by ground application only at the volumes specified in the application. The pesticide must be incorporated into the soil by applications of 1.0 inch of irrigation water immediately after treatment with chlorpyrifos.

3. Only one post-harvest application/acre/season is to be made. Either growers or commercial State-licensed applicators may apply chlorpyrifos. Washington State University extension specialists and agents shall provide information about rates and procedures.

4. Up to 7,800 acres of peppermint in the Washington Counties named above may be treated with chlorpyrifos.

5. Fresh or spent peppermint hay is not to be used as a livestock feed item.

6. Mint oil with a residue level of chlorpyrifos and its metabolite, 3,5,6-trichloro-2-pyridinol, not exceeding 0.35 ppm may enter interstate commerce. Fresh or spent hay with residues of chlorpyrifos and its metabolite not exceeding 0.1 ppm may also enter interstate commerce. The Food and Drug Administration, U.S. Department of Health, and Human Services, has been advised of this action.

7. All applicable label directions, precautions, and restrictions must be adhered to.

8. Any adverse effects resulting from the use of chlorpyrifos under this specific exemption must be immediately reported to the EPA.

9. There must be a 400-foot buffer zone between peppermint fields and any fish-bearing area.

10. The Applicant must submit a report to EPA summarizing the results of this program by the end of March, 1981.

(Sec. 18 as amended (92 Stat. 819; (7 U.S.C. 136))

Dated December 11, 1980.

Edwin L. Johnson,

Deputy Assistant Administrator for Pesticide Programs.

[FR Doc. 80-39454 Filed 12-18-80; 8:45 am]

BILLING CODE 6560-32-M

FEDERAL PREVAILING RATE ADVISORY COMMITTEE

Open Committee Meetings

Pursuant to the provisions of section 10 of the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given that meetings of the Federal Prevailing Rate Advisory Committee will be held on:

Thursday, January 15, 1981
Thursday, January 22, 1981

These meetings will convene at 10 a.m., and will be held in Room 5A06A, Office of Personnel Management Building, 1900 E Street, NW, Washington, D.C.

The Federal Prevailing Rate Advisory Committee is composed of a Chairman, representatives of five labor unions holding exclusive bargaining rights for Federal blue-collar employees, and representatives of five Federal agencies. Entitlement to membership of the

Committee is provided for in 5 U.S.C. 5347.

The Committee's primary responsibility is to review the prevailing rate system and other matters pertinent to the establishment of prevailing rates under subchapter IV, chapter 53, 5 U.S.C., as amended, and from time to time advise the Office of Personnel Management thereon.

These scheduled meetings will convene in open session with both labor and management representatives attending. During the meeting either the labor members or the management members may caucus separately with the Chairman to devise strategy and formulate positions. Premature disclosure of the matters discussed in these caucuses would impair to an unacceptable degree the ability of the Committee to reach a consensus on the matters being considered and disrupt substantially the disposition of its business. Therefore, these caucuses will be closed to the public on the basis of a determination made by the Director of the Office of Personnel Management under the provisions of Section 10(d) of the Federal Advisory Committee Act (Pub. L. 92-463) and 5 U.S.C., section 552b(c)(9)(B). These caucuses may, depending on the issues involved, constitute a substantial portion of the meeting.

Annually, the Committee publishes for the Office of Personnel Management, the President, and Congress a comprehensive report of pay issues discussed, concluded recommendations thereon, and related activities. These reports are also available to the public, upon written request to the Committee Secretary.

Members of the public are invited to submit material in writing to the Chairman concerning Federal Wage System pay matters felt to be deserving of the Committee's attention. Additional information concerning these meetings may be obtained by contacting the Committee Secretary, Federal Prevailing Rate Advisory Committee, Room 1340, 1900 E Street, NW., Washington, D.C. 20415 (202-632-9710).

December 12, 1981.

Jerome H. Ross, *Chairman,*

Federal Prevailing Rate Advisory Committee.

[FR Doc. 80-39471 Filed 12-18-80; 8:45 am]

BILLING CODE 6325-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Alcohol, Drug Abuse, and Mental Health Administration

Advisory Committees; Filing of Annual Reports

Notice is hereby given that pursuant to Section 13 of Pub. L. 92-463 (5 U.S.C Appendix I), Annual Reports for Alcohol, Drug Abuse, and Mental Health Administration Committees have been filed with the Library of Congress. These are:

Alcohol Abuse Prevention Review Committee
Alcohol Biomedical Research Review Committee
Alcohol Human Resource Development Review Committee
Alcohol Psychosocial Research Review Committee
Basic Behavioral Processes Research Review Committee
Basic Psychopharmacology and Neuropsychology Research Review Committee
Basic Sociocultural Research Review Committee
Board of Scientific Counselors, NIMH
Cognition, Emotion, and Personaltiy Research Review Committee
Community Alcoholism Services Review Committee
Community Processes and Social Policy Review Committee
Criminal and Violent Behavior Review Committee
Drug Abuse Biomedical Research Review Committee
Drug Abuse Clinical, Behavioral, and Psychosocial Research Review Committee
Drug Abuse Resource Development Review Committee
Epidemiologic and Services Research Review Committee
Interagency Committee on Federal Activities for Alcohol Abuse and Alcoholism
Life Course Review Committee
Mental Health Research Education Review Committee
Mental Health Services Manpower Development Review Committee
Mental Health Small Grant Review Committee
Minority Advisory Committee, ADAMHA
Minority Group Mental Health Review Committee
National Advisory Council on Alcohol Abuse and Alcoholism
National Advisory Council on Drug Abuse
National Advisory Mental Health Council
Paraprofessional Education Review Committee
Psychiatric Nursing Education Review Committee
Psychiatry Education Review Committee
Psychology Education Review Committee
Psychopathology and Clinical Biology Research Review Committee
Rape Prevention and Control Advisory Committee
Research Scientist Development Review Committee
Social Work Education Review Committee
Treatment Development and Assessment Research Review Committee

Copies are available to the public for inspection at the Library of Congress, Special Forms Reading Room, Main Building, and on weekdays between 9:00 a.m. and 4:30 p.m., at the Department of Health and Human Services, Department Library, North Building, Room 1436, 330 Independence Avenue, S.W., Washington, D.C. 20201, telephone (202) 245-6791.

Dated: December 11, 1980.

Robert L. Trachtenberg,

Deputy Administrator, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 80-39397 Filed 12-18-80; 8:45 am]

BILLING CODE 4110-88-M

Advisory Councils, Rechartering

Pursuant to the Federal Advisory Committee Act, Pub. L. 92-463 (5 U.S.C. Appendix I), the Alcohol, Drug Abuse, and Mental Health Administration announces the rechartering by the Secretary of the following National advisory bodies:

National Advisory Mental Health Council, November 24, 1980
National Advisory Council on Drug Abuse, December 2, 1980
National Advisory Council on Alcohol Abuse and Alcoholism, December 3, 1980

The authority for these Councils is continuing and charters have been filed in accordance with Section 14 of said Act.

Dated: December 11, 1980.

Robert L. Trachtenberg,

Deputy Administrator, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 80-39396 Filed 12-18-80; 8:45 am]

BILLING CODE 4110-88-M

Food and Drug Administration

Illini Feeds; Swine Mix Tylan 10 Premix; Withdrawal of Approval of NADA

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration withdraws approval of a new animal application (NADA) providing for use of Swine Mix Tylan (Tylosin phosphate) 10 Premix in making finished feeds. The feeds are indicated for increased rate of weight gain and improved feed efficiency. The sponsor, Illini Feeds, requested the withdrawal of approval.

EFFECTIVE DATE: December 29, 1980.

FOR FURTHER INFORMATION CONTACT: David N. Scarr, Bureau of Veterinary Medicine (HFV–214), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1846.

SUPPLEMENTARY INFORMATION: Illini Feeds, Box T, Oneida, IL 61467, is the sponsor of NADA 110–202, which provided for use of a 10-gram-per-pound tylosin premix in making complete swine feeds containing 10 to 100 grams of tylosin per ton. The feeds are indicated for increased rate or weight gain and improved feed efficiency. The NADA was originally approved July 28, 1978. By letter of July 21, 1980, the sponsor requested withdrawal of approval of the NADA because the product has never been manufactured or marketed.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(e), 82 Stat. 345–347 (21 U.S.C. 360b(e))), under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1) and redelegated to the Bureau of Veterinary Medicine (21 CFR 5.84), and in accordance with § 514.115 *Withdrawal of approval of applications* (21 CFR 514.115), notice is given that approval of NADA 110–202 and all supplements for Illini Feeds' Swine Mix Tylan 10 Premix is hereby withdrawn, effective December 29, 1980.

In a separate document published elsewhere in this issue of the Federal Register, § 558.625 *Tylosin* is amended by revoking paragraph (b)(55), which provides for approval of this NADA.

Dated: December 3, 1980.

Terence Harvey,

Acting Director, Bureau of Veterinary Medicine.

[FR Doc. 80-39120 Filed 12-18-80; 8:45 am]

BILLING CODE 4110-03-M

[Docket No. 76N-0052]

Cold, Cough, Allergy, Bronchodilator, and Antiasthmatic Drug Products for Over-The-Counter (OTC) Human Use; Decision on Dosage of Pseudoephedrine Preparations

AGENCY: Food and Drug Administration, HHS.

ACTION: Extension of effective date.

SUMMARY: The Food and Drug Administration is extending until May 1, 1981, the date by which manufacturers of OTC oral nasal decongestant drug products containing pseudoephedrine are required to comply with FDA's revised dosage limit. The revised labeling would reflect the agency's decision to reduce the maximum daily dosage of pseudoephedrine preparations in the proposed monograph for OTC Cold, Cough, Allergy, Bronchodilator, and Antiasthmatic Drug Products. The effective date is being changed in response to petitions from two manufacturers who believed that the agency deadline did not allow enough time to reformulate fixed combination products.

DATE: Effective date for required relabeling is May 1, 1981.

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, Bureau of Drugs (HFD–510), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4960.

SUPPLEMENTARY INFORMATION: In the Federal Register of September 30, 1980 (45 FR 64709), the Commissioner of Food and Drugs announced the decision that the available data did not support the 360-milligram (mg) maximum daily dosage for drug products containing pseudoephedrine for OTC use as an oral nasal decongestant that had been recommended by the Advisory Review Panel on OTC Cold, Cough, Allergy, Bronchodilator and Antiasthmatic Products. The notice explained that data submitted to the agency after the publication of the Panel's proposed monograph suggest that significant side effects could result from the 360-mg daily dosage and that a 240-mg maximum adult daily dosage is more appropriate. The agency concluded that, under the procedures established in 21 CFR 330.13(b)(2), pseudoephedrine products labeled with the higher dosage limitations would be required to be relabeled with specified lower dosage limitations by January 30, 1981.

On October 30, 1980, the Commissioner received two petitions, one from McNeil Consumer Products Co. and the other from Marion Laboratories, Inc., requesting a reconsideration of the January 30, 1981, effective date for the required relabeling. (Copies of the petitions are on file in the Dockets Management Branch (HFA–305), Rm. 4–62, Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.) They based their requests on their belief that the deadline did not allow enough time for changes in fixed combination products, which must be reformulated as well as relabeled to conform to the new reduced dosage limitation. The petitions pointed out that reformulation entails a variety of technical procedures and business transactions that take longer than 4 months to complete. Accordingly, they stated that it would be impossible to reformulate before the announced deadline. Both manufacturers also stressed that there would be increased production costs if current inventories could not be used. The petitions requested that the effective date be extended until either April 1 or May 1, 1981.

The Commissioner has considered these requests and has concluded that good and sufficient reason has been provided for extending the effective date. Therefore, FDA is granting both petitions by extending until May 1, 1981, the effective date for compliance with the revised dosage limitations set forth in the September 30, 1980 notice.

Dated: December 12, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-39125 Filed 12-18-80; 8:45 am]

BILLING CODE 4110-03-M

Ayerst Laboratories; Hycholin Injectable; Withdrawal of Approval of NADA

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The agency withdraws approval of a new animal drug application (NADA) sponsored by Ayerst Laboratories providing for use of Hycholin (pentapiperide methylsulfate injectable) in management of gastrointestinal disturbances in dogs and cats. The sponsor has requested this action.

EFFECTIVE DATE: December 29, 1980.

FOR FURTHER INFORMATION CONTACT: Howard Meyers, Bureau of Veterinary Medicine (HFV–216), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4093.

SUPPLEMENTARY INFORMATION: Ayerst Laboratories, Division of American Home Products Corp., 685 Third Ave.,

New York, NY 10017, is the sponsor of NADA 13-917 which provides for intravenous or intramuscular use of Hycholin in dogs and cats for treating excessive salivation, gastroenteritis, and diarrhea. The application was originally approved November 7, 1963. By letter of January 9, 1978, the sponsor requested withdrawal of approval of the NADA because the product is no longer being manufactured or marketed.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(e), 82 Stat. 345-347 (21 U.S.C. 360b(e))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1) and redelegated to the Bureau of Veterinary Medicine (21 CFR 5.84), and in accordance with § 514.115(d) *Withdrawal of approval of applications* (21 CFR 514.115(d)), notice is given that approval of NADA 13-917 and all supplements for Ayerst Laboratories', Hycholin Injectable is hereby withdrawn, effective December 29, 1980.

Dated: December 10, 1980.

Gerald B. Guest,

Acting Director, Bureau of Veterinary Medicine.

[FR Doc. 80-39048 Filed 12-19-80; 8:45 am]

BILLING CODE 4110-03-M

Burns-Biotec Laboratories, Inc.; Pentosol (Pentobarbital Sodium Injection); Withdrawal of Approval of NADA

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) withdraws approval of a new animal drug application (NADA) providing for use of Pentosol (pentobarbital sodium injection) as an intermediate-acting anesthetic in dogs and cats. The sponsor, Burns-Biotec Laboratories, Inc., requested the action.

EFFECTIVE DATE: December 29, 1980.

FOR FURTHER INFORMATION CONTACT: Leonard D. Krinsky, Bureau of Veterinary Medicine (HFV-216), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4093.

SUPPLEMENTARY INFORMATION: Burns-Biotec Laboratories, Inc., 8530-8536 K St., P.O. Box 3113, Omaha, NE 68103, is the sponsor of NADA 46-588 which provides for use of Pentosol (pentobarbital sodium injection) as an anesthetic in dogs and cats. The application was originally approved October 4, 1974. In a letter dated August 27, 1980, the firm requested that approval of NADA 46-588 be withdrawn.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(e), 82 Stat. 345-347 (21 U.S.C. 360b(e))), under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1) and redelegated to the Director of the Bureau of Veterinary Medicine (21 CFR 5.84), and in accordance with § 514.115 *withdrawal of approval of applications* (21 CFR 514.115), notice is given that approval of NADA 46-588 and all supplements for Pentosol (pentobarbital sodium injection) is hereby withdrawn, effective December 29, 1980.

In a separate document published elsewhere in this issue of the Federal Register § 522.1704(b)(2) is amended to delete that portion of the regulation which reflects approval of this NADA.

Dated: December 3, 1980.

Terence Harvey,

Deputy Director, Bureau of Veterinary Medicine.

[FR Doc. 80-39047 Filed 12-18-80; 8:45 am]

BILLING CODE 4110-03-M

Merck Sharp & Dohme Research Laboratories; Equizole Liquid Horse Wormer; Withdrawal of Approval of NADA

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The agency withdraws approval of a new animal drug application (NADA) sponsored by Merck Sharp & Dohme Research Laboratories providing for use of Equizole (thiabendazole) Liquid Horse Wormer for controlling certain helminth infections. The sponsor has requested this action.

EFFECTIVE DATE: December 29, 1980.

FOR FURTHER INFORMATION CONTACT: Howard Meyers, Bureau of Veterinary Medicine (HFV-216), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4093.

SUPPLEMENTARY INFORMATION: Merck Sharp & Dohme Research Laboratories, Division of Merck & Co., Inc., Rahway, NJ 07065, is the sponsor of NADA 47-714 which provides for use of Equizole Liquid Horse Wormer for controlling infections of large strongyles, small strongyles, pinworms and threadworms. The application was originally approved October 8, 1971. By letter of April 21, 1980, the sponsor requested withdrawal of approval of the application because the product has never been marketed.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(e), 82 Stat. 345-347 (21 U.S.C. 360b(e))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1) and redelegated to the Bureau of Veterinary Medicine (21 CFR 5.84), and in accordance with § 514.115(d) *Withdrawal of approval of applications* (21 CFR 514.115(d)), notice is given that approval of NADA 47-714 and all supplements for Merck's Equizole Liquid Horse Wormer is hereby withdrawn, effective (December 29, 1980).

Dated: December 10, 1980.

Gerald B. Guest,

Acting Director, Bureau of Veterinary Medicine.

[FR Doc. 80-39050 Filed 12-18-80; 8:45 am]

BILLING CODE 4110-03-M

[Docket No. 80M-0435]

Zimmer-USA; Premarket Approval of Zimmer® Direct Current Bone Growth Stimulator

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) announces its approval of the application for premarket approval under the Medical Device Amendments of 1976 of the Zimmer® Direct Current Bone Growth Stimulator sponsored by Zimmer-USA, Warsaw, IN. After reviewing the recommendation of the Orthopedic Device Section of the Surgical and Rehabilitation Devices Panel, FDA notified the sponsor that the application was approved because the device has been shown to be safe and effective for use as recommended in the submitted labeling.

DATE: Petitions for administrative review by January 19, 1981.

ADDRESS: Requests for copies of the summary of safety and effectiveness data and petitions for administrative review may be sent to the Dockets Management Branch (formerly the Hearing Clerk's Office) (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Henry A. Goldstein, Bureau of Medical Devices (HFK-402), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-8162.

SUPPLEMENTARY INFORMATION: The sponsor, Zimmer-USA, Warsaw, IN, submitted an application for premarket approval of the Zimmer® Direct Current Bone Growth Stimulator to FDA on February 26, 1979. The application was reviewed by the Orthopedic Device Section of the Surgical and Rehabilitation Devices Panel, an FDA advisory committee, which

recommended approval of the application. On November 23, 1979, FDA approved the application by a letter to the sponsor from the Director of the Bureau of Medical Devices.

A summary of the safety and effectiveness data on which FDA's approval is based is on file in the Dockets Management Branch (address above) and is available upon request from that office. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition under section 515(g) of the act (21 U.S.C. 360e(g)) for administrative review of FDA's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and of FDA's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration of FDA action under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish notice of its decision in the Federal Register. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before January 19, 1981, file with the Dockets Management Branch (formerly the Hearing Clerk's office) (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, four copies of each petition and supporting data and information, identified with the name of the device and the Dockets Management Branch docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: December 9, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-39049 Filed 12-18-80; 8:45 am]

BILLING CODE 4110-03-M

National Institutes of Health

Biometry and Epidemiology Contract Review Committee; Meeting

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the Biometry and Epidemiology Contract Review Committee, National Cancer Institute, January 29, 1981, Building 31C, Conference Room 9, National Institutes of Health, Bethesda, Maryland. The meeting will be open to the public on January 29, from 8:30 a.m. to 9:30 a.m., to review administrative details. Attendance by the public will be limited to space available.

In accordance with provisions set forth in Sections 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code and Section 10(d) of Public Law 92-463, the meeting will be closed to the public on January 29, from 9:30 a.m. to adjournment, for the review, discussion and evaluation of individual contract proposals. These proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the proposals, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Committee Management Officer, National Cancer Institute, Building 31, Room 4B43, National Institutes of Health, Bethesda, Maryland (301/496-5708) will provide summaries of the meeting and a roster of committee members, upon request.

Dr. Wilna A. Woods, Executive Secretary, National Cancer Institute, Westwood Building, Room 822, National Institutes of Health, Bethesda, Maryland 20205 (301/496-7153) will furnish substantive program information.

Dated: December 9, 1980.

Suzanne L. Fremeau,

Committee Management Officer, NIH.

[FR Doc. 80-39409 Filed 12-18-80; 8:45 am]

BILLING CODE 4110-08-M

Board of Scientific Counselors; Division of Cancer Biology and Diagnosis; Meeting

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the Board of Scientific Counselors, DCBD, National Cancer Institute, January 29, 30 and 31, 1981. This meeting will be open to the public on January 29 and 30, 1981, Building 539, 1st Floor Conference Room, Frederick Cancer Research Center, Frederick, MD, from 9:00 a.m. to adjournment to discuss the scientific program of the Cancer Biology Program, DCBD. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in Section 552b(c)(6), Title 5, U.S. Code and Section 10(d) of Pub. L. 92-463, the meeting will be closed to the public on January 31, 1981, from 9:00 a.m. to adjournment, for the review, discussion, and evaluation of individual programs and projects conducted by DCBD, National Cancer Institute, including consideration of personnel qualifications and performance, the competence of individual investigators, medical files of individual research subjects, and similar items, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Dr. Alan S. Rabson, Director, Division of Cancer Biology and Diagnosis, National Cancer Institute, Building 31A, Room 3A-03, National Institutes of Health, Bethesda, Maryland 20205 (301/496-4345) will furnish summary minutes, rosters of committee members, and substantive program information.

Dated: December 12, 1980.

Suzanne L. Fremeau,

Committee Management Officer, NIH.

[FR Doc. 80-39414 Filed 12-18-80; 8:45 am]

BILLING CODE 4110-08-M

Board of Scientific Counselors, NIEHS Meeting

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the Board of Scientific Counselors, National Institute of Environmental Health Sciences, January 28-29, 1981, in Building 18 conference room, National Institute of Environmental Health Sciences, Research Triangle Park, North Carolina.

This meeting will be open to the public from 9 a.m. to 12 noon on January 28, for the purpose of discussing recent developments in the Institute's budget, personnel, permanent facilities, contracts, scientific programs, and plans of the Laboratory of Environmental Chemistry, Laboratory of Pharmacology and the Physiological Genetics Group (Laboratory of Biochemical Genetics). Attendance by the public will be limited to space available.

In accordance with the provisions set forth in Section 552b(c)(6) Title 5 U.S. Code and Section 10(d) of Public Law 92-463, the meeting will be closed to the public on January 28 from approximately

1 p.m. to adjournment on January 29, 1981, for the evaluation of the programs of the Laboratory of Environmental Chemistry, Laboratory of Pharmnacology and the Physiological Genetics Group (Laboratory of Biochemical Genetics), including the consideration of personnel qualifications and performance, the competence of individual investigators, and similar items, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Executive Secretary, Dr. Charles E. Carter, Scientific Director, National Institute of Environmental Health Sciences, Research Triangle Park, North Carolina 27709, telephone (919) 541–3205, will furnish summaries of the meeting, rosters of committee members and substantive program information.

Dated: December 12, 1980.

Suzanne L. Fremeau,

Committee Management Officer, NIH.

[FR Doc. 80-39411 Filed 12-18-80; 8:45 am]

BILLING CODE 4110-08-M

Board of Scientific Counselors, Division of Resources, Centers, and Community Activities; Meeting

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Board of Scientific Counselors, Division of Resources, Centers, and Community Activities, National Cancer Institute, National Institutes of Health, January 29–30, 1981 Blair Building, Conference Room 110, 8300 Colesville Road, Silver Spring, Maryland. The entire meeting will be open to the public from 8:30 a.m. on January 29 through adjournment on January 30, to discuss the current and future programs of the Division of Resources, Centers, and Community Activities. Attendance by the public will be limited to space available.

The Committee Management Officer, National Cancer Institute, Building 31, Room 4B43, National Institutes of Health, Bethesda, Maryland 20205 (301/496–5708) will provide summaries of meetings and rosters of committee members, upon request.

Dr. Robert G. Burnight, Executive Secretary, National Cancer Institute, National Institutes of Health, Blair Building, Room 3A01A, Silver Spring, Maryland 30910 (301/427–8630) will furnish substantive program information.

Dated: December 12, 1980.

Suzanne L. Fremeau,

Committee Management Officer, NIH.

[FR Doc. 80-39410 Filed 12-18-80; 8:45 am]

BILLING CODE 4110-08-M

Cancer Special Program Advisory Committee; Meeting

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Cancer Special Program Advisory Committee, National Cancer Institute, March 12–13, 1981, Building 31C, Conference Room 10, National Institutes of Health, Bethesda, Maryland. This meeting will be open to the public on March 12, from 9:00 a.m. to 10:00 a.m., to review administrative details. Attendance by the public will be limited to space available.

In accordance with provisions set forth in Sections 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code and Section 10(d) of Pub. L. 92–463, the meeting will be closed to the public on March 12, from 10:00 a.m. to 5:00 p.m. and on March 13, from 8:30 a.m. to adjournment, for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Committee Management Officer, National Cancer Institute, Building 31, Room 4B43, National Institutes of Health, Bethesda, Maryland 20205 (301/496–5708) will provide summaries of the meetings and rosters of committee members, upon request.

Dr. William R. Sanslone, Executive Secretary, National Cancer Institute, Westwood Building, Room 805, National Institutes of Health, Bethesda, Maryland (301/496–7565) will furnish substantive program information.

(Catalog of Federal Domestic Assistance Number 13.392, projects grants in cancer construction, National Institutes of Health)

(NIH programs are not covered by OMB Circular A–95 because they fit the description of "programs not considered appropriate" in section 8(b) (4) and (5) of that Circular).

Dated: December 10, 1980.

Suzanne L. Fremeau,

Committee Management Officer, NIH.

[FR Doc. 80-39412 Filed 12-18-80; 8:45 am]

BILLING CODE 4110-08-M

Clinical Cancer Education Committee; Meeting

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Clinical Cancer Education Committee, National Cancer Institute, February 25–26, 1981, Building 31, A Wing, Conference Room 4, National Institutes of Health, Bethesda, Maryland. This meeting will be open to the public on February 25, from 8:30 a.m. to 9:30 a.m., to review administrative details. Attendance by the public will be limited to space available.

In accordance with provisions set forth in Sections 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code and Section 10(d) of Public Law 92–463, the meeting will be closed to the public on February 25, from 9:30 a.m. to 5:00 p.m., and on February 26, from 8:30 a.m. to adjournment, for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of person privacy.

The Committee Management Officer, National Cancer Institute, Building 31, Room 4B43, National Institutes of Health, Bethesda, Maryland 20205 (301/496–5708) will provide summaries of the meeting and rosters of committee members, upon request.

Dr. Margaret H. Edwards, Executive Secretary, National Cancer Institute, Blair Building, Room 722, National Institutes of Health, Bethesda, Maryland 20205 (301/427–8855) will furnish substantive program information.

(Catalog of Federal Domestic Assistance No. 13.398, project grants in cancer research manpower)

(NIH programs are not covered by OMB Circular A–95 because they fit the description of "programs not considered appropriate" in section 8(b)(4) and (5) of that Circular)

Dated: December 10, 1980.

Suzanne L. Fremeau,

Committee Management Officer, NIH.

[FR Doc. 80-39413 Filed 12-18-80; 8:45 am]

BILLING CODE 4110-08-M

National Advisory Allergy and Infectious Diseases Council; Allergy and Immunology Subcommittee; Microbiology and Infectious Diseases Subcommittee, Meeting

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the National Advisory Allergy and Infectious Diseases Council, National

Institute of Allergy and Infectious Diseases, and its Subcommittees on January 29–30, 1981 at the National Institutes of Health, Building 31C, Conference Room 10, Bethesda, Maryland.

The meeting will be open to the public on January 29 from approximately 9:00 to 9:30 a.m., and from 12:30 p.m. to approximately 5:00 p.m. On January 30 the meeting will be open to the public from approximately 8:30 a.m. to 12:00 p.m. This will be to discuss program policies and issues. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in Sections 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code, and Section 10(d) of Public Law 92–463, the meetings of the NAAIDC Allergy and Immunology Subcommittee and of the NAAIDC Microbiology and Infectious Diseases Subcommittee will be close to the public for approximately three hours for the review, evaluation, and discussion of individual grant applications. It is anticipated that this will occur from 9:30 a.m. until approximately 12:30 p.m. on January 1981. The meeting of the full Council will be closed from approximately 1:00 p.m. until adjuournment on January 30 for the review, evaluation, and discussion of individual grant applications.

These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mr. Robert L. Schreiber, Chief, Office of Research Reporting and Public Response, National Institute of Allergy and Infectious Diseases, Building 31, Room 7A32, National Institutes of Health, Bethesda, Maryland, telephone (301) 496–5717, will provide summaries of the meetings and rosters of the Council members as requested.

Dr. Robert J. Byrne, Acting Director, Extramural Activities Program, NIAID, NIH, Westwood Building, Room 703, telephone (301) 496–7688, will provide substantive program informtion.

(Catalog of Federal Domestic Assistance Program Nos. 13.855, Pharmalogical Sciences; 13.856, Microbiology and Infectious Diseases Research National Institutes of Health)

NIH programs are not covered by OMB Circular A–95 because they fit the description of "programs not considered appropriate" in section 8(b)(4) and (5) of that Circular.

Dated: December 10, 1980.

Suzanne L. Fremeau,

Committee Management Officer, NIH.

[FR Doc. 80-39415 Filed 12-18-80; 8:45 am]

BILLING CODE 4110-08-M

National Advisory Environmental Health Sciences Council; Meeting

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the National Advisory Environmental Health Sciences Council, National Institute of Environmental Health Sciences, January 19, 1981 at the National Institute of Environmental Health Sciences, Building 18 Conference Room, Research Triangle Park, North Carolina.

This meeting will be open to the public on January 19, 1981, from 9 a.m. to approximately 10:00 a.m. for the report of the Director, NIEHS, and for discussion of the NIEHS budget, program policies and issues, recent legislation, and other items of Interest. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in Sections 552b(c)(4) and 552b(c)(6), Title 5 U.S. Code and Section 10(d) of Public Law 92–463, the meeting will be closed to the public on January 19, from approximately 10:00 a.m. to adjournment on January 19, 1981, for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Leota B. Staff, Committee Management Officer, NIEHS, Building 31, Room 4B31, National Institutes of Health, Bethesda, Maryland 20205, (301) 496–3511, will provide summaries of the meeting and rosters of council members.

Dr. Wilford L. Nusser, Associated Director for Extramural Program, National Institute of Environmental Health Sciences, P.O. Box 12233, Research Triangle Park, North Carolina 27709, (919) 755–4015, FTS 672–4015, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 13.892, Prediction, Detection and Assessment of Environmentally Caused Diseases and Disorders; 13.893, Mechanisms of Environmental Diseases and Disorders; 13.894, Environmental Health Research and Manpower Development Resources, National Institutes of Health)

NIH programs are not covered by OMB Circular A–95 because they fit the description of "programs not considered appropriate" in section 8(b) (4) and (5) of that Circular.

Dated: December 10, 1980.

Suzanne L. Fremeau,

Committee Management Officer, NIH.

[FR Doc. 80-39410 Filed 12-18-80; 8:45 am]

BILLING CODE 4110-08-M

National Advisory Eye Council; Meeting

Pursuant to Public Law 94–463, notice is hereby given of the meeting of the National Advisory Eye Council, National Eye Institute, January 18, 19, 20, and 21, 1981, Bethesda, Maryland.

The National Advisory Eye Council's standing subcommittee, the Vision Research Program Planning Subcommittee, will meet at 7:00 p.m., Sunday, January 18, 1981, in the Bethesda Marriott Hotel, 2 Pooks Hill Road, Bethesda, Maryland, for the purpose of discussing Volume I of the new program planning document, which is the Council's overview and summary report. Attendance by the public will be limited to space available.

The full National Advisory Eye Council will meet January 19, 20, and 21, 1981, Building 31, Conference Room 8, National Institutes of Health, Bethesda, Maryland. This meeting will be open to the public from 9:00 a.m. for the remainder of the day on Monday, January 19, for opening remarks by the Director, National Eye Institute, and for discussions of the first drafts of the reports of the Council's five program planning panels. The meeting will again be open to the public on Tuesday, January 20, beginning at 8:30 a.m. until approximately 1:00 p.m. for discussions of procedural mattters and presentations by the extramural staff of the National Eye Institute. Attendance by the public will be limited to space available.

In accordance with provisions set forth in Sections 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code and Section 10(d) of Public Law 92–463, the meeting will be closed to the public from approximately 1:00 p.m. for the remainder of the day on Tuesday, January 20, and all day on Wednesday, January 21, for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable materials, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Mary Carter, Committee Management Officer, National Eye Institute, Building 31, Room 6A–04, National Institutes of Health, Bethesda, Maryland 20205 (301) 496–4903, will provide summaries of meetings and rosters of committee members.

Dr. Ronald G. Geller, Associate Director for Extramural and Collaborative Programs, National Eye Institute, Building 31, Room 6A–04, National Institutes of Health, Bethesda, Maryland 20205 (301) 496–4903, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 13.867, Retinal and Choroidal Diseases Research; 13.868, Corneal Diseases Research; 13.869, Cataract Research; 13.870, Glaucoma Research; and 13.871, Sensory and Motor Disorders of Visual Research; National Institutes of Health)

NIH programs are not covered by OMB Circular A–95 because they fit the description of "programs not considered appropriate" in section 8(b)(4) and (5) of that Circular.

Dated: December 10, 1980.

Suzanne L. Fremeau,

Committee Management Officer, National Institutes of Health.

[FR Doc. 80–39419 Filed 12–18–80; 8:45 am]

BILLING CODE 4110–08–M

National Advisory General Medical Sciences Council; Meeting

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the National Advisory General Medical Sciences Council, National Institute of General Medical Sciences, National Institutes of Health, January 29 and 30, 1981, Building 1, Wilson Hall, Bethesda, Maryland.

This meeting will be open to the public on January 29, 1981, from 9 a.m. to 1 p.m. for opening remarks; report of the Director, NIGMS; and other business of the Council. Attendance by the public will be limited to space available.

In accordance with provisions set forth in Sections 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code, and Section 10(d) of Pub. L. 92–463, the meeting will be closed to the public for approximately the last four hours of the day on January 29, 1981, and six hours on January 30, 1981. It is estimated that the closed session will occur on January 29 from approximately 1:00 p.m. to 5:00 p.m., and on January 30, 1981, from 9:00 a.m. until adjournment, for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Ellen Casselberry, Public Information Officer, National Institute of General Medical Sciences, National Institutes of Health, Room 9A12, Westwood Building, Bethesda, Maryland 20205, Telephone: 301, 496–7301 will provide a summary of the meeting and a roster of council members. Dr. Ruth L. Kirschstein, Executive Secretary, NAGMS Council, National Institutes of Health, Building 31, Room 4A52, Bethesda, Maryland 20205, Telephone: 301, 496–5231 will provide substantive program information.

(Catalog of Federal Domestic Assistance Programs Nos. 13–821, Physiology and Biomedical Engineering; 13–859, Pharmacology-Toxicology Research; 13–862, Genetics Research; 13–863, Cellular and Molecular Basis of Disease Research; and 13–880, Minority Access to Research Careers (MARC))

NIH programs are not covered by OMB Circular A–95 because they fit the description of "programs not considered appropriate" in section 8(b) (4) and (5) of that Circular.

Dated December 10, 1980.

Suzanne L. Fremeau,

Committee Management Officer, NIH.

[FR Doc. 80–39417 Filed 12–18–80; 8:45 am]

BILLING CODE 4110–08–M

National Cancer Institute Committees; Notice of Renewal

Pursuant to the Federal Advisory Committee Act of October 6, 1972, (Public Law 92–463, 86 Stat. 770–776), the Director, National Institutes of Health, announces the renewal by the Director, NCI, of the following committees:

Committee and Termination Date

Breast Cancer Task Force Committee—December 20, 1982
Biometry and Epidemiology Contract Review Committee—December 20, 1982
Board of Scientific Counselors, Division of Cancer Treatment—December 20, 1982
Cancer Clinical Investigation Review Committee—December 20, 1982
Cancer Special Program Advisory Committee—December 20, 1982
Diagnostic Research Advisory Group—December 20, 1982

Authority for these committees will expire on the dates indicated, unless renewed by appropriate action as authorized by law.

Dated: December 10, 1980.

Donald S. Fredrickson, M.D.,

Director, National Institutes of Health.

[FR Doc. 80–39418 Filed 12–18–80; 8:45 am]

BILLING CODE 4110–08–M

National Toxicology Progam; National Toxicology Program Board of Scientific Counselors; Meeting

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the National Toxicology Program (NTP) Board of Scientific Counselors, U.S. Public Health Service, in Building 18 conference room, National Institute of Environmental Health Sciences, Research Triangle Park, North Carolina, on January 15 and 16, 1981.

The meeting on January 15 will be open to the public from 9 a.m. until adjournment. Agenda items include the following: (1) Review of NTP programs in: (a) reproductive and developmental toxicology, and (b) cellular and genetic toxicology; (2) automated data processing study—final report on technical review of the toxicology data management system; (3) status report on implementation of modifications in the NTP chemical nomination and chemical selection process; (4) preliminary report and recommendations on statements concerning hazard to humans based on animal testing results; and (5) a conceptual review of the animal bioassay process.

In accordance with the provisions set forth in Section 552 (c)(6) Title 5 U.S. Code and Section 10(d) of Public Law 92–463, the meeting will be closed to the public on January 16 from 9 a.m. to adjournment for evaluation of NTP programs in reproductive and developmental toxicology, and cellular and genetic toxicology, including the consideration of personnel qualifications and performance, the competence of individual investigators, and similar items, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Executive Secretary, Dr. Larry G. Hart, Office of the Director, National Toxicology Program, P.O. Box 12233, Research Triangle Park, North Carolina 27709, telephone (919) 541–3989, FTS 629–3989, will furnish summary minutes of the meetings, roster of Board members.

Dated: December 11, 1980.

David P. Rall, M.D., Ph.D.,

Director, National Toxicology Program.

[FR Doc 80–39420 Filed 12–18–80; 8:45 am]

BILLING CODE 4110–08–M

INTERGOVERNMENTAL RELATIONS ADVISORY COMMISSION

Proposed Grants Policymaking Meeting

AGENCY: Advisory Commission on Intergovernmental Relations.

ACTION: Notice of roundtables (open meeting) on proposed grants policymaking by the Office of Management and Budget.

SUMMARY: The third of a series of roundtables has been organized to: (1) Present the issues, problems, and alternative approaches as associated with federal assistance policy in the areas of competition, dispute resolution, handicapped regulations, and cross-cutting national requirements; and (2) Provide improved access to all major recipient groups in the policymaking process and to obtain comment form the effected parties.

DATE AND PLACE: January 8–9, 1981: University of Illinois, 750 S. Halsted, Chicago, Illinois.

AGENDA: A series of ACIR convened panels will address the issue papers or proposed policies of the Office of Management and Budget. The purpose of the roundtable is to obtain information concerning the relevancy, impact, and practicality of the proposed policies and the issue papers developed by the Office of Management and Budget. The leader of the OMB Task Force on each issue will present the OMB paper. Interested parties are encouraged to address at least the following questions in making comments:

January 8, 1981—9:00 a.m.–12:15 p.m.

Competition for Federal Assistance Awards

(1) Should there be a government-wide policy guiding competition practices in the ward of grants and cooperative agreements? Under what circumstances should competition be limited?

(2) Should a government-wide policy for competition be devised? What broad principles should it encompass?

(3) If competitive procedures are desirable, when and how should they be applied?

(4) Is there a general awareness of the evaluation criteria used by federal agencies in making awards?

(5) What steps should be taken to ensure competition in evaluating grant applications and making final awards? Are there alternatives to a government-wide circular?

(6) Should different criteria be used depending on the nature and/or the expertise available to the applicant?

(7) What evaluation process should be established in the federal agencies to ensure fair competition?

(8) To what extent should information concerning the evaluation process be made available before and after the award?

January 8, 1981—2:00 p.m.–5:00 p.m.

Dispute Resolution for Federal Assistance

(1) Is there a need for dispute resolution procedures by federal agencies?

(2) Should uniform procedures be required of all federal agencies for resolving disputes?

(3) What steps should be taken to insure that dispute resolution procedures are widely known? What is the OMB role and what is the federal agency role in disseminating this information?

(4) Would the procedures described in the circular adequately address and remedy those disputes that most frequently occur between the federal agency and the primary grantee? Are there other methods that may prove more satisfactory?

(5) Should the circular be extended to cover disputes that arise when federal grants "pass-through" the states?

(6) What role should the Office of Management and Budget assume in ensuring the implementation of the circular?

(7) What are the relative advantages of formal and informal dispute resolution processes?

January 9, 1981—9:00 a.m.–12:15 p.m.

Handicapped Regulations

(1) What management approach can be developed to address the needs of the handicapped while recognizing the administrative and economic problems associated with implementing the regulations?

(2) In what ways do the current regulations fail to address these problems?

(3) What changes can be expected in the implementation of the 504 regulations as a result of the transfer of responsibility to the Department of Justice?

(4) What role should OMB, the federal agencies, field offices and recipient groups assume to realize the objectives of meeting the needs of the handicapped without unnecessary administrative and economic burdens?

(5) Can this issue be viewed in management terms, or is it strictly a civil rights issue whose compliance should be achieved regardless of cost consideration?

(6) What types of technical assistance and coordination efforts are needed by state and local governments, non-profit and for-profit organizations and other gorups in complying with the 504 requirements?

January 9, 1981—1:45 p.m.–5:30 p.m.

Cross-Cutting National Policy Requirements and Sub-National Conflict Resolution (Concurrent Session)

The proposed circular on national policy requirements appeared in the Federal Register, Friday, November 7, 1980, p. 74416.

(1) Are there serious problems created by a conflict in the implementation of cross-cutting requirements? If so, which requirement or combination of requirements cause the most problem?

(2) Are cross-cutting requirements enforced now? To what extent should they be enforced and how should this be addressed in the circular?

(3) Should these problems be addressed by the Office of Management and Budget in a circular? Is there a need for a statutory base for OMB's proposed framework?

(4) Does the need exist for a set of single standards or should there be greater flexibility in the application of these regulations?

(5) Is the management approach described in circular the best approach for OMB to manage cross-cutting requirements? What are the alternatives?

(6) To what degree can the conflicts which have a legal basis be resolved managerially?

(7) What specific roles should OMB, the federal regional councils, and the federal field offices assume in the management of cross-cutting requirements?

(8) To what degree are conflicts concerning cross-cutting requirements likely to occur at the sub-national level? Are those conflicts significant enough to warrant a sub-national conflict resolution process?

(9) If so, what elements must be present for resolution of conflicts at the sub-national level?

SUPPLEMENTARY INFORMATION: This meeting is open to the public and audience participation is encouraged. Copies of the OMB issue papers and circulars are available upon request by contacting Maurice E. White at 202/653–5538. The public is invited to submit questions, comments, statements in advance to ACIR, 1111 20th Street, NW,

Washington, DC 20575. Attn: Mike Mitchell.

Franklin A. Steinko,

Budget and Management Officer.

[FR Doc. 80-39507 Filed 12-18-80; 8:45 am]

BILLING CODE 6115-01 -M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Outer Continental Shelf (OCS) Oil and Gas Lease Sale No. 59; Change in Date of Public Hearings Regarding Proposed OCS Oil and Gas Lease Sale No. 59

On November 21, 1980, the availability of the Draft Environmental Impact Statement (DEIS) for proposed OCS Sale No. 59, offshore the Mid-Atlantic States, and the holding of public hearings regarding this DEIS were announced in the Federal Register. The purpose of this notice is to announce that the public hearing originally scheduled for January 20, 1981, at the Hilton Gateway Hotel in Newark, New Jersey, has been rescheduled to be held on January 19, 1981, at the same location.

The second hearing on this DEIS will be held as previously announced, on January 22, 1981, at the Omni International Hotel in Norfolk, Virginia.

Interested individuals, representatives or organizations, and public officials wishing to testify at the public hearings are requested to contact the Manager, New York OCS Office, Bureau of Land Management, Federal Building, 26 Federal Plaza, Suite 32-120, New York, New York 10278 by 4:30 p.m., January 14, 1981.

Ed Hastey,

Associate Director, Bureau of Land Management.

[FR Doc. 80-39395 Filed 12-18-80; 8:45 am]

BILLING CODE 4310-84-M

Richfield District Multiple Use Advisory Council Meeting

December 12, 1980

Notice is hereby given that a meeting of the Richfield District Advisory Council will be held January 27, 1981.

The meeting will begin at 10:00 a.m. in the conference room of the Bureau of Land Management (BLM) office at 150 East 900 North, Richfield, Utah.

The agenda for the meeting will include:

(1) Election of permanent chairperson and vice chairperson,

(2) Establishment of committees,

(3) Discussion of BLM's minerals program and policies,

(4) Fiscal year 1981 Annual Work Plan,

(5) Briefing on status of wilderness review and wilderness study areas in the Richfield District,

(6) Council recommendations on issues for Henry Mountain Planning Area,

(7) Council recommendations for interim off-road vehicle designations, Deep Creek Mountains,

(8) Scheduling for next meeting and agenda topics,

(9) Public statements.

The meeting is open to the public. Interested persons may present oral statements to the Council between 4:00 p.m. and 5:00 p.m. on January 27 or file a written statement for the Council's consideration. Persons wishing to make oral statements must notify the District Manager, Bureau of Land Management, 150 East 900 North, Richfield, Utah, (801) 896-8221, by January 23, 1981.

Summary minutes of the Council meeting will be maintained in the District Office and will be available for public inspection and reproduction during the regular business hours within 30 days following the meeting.

Donald L. Pendleton,

District Manager.

[FR Doc. 80-39391 Filed 12-18-80; 8:45 am]

BILLING CODE 4310-84-M

Wisconsin; Availability of BLM Maps of Public Lands and Minerals

Notice is hereby given that a new Bureau of Land Management (BLM) map showing the location of public lands and Federal mineral rights in the Wabeno area of northern Wisconsin is now available to the public. The map, prepared as a result of a Bureau-wide program to map areas of mineral interests, is published at the scale 1:100,000 (one centimeter=one kilometer) in a format of 1° longitude by 30' latitude (34 x 60 miles). They are sold for $2.00 each.

Other maps now available in Wisconsin and Upper Michigan cover the areas around Ashland, Merrill and Rhinelander, Wisconsin; and Iron Mountain, Iron River, L'Anse, Ontonagon and Wakefield, Michigan. Ultimately, more maps will be printed covering all of northern Wisconsin and parts of eastcentral Minnesota and Upper and Lower Michigan. BLM maps covering northern Minnesota have already been printed and are available to the public.

For further information, contact the Bureau of Land Management, Lake States Office, 125 Federal Building, Duluth, Minnesota 55802, (218) 727-6692 or Bureau of Land Management, Eastern States Office, 350 South Pickett Street, Alexandria, Virginia 22304, telephone (703) 235-2840.

Pieter J. VanZanden,

Associate Eastern States Director.

[FR Doc. 80-39319 Filed 12-18-80; 8:45 am]

BILLING CODE 4310-84-M

Douglas—South Umpqua Management Framework Plans

The Bureau of Land Management, Roseburg District, is continuing with land use planning for 424,000 acres of public lands in Douglas County, Oregon.

The Roseburg District lies primarily within the Umpqua River basin and planning areas are bounded by the Eugene, Coos Bay and Medford Districts as well as the Umpqua National Forest.

The planning effort will result in a management framework plan (MFP), timber management environmental impact statement (EIS) and a decision document, all of which will define and guide management actions for the next decade.

Since 1978, BLM resource specialists in forestry, wildlife, fisheries, minerals, recreation, soil conservation, visual, cultural and botanical resources, together with specialists in sociology and economics, have completed the following elements of the planning process:

Identification of issues
Resource inventories
Social and economic analyses
Development of management recommendations

In addition, the District has conducted planning area tours, held open houses, periodically distributed newsletters and requested public nomination of areas of critical environmental concern (ACEC's).

The above listed specialists will be assisting BLM managers in the development of an array of land use and resource alternatives. These alternatives will be distributed for public review in May 1981. Following the public review BLM managers will develop a preferred alternative for submission to the State Director (Aug. 1981). This will be used as the basis for the proposed action in a timber management environmental impact statement for the Douglas—South Umpqua sustained yield management units scheduled for preparation, public review and completion in 1982. During 1983, BLM will prepare draft and final decision documents on the EIS, finalize the land use plan, declare a new allowable cut and begin implementation of the land

use plan, which will guide BLM resource management for the next decade.

Draft planning criteria to be used in the development of land use alternatives are being formulated and will be available for public review and comment in early 1981. Draft criteria will be distributed to all persons on our planning newsletter mailing list. In addition, public announcements in local newspapers will identify availability of the draft criteria. BLM managers and specialists will be using the criteria to develop alternatives and resolve land use conflicts that focus on major issues.

The issues for which we have received the greatest degree of public concern include:

1. Maintaining habitat diversity for terrestrial and aquatic wildlife including: Old growth forest, riparian areas and habitat of threatened and endangered species.

2. Accommodating a variety of recreation uses and facilities.

3. Determining whether BLM management practices should be restricted adjacent to rural subdivisions and residences or, whether rural growth should be restricted.

4. Determining the proper management of lands and resources within municipal watersheds.

5. Determining the proper timber harvest rate to meet industry needs, community stability and other resource demands.

Continuing public involvement will remain a key part of the planning process. Public announcements and notices in local newspapers will provide times, dates and locations of upcoming meetings associated with the planning, environmental impact statement and decision phases of the effort.

Anyone who wishes to add his name to the planning newsletter mailing list or who wishes to discuss the BLM planning effort and availability of information, may contact the District Manager, Bureau of Land Management, 777 N.W. Garden Valley Blvd., Roseburg, OR 97470 or call (503) 672-4491.

December 12, 1980.

James E. Hart,

District Manager.

[FR Doc. 80-39476 Filed 12-18-80; 8:45 am]

BILLING CODE 4310-84-M

New Mexico Wilderness Inventory

December 17, 1980.

AGENCY: Bureau of Land Management, Interior.

ACTION: Correction to Final Intensive Wilderness Inventory Decisions.

SUMMARY: The purpose of this notice is to correct errors which appeared in FR Doc. 80-35412 ("Notice of Final Intensive Wilderness Inventory Decisions") on November 14, 1980.

At the top of page 75593, four units in the Roswell and Las Cruces Districts were incorrectly identified as "Inventory Units in Which a Wilderness Study Decision is Being Deferred." These units have been deleted from further consideration as wilderness.

The table should have read as follows:

Final Intensive Wilderness Inventory Decision

Inventory Units Being Deleted from Further Consideration as Wilderness

B. Units Proposed as WSA's in the March 28, 1980, Federal Register Notice, but have been Found to Lack Wilderness Characteristics After Evaluation of Further Comments by the BLM.

BLM district	Name	Number	Acreage
Las Cruces	Florida Mountains	NM-030-034	75,310
Las Cruces	Texas Hill "A"	NM-030-810A	7,340
Las Cruces	Texas Hill "B"	NM-030-810B	5,310
Total			100,080
Roswell	Mescalero Sands	NM-060-501	10,600
Total			10,600

Larry L. Woodard,

Acting State Director.

[FR Doc. 80-39477 Filed 12-18-80; 8:45 am]

BILLING CODE 4310-84-M

Geological Survey

Highland Block A-368, Gulf of Mexico off the Texas Coast; Blowout and Fire Report

AGENCY: U.S. Geological Survey, Department of the Interior.

ACTION: Report on Blowout and Fire, High Island Block A-368, Gulf of Mexico Outer Continental Shelf, Offshore the State of Texas, Available from U.S. Geological Survey.

Pursuant to the provisions of Section 208 [subsection 22(d), (e), and (f)] of the OCS Lands Act Amendments of 1978, an investigation was conducted into the blowout and fire that occurred on March 24, 1980, involving drilling operations on Well A-3, Lease OCS-G 2433, High Island Block A-368, Gulf of Mexico, off the Texas coast. A report has been prepared by the Review Board appointed to conduct the investigation and copies of the report are now available.

The Review Board was comprised of four U.S. Geological Survey Conservation Division members assisted by representatives of the U.S. Coast Guard and the Marine Board, National Academy of Sciences. A public hearing was held in order to take testimony from 21 witnesses. Sessions were conducted in Metairie, Louisiana on May 13, 14, and 15, 1980, in Houston, Texas on May 20, 1980, and in Galveston, Texas on May 21, 1980.

The investigation findings included in the report cover the following topics:

A. Preliminary Activities.
B. Loss of Well Control.
C. Explosion and Fire.
D. Emergency Warning.
E. Abandonment of Platform.
F. Deaths and Damage.
G. Station Bill.

Additionally, the Review Board's conclusions address the proximate cause of the incident as loss of well control, the proximate cause of the explosion and fire as the attempt to remove locking bars from the diverter system valves under pressure, the proximate causes of the resulting fatalities, and several contributing causes associated with the incident.

The report also contains a number of recommendations to both the U.S. Coast Guard and U.S. Geological Survey concerning revision of regulatory requirements to eliminate or minimize the possibility of a similar occurrence in the future.

Copies of the report may be obtained from the Deputy Division Chief, Offshore Minerals Regulation, Conservation Division, U.S. Geological Survey, National Center, Mail Stop 640, Reston, Virginia 22092. For further information contact Mr. Price McDonald at (703) 860-7571.

Dated: November 19, 1980.

Lowell G. Hammons,

Acting Deputy Division Chief, Offshore Minerals Regulation, Conservation Division.

[FR Doc. 80-39403 Filed 12-18-80; 8:45 am]

BILLING CODE 4310-31-M

Oil and Gas and Sulphur Operations in the Outer Continental Shelf; Amoco Production Co.

AGENCY: U.S. Geological Survey, Department of the Interior.

ACTION: Notice of the Receipt of a Proposed Development and Production Plan.

SUMMARY: Notice is hereby given that Amoco Production Company has submitted a Development and

Production Plan describing the activities it proposes to conduct on Lease OCS–G 0987, Block 273, Eugene Island Area, offshore Louisiana.

The purpose of this Notice is to inform the public, pursuant to Section 25 of the OCS Lands Act Amendments of 1978, that the Geological Survey is considering approval of the Plan and that it is available for public review at the offices of the Conservation Manager, Gulf of Mexico OCS Region, U.S. Geological Survey, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana 70002.

FOR FURTHER INFORMATION CONTACT: U.S. Geological Survey, Public Records, Room 147, open weekdays 9 a.m. to 3:30 p.m., 3301 North Causeway Blvd., Metairie, Louisiana 70002, Phone (504) 837–4720, Ext. 226.

SUPPLEMENTARY INFORMATION: Revised rules governing practices and procedures under which the U.S. Geological Survey makes information contained in Development and Production Plans available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in a revised Section 250.34 of Title 30 of the Code of Federal Regulations.

Dated: December 12, 1980.

E. A. Marsh,

Staff Assistant for Operations, Gulf of Mexico OCS Region.

[FR Doc. 80-39428 Filed 12-18-80; 8:45 am]

BILLING CODE 4310-31-M

Oil and Gas and Sulphur Operations in the Outer Continental Shelf; Forest Oil Corp.

AGENCY: U.S. Geological Survey, Department of the Interior.

ACTION: Notice of the Receipt of a Proposed Development and Production Plan.

SUMMARY: Notice is hereby given that Forest Oil Corporation has submitted a Development and Production Plan describing the activities it proposes to conduct on Lease OCS–G 0997, Block 309, Eugene Island Area, offshore Louisiana.

The purpose of this Notice is to inform the public, pursuant to Section 25 of the OCS Lands Act Amendments of 1978, that the Geological Survey is considering approval of the Plan and that it is available for public review at the offices of the Conservation Manager, Gulf of Mexico OCS Region, U.S. Geological Survey, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana 70002.

FOR FURTHER INFORMATION CONTACT: U.S. Geological Survey, Public Records, Room 147, open weekdays 9 a.m. to 3:30 p.m., 3301 North Causeway Blvd., Metairie, Louisiana 70002, Phone (504) 837–4720, Ext. 226.

SUPPLEMENTARY INFORMATION: Revised rules governing practices and procedures under which the U.S. Geological Survey makes information contained in Development and Production Plans available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in a revised § 250.34 of Title 30 of the Code of Federal Regulations.

Dated: December 12, 1980.

E. A. Marsh,

Staff Assistant for Operations, Gulf of Mexico OCS Region.

[FR Doc. 80-39431 Filed 12-18-80; 8:45 am]

BILLING CODE 4310-31-M

Oil and Gas and Sulphur Operations in the Outer Continental Shelf; Pennzoil Co.

AGENCY: U.S. Geological Survey, Department of the Interior.

ACTION: Notice of the Receipt of a Proposed Development and Production Plan.

SUMMARY: Notice is hereby given that Pennzoil Company has submitted a Development and Production Plan describing the activities it proposes to conduct on Lease OCS–G 3156, Block 262, Eugene Island Area, offshore Louisiana.

The purpose of this Notice is to inform the public, pursuant to Section 25 of the OCS Lands Act Amendments of 1978, that the Geological Survey is considering approval of the Plan and that it is available for public review at the offices of the Conservation Manager, Gulf of Mexico OCS Region, U.S. Geological Survey, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana 70002.

FOR FURTHER INFORMATION CONTACT: U.S. Geological Survey, Public Records, Room 147, open weekdays 9 a.m. to 3:30 p.m., 3301 North Causeway Blvd., Metairie, Louisiana 70002, Phone (504) 837–4720, Ext. 226.

SUPPLEMENTARY INFORMATION: Revised rules governing practices and procedures under which the U.S. Geological Survey makes information contained in Development and Production Plans available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in a revised § 250.34 of Title 30 of the Code of Federal Regulations.

Dated: December 12, 1980.

E. A. Marsh,

Staff Assistant for Operations, Gulf of Mexico OCS Region.

[FR Doc. 80-39429 Filed 12-18-80; 8:45 am]

BILLING CODE 4310-31-M

Oil and Gas and Sulphur Operations in the Outer Continental Shelf; Texaco

AGENCY: U.S. Geological Survey, Department of the Interior.

ACTION: Notice of the Receipt of a Proposed Development and Production Plan.

SUMMARY: This Notice announces that Texaco, Unit Operator of the Eugene Island Block 205 Federal Unit Agreement No. 14–08–0001–8654, submitted on November 28, 1980, a proposed supplemental plan of development/production describing the activities it proposes to conduct on the Eugene Island Block 205 Federal Unit.

The purpose of this Notice is to inform the public, pursuant to Section 25 of the OCS Lands Act of 1978, that the Geological Survey is considering approval of the plan and that it is available for public review at the offices of the Conservation Manager, Gulf of Mexico OCS Region, U.S. Geological Survey, 3301 N. Causeway Blvd., Room 147, Metairie, Louisiana 70002.

FOR FURTHER INFORMATION CONTACT: U.S. Geological Survey, Public Records, Room 147, open weekdays 9:00 a.m. to 3:30 p.m., 3301 N. Causeway Blvd., Metairie, Louisiana 70002, phone (504) 837–4720, ext. 226.

SUPPLEMENTARY INFORMATION: Revised rules governing practices and procedures under which the U.S. Geological Survey makes information contained in Development and Production Plans available to affected States, executives of affected local governments, and other interested parties became effective on December 13, 1979 (44 FR 53685). Those practices and procedures are set out in a revised § 250.34 of Title 30 of the Code of Federal Regulations.

Dated: December 12, 1980.

J. Courtney Reed,

Staff Assistant for Resource Evaluation, Gulf of Mexico OCS Region.

[FR Doc. 80-39427 Filed 12-18-80; 8:45 am]

BILLING CODE 4310-31-M

Oil and Gas and Sulphur Operations in the Outer Continental Shelf; Union Oil Co. of California

AGENCY: U.S. Geological Survey, Department of the Interior.

ACTION: Notice of the Receipt of a Proposed Development and Production Plan.

SUMMARY: Notice is hereby given that Union Oil Company of California has submitted a Development and Production Plan describing the activities it proposes to conduct on Lease OCS 0196, Block 32, Eugene Island Area, offshore Louisiana.

The purpose of this Notice is to inform the public, pursuant to Section 25 of the OCS Lands Act Amendments of 1978, that the Geological Survey is considering approval of the Plan and that it is available for public review at the offices of the Conservation Manager, Gulf of Mexico OCS Region, U.S. Geological Survey, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana 70002.

FOR FURTHER INFORMATION CONTACT: U.S. Geological Survey, Public Records, Room 147, open weekdays 9 a.m. to 3:30 p.m., 3301 North Causeway Blvd., Metairie, Louisiana 70002, Phone (504) 837-4720, Ext. 226.

SUPPLEMENTARY INFORMATION: Revised rules governing practices and procedures under which the U.S. Geological Survey makes information contained in Development and Production Plans available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in a revised § 250.34 of Title 30 of the Code of Federal Regulations.

Dated: December 12, 1980.

E. A. Marsh,

Staff Assistant for Operations, Gulf of Mexico OCS Region.

[FR Doc. 80-39430 Filed 12-18-80; 8:45 am]

BILLING CODE 4310-31-M

Office of Surface Mining Reclamation and Enforcement

Memorandum of Understanding With Environmental Protection Agency

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), and the Environmental Protection Agency (EPA).

ACTION: Notice of availability of a Memorandum of Understanding (MOU).

SUMMARY: A docmument entitled "Memorandum of Understanding between the Environmental Protection Agency and the Office of Surface Mining Regarding the Coordination of Diverse Responsibilities" is available for public review. This MOU was executed November 18, 1980 and contains broad guidelines for cooperation between OSM and EPA regarding research, information and data sharing, inspector training, permit writing assistance, non-regulatory rules and policy, major special studies, grant fund coordination, litigation, audit concerns, legislative initiatives, and reporting requirements.

The major objective of this MOU is to minimize duplicative and overlapping efforts of the two agencies.

ADDRESSES: Copies of this MOU may be personnally picked-up from the following OSM and EPA offices:

Office of Surfacing Mining, Information and Records Management Division, Room 5415, 1100 L Street NW., Washington, D.C.

Environmental Protection Agency, Permits Division, EN 336, Room 3220, 401 M Street SW., Washington, D.C.

Written requests for copies of this MOU may be directed to the following OSM address: Office of Surface Mining, Information and Records Management Division, 1951 Constitution Avenue NW., Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT:

Joel Anderson, Office of Surface Mining, Information and Records Management Division, Room 5415—Telephone (202) 343-5447

J. William Jordan, Environmental Protection Agency, Permits Division, Room 3220, Telephone (202) 426-7010.

Toney Head, Jr.,

Acting Director, Office of Surface Mining Reclamation and Enforcement.

December 10, 1980.

[FR Doc. 80-39394 Filed 12-18-80; 8:45 am]

BILLING CODE 4310-05-M

INTERSTATE COMMERCE COMMISSION

Agricultural Cooperative; Notice to the Commission of Intent to Perform Interstate Transportation for Certain Nonmembers

Dated: December 16, 1980.

The following Notices were filed in accordance with section 10526(a)(5) of the Interstate Commerce Act. These rules provide that agricultural cooperatives intending to perform nonmember, nonexempt, interstate transportation must file the Notice, Form BOP 102, with the Commission within 30 days of its annual meetings each year. Any subsequent change concerning officers, directors, and location of transportation records shall require the filing of a supplemental Notice within 30 days of such change. The name and address of the agricultural cooperative, the location of the records, and the name and address of the person to whom inquiries and correspondence should be addressed, are published here for interested persons. Submission of information that could have bearing upon the propriety of a filing should be directed to the Commission's Bureau of Investigations and Enforcement, Washington, D.C. 20423. The Notices are in a central file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, D.C.

(1) Complete Legal Name Of Cooperative Association Or Federation Of Cooperative Associations: Agricultural Services Association Inc.

Principal Mailing Address (Street No., City, State, and Zip Code): P.O. Box 472, Bells, TN 38006.

Where Are Records Of Your Motor Transportation Maintained (Street No., City, State and Zip Code): A.S.A. Office—Transportation High Street, Bells, TN 38006.

Person To Whom Inquiries And Correspondence Should Be Addressed (Name and Mailing Address): J. P. McCormick, Vice President, P.O. Box 474, Bells, TN 38006.

(2) Complete Legal Name Of Cooperative Association Or Federation Of Cooperative Associations: Mid-America Farm Lines, Inc.

Principal Mailing Address (Street No., City, State, and Zip Code): 420 N. Nettleton, Springfield, MO 65801.

Where Are Records Of Your Motor Transportation Maintained (Street No., City, State and Zip Code): 420 N. Nettleton, Springfield, MO 65801.

Person To Whom Inquiries And Correspondence Should Be Addressed (Name and Mailing Address): Gary Hanman, 800 W. Tampa, Springfield, MO 65805.

(3) Complete Legal Name Of Cooperative Association Or Federation Of Cooperative Associations: Nurserymen's & Farmers Shipping Association.

Principal Mailing Address (Street No., City, State, and Zip Code): P.O. Box 313, Warehouse Point, CT 06088.

Where Are Records Of Your Motor Transportation Maintained (Street NO., City, State and Zip Code): Shoham Road, Warehouse Point, Connecticut 06088.

Person To Whom Inquiries And Correspondence Should Be Addressed (Name and Mailing Address): Charles

Frascons, P.O. Box 313, Warehouse Point, CT 06088.
(4) Complete Legal Name Of Cooperative Association Or Federation Of Cooperative Associations: Specialized Leasing, Inc.
Principal Mailing Address (Street No., City, State, and Zip Code): 1127 N. 18th Omaha, NE 68102.
Where Are Records Of Your Motor Transportation Maintained (Street No., City, State, and Zip Code): 1127N. 18th, Omaha, Nebraska 68102.
Person To Whom Inquiries And Correspondence Should Be Addressed (Name and Mailing Address): Avalon Arbogast, 1127 N. 18th Omaha, NE.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 80-39439 Filed 12-18-80; 8:45 am]
BILLING CODE 7035-01-M

[Volume No. 161]

Motor Carriers; Permanent Authority Decisions; Decision-Notice

Decided: December 15, 1980.

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 on or before February 2, 1981 (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.

By the Commission, Review Board Number 3, Members Parker, Fortier, Hill.

Agatha L. Mergenovich,

Secretary.

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."

MC 128966 (Sub-8F), filed December 5, 1980. Applicant: METROPOLITAN CARTAGE & LEASING, INC., 1703 West 9th St., Kansas City, MO 64101. Representative: Tom B. Kretsinger, 20 East Franklin, Liberty, MO 64068. 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 153016F, filed December 1, 1980. Applicant: MCGUIRE TRUCKING, INC., P.O. Box 5417, Lake Station, IN 46405. Representative: Dixie C. Newhouse, 1329 Pennsylvania Ave., P.O. Box 1417, Hagerstown, MD 21740. 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 153026F, filed December 4, 1980. Applicant: WA HO TRUCK BROKERAGE, a Corporation, 1400 N. 24th St., Phoenix, AZ 85005. Representative: Andrew V. Baulor, 337 E. Elm St., Phoenix, AZ 85012. As a *broker* to arrange for the transportation of *general commodities* (except household goods), between points in the U.S.

[FR Doc. 80-39438 Filed 12-18-80; 8:45 am]
BILLING CODE 7035-01-M

Motor Carriers; Operating Rights Application(s) Directly Related To Finance Proceedings

The following operating rights application(s) are filed in connection with pending finance applications under Section 11343 (formerly Section 5(2)) of the Interstate Commerce Act, or seek tacking and/or gateway elimination in connection with transfer application under Section 10926 (formerly Section 212(b)) of the Interstate Commerce Act.

On applications filed before March 1, 1979, an original and one copy of *protests* to the granting of authorities must be filed with the Commission within 30 days after the date of this Federal Register notice. Such protests shall conform with Special Rule 247(e) of the Commission's *General Rules of Practice* (49 CFR 1100.247) and include a concise statement of protestant's interest in the proceeding and copies of its conflicting authorities.

Applications filed on or after March 1, 1979, are governed by Special Rule 247 of the Commission's *General Rules of Practice* also but are subject to petition to intervene either with or without leave. An original and one copy of the petition must be filed with the Commission on or before January 19, 1981. A petition for intervention must comply with Rule 247(k) which requires petitioner to demonstrate that it (1) holds operating authority permitting performance of any of the service which the applicant seeks authority to perform, (2) has the necessary equipment and facilities for performing that service, and (3) has performed service within the scope of the application either (a) for those supporting the application, or, (b) where the service is not limited to the facilities of particular shippers, from and to, or between, any of the involved points. Persons unable to intervene under Rule 247(k) may file a petition for leave to intervene under Rule 247(l) setting forth the specific grounds upon which it is made, including a detailed statement of petitioner's interest, the particular facts, matters, and things relied upon, the extent to which petitioner's interest will be represented by other parties, the extent to which petitioner's participation may reasonably be expected to assist in the development of a sound record, and the extent to which participation by the petitioner would broaden the issues or delay the proceeding.

Verified statements in opposition should not be tendered at this time. A copy of the protest or petition to intevene shall be served concurrently upon applicant's representative or applicant if no representative is named.

Each applicant states that approval of its application will not significantly affect the quality of the human environment nor involve a major regulatory action under the Energy Policy and Conservation Act of 1975.

MC 151259 (Sub-1F), filed November 11, 1980. Applicant: TRIPLE S HAULING, INC., 4000 I-70 Drive Northwest, Columbia, MO 65201. Representative: Peter A. Greene, 1920 N Street, N.W., Washington, DC 20036. To operate as a *contract carrier,* over irregular routes, transporting *water pipeline and sewer pipeline,* and *materials, supplies* and, *equipment* used in construction and installation of water pipeline and sewer pipeline, between points in MO, SD, NE, KS, OK, AR, MS, TN, KY, IL, and IA, under continuing contract(s) with Emery Sapp & Sons, Inc., of Columbia, MO. Hearing site: Columbia, MO, or Washington, DC.

Note.—This application is being published to comply with a condition in MC-F14503F decided December 11, 1980.

By the Commission.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 80-39437 Filed 12-18-80; 8:45 am]

BILLING CODE 7035-01-M

Intent To Engage in Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(91) that the named corporations intend to provide or to use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

1. Parent corporation and address or principal office: The Great Atlantic & Pacific Tea Company, Inc., 2 Paragon Drive, Montvale, N.J. 07645.

2. Wholly-owned subsidiaries which will participate in the operations, and address of their respective principal offices:

(a) Compass Foods, Inc., 2 Paragon Drive, Montvale, N.J. 07645.
(b) The Great Atlantic & Pacific Company, of Canada, 5559 Dundas St. W., Islington, Ontario.
(c) The Great Atlantic & Pacific Company, of Vermont, Inc., 2 Paragon Drive, Montvale, N.J. 07645.
(d) Kwik Save Inc., 2 Paragon Drive, Montvale, N.J. 07645.
(e) LoLo Discount Stores, Inc., 2 Paragon Drive, Montvale, N.J. 07645.
(f) Plus Discount Foods, Inc., 2 Paragon Drive, Montvale, N.J. 07645.
(g) Super Market Service Corp., 2 Paragon Drive, Montvale, N.J. 07645.
(h) Supermarket Distribution Services, Inc., 2 Paragon Drive, Montvale, N.J. 07645.

1. *Parent Corporation and Address or Principal Office:* Cadillac Rubber & Plastics, Inc., P.O. Box 207, West Seventh Street, Cadillac, Michigan 49601.

2. *Wholly Owned Subsidiaries Which Will Participate in the Operations, and Addresses of Their Respective Principal Offices:*

(A) Newbern Rubber, Inc., Highway 77 East, P.O. Box 277, Newborn, Tennessee 38059.

1. Parent Corporation: Chem-Nuclear Systems, Inc., P.O. Box 1866, Bellevue, Washington 98009.

2. Participating wholly-owned subsidiary: Chem-Security Systems, Inc., P.O. Box 1866, Bellevue, Washington 98009.

1. Parent corporation and address of principal office: ConAgra, Inc., 200 Kiewit Plaza, Omaha, NE 68131.

2. Wholly-owned subsidiaries which will participate in the operations, and address of their respective principal offices:

1. Ada Grain Company, 876 Grain Exchange Bldg., Minneapolis, MN 55415
2. Atwood Commodities, Inc., 876 Grain Exchange Bldg., Minneapolis, MN 55415
3. Atwood-Larson Company, 876 Grain Exchange Bldg., Minneapolis, MN 55415
4. ConAgra Transportation, Inc., 5150 West Channel Road, Catoosa, Oklahoma 74501
5. ConAgra Pet Products Company, 3902 Leavenworth Street, Omaha, Nebraska 68105
6. Interstate Terminals, Inc., 5150 West Channel Road, Catoosa, Oklahoma 74501
7. LCM Corporation, 5150 West Channel Road, Catoosa, Oklahoma 74501
8. Lynn Transportation Company, Inc., 712 South 11th Street, Oskaloosa, Iowa 52577
9. MHC Corporation, 200 Kiewit Plaza Omaha, Nebraska 68131
10. OKG Bulkhandling Corp., 5150 West Channel Road, Catoosa, Oklahoma 74501
11. Port ConAgra, Inc., 3750 Washington Ave., North Minneapolis, MN 55412
12. United Agri Products, Inc., 725 So. Schneider St., Fremont, Nebraska 68025
13. Westfeeds, Inc., 406 Fuller Avenue, Helena, Montana 59601
14. Banquet Foods Company, Boatmen Tower, 14th Floor, 110 North Broadway, St. Louis, MO 63102
15. Balcom Chemicals, Inc., Post Office Box 1286 Greeley, Colorado 80631
16. Bralen Trucking Co., Inc., Post Office Box 1286, Greeley, Colorado 80631
17. Central Valley Chemicals, Inc., Post Office Box 446, Weslaco, Texas 78596
18. Dixie Ag Supply, Inc., 1801 Old Montgomery Road, Selma, Alabama 36701
19. G.S. Operating Corporation, 615 Griswold Street, Detroit, Michigan 48226
20. Growers Service Corporation, Post Office Box 1286, Greeley, Colorado 80631
21. Hess & Clark, Inc., 7th and Orange Streets, Ashland, Ohio 44805
22. Loveland Industries, Inc., 2307 West 8th Street, Loveland, Colorado 80537
23. Mid Valley Chemicals, Inc., Post Office Box 446, Weslaco, Texas 78596
24. Midwest Agriculture Warehouse Co., 725 South Schneider Street, Fremont, Nebraska 68025
25. Moyer Chemical & Equipment Co., Inc., Post Office Box 7, Fremont, Nebraska 68025
26. Northwest Chemical Corporation, 4560 Ridge Road NW., Salem, Oregon 97303
27. Ostlund Chemical Company, 1330 Northwest 40th, Fargo, North Dakota 58102
28. Platte Chemical Co., 150 South Main, Fremont, Nebraska 68025
29. Pueblo Chemical & Supply Co., Post Office Box 1279, Garden City, Kansas 67846
30. Snake River Chemicals, Inc., Post Office Box 1196, Caldwell, Idaho 83650
31. Transbas, Inc., 1525 Lockwood Road, Billings, Montana 59101
32. Tri River Chemcial Company, Inc., Post Office Box 2641, Pasco, Washington 99302
33. Tri State Chemicals, Inc., Post Office Box 1206, Hereford, Texas 79045
34. Tri-State Delta Chemicals, Inc., Post Office Box 369, Clarksdale, Mississippi 38614
35. Westchem Agricultural Chemicals, Inc., 1525 Lockwood Road, Billings, Montana 59101
36. Tri Valley Corporation, 13803 "F" Street, Omaha, Nebraska 68137
37. Yellowstone Valley Chemicals, Inc., 1525 Lockwood Road, Billings, Montana 59101
38. UAP Subsidiary, Inc., Union Commerce Building, Cleveland, Ohio 44115

1. Parent Corporation and address of principal office: Continental Grain Company, 277 Park Avenue, New York, New York 10172.

2. Wholly-owned subsidiaries which will participate in the operations and address of their respective principal offices:

(A) Allied Mills, Inc., 10 South Riverside Plaza, Chicago, Illinois 60606
(B) Arnold Bakers, Inc., 10 Hamilton Avenue, Greenwich, Connecticut 06830
(C) Baronet Corporation, 375 County Avenue, Secaucus, New Jersey 07904
(D) Continental Milling Corporation, 277 Park Avenue, New York, New York 10172

1. The parent corporation: Conwood Corporation, Conwood Building, 813 Ridgelake Boulevard, P.O. Box 217, Memphis, Tennessee 38101.

2. Wholly-owned subsidiaries which will participate in the operations, and the address of their respective principal offices are as follows:

a. Scott Tabacco Company, 939 Adams, Bowling Green, KY 42101
b. Taylor Bros., Inc., 2415 Stratford Road, Winston-Salem, NC 27103
c. Kilgore Corp., Toone, TN 38381
d. Blevins Popcorn, P.O. Box 171233, Memphis, TN 38117
e. Concession Industries Corp., P.O. Box 90346, Nashville, TN 37209
f. Manhattan Products, Inc., 333 Starke Road, Carlstadt, NJ 07072
g. Laundry Aids, Inc., 333 Starke Road, Carlstadt, NJ 07072

h. Conwood Export Corp., 813 Ridgelake Boulevard, Memphis, TN 38119
i. Standard Theatre Supply Company, 125 Higgins Street, Greensboro, NC 27406

1. Parent corporation and address of principal office: Copper Sales, Inc., 2220 Florida Avenue South, Minneapolis, MN 55426.

2. Wholly-owned subsidiaries which will participate in the operations, and address of the principal offices:

(a) Lead Products Ohio, Inc., P.O. Box 42116, Cincinnati, Ohio 45242
(b) Allied Supply Co., Inc., P.O. Box 26470, Minneapolis, MN 55426

1. The parent corporation: Eli Lilly and Company, and our corporate address is 307 East McCarty Street, Indianapolis, Indiana 46285.

2. Wholly-owned subsidiaries which will participate in the operations, and addresses of their respective principal offices are as follows:

Cardiac Pacemakers, Inc., 4100 North Hamline Avenue, P.O. Box 43079, St. Paul, Minnesota 55164
Eli Lilly International Corporation, 307 East McCarty Street, Indianapolis, Indiana 46285
Eli Lilly Interamerica, Inc., 307 East McCarty Street, Indianapolis, Indiana 46285
Eli Lilly S.A. (Geneva), Case Postale 395, 1211 Geneva 26, Switzerland
Eli Lilly S.A. (Puerto Rico), 262 Uruguay Street, San Juan, Puerto Rico 00917
Elizabeth Arden, Inc., 1345 Avenue of the Americas, New York, New York 10019
IVAC Corporation, 11353 Sorrento Valley Road, San Diego, California 92121
Physio-Control Corporation, 11811 Willows Road, Redmond, Washington 98052

1. Parent corporation and address of principal office: Endicott Johnson Corporation, 1100 East Main Street, Endicott, NY 13760.

2. Wholly-owned subsidiaries which will participate in the operations, and address of their respective principal offices:

(a) Merit Shoe Co., Inc., 1100 East Main Street, Endicott, NY 13760.
(b) Father & Son Shoe Stores, Inc., 1100 East Main Street, Endicott, NY 13760.
(c) Lehigh Safety Shoe Co., 1100 East Main Street, Endicott, NY 13760.
(d) The Nobil Shoe Company, 750 East Tallmadge Avenue, Akron, Ohio 44330.

1. Parent corporation and address of principal office: Harrisonburg Auto Auction, Inc., Route 1, Box 65, Harrisonburg, VA 22801.

2. Wholly owned subsidiary which will participate in the operations, and address of its principal office: Harrisonburg Auto Auction Transports, Inc., Route 1, Box 65, Harrisonburg, VA 22801.

1. Parent corporation and address of principal office: Highway Culvert Corporation, P.O. Box 550, Liberty, New York 12754.

2. Wholly-owned subsidiaries which will participate in the operations, and address of their principal office: Alsam Steel Corporation, P.O. Box 550, Liberty, New York 12754.

1. The parent corporation: Howard Paper Mills, Inc. whose principal office address is 115 Columbia Street, Dayton, Ohio 45407.

2. An affiliated company: Harrison Enterprises:

1. Parent corporation and address of principal office: Koffman Port Industries Inc., 555 Broadway, Haverhill, MA 01830.

2. Wholly-owned subsidiaries which will participate in the operations and address of their respective principal office:

(a) Koffman Products Inc., 555 Broadway, Haverhill, MA 01830
(b) Port Poly, Inc., State Line Industrial Park, Salem, NH 03079
(c) Koffman Sales Co. Inc., 555 Broadway, Haverhill, MA 01830
(d) Bradco Industries Inc., State Line Industrial Park, Salem, NH 03079
(e) J.T.I. Corporation, State Line Industrial Park, Salem, NH 03079

1. Parent corporation and address of principal office: Levi Strauss & Co., a Delaware Corporation, Two Embarcadero Center, San Francisco, CA 94106.

2. Wholly-owned subsidiaries which will participate in the operations, and address of their respective principal offices:

(a) Levi Strauss International, 900 Front Street, San Francisco, CA 94106.
(b) Levi Strauss Inter-America, Mercantile Plaza Building, Suite 710, Hato Rey, Puerto Rico 00918.
(c) Levi Strauss Manufacturing de Puerto Rico, Inc., Mercantile Plaza Building, Suite 710, Hato Rey, Puerto Rico 00918.
(d) Levi Strauss de Argentina, S.A., Av. Mitre 2351/9, 1605 Munro—Partido de Vincente Lopez, Provincia de Buenos Aires, Republica Argentina.
(e) Levi Strauss (Australia Pty. Ltd., 41 McLaren Street, North Sidney NSW 2060, Australia.
(f) Levi Strauss & Co.—Europe, S.A., "Le President", 427, Avenue Louise, B-1050 Brussels, Belgium.
(g) Levi Strauss Belgium, S.A., Brussels-International Trade Mart, Square Atomium, Avignon 272, Brussels, Belgium.
(h) Levi Strauss Do Brazil Industria e Comercio Ltda., Rua. Joao Paulo Ablas s/n, Rodovia Raposa, Tavares km 24, 5, Jardim da Gloria Cotia, Sao Paulo, Brazil.
(i) Levi Strauss Chile Limitada, c/o Philippi, Yrarrazaval, Oyarzun & Cox. Compania 1068—7 Piso, Santiago, Chile.
(j) Levi Strauss Scandinavia, A.p.S., Bernhard Bangs Alle 25, DK-2000, Copenhagen, Denmark.
(k) Levi Strauss France, S.A., Rue de L'Yser, F-59480 La Bassee, Lille (Nord), France.
(l) Levi Strauss (Far East Ltd., 9/f Hong Kong Spinner's Industrial Building, 603 Tai Nan Street, Kowloon, Hong Kong.
(m) Levi Strauss Italia, S.p.A., Via Serbelloni 1, 20122 Milano, Italy.
(n) Levi Strauss (Malaysia) Sendirian Berhad, 1 Burmah Cross off Burmah Road, Georgetown, Penang, Malaysia.
(o) Levi Strauss de Mexico, S.A. de C.V., Atomo No. 3, Parque Industrial Naucalpan, Naucalpan de Juarez, Estade de Mexico.
(p) Levi Strauss Nederland, N.V., Basiweg 59, NL Amsterdam, Holland.
(q) Levi Strauss (New Zealand) Ltd., 22 Heather Street, Parnell, Aukland, 1, New Zealand.
(r) Levi Strauss Norway, A/S, Marcos Thranesgt. 2, Oslo 4, Norway.
(s) Levi Strauss of Canada, Inc., 240 Duncan Mill Road, Don Mills, Ontario, Canada M3B 1Z4.
(t) Levi Strauss (Philippines Inc., 2264 Rasong Tamo Extension, Makati, Rizal, Philippines.
(u) Levi Strauss (Portugal) Confeccoes, L.D.A., c/o Levi Strauss de Espana, S.A., Rosezlon 205, 3rd Floor, Barcelona, 8 Spain.
(v) Levi Strauss (Singapore) Pte, Ltd., 1321, International Plaza, 10 Anson Road, Singapore 0207.
(w) Levi Strauss de Espana, S.A., Rosezlon 205, 3rd Floor, Barcelona, 8 Spain.
(x) Levi Strauss Sweden, A.B., Arsenalsgatan 6, III, 111 47 Stockholm, Sweden.
(y) Levi Strauss (Suisse) S.A., Route de la Pierre, 1024 Ecublens VD., Switzerland.
(z) Levi Strauss (U.K.) Ltd., Levi's House, Moulton Park Industrial Estate, Moulton Way, Northampton, NN3 1QA, England.
(a-a) Levi Strauss de Venezuela, C.A., Edificio El Cigarral, Piso #4, Avenida Principal, Colinas de Bello Monte, Caracas, Venezuela.
(b-b) Levi Strauss Germany G.m.b.H., Rembruckerstrasse 21-25, Postfach 1260, Heusenstamm, 6056 West Germany.
(c-c) Tops and Bottoms Internationals, C.A. (40 percent owned), Edificio El Cigarral Piso 5, Avenida Principal, Colinas de Bello Monte, Caracas, Venezuela.
(d-d) Anomalus, Inc., 1621 East Magnolia Avenue, Knoxville, Tennessee 37917.
(e-e) Anomalus Canada, Ltd., Two Embarcadero Center, San Francisco, CA 94106.
(f-f) B. Tepner & Co. Ltd., 8400 St. Lawrence Boulevard, Montreal, Quebec, Canada H2P 2M4.
(g-g) Confecciones del Rio Grande, S.A. de C.V., Alvaro Pbregon #56 H. Matamoros, Tamaulipas, Mexico.
(h-h) GWG Limited, 5240 Calgary Trail, Edmonton, Alberta, T6H 4W6 Canada.
(i-i) Levi Strauss Employee Purchase Plan, Inc., 1621 East Magnola Ave. 37917.
(j-j) Levi Strauss Eximco, S.A., 15 ch. Franxois—Lehmann, 1218 Grand—Saconnex, Geneva, Switzerland.
(k-k) Levi Strauss Export Sales Corp., Two Embarcadero Center, San Francisco, CA 94106.
(l-l) Levi Strauss of San Juan, Inc., Two Embarcadero Center, San Francisco, CA 94106.
(m-m) Levi Strauss Overseas Finance, N.V., c/o Curacao International Trust Company,

N.V., Handelskade Space 8, P.O. Box 812, Curacao, Netherlands, Antilles.
(n-n) Levi Strauss Pan America, Two Embarcadero Center, San Francisco, CA 94106.
(o-o) LEVI's Accessories, Inc., 10270 St. Rita Lane, Cincinnati, OH 45215.
(p-p) NF Industies, Inc., Two Embarcadero Center, San Francisco, CA 94106.
(q-q) Zenith International Insurance Limited, Cedarpark Centre Building, Cedar Avenue, Hamilton 5, Bermuda.
(r-r) Diversified Apparel Enterprises, Inc., 611–617 Mission Street, San Francisco, CA 94105.
(s-s) Koret of California, Inc., 611–617 Mission Street, San Francisco, CA 94105.
(t-t) Koret of California (Canada) Ltd., 99 East Cordova, Vancouver, B.C. V6A 1K4.
(u-u) Blairmoor (Puerto Rico), Inc., 611–617 Mission Street, San Francisco, CA 94105.
(v-v) Rainfair, Inc., 1501 Albert Street, Racine, WI 53401.
(w-w) Resistol Sales, Inc., 601 Marion Drive, Garland, TX 75040.
(x-x) Oxxford Clothes, Inc., 1220 West Van Buren Street, Chicago, IL 60607.
(y-y) Capri Sportswear, 611–617 Mission Street, San Francisco, CA 94105.
(z-z) Shaw Manufacturing, Inc., 611–617 Mission Street, San Francisco, CA 94105.
(a-a-a) Koracorp Management Company, Inc., 611–617 Mission Street, San Francisco, CA 94105.
(b-b-b) KCM, Inc., 611–617 Mission Street, San Francisco, CA 94105.
(c-c-c) KIR, Inc., 611–617 Mission Street, San Francisco, CA 94105.
(d-d-d) Mission Place, Inc., 611–617 Mission Street, San Francisco, CA 94105.
(e-e-e) Koracorp Industries, Inc., 611–617 Mission Street, San Francisco, CA 94105.
(f-f-f) KCW, Inc., 611–617 Mission Street, San Francisco, CA 94105.
(g-g-g) Koracorp Industries (Hong Kong) Ltd., Room 1001, Prosperity House, 10 Granville Road, Kowloon, Hong Kong.
(h-h-h) I.R., Inc., Suite 302 Pacific Enterprises Building, 54–5 Chung Shan North Road, Section 3, Taipei, Taiwan, R.O.C.
(i-i-i) Establissements Fra-For, S.A., 1 Cours Jacquin, B.P. 31, Troyes 1000, France.
(j-j-j) Societe Civile Des Terrasses, Troyes 1000, France.
(k-k-k) Mezrahi Et Cie, 56 Rue General De Gaulle, Troyes 1000, France.
(l-l-l) MCO, Inc., 611–617 Mission Street, San Francisco, CA 94105.

1. Parent corporation and address of principal office: Lumber Wholesalers, Inc., 318 Lincoln Avenue, Cadiz, Ohio 43907.

2. Wholly owned subsidiaries which will participate in the operations, and addresses of the respective principal offices: Wilgus & Co. P.O. Box 186, Cadiz, Ohio 43907.

1. Parent Corporation: The Mennel Milling Company, 128 West Crocker Street, Fostoria, OH 44830.

2. Wholly-owned subsidiaries which will participate in the operation:

(a) The Mennel Milling Co. of Michigan, 109 South Mill Street, Dowagiac, MI 49047.
(b) Roanoke City Mills, Inc., 1702 South Jefferson St., Roanoke, VA 24006.
(c) The Mennel Milling Co. of Virginia, 1702 South Jefferson St., Roanoke, VA 24006.
(d) Meadowview Mills, Meadowview, VA 24361.
(e) Prince Edward Mills, Farmville, VA 23901.
(f) Exchange Milling Company, 560 Depot Street, Christiansburg, VA 24078.

1. Parent corporation and address of principal office: Reeves Brothers, Inc., P.O. Box 1898, Spartanburg, SC 29304.

2. Wholly-owned subsidiaries which will participate in the operations and address of their respective principal offices:

(a) Cinderella Knitting Mills, Inc., P.O. Box 93, Denver, PA 17517.
(b) Reeves Bros. Canada Limited, 415 Evans Avenue, Toronto, Ontario M8W 2T2.
(c) Turner Trucking Company, P.O. Box 1837, Spartanburg, SC 29304.

1. Parent corporation and address of principal office:

Savannah Foods & Industries, Inc., P.O. Box 339, Savannah, GA 31402.

2. Wholly-owned subsidaries which will participate in the operations, and address of their respective principal offices:

(a) Everglades Sugar Refinery, Inc., P.O. Box 278, Clewiston, FL 33440.
(b) Transales Corporation, P.O. Box 9177, Savannah, GA 31402.
(c) The Jim Dandy Company, P.O. Box 10687, Birmingham, AL 35202.
(d) Food Carrier, Inc., P.O. Box 2287, Savannah, GA 31402.
(e) Sunaid of Florida, Inc., P.O. Box 339, Savannah, GA 31402.

1. The parent corporation, Sysco Corporation, 1177 West Loop South, Houston, Texas.

2. Divisions

Cochran/Sysco Food Services, P.O. Box 2507, Jackson, Mississippi 39207.
Global Frozen Foods Company, 700 Dibblee Drive, Garden City, New York 11530.
Plantation—Sysco, P.O. Drawer 64000A, Miami, Florida 33164.
Sysco/Fialkow Food Services Co., P.O. Box 37045, Jacksonville, Florida 32205.
Sysco/H & R Food Services Co., P.O. Box 9069, El Paso, Texas 79982.
Sysco Intermountain Food Services, P.O. Box 27638, Salt Lake City, Utah 84125.
Sysco/Northwest Food Services, P.O. Box 25821, Albuquerque, New Mexico 87125.
Theimer-Sysco Food Services, P.O. Box 13786, Roanoke, Virginia 24034.
Thomas/Sysco Food Services, 10510 Evendale Drive, Cincinnati, Ohio 45241.

3. SUBSIDIARIES

Allied-Sysco Food Services, Inc., P.O. Box 6185, Hayward, California 94540.
Arrow-Sysco Food Services, Inc., P.O. Box 10038, Jefferson, Louisiana 70181.
Baraboo-Sysco Food Services, Inc., P.O. Box 29, Baraboo, Wisconsin 53913.
Glencoe-Sysco Food Services, Co., 6116 Walker Avenue, Maywood, California 90270.
Grants-Sysco Food Services, Inc., P.O. Box 1593, Saginaw, Michigan 48605.
HFP-Sysco Food Services, Inc., P.O. Box 113, Harrisonburg, Virginia 22801.
Hallsmith-Sysco Food Services, Inc., 380 South Worcester, Norton, Massachusetts 02766.
Hardin's-Sysco Food Services, Inc., P.O. Box 18847, Memphis, Tennessee 38181.
Koon-Sysco Food Services, Inc., 331 Kentucky Street, Bowling Green, Kentucky 42101.
Mid-Central/Sysco Food Services, Inc. P.O. Box 57, Kansas City, Missouri 64141.
Miesel/Sysco Food Service, Co., P.O. Box 579, Detroit, Michigan 48232.
Robert Orr-Sysco Food Services, Co., P.O. Box 1087, Nashville Tennessee 37202.
Select-Sysco Foods, Inc., P.O. Box 3097, Hayward, California 94540.
Sysco/Alamo Food Services, Inc., P.O. Box 18364, San Antonio, Texas 78218.
Sysco Chemical Company, Inc., P.O. Box 10129, Detroit, Michigan 48210.
Sysco Food Services, Inc., P.O. Box 15316, Houston, Texas 77020.
Sysco Food Services—Southeast, Inc., P.O. Box 2805, Augusta, Georgia 30904.
Sysco Food Systems, Inc., P.O. Box 344229, Dallas, Texas 75234.
Sysco/Frost-Pack Food Services, Inc. P.O. Box 8769, Grand Rapids, Michigan 49508.
Sysco Frosted Foods, Inc., P.O. Box 5327, Albany, New York 12205.
Sysco/Louisville Food Services, Co., P.O. Box 32470, Louisville, Kentucky 40232
Sysco-Metro Food Services, Inc., P.O. Box 7509, Marietta, Georgia 30065.
Sysco-Midwest Food Services, Inc., P.O. Box 5299, Lafayette, Indiana 47903.
Sysco/Rome Food Service, Inc., P.O. Box 2026, Rome, Georgia 30161.

1. Parent Corporation and address of principal office:

Washington Manufacturing Company, Inc., P.O. Box 486, 800 East 7th Street, Washington, IA 52353.

2. Wholly-owned subsidiaries which will participate in the operations and address of their respective principal offices:

Barker Products Corporation, P.O. Box 457 Industrial Park, Keosauqua, IA 52565.

(1) Parent corporation and address of principal office:

Wisconsin Packing Co., Inc., a Delaware Corporation, 4700 North 132nd Street, Butler, WI 53007.

(2) Wholly-owned subsidiaries which will participate in the operations, and address of their respective principal offices:

(a) Wisconsin Packing Co., Inc., a Wisconsin corporation, 4700 North 132nd Street, Butler, WI 53007;
(b) Butler Beef, Inc., 4700 North 132nd Street, Butler, Wisconsin 53007;
(c) Milwaukee Tallow Co., 131 South 7th Street, Milwaukee, WI 53223;

(d) Hide Service Corp., 131 South 7th Street, Milwaukee, WI 53223;
(e) New Glarus Foods, Inc., 421 Second Street, New Glarus, WI 53574;
(f) Midwest Protein, Inc., Route 2, Virogua, WI 54665;
(g) Justro Feed Corp., 4200 West Kiehnau Street, Milwaukee, WI 53209.

Agatha L. Mergenovich,
Secretary.

[FR Doc. 80-39514 Filed 12-18-80; 8:45 am]
BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. Ciba-Geigy Corporation

Pursuant to the Antitrust Procedures and Penalties Act 15 U.S.C. 16(b), [APPA], the Antitrust Division publishes the following comments received from members of the public on the proposed final judgment in the case of *United States* v. *Ciba-Geigy Corporation,* Civil Action No. 791.69, District of New Jersey. Also published, herewith, is the response of the Department of Justice to such comments. This publication completes compliance with the provisions of the APPA.

Joseph H. Widmar,
Director, Office of Operations, Antitrust Division, Department of Justice.

Re: United States v. Ciba-Geigy Corporation Civil Action 791-69 (D.N.J.)

December 12, 1980.

Mr. Anthony P. DeLio II,
121 Whitney Avenue,
New Haven, CN 06510

Dear Mr. DeLio: This letter responds to your October 21, 1980 comments concerning the proposed consent judgment in the above-identified case.

You state that in general you oppose appeals by the Department of Justice from adverse decisions in the district courts and that you view the appeal in this case primarily as a pressure tactic to obtain a consent decree. The Department of Justice, through the Antitrust Division, is by law responsible for enforcing the antitrust laws of the United States. The statutory authority to enforce the antitrust laws includes the authority to appeal from final adverse district court judgments. A decision by the Department to appeal an adverse judgment is made only after a thorough, internal review procedure in which the public interest is paramount. The Department does not regard nor use its right to appeal as a vehicle for pressuring defendants to enter into consent decrees.

The goal of the Antitrust Division in negotiating an antitrust consent decree is to stop the alleged illegal practices involved, prevent their renewal, and restore competitive conditions in the marketplace. When patents are involved, as they are in this case, restoring competition can require compulsory patent licensing. When, as herein, the patents were allegedly obtained by fraud, dedication of the patents is especially appropriate.

The Antitrust Division respectfully disagrees with your views that consent decrees requiring patents to be licensed or dedicated to the public weaken the patent system and that Department policies over the years have had a negative effect upon innovation in the United States. The Antitrust Division has repeatedly indicated its view that the patent grant is an important part of our economic system because it spurs innovation and thereby fosters competition. However, patents can be used unreasonably to restrain competition in violation of the antitrust laws. When patents are so used, they are not serving the public interest. In such cases, the Department of Justice cannot fail to take appropriate antitrust enforcement action simply because patents are involved.

The Department of Justice appreciates your interest in this matter. Notwithstanding your comments on the proposed consent judgment, the Department remains convinced that entry of the final judgment in this case is in the public interest.

Sincerely yours,

Roger B. Andewelt,
Assistant Chief, Intellectual Property Section, Antitrust Division (SAFE-704), U.S. Department of Justice, Washington, DC 20530, 202/724-7966.

October 21, 1980.

Re: Ciba-Geigy/Abbot Laboratories Settlement

Mr. Roger B. Anderwelt,
Assistant Chief, Intellectual Property Section, Antitrust Division (Safe-704), United States Department of Justice, Washington, D.C. 20530.

Dear Mr. Anderwelt: As a member of the public, I am unalterably opposed to appeals by the Justice Department from adverse decisions in the District Courts. The Department should stop harassing American businessmen and fueling inflation to the public, both directly and indirectly.

After having lost in the District Court, on the patent issues, an appeal by the Justice Department was for the most part a pressure tactic used to maneuver a consent decree. It was unnecessary and counter productive to the nation as a whole. Consent decrees, whereby (trade) patents are dedicated to the public or are forced to be licensed, severely weaken the patent system and a patentee's position. While it can be argued that Ciba-Geigy's patent position should be weakened, this is a poor excuse for having patents dedicated to the public. The reason for this is that it opens up the technology to a great deal of foreign competition.

The policies of the Justice Department over the years have been horrendously poor where patents and patent rights are concerned. This has had a negative effect upon the incentive to invent and innovation in the U.S. This coupled with the fact that there is no competition in labor rates, has made the U.S. a country that is a high cost producer committed to free trade.

The Antitrust Division's academic approach to most of these problems has severely weakened the country as a whole and it is time for such policies to change. As such, I am against the implementation of the consent decree against Ciba in so far as it results in a dedication of patents to the public.

Very truly yours,

Anthony P. DeLio.

[FR Doc. 80-39470 Filed 12-18-80; 8:45 am]
BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Employment and Training Administration

Comprehensive Employment and Training Act, Native American Private Sector Initiatives Programs

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: This notice provides the plans of the Employment and Training Administration for allocating funds for the Fiscal Year 1981 Native American Private Sector Initiatives Program, under Title VII of the Comprehensive Employment and Training Act.

FOR FURTHER INFORMATION CONTACT: Mr. Pete Homer, Acting Director, Office of Indian and Native American Programs, Employment and Training Administration, 601 D Street, N.W., Room 6414, Washington, D.C. 20213.

SUPPLEMENTARY INFORMATION: Pursuant to the 1978 amendments to the Comprehensive Employment and Training Act (CETA) (29 U.S.C. 801 *et seq.*), the Office of Indian and Native American Programs (OINAP) announces a program authorized under Title VII of CETA to demonstrate the effectiveness of a variety of approaches to tie private industry closer to employment and training programs. Based on the Administration's budget request for this program, approximately $3.3 million in Title VII funds will be available through this solicitation to Native American grantees who are eligible under Section 302(c)(1) (A) and (B) of CETA. The Department of Labor will also reserve $3.3 million in Title VI discretionary funds to be used for Native American Private Sector Initiatives Program (NAPSIP), for a total of $6.6 million. Award of grants under this program is contingent upon the availability of funds. A "Solicitation for Grant Application" (SGA) that will describe application procedures and items necessary for a proposal will be issued immediately to all eligible Native American grantees.

Selection of proposals will be done on a competitive basis. Criteria on which

proposals will be evaluated are contained in the SGA. Regulations for the Native American Private Sector Initiatives Programs (NAPSIP) are found in regulations governing the Indian and Native American Employment and Training Programs at 20 CFR Parts 675 and 688, (44 FR 64326 *et seq.*, November 6, 1979). Eligible applicants are not required to submit proposals. However, all eligible applicants wishing to obtain Title VII funds must submit a proposal consistent with the requirements of the SGA.

All eligible Native American grantees desiring NAPSIP funds must first establish a Private Industry Council (PIC) to assist in the development of the proposal and the implementation of the program if award is made. The PIC must be made up of representatives from private industry, organized labor, community based organizations, and educational institutions. A majority of the membership must be from private industry. Details on the PIC are contained in the SGA and the regulations at 20 CFR 688.271.

Eligible Native American grantees will be advised at a later date of the proposal due date.

Signed in Washington, D.C., this 3rd day of December.

Lamond Godwin,

Administrator, Office of National Programs.

[FR Doc. 80-39193 Filed 12-18-80; 8:45 am]

BILLING CODE 4510-30-M

Pension and Welfare Benefit Programs

[Prohibited Transaction Exemption 80-98; Exemption Application No. D-1890]

Exemption From the Prohibitions for Certain Transactions Involving the Hardrives Co., Inc., Profit Sharing Trust Located in Fort Lauderdale, Fla.

AGENCY: Department of Labor.

ACTION: Grant of individual exemption.

SUMMARY: This exemption permits a series of loans (the Loans) to the Hardrives Co., Inc. Profit Sharing Trust (the Plan) from Hardrives Co., Inc. (Hardrives), and Excavators, Inc. (Excavators), parties in interest with respect to the Plan; a repayment of principal on March 23, 1978, by the Plan to Excavators; and the repayment of the outstanding Loan balances plus accrued unpaid interest by the Plan to Hardrives and Excavators.

FOR FURTHER INFORMATION CONTACT: Mr. David Stander of the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216. (202) 523-8882. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On September 16, 1980, notice was published in the Federal Register (45 FR 61406) of the pendency before the Department of Labor (the Department) of a proposal to grant an exemption from the restrictions of section 406(a), 406(b)(1) and 406(b)(2) of the Employee Retirement Income Security Act of 1974 (the Act) and from the sanctions resulting from the application of section 4975(c)(1)(A) through (E) of the Code, for the above transactions. The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, D.C. The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition the notice stated that any interested person might submit a written request that a public hearing be held relating to this exemption. The applicant has represented that it has complied with the requirements of the notification to interested persons as set forth in the notice of pendency. No public comments and no requests for a hearing were received by the Department.

The notice of pendency was issued and the exemption is being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption granted under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person with respect to a plan to which the exemption is applicable from certain other provisions of the Act and the Code. These provisions include any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his or her duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does the fact the transaction is the subject of an exemption affect the requirement of section 401(a) of the Code that a plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries.

(2) This exemption does not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code.

(3) This exemption is supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption or transitional rule is not dispositive of whether the transaction is, in fact, a prohibited transaction.

Exemption

In accordance with section 408(a) of the Act and section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following determinations:

(a) The exemption is administratively feasible;

(b) It is in the interests of the Plan and of its participants and beneficiaries; and

(c) It is protective of the rights of the participants and beneficiaries of the Plan.

Accordingly the restrictions of section 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the Loans to the Plan by Hardrives and Excavators; a repayment of principal on March 23, 1978, by the Plan to Excavators; and the repayment of the outstanding Loan balances plus accrued unpaid interest by the Plan to Hardrives and Excavators.

The availability of this exemption is subject to the express condition that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transaction to be consummated pursuant to this exemption.

Signed at Washington, D.C., this 11th day of December, 1980.

Ian D. Lanoff,

Administrator, Pension and Welfare Benefit Programs, Labor-Management Services Administration, U.S. Department of Labor.

[FR Doc. 80-39294 Filed 12-18-80; 8:45 am]

BILLING CODE 4510-29-M

[Prohibited Transaction Exemption 80-99; Exemption Application No. D-1095]

Exemption From the Prohibitions for Certain Transactions Involving the Wichita Oil Company Profit-Sharing Plan Located in Wichita Falls, Tex.

AGENCY: Department of Labor.

ACTION: Grant of individual exemption.

SUMMARY: This exemption permits the sale of certain real property by the Wichita Oil Company Profit-Sharing Plan (the Plan) to the Wichita Oil Company, Inc. (the Employer).

FOR FURTHER INFORMATION CONTACT: Ms. Linda Hamilton of the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216 (202) 523-7462. (This is not a toll-free number.)

SUPPLEMENTARY INFROMATION: On August 8, 1980, notice was published in the Federal Register (45 FR 52949) of the pendency before the Department of Labor (the Department) of a proposal to grant an exemption for the restrictions of sections 406(a) and 406(b) (1) and (2(of the Employee Retirement Income Security Act of 1974 (the Act) and from the sanctions resulting from the application of section 4975 of the Internal Revenue Code of 1954 (the Code), by reason of section 4975(c)(1) (A) through (E) of the Code, for a transaction described in an application filed by the Employer and the Plan trustees. The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, D.C. The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition the notice stated that any intereted person might submit a written request that a public hearing be held relating to this exemption.

By letter of October 6, 1980, the applicants notified the department that they were unable to comply with their representation to notify all interested persons within the specified time period. Notice was not given to interested persons until four days later than the time specified in the Notice of Pendency. Therefore, pursuant to discussions with the Department, by letter dated October 17, 1980, the applicants again gave notice to interested persons in the manner described in the Notice of Pendency and informed them that the time period within which they could comment and/or request a public hearing on the proposed exemption would be extended for an additional two week period, until October 31, 1980. No public comments and no requests for a hearing were received by the Department.

This application was filed with both the Department and the Internal Revenue Service. However, the Notice of Pendency was issued and the exemption is being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 [43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

General Infomation

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption granted under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person with respect to a plan to which the exemption is applicable from certain other provisions of the Act and the Code. These provisions include any prohibited transactions provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the act, which among other things require a fiduciary to discharge his or her duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does the fact the transaction is the subject of an exemption affect the requirement of section 401(a) of the Code that a plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries.

(2) This exemption does not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code.

(3) This exemption is supplemental to, and not in derogation of, any other provision of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption or transitional rule is not dispositive of whether the transaction is, in fact, a prohibited transaction.

Exemption

In accordance with section 408(a) of the Act and section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following determinations:

(a) The exemption is administratively feasible;

(b) It is the interests of the Plan and of its participants and beneficiaries; and

(c) It is protective of the rights of the participants and beneficiaries of the Plan.

Accordingly the restrictions of sections 406(a) and 406(b) (1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the sale of a 4.04 tract of land located at Seymour Highway and Beverly Circle, Wichita Falls, Texas, by the Plan to the Employer for the greater of $138,000 or the fair market value of the property at the time of the sale.

The availability of this exemption is subject to the express condition that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transaction to be consummated pursuant to this exemption.

Signed at Washington, D.C. this 11th day of December 1980.

Ian D. Lanoff,

Administrator, Pension and Welfare Benefit Programs, Labor-Management Services Administration, U.S. Department of Labor.

[FR Doc 80-39295 Filed 12-18-80; 8:45 am]

BILLING CODE 4510-29-M

[Prohibited Transaction Exemption 80-100; Exemption Application No. D-1352]

Exemption from the Prohibitions for Certain Transactions Involving the Wisconsin State Carpenters Pension Fund Located in Eau Claire, Wisconsin

AGENCY: Department of Labor.

ACTION: Grant of Individual Exemption.

SUMMARY: This exemption permits the making of long-term mortgage loans by the Wisconsin State Carpenters Pension Fund (the Plan) in situations where the loans would be arranged by and

purchased from mortgage bankers which are service providers to the Plan and, therefore, parties in interest.

FOR FURTHER INFORMATION CONTACT: Alan H. Levitas of the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216. (202) 523-8884. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On October 17, 1980, notice was published in the Federal Register (45 FR 69070) of the pendency before the Department of Labor (the Department) of a proposal to grant an exemption from the restrictions of section 406(a) of the Employee Retirement Income Security Act of 1974 (the Act) and from the sanctions resulting from the application of section 4975 of the Internal Revenue Code of 1954 (the Code) by reason of section 4975(c)(1)(A) through (D) of the Code, for the transactions described in an application filed on behalf of the trustees of the Plan. The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, D.C. The notice also invited interested persons to submit comments on the requested exemption to the Department. The applicant has represented that it has complied with the requirements of the notification to interested persons as set forth in the notice of pendency. No public comments were received by the Department.

The notice of pendency was issued and the exemption is being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption granted under section 408(a) of the Act and section 4975(c)(2) of the code does not relieve a fiduciary or other party in interest or disqualifed person with respect to a plan to which the exemption is applicable from certain other provisions of the Act and the Code. These provisions include any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsiblity provisions of section 404 of the Act, which among other things require a fiduciary to discharge his or her duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does the fact the transaction is the subject of an exemption affect the requirement of section 401(a) of the Code that a plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries.

(2) This exemption does not extend to transactions prohibited under section 406(b) of the Act and section 4975(c)(1)(E) and (F) of the Code.

(3) This exemption is supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption or transitional rule is not dispositive of whether the transaction is, in fact, a prohibited transaction.

Exemption

In accordance with section 408(a) of the Act and section 4975(c)(2) of the code and the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the follwoing determinations:

(a) The exemption is administratively feasible;

(b) It is in the interests of the Plan and of it participants and beneficiaries; and

(c) It is protective of the rights of the participants and beneficiaries of the Plan.

Accordingly the restricitions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to issuance by the plan of commitments obligating the Plan to purchase mortgage loans on commercial real estate, where such commitments are made to financial institutions which are parties in interest or disqualified persons with respect to the Plan solely by reason of servicing mortgage loans for the Plan. The foregoing exemption will be applicable subject to the conditions as set forth in the notice of pendency.

The availability of this exemption is subject to the express condition that the material facts and representations contained in the application are true and complete, and that the application accurately decribes all material terms of the transaction to be consummated pursuant to this exemption.

Signed at Washington, D.C., this 11th day of December, 1980.

Ian D. Lanoff,

Administrator, Pension and Welfare Benefit Programs, Labor-Management Services Administration, U.S. Department of Labor.

[FR Doc. 80-39226 Filed 12-18-80; 8:45 am]

BILLING CODE 4510-29-M

Office of Pension and Welfare Benefit Programs

[ORPS Application No. V-1137]

Employee Benefit Plans; Alternative Method of Compliance for the L. M. Blumstein, Inc., Employee Benefit Plan

AGENCY: Department of Labor.

ACTION: Grant of alternative method of compliance.

SUMMARY: The Department of Labor (the Department) hereby grants an alternative method of compliance with the summary plan description and summary of material modification requirements of the Employee Retirement Income Security Act of 1974 (the Act) for the L. M. Blumstein, Inc. Employee Benefit Plan (the Plan).

EFFECTIVE DATE: September 24, 1977.

FOR FURTHER INFORMATION CONTACT: Mrs. Miriam Freund, of the Department, (202) 523-8671. (This is not a toll free number).

SUPPLEMENTARY INFORMATION: On August 29, 1980, notice was published in the Federal Register (45 FR 57795) of the pendency before the Department of an alternative method of compliance with the summary plan description and summary of material modification requirements of the Act for the Plans.[1] The alternative method of compliance was requested in a petition filed by Joseph T. Blumstein, Treasurer of L. M. Blumstein, Inc., sponsor and administrator of the Plan, pursuant to section 110(a) of the Act.

The notice set forth a summary of the facts and representations contained in the petition for an alternative method of compliance and referred interested persons to the petition on file with the Department for a complete statement of the facts and representations. The petition has been available for public inspection at the Department in

[1] The Department notes that the alternative method of compliance granted relates only to the summary plan description and summary of material modification requirements of the Act and does not afford relief from any provisions of the Internal Revenue Code of 1954.

Washington, D.C. The notice also invited interested persons to submit comments on the requested alternative method of compliance to the Department.

The Department has received letters from two commentators. One commentator asked what would happen if in the future the Plan covered a participant who was not well versed in the terms of the Plan and also stated that he knows of many plan sponsors, trustees, and administrators who are not familiar with the terms of their own plans. The other commentator suggested extending the proposed alternative method of compliance to all plans covering less than 11 participants.

With regard to these comments, it should be noted that (1) as stated both herein and in the notice of pendency, the alternative method of compliance in this case is conditioned on the Plan's having no participants other than those described in the petitioner's submissions, who, according to such submissions, are very familiar with the terms of the Plan and amendments thereto, and (2) the alternative method of compliance described both herein and in the notice of pendency applies only to the Plan in this case and to no other plan. Representatives of any other plan may petition the Department for an alternative method of compliance if they feel they can demonstrate that such alternative method of compliance meets the requirements of section 110(a) of the Act.[2] If the Department determines that these requirements are met, it will publish notices in the Federal Register of both the proposal and granting of an alternative method of compliance for such other plan and shall provide opportunity for interested persons to present their views on such alternative method. For clarification, the alternative method of compliance in this case is made effective as of September 24, 1977, the first day on which the Plan covered only the four participants who are the trustees of the Plan.

Alternative Method of Compliance: In accordance with section 110(a) of the Act and based upon the entire record, the Department makes the following determinations:

(1) The use of the alternative method is consistent with the purposes of Title I of the Act and provides adequate disclosure to the Plan's participants and beneficiaries and adequate reporting to the Department;

(2) The application of the summary plan description and summary of material modification requirements would increase the costs to the Plan or impose unreasonable administrative burdens with respect to the operation of the Plan, having regard to the particular characteristics of the Plan; and

(3) The application of the summary plan description and summary of material modification requirements of the Act would be adverse to the interests of the Plan's participants in the aggregate.

Accordingly, the Department hereby grants the following alternative method of compliance:

Effective September 24, 1977, the plan administrator of the Plan is not required to prepare and distribute summary plan descriptions and summaries of material modifications to Plan participants or to file such documents with the Secretary of Labor, provided that the plan administrator (1) upon the written request of any participant or beneficiary, furnishes free of charge a copy of the instruments under which the Plan is established or operated, and (2) furnished free of charge to each Plan participant and beneficiary a copy of each amendment or other change to the Plan in the event the Plan is amended or changed.

The availability of this alternative method of compliance is subject to the express conditions that (1) the Plan has no participants other than those described in the petitioner's submissions, and (2) the material facts and representations contained in the petition are true and complete and the petition accurately describes all factors material to the granting of the alternative method of compliance.

Signed at Washington, D.C., this 11th day of December 1980.

Ian D. Lanoff,

Administrator of Pension and Welfare Benefit Programs, Labor-Management Services Administration, U.S. Department of Labor.

[FR Doc. 80-39079 Filed 12-18-80; 8:45 am]

BILLING CODE 4510-29-M

[2] Under section 110(a) of the Act, the Department must determine that the use of an alternative method is consistent with the purposes of Title I of the Act and that it provides adequate disclosure to the participants in the plan and adequate reporting to the Department, that the application of the reporting and disclosure requirements of the Act would increase the costs to the plan or impose unreasonable administrative burdens with respect to the operation of the plan, having regard to the particular characteristics of the plan or the type of plan involved, and that the application of the reporting and disclosure requirements of the Act would be adverse to the interests of plan participants in the aggregate.

[ORPS Application No. V-1209]

Employee Benefit Plans; Alternative Method of Compliance for the F. Kunreuther Associates, Inc., Employees' Profit Sharing Plan and the F. Kunreuther Associates, Inc., Employees' Pension Plan

AGENCY: Department of Labor.

ACTION: Grant of alternative method of compliance.

SUMMARY: The Department of Labor (the Department) hereby grants an alternative method of compliance with the summary plan description and summary of material modification requirements of the Employee Retirement Income Security Act of 1974 (the Act) for the F. Kunreuther Associates, Inc., Employees' Profit Sharing Plan and the F. Kunreuther Associates, Inc., Employees' Pension Plan (the Plans).

EFFECTIVE DATE: January 1, 1975.

FOR FURTHER INFORMATION CONTACT: Mrs. Miriam Freund, of the Department, (202) 523-8671. (This is not a toll free number).

SUPPLEMENTARY INFORMATION: On August 29, 1980, notice was published in the Federal Register (45 FR 57796) of the pendency before the Department of an alternative method of compliance with the summary plan description and summary of material modification requirements of the Act for the Plans.[1] The alternative method of compliance was requested in a petition filed by F. Kunreuther, President of F. Kunreuther Associates, Inc., the sponsor of the Plans, pursuant to section 110(a) of the Act.

The notice set forth a summary of the facts and representations contained in the petition for an alternative method of compliance and referred interested plans to the petition on file with the Department for a complete statement of the facts and representations. The petition has been available for public inspection at the Department in Washington, D.C. The notice also invited interested persons to submit comments on the requested alternative method of compliance to the Department.

The Department has received letters from two commentators. One commentator asked what would happen if in the future the Plans covered a participant who was not well versed in

[1] The Department notes that the alternative method of compliance granted relates only to the summary plan description and summary of material modification requirements of the Act and does not afford relief from any provisions of the Internal Revenue Code of 1954.

the terms of the Plans and also stated that he knows of many plan sponsors, trustees, and administrators who are not familiar with the terms of their own plans. The other commentator suggested extending the proposed alternative method of compliance to all persons covering less than 11 participants.

With regard to these comments, it should be noted that (1) as stated both herein and in the notice of pendency, the alternative method of compliance in this case is conditioned on the Plans' having no participants other than those described in the petitioner's submissions, who, according to such submissions, are very familiar with the terms of the Plans and amendments thereto, and (2) the alternative method of compliance described both herein and in the notice of pendency applies only to the Plans in this case and to no other plan. Representatives of any other plan may petition the Department for an alternative method of compliance if they feel they can demonstrate that such alternative method of compliance meets the requirements of section 110(a) of the Act.[2] If the Department determines that these requirements are met, it will publish notices in the Federal Register of both the proposal and granting of an alternative method of compliance for such other plan and shall provide opportunity for interested persons to present their views on such alternative method. For clarification, the alternative method of compliance in this case is made effective as of January 1, 1975, inasmuch as the Plans have covered only the two participants who are the trustees of the Plans since before that date.

Alternative Method of Compliance: In accordance with section 110(a) of the Act and based upon the entire record, the Department makes the following determinations:

(1) The use of the alternative method is consistent with the purposes of Title I of the Act and provides adequate disclosure to the Plans' participants and beneficiaries and adequate reporting to the Department;

(2) The application of the summary plan description and summary of material modification requirements would increase the costs to the Plans or impose unreasonable administrative burdens with respect to the operation of the Plans, having regard to the particular characteristics of the Plans; and

(3) The application of the summary plan description and summary of material modification requirements of the Act would be adverse to the interests of the Plans' participants in the aggregate.

Accordingly, the Department hereby grants the following alternative method of compliance:

Effective January 1, 1975, the plan administrator of the Plan is not required to prepare and distribute summary plan descriptions and summaries of material modifications to the Plans' participants or to file such documents with the Secretary of Labor, provided that the plan administrator (1) upon the written request of any participant or beneficiary, furnishes free of charge a copy of the instruments under which each of the Plans is established or operated, and (2) furnishes free of charge to each plan participant and beneficiary a copy of each amendment of other change to either of the Plans in the event the plan is amended or changed.

The availability of this alternative method of compliance is subject to the express conditions that (1) the Plans have no participants other than those described in the petitioner's submissions, and (2) the material facts and representations contained in the petition are true and complete and the petition accurately describes all factors material to the granting of the alternative method of compliance.

Signed at Washington, D.C., this 11th day of December, 1980.

Ian D. Lanoff,

Administrator of Pension and Welfare Benefit Programs, Labor-Management Services Administration, U.S. Department of Labor.

[FR Doc. 80-39078 Filed 12-18-80; 8:45 am]

BILLING CODE 4510-29-M

[2] Under section 110(a) of the Act, the Department must determine that the use of an alternative method is consistent with the purposes of Title I of the Act and that it provides adequate disclosure to the participants in the plan and adequate reporting to the Department, that the application of the reporting and disclosure requirements of the Act would increase the costs to the plan or impose unreasonable administrative burdens with respect to the operation of the plan, having regard to the particular characteristics of the plan or the type of plan involved, and that the application of the reporting and disclosure requirements of the Act would be adverse to the interests of plan participants in the aggregate.

Office of the Secretary

Bridon American Corp., et al.; Investigations Regarding Certification of Eligibility To Apply for Worker Adjustment of Assistance; Correction

In FR Doc. 80-24274 appearing on page 93616 in the Federal Register of August 12, 1980, the dates of petitions in case number TA-W-9741—TA-W-9750 were inadvertently typed incorrectly and should be corrected to read as follows:

Petitioner (Union/workers or former workers of:); Date of petition; and Petition number

Bridon American Corporation (Co.); 7/25/80; TA-W-9741

Copiague Knitwear Corp. (ILGWU); 6/19/80; TA-W-9742

Famous Cottons, Inc. (ILGWU); 6/19/80; TA-W-9743

Hater Industries, Inc. (Co.); 7/25/80; TA-W-9744

I.D.R. Carpentry (workers); 6/9/80; TA-W-9745

Leaderman Sportswear, Inc. (ILGWU); 7/9/80; TA-W-9746

Linel Novelty (workers); 5/5/80; TA-W-9747

Progressive Machinery Corp. (Co.); 7/25/80; TA-W-9748

SGL Modern Creative (Co.); 7/24/80; TA-W-9749

Thomas Die & Stamping, Inc. (workers); 5/22/80; TA-W-9750.

Signed at Washington, D.C., this 9th day of December 1980.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc 80-39352 Filed 12-18-80; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-7855]

Budd Co.; Negative Determination Regarding Application for Reconsideration

By an application dated October 14, 1980, the petitioner requested administrative reconsideration of the Department of Labor's Notice of Determination Regarding Eligibility to Apply for Worker Adjustment Assistance in the case of workers and former workers producing wheel hubs, brake drums and automobile stampings at The Budd Company's Detroit, Michigan plant. Workers producing steel disc wheels were certified for trade adjustment assistance in the above mentioned notice. The Notice of Determination was published in the Federal Register on October 3, 1980, (45 FR 65700).

Pursuant to 29 CFR 90.18(c), reconsideration may be granted under the following circumstances:

(1) if it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) if it appears that the determination complained of was based on a mistake in the determination of facts previously considered; or

(3) if, in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justifies reconsideration of the decision.

The petitioner claims that the certification of workers producing steel disc wheels should be extended to all workers at the Detroit plant since the production of steel disc wheels and wheel hubs cannot be segregated from import-impacted production and

constitutes a significant proportion of the overall production of the Detroit plant. The petitioner further claims that the closing of the Detroit plant represents a loss of a domestic source for all potential customers of wheels and that foreign competition causes a further contraction for all domestic suppliers.

The Department's review showed that workers at Budd's Detroit plant did not meet the increased import criterion of the Trade Act of 1974 for auto body stampings and brake drums and did not meet the "contributed importantly" test of the Trade Act for wheel hubs. U.S. imports of automotive body stampings and brake drums were negligible in 1978 and 1979. With respect to wheel hubs, the Department's survey of Budd's customers showed that the respondents did not purchase imported wheel hubs in model year (MY) 1979 or MY 1980. However, with respect to steel disc wheels, all of the requirements were met.

The Department found that steel disc wheels and wheel hubs are produced and sold separately as components to major original equipment manufacturers. Therefore, workers producing wheel hubs at the Detroit plant must meet the increased import criterion and "contributed importantly" test for wheel hubs. Workers producing wheel hubs at the Detroit plant did not meet this statutory requirement.

The Department does not agree with the petitioner's claim that the inability to obtain potential domestic business can be considered as a basis for certification under the Trade Act of 1974. The Detroit plant has not closed but much of its reduced activity is the result of the domestic transfer of the wheel hub and drum operation from Detroit and the decline in demand for automotive stampings caused in part by the general recession and imports of finished automobiles. The Department has already determined that finished articles cannot be considered like or directly competitive with its component parts within the meaning of the trade Act of 1974. This position has been supported by the courts.

Conclusion

After review of the application and the investigative file, I conclude that there has been no error or misinterpretation of fact or misinterpretation of the law which would justify reconsideration of the Department of Labor's prior decision. The application is therefore, denied.

Signed at Washington, D.C., this 10th day of December 1980.

Harry J. Gilman,

Supervisory International Economist; Office of Foreign Economic Research.

[FR Doc. 80-39354 Filed 12-18-80; 8:45 am]

BILLING CODE 4510-28-M

Chrysler Corp., Export Plant, et al.; Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted investigations pursuant to Section 221(a) of the Act and 29 CFR 90.12.

The purpose of each of the investigations is to determine whether absolute or relative increases of imports of articles like or directly competitive with artices produced by the workers' firm or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number or proportion of the workers of such firm or subdivision.

Petitioners meeting these eligibility requirements will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

Pursuant to 29 CFR 90.13, the petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, no later than December 29, 1980.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than December 29, 1980.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C., this 8th day of December 1980.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

Appendix

Petitioner: Union/workers or former workers of—	Location	Date Received	Date of petition	Petition No.	Articles produced
Chrysler Corp., Export Plant (workers)	Brownstown, MI	11-17-80	11-14-80	TA-W-11,831	Auto parts.
Chrysler Outboard Corp. (AIW)	Beaver Dam, WI	11-25-80	11-20-80	TA-W-11,832	Mfg. of inboard marine and industrial engines.
Cowden Mfg. Company (workers)	Morehead, KY	11-24-80	11-22-80	TA-W-11,833	Jeans.
Fashions by Andre (ILGWU)	Bayside, NY	11-24-80	11-17-80	TA-W-11,834	Dresses.
MCP Industries (workers)	Detroit, MI	11-25-80	11-25-80	TA-W-11,835	Plating and heat treating.
Marco Electric Mfg. Co. (USWA)	Womelsdorf, PA	11-25-80	11-20-80	TA-W-11,836	Fans and fan motors.
Moss Sportswear Co., Inc. (company)	Baltimore, MD	11-28-80	11-26-80	TA-W-11,837	Men's shirts.
Pathfinder Mines Corp., Big Eagle Mine (USWA).	Jeffrey City, WY	11-24-80	11-21-80	TA-W-11,838	Petition states Uranium—yellow cake.
Pathfinder Mines Corp., Lucky Mc. Mine (USWA).	Riverton, WY	11-24-80	11-21-80	TA-W-11,839	Petition states Uranium—yellow cake.
Pathfinder Mines Corp., Shirley Basin Mine (USWA).	Shirley Basin, WY	11-24-80	11-21-80	TA-W-11,840	Petition states Uranium—yellow cake.
Carter Carburetor (UAW)	St. Louis, MO	11-25-80	11-20-80	TA-W-11,841	Carburetors; fuel pumps and fuel system accessories.
Four Slide Unlimited, Inc. (Now). Lee Mfg. (workers).	Bad Axe, MI	12-1-80	11-21-80	TA-W-11,842	Hog rings.
Joseph Asch Co., Inc., Sportswear Div. (wkrs).	New York, NY	11-28-80	11-24-80	TA-W-11,843	Ladies knit T and fashion tops.
Lorber Industries (workers)	Gardena, CA	12-1-80	11-19-80	TA-W-11,844	Knitted fabrics.
Old Ben Coal Company (workers)	Benton, IL	11-25-80	11-20-80	TA-W-11,845	Coal.

Appendix—Continued

Petitioner: Union/workers or former workers of—	Location	Date Received	Date of petition	Petition No.	Articles produced
Robinet Mfg. (company)	North Branch, MI	11-28-80	11-20-80	TA-W-11,846	Seat belt pins and pins for automatic trunk locks.
Saywood Sportswear, Inc. (company)	New York, NY	11-28-80	11-26-80	TA-W-11,847	Manufacture and contractor blouses.
Seal-O-Matic (company)	Newark, NJ	12-1-80	11-24-80	TA-W-11,848	Tape machines and shipping room tools.
Sealed Power Corp. (UAW)	Muskegan Ht., MI	11-28-80	11-19-80	TA-W-11,849	Engine and transmission parts.
The Telescope Folding Furniture Co., Inc. (UFW).	Granville, NY	11-25-80	11-13-80	TA-W-11,850	Outdoor furniture.
Firestone Tire & Rubber Company (URW)	Memphis, TN	11-25-80	11-21-80	TA-W-11,851	Passenger tires.
Crotty Corporation (workers)	Quincy, MI	12-1-80	11-24-80	TA-W-11,852	Gasket cutters: sun visors, automotive trim.
D. J. Glass & Assoc. (workers)	Indianapolis, IN	11-28-80	11-17-80	TA-W-11,853	Install conveyor systems.
E. M. Richmond (company)	Hinton, WV	11-24-80	11-20-80	TA-W-11,854	Mining equipment.
Essex Group, Inc., Electro Mechanical Div. (workers).	Lantaster, OH	12-1-80	11-19-80	TA-W-11,855	Automotive switches.
Hillcrest Garment Co. (ILGWU)	New York, NY	12-1-80	11-24-80	TA-W-11,856	Ladies raincoats.
M & A Manufacturing Co. (workers)	Newark, NJ	11-26-80	11-21-80	TA-W-11,857	Ladies raincoats, car coats, coats.
Ridgway Steel Fabrication, Inc. (workers)	Ridgway, PA	12-1-80	11-25-80	TA-W-11,858	Welded steel fabrication.
Van Ply Inc. (workers)	Vancouver, WA	11-28-80	11-20-80	TA-W-11,859	Mfg. prefinished wall panelling.
Western Nuclear, Inc. (USWA)	Jeffrey City, WY	11-24-80	11-21-80	TA-W-11,860	Yellow cake uranium.
Weyerhaeuser Co.—Woods (LSW)	Snoqualmie, WA	11-24-80	11-21-80	TA-W-11,861	Lumber.
Weyerhaeuser Company—Plant (LSW)	Snoqualmie, WA	11-24-80	11-21-80	TA-W-11,862	Lumber.
Wheeling-Pittsburgh Steel Corp. (company)	Pittsburgh, PA	11-28-80	11-21-80	TA-W-11,863	Providing sales and exec. services for steel plants.
Allen Logging (workers)	Forks, WA	12-1-80	11-25-80	TA-W-11,864	Process veneer and 2X4's.
Coral Gables Imported Motor Cars, DBA Kalamazoo Chrysler Plymouth (company).	Kalamazoo, MI	11-24-80	11-20-80	TA-W-11,865	Car dealership.
Dan Bar, Inc. (workers)	Warren, MI	12-1-80	11-28-80	TA-W-11,866	Brackets, panels, levers, gaskets.
Cerden & Son Mfg., Inc. (workers)	Frankton, IN	12-1-80	11-28-80	TA-W-11,867	Wedge brackets and yokes.
Kent Moore Stamping & Fabricating Co. (formerly Standard Forge) (UAW).	Detroit, MI	12-1-80	11-26-80	TA-W-11,868	Component parts for building tractors for agricultural use.
National Standard Co. Strandflex Div. (IAM)	Oriskany, NY	12-1-80	11-25-80	TA-W-11,869	Automotive cable.
Paris Knitting Mills, Inc. (ILGWU)	Carlstadt, NJ	11-28-80	11-24-80	TA-W-11,870	Women's knitwear.
Sullivan Shoe Company (company)	Sullivan, MO	12-2-80	11-26-80	TA-W-11,871	Mfg. vinyl shoes for roller skates.
Wheeling-Pittsburgh Steel Corp. (company)	Wheeling, WV	11-28-80	11-21-80	TA-W-11,872	Provide administrative services for steel plates.
Armco, Inc., Advanced Materials Division, Houston Plant (USWA).	Houston, TX	12-3-80	12-1-80	TA-W-11,873	Pipe and tubing.
Tube Products Corp. (company)	Louisville, KY	12-5-80	12-3-80	TA-W-11,874	Tailpipes and exhaust pipes.
Meco Knit Mills (workers)	Brooklyn, NY	12-1-80	11-28-80	TA-W-11,875	Sweaters.
Purolator Products, Inc. (workers)	Ringtown, PA	12-3-80	11-26-80	TA-W-11,876	Original equipment filters.
Tom Holzer Ford (workers)	Farmington, MI	11-24-80	10-28-80	TA-W-11,877	Car dealership.

[FR Doc. 80-39353 Filed 12-18-80; 8:45 am]
BILLING CODE 4510-28-M

[TA-W-7589]

Dayton Tire and Rubber Co.; Negative Determination on Reconsideration

On September 17, 1980, the Department made an Affirmative Determination Regarding Application for Reconsideration for workers and former workers of the Dayton Tire and Rubber Company, Dayton, Ohio. This determination was published in the Federal Register on September 26, 1980, (45 FR 63981).

The petitioner principally claims that there was integration in the production of passenger car and truck tires between the Seiberling Tire and Rubber Company's plant in Barberton, Ohio, whose workers were certified for trade adjustment assistance, TA-W-6906 and the Dayton Tire and Rubber Company's plant in Dayton, Ohio.

The Department's review showed that the petition for workers producing passenger car and truck tires at Dayton did not meet the "contributed importantly" test of the Trade Act of 1974.

On reconsideration, the Department found that an insignificant share of Dayton's production of passenger car and truck tires was produced for Seiberling and marketed to Seiberling's customers. It did find, however, that a significant share of Seiberling's production of passenger car tires at Barberton consisted of Dayton brand tires which were marketed to Dayton's customers. The Department's certification of the Barberton plant's workers was based largely on a survey of Seiberling's own customers. The fact that a significant share of Seiberling's production was for Dayton and sold under Dayton labels and to Dayton's customers would not provide a basis for certifying Dayton's workers. The Department's survey of Dayton's customers showed that the respondents accounted for a substantial share of Dayton's 1979 and 1980 passenger car and truck tire sales. The survey showed that most customers who decreased purchases of tires from Dayton did not increase their purchases of imported tires and most of the customers who increased purchases of imported tires also increased their purchases of domestic tires. The Department found that, in general, the reliance on imports of passenger car and truck tires by Dayton's customers was relatively small.

Conclusion

After reconsideration, I reaffirm the original denial of eligibility to apply for adjustment assistance to workers and former workers at the Dayton, Ohio plant of the Dayton Tire and Rubber Company.

Signed at Washington, D.C., this 11th day of December 1980.

Harry J. Gilman,

Supervisory International Labor Economist. Office of Foreign Economic Research.

[FR Doc. 80-39355 Filed 12-18-80; 8:45 am]
BILLING CODE 4510-28-M

[TA-W-9192]

Firestone Tire & Rubber Co., Akron I Plant; Affirmative Determination Regarding Application for Reconsideration

The Department on its own motion with additional information provided by the United Rubber Workers which arrived too late to be considered in the Department's Notice of Negative Determination for workers and former workers of Firestone's Akron No. 1 Plant in Akron, Ohio has decided to grant administrative reconsideration. That determination was published in the

Federal Register on November 18, 1980 (45 FR 76274).

The application for reconsideration claimed that aircraft, off-the-road, and racing tires were produced at Akron I as well as truck tires. The union further contends that the truck tire production will be transferred to Firestone's plant in Hamilton, Ontario for exportation back to the U.S. market.

Conclusion

After review of the application, I conclude that the union's claim is of sufficient weight to justify reconsideration of the Department's prior decision. The application is, therefore, granted.

Signed at Washington, D.C., this 10th day of December 1980.

C. Michael Aho,

Director, Office of Foreign Economic Research.

[FR Doc. 80-39357 Filed 12-18-80; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-9026; 9246-48; 9250-51; 10,733; 10,735; 10,743-44; 10,748; 10,757; 10,761; 10,763; 10,766; 10,771-72; 10,775; 10,778; 10,781; 10,797; 10,799; 10,801-14; 10,818-44; and 10,846-48]

General Motors Corp.; Amended Certification of Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, the Department of Labor issued Certifications of Eligibility To Apply for Adjustment Assistance on October 10, 1980, applicable to all workers of certain designated support facilities of General Motors Corporation, Detroit, Michigan. The Certifications were published in the Federal Register on October 21, 1980 (45 FR 69600).

On the basis of additional information from General Motors, the Office of Trade Adjustment Assistance, on its own motion reviewed the certifications. The additional information showed several layoffs occurring a few weeks prior to the June 1, 1980 impact date for General Motors Assembly Division Central Office, Westland, Michigan, TA-W-9247 and the General Motors Assembly Division Central Office, Warren, Michigan, TA-W-9248 and one day prior to the January 1, 1980 impact date for General Motors Chevrolet Zone and Regional Offices, Irving, Texas. These layoffs were not covered by the original impact dates set in the instant certifications.

The intent of the certifications is to cover all workers at both the Westland, Michigan and Warren, Michigan locations of General Motors Assembly Division's Central Offices and General Motors Chevrolet Zone and Regional Offices in Irving, Texas, who were affected by the decline in production of import impacted GM vehicles. The Notice of Certifications, therefore, is amended to include new impact dates of May 15, 1980 for workers at General Motors Assembly Division, Central Office, Westland, Michigan, TA-W-9247 and March 15, 1980 for workers at General Motors Assembly Division Central Office, Warren, Michigan, TA-W-9248. The Notice of Certifications is further amended to include a new impact date of December 15, 1979 for workers at General Motors Chevrolet Zone and Regional Offices, Irving, Texas, TA-W-10,806.

The certifications applicable to TA-W-9247, TA-W-9248 and TA-W-10,806 are hereby amended and issued as follows:

"All workers of General Motors Assembly Division Central Office, Westland and Warren, Michigan who became totally or partially separated from employment on or after May 15, 1980 and March 15, 1980, respectively, and before November 1, 1980, and all workers of General Motors Chevrolet Zone and Regional Offices, Irving, Texas, who became totally or partially separated from employment on or after December 15, 1979 and before November 1, 1980 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974."

Signed at Washington, D.C., this 10th day of December 1980.

James F. Taylor,

Director, Office of Management, Administration and Planning.

[FR Doc. 80-39358 Filed 12-18-80; 8:45 am]

BILLING CODE 4510-26-M

TA-W-6705

General Motors Corp.; Delco Electronics, Kokomo, Ind., et al.; Amended Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, the Department of Labor issued three Certifications Regarding Eligibility to apply for Worker Adjustment Assistance which were published in the Federal Register on October 3, 1980, (45 FR 65704); October 31, 1980, (45 FR 72361) and November 18, 1980 (45 FR 76274).

The first certification was applicable to all workers covered under petitions TA-W-9249 and 9252 of the General Motors Corporation, Saginaw Steering Gear Division in Athens, Alabama and the Delco-Remy Division in Anaheim, California, respectively.

The second certification was applicable to all workers covered under petitions TA-W-9562, 9563, 9566 and 9569 of the General Motors Corporation, Chevrolet Motor Division, Muncie, Indiana; Fisher Body Division, Grand Rapids, Michigan; Hydra-Matic Division, Ypsilanti, Michigan and the Central Foundry Division, Massena, New York, respectively.

The third certification was applicable to all workers covered under petition TA-W-9570 of the General Motors Corporation, General Motors Assembly Division, Linden, New Jersey.

The Department also issued a Notice of Amended Determination covering workers at 85 assembly and auxiliary plants of the General Motors Corporation, Detroit, Michigan, whose separations were related to increased import competition. This Notice of Amended Determinations was published in the Federal Register on September 9, 1980, (45 FR 59452).

On the basis of additional information, the Office of Trade Adjustment Assistance, on its own motion, reviewed these three certifications and the amended determinations. It was found on review that workers at several subdivisions of General Motor Corporation, who were certified under the three above-mentioned certifications and the amended determinations were not able to establish their individual eligibility for trade readjustment allowances despite having worked for more than 26 weeks at plants whose workers were certified for adjustment assistance, since multiple certifications of various plants of the same firm do not allow for coverage of certain employees who had transferred from one certified worker group to another in the 52 weeks prior to their layoffs.

The intent of the certifications is to cover all workers at the several locations of the General Motors Corporation who were affected by the decline in the sales or production of passenger cars, pick-up trucks, light trucks, utility vehicles, vans and component parts for passenger cars, trucks, vans and general utility vehicles at 92 assembly and auxiliary plants of the General Motors Corporation, Detroit, Michigan, related to increased import competition. The Notices of Certification and Notice of Amended Determinations, therefore, are amended to include all workers at the 92 assembly and auxiliary plants of the General Motors Corporation, Detroit, Michigan, except those who were specifically denied.

The Notice of Amended Determination (45 FR 59452) is hereby amended to add the following:

"All workers of the following facilities of the General Motors Corporation who became

totally or partially separated from employment on or after the indicated impact dates and before, where indicated, the termination dates are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974."

TA-W—Plant	Impact date	Termination date
9249—Saginaw Steering Gear Division, Athens, Ala.	Dec. 1, 1979	
9252—Delco-Remy Division, Anaheim, Calif.	Oct. 1, 1979	
9562—Chevrolet Motor Division, Muncie, Ind.	Jan. 1, 1980	Nov. 15, 1980
9563—Fisher Body Division, Grand Rapids Plant No. 1, Grand Rapids, Mich.	Dec. 1, 1979	Nov. 15, 1980
9566—Hydra-Matic Division, Ypsilanti, Mich.	Dec. 1, 1979	Nov. 15, 1980
9569—Central Foundry Division, Massena, N.Y.	Nov. 1, 1979	Nov. 15, 1980
9570—General Motors Assembly Division, Linden, N.J.	Apr. 1, 1980	

Signed at Washington, D.C., this 10th day of December 1980

James F. Taylor,

Director, Officer of Management Administration and Planning.

[FR Doc. 80-39356 Filed 12-18-80; 8:45 am]

BILLING CODE 4510-28-M

Kalamazoo Spring Co., et al.; Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for worker adjustment assistance issued during the period December 8–12, 1980.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of Section 222 of the Act must be met.

(1) that a significant number of proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) that sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) that increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat, thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases it has been concluded that at least one of the above criteria has not been met.

TA-W-8923; Kalamazoo Spring Co., Kalamazoo, MI

Investigation revealed that criterion (3) has not been met. A survey of customers of the subject firm indicated that increased imports did not contribute importantly to sales declines and worker separations at the subject firm.

TA-W-8762; Dayton Malleable, Inc., Dayton, OH

Investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-8371; C.J. Edwards Co., Inc., Mt. Clemens, MI

Investigation revealed that criterion (3) has not been met.

TA-W-8739; Bell Sportswear, Inc., Hammonton, NJ

Investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-9719; RMP Parts Rebuilding, Fitchburg, MA

Investigation revealed that criterion (3) has not been met. The workers' firm does not produce an article as required for certification under Section 223 of the Act.

TA-W-8330; Alform, Inc.; Inkster, MI

Investigation revealed that criterion (3) has not been met. Aggregate U.S. imports of models and patterns are negligible.

TA-W-7860; D. Cook, Inc.; Crossing, WA and Copalis, WA

Investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-8625; Firestone Synthetic Co., Hopewell, VA

Investigation revealed that criterion (3) has not been met. Aggregate U.S. imports of nylon resins did not increase as required for certification.

TA-W-10,646; Preferred Tool and Die Co., Inc., Constock Park, MI

Investigation revealed that criterion (3) has not been met. Aggregate U.S. imports of auto stamping dies are negligible.

TA-W-8827; Emil Von Dungen, Inc., Lockport, NY

Investigation revealed that criterion (3) has not been met. Aggregate U.S. imports of steel tanks and material handling equipment are negligible.

TA-W-10,450; Airco Welding Products, Springfield, NJ

Investigation revealed that criterion (3) has not been met. Separations from the subject firm resulted from a transfer of production to another domestic facility.

TA-W-10,373 & 11,024; Itman Coal Co.; Mine #3B, Wyoming County, WV and Mines #1, #2, #3, and the Shop and Preparation Plant, Wyoming County, WV

Investigation revealed that criterion (3) has not been met. Aggregate U.S. imports of coal and coke did not increase as required for certification.

TA-W-9066; Rea Magnet Wire Co., Inc., Lafayette, IN

Investigation revealed that criterion (3) has not been met. Aggregate U.S. imports of magnet wire are negligible.

TA-W-8740; American Stamping Co., Euclid, OH

Investigation revealed that criterion (3) has not been met. A survey of customers of the subject firm indicated that increased imports did not contribute importantly to sales declines and worker separations at the subject firm.

TA-W-10,656; A. O. Smith Corp., Royal Oak, MI

Investigation revealed that criterion (3) has not been met. The Royal Oak Plant performs support operations for plants of A. O. Smith Corporation for which no active adjustment assistance certification exists.

TA-W-10,216; Delavan Industries, Inc., Buffalo, NY

Investigation revealed that criterion (3) has not been met. Aggregate U.S. imports of auto transport trailers are negligible.

TA-W-8692; Grand Haven Stamped Products Co., Grand Haven, MI

Investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-10,728 & 10,729; Northwest Steel Rolling Mills, Inc.; Seattle, WA and Kent, WA

Investigation revealed that criterion (3) has not been met. Aggregate U.S. imports of reinforcing bar did not increase as required for certification.

TA-W-9126 & 9127; Orcomatic, Inc., Statford and Norwich, CT

Investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-8407; Variety Stamping Corp., Cleveland, OH

Investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-8376; Mickey's Clam, Inc., New York, NY

Investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-8772; ITT Higbie Mfg. Co., Archbold, OH

Investigation revealed that criterion (3) has not been met. A survey of customers of the subject firm indicated that increased imports did not contribute importantly to sales declines and worker separations at the firm.

TA-W-10, Firestone Tire and Rubber Co., Salinas, CA

Investigation revealed that criterion (3) has not been met. A survey of customers of the subject firm indicated that increased imports did not contribute importantly to sales declines and worker separations at the firm.

TA-W-8161, 8162, 8163, 8164, & 8165; L&K Co., Inc. and Xylographics, Shelby, NC; L&K Sewing, Inc., Hickory, NC; Gaftan Sportswear, Inc., Gaffney, SC and Jonesville, SC

Investigation revealed that criterion (3) has not been met. A survey of customers of the subject firm indicated that increased imports did not contribute importantly to sales declines and worker separations at the firm.

TA-W-9318; Edgerton Mfg. Inc., Edgerton, OH

Investigation revealed that criterion (3) has not been met. A survey of customers of the subject firm indicated that increased imports did not contribute importantly to sales declines and worker separations at the firm.

TA-W-8650; Dube J.D.R. Knitting Mills Corp., Brooklyn, NY

Investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-8351; United Technologies Corp., Atlanta, MI

Investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-10,852; Cannelton, Industries, Inc., Lady Dunn Div., Cannelton, WV

Investigation revealed that criterion (3) has not been met. All coal mined by the subject facility is exported to Canada and therefore cannot be adversely affected by increased imports.

TA-W-10,613; Electro Finishing Inc., Inc., Oak Park, MI

Investigation revealed that criterion (3) has not been met. The workers' firm does not produce an article as required for certification.

TA-W-10,404; Standard Steel Treating Co., Detroit, MI

Investigation revealed that criterion (3) has not been met. The workers' firm does not produce an article as required for certification under Section 223 of the Trade Act of 1974.

TA-W-9115 & 9115A; M. Hoffman and Co., Inc.; South Hackensack, NJ and Boston, MA

Investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-8958 & 10,350; Salty's Caps and Apparel, Inc. (DBA Salty's Apparel, Inc.); Fort Worth, TX and Spur, TX

Investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-8345; Wolverine Products, Inc., Warren, MI

Investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-10,378; Stein, Inc., Cleveland, OH

Investigation revealed that criterion (3) has not been met. Aggregate U.S. imports of scrap are negligible.

TA-W-10,305: Frazier Company, Inc., Cincinnati, OH

Investigation revealed that the workers do not produce an article as required for certification under Section 223 of the Act.

TA-W-9588; Tenneco Chemicals, Inc., Burlington, NJ

Investigation revealed that criterion (3) has not been met. Aggregate U.S. imports of PVC resins did not increase as required for certification.

TA-W-10,996; Wallover Oil Co., East Liverpool, OH

Investigation revealed that criterion (3) has not been met. Aggregate U.S. imports of lubricants did not increase as required for certification.

TA-W-8977 & 9024; Burlington Dress Co., Inc.; Atlantic City, NJ and Burlington, NJ

Investigation revealed that criterion (3) has not been met. Sales by the manufacturers for which the subject firm produced under contract increased.

TA-W-9718; Evans Products Co., Gagetown, MI

Investigation revealed that criterion (3) has not been met. Aggregate U.S. imports of material handling containers are negligible.

TA-W-8046; General Tire and Rubber Co., Ionia, MI

Investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-8409; Prestolite Electronics, Decatur, AR

Investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-9674; Onan Corp., Huntsville, AL

Investigation revealed that criterion (3) has not been met. Aggregate U.S. imports of gasoline-powered engines and power generator sets are negligible.

TA-W-8602 & 9307; Active Products Corp., Marion, IN and Active Industries, Inc., Elkton, MI

Investigation revealed that criterion (3) has not been met. A survey of

customers indicated that increased imports did not contribute importantly to worker separations at the firm.

Affirmative Determinations

TA–W–8125; Magda Fashions, New York, NY

A certification was issued applicable to all workers at the subject firm separated on or after April 30, 1979.

TA–W–7957, 7957A, & 10,464; Everlock Detroit, Inc.; Mt. Clemens, MI; Troy, MI; and Sterling Heights, MI

A certification was issued covering all workers of the firm separated on or after August 21, 1979.

TA–W–8697 & 8697A; Amsterdam, Inc., Amsterdam, NY

A certification was issued covering all workers of the firm separated on or after May 28, 1979.

TA–W–10,170 & 10,174; Crown Leather Finishing, Johnstown, NY and Risedorph, Inc., Gloversville, NY

A certification was issued covering all workers of the firm separated on or after July 29, 1979 and before March 31, 1980.

TA–W–10,156 & 10,157; Karg Brothers, Inc., Johnstown, NY and Karg Finishing, Johnstown, NY

A certification was issued covering all workers of the firm separated on or after July 31, 1979 and before March 31, 1980.

TA–W–9758; Top Look Leather Fashions, Inc., New York, NY

A certification was issued covering all workers at the subject firm separated on or after July 27, 1979.

I hereby certify that the aforementioned determinations were issued during December 8–12, 1980. Copies of these determinations are available for inspection in Room S–5314, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, D.C. 20210 during normal working hours or will be mailed to persons who write to the above address.

Dated: December 15, 1980.

Harold A. Bratt,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 80-39351 Filed 12-18-80; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-11,375]

Martha Manning Co., Inc.; Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on October 20, 1980 in response to a worker petition received on October 15, 1980 which was filed by the International Ladies' Garment Workers' Union on behalf of workers and former workers producing ladies' sportswear and dresses at the Mascoutah, Illinois plant of Martha Manning Company, Incorporated.

On June 3, 1980, a petition was filed on behalf of the same group of workers (TA–W–8965).

Since the identical group of workers is the subject of the ongoing investigation TA–W–8965, a new investigation would serve no purpose. Consequently, the investigation has been terminated.

Signed at Washington, D.C. this 9th day of December 1980.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 80-39359 Filed 12-18-80; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-10,600]

Star Screw Products; Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on September 8, 1980, in response to a petition received on August 29, 1980, which was filed on behalf of workers at Star Screw Products, Wyandotte, Michigan. The workers produce screw machine products.

The petitioning company official requested in a letter that the petition be withdrawn. On the basis of this request, continuing the investigation would serve no purpose. Consequently, the investigation has been terminated.

Signed at Washington, D.C. this 9th day of December 1980.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 80-39360 Filed 12-18-80; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-10,241]

Holiday Chrysler-Plymouth, Incorporated; Negative Determination Regarding Application for Reconsideration

By letter of October 23, 1980 (copy attached), one of the petitioners for the workers requested administrative reconsideration of the Department of Labor's Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance in the case of former workers of that company. The determination was published in the Federal Register on October 3, 1980 (45 FR 65701).

Pursuant to 29 CFR 90.18(c), reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts previously considered; or

(3) If, in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justifies reconsideration of the decision.

The petitioner notes that although workers at Holiday Chrysler-Plymouth were denied certification because they did not produce an article the petitioner nevertheless believes that Holiday Chrysler-Plymouth went out of business because of foreign imports of automobiles.

The Department's review showed that Holiday Chrysler-Plymouth is engaged in providing the service of selling and servicing Chrysler and Plymouth automobiles in Elyria, Ohio and, as such, does not produce an article within the meaning of section 222(3) of the Trade Act.

The Department recognizes the relationship between the loss of jobs in independent car dealerships and increased imports of foreign-made cars. However, such a relationship does not provide a basis for the Department to certify the dealership workers under the Trade Act of 1974.

The petitioner's claim does not address the basis upon which the Department's denial is predicated. Since workers at Holiday Chrysler-Plymouth do not produce an article, they may be certified only if the Chrysler Corporation is the "workers' firm" within the meaning of section 222 of the Trade Act. Chrysler may be determined to be the "workers' firm" if Chrysler and Holiday Chrysler-Plymouth are related by ownership or by a substantial degree of proprietary control, or if the workers are *de facto* employees of Chrysler. Chrysler is not the "workers' firm" under either test. There is no element of ownership or control between the firms. The workers also are not *de facto* employees of Chrysler since all payroll transactions, personnel actions and employee benefits are under the control of Holiday Chrysler-Plymouth. Further, the fact that Chrysler leases the facilities to Holiday Chrysler-Plymouth and is the sole supplier of autos to Holiday Chrysler-Plymouth is not sufficient in itself to support a

determination that Chrysler is the "workers' firm."

Conclusion

After review of the application and the investigative file, I conclude that there has been no error or misinterpretation of the law which would justify reconsideration of the Department of Labor's prior decision. The application is, therefore, denied.

Signed at Washington, D.C., this 11th day of December 1980.

Harry J. Gilman,

Supervisory International Economist, Office of Foreign Economic Research.

[FR Doc. 80-39490 Filed 12-18-80; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-10,719]

Litton UHS; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on September 15, 1980, in response to a worker petition received on July 16, 1980, which was filed by officials of PR Parts and Systems, Incorporated on behalf of workers and former workers producing conveyer systems at Litton UHS, Lathrup Village, Michigan.

Since the petitioners, officials of PR Parts and Systems, Incorporated are not authorized representatives of workers at Litton UHS, this investigation has been terminated.

Signed at Washington, D.C., this 11th day of December 1980.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 80-39491 Filed 12-18-80; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-11,643]

Pilot Knob Pellet Co.; Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on November 10, 1980, in response to a worker petition received on November 3, 1980, which was filed by the United Steelworkers of America on behalf of workers and former workers producing iron ore pellets at the Pilot Knob Pellet Company, Ironton, Missouri.

On October 10, 1980, a petition was filed on behalf of the same group of workers (TA-W-11,328).

Since the identical group of workers is the subject of the ongoing investigation TA-W-11,328, a new investigation would serve no purpose. Consequently, the investigation has been terminated.

Signed at Washington, D.C., this 11th day of December 1980.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 80-39492 Filed 12-18-80; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-11,263]

Willow Run Rubber and Lining Company, Inc., Farmington, Michigan; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on October 14, 1980 in response to a worker petition received on October 3, 1980 which was filed on behalf of workers and former workers producing 8 cylinder distributor caps at Willow Run Rubber and Lining Company, Incorporated, Farmington, Michigan.

On August 25, 1980, a petition was filed on behalf of the same group of workers (TA-W-10,529). Since the identical group of workers is the subject of the ongoing investigation TA-W-10,529, a new investigation would serve no purpose. Consequently, the investigation has been terminated.

Signed at Washington, D.C. this 9th day of December 1980.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 80-39361 Filed 12-18-80; 8:45 am]

BILLING CODE 4510-28-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 80-83]

Intent To Grant Exclusive Patent License

Notice is hereby given that consideration is being given to the grant to Combined Technologies of Nashville, Tennessee, of a limited, exclusive, revocable license to practice the invention described in U.S. Patent No. 3,532,807 for "Automatic Closed Circuit Television Arc Guidance Control" issued October 6, 1970, to the Administrator of the National Aeronautics and Space Administration on behalf of the United States of America. The proposed exclusive license will be for a limited number of years and will contain appropriate terms and conditions to be negotiated in accordance with the NASA Patent Licensing Regulations, 14 CFR 1245.2, as revised April 1, 1972. NASA will negotiate the final terms and conditions and grant the exclusive license unless, within 30 days of the date of this Notice, the Chairperson, Inventions and Contributions Board, NASA, Washington, DC., 20546, receives in writing either of the following, together with supporting documentation: (i) a statement from any person setting forth reasons why it would not be in the best interest of the United States to grant the proposed exclusive license; or (ii) an application for a nonexclusive license under such invention, in accordance with § 1245.206(b), in which applicant states that he has already brought or is likely to bring the invention to practical application within a reasonable period. The Board will review all written responses to the Notice and then recommend to the Administrator whether to grant the exclusive license.

Dated: December 8, 1980.

S. Neil Hosenball,

General Counsel.

[FR Doc. 80-39393 Filed 12-18-80; 8:45 am]

BILLING CODE 7510-01-M

NUCLEAR REGULATORY COMMISSON

[Docket No. 50-322A]

Long Island Lighting Co.; Receipt of Updated Information for Antitrust Review of Operating License Application

Note.—This document originally appeared in the Federal Register for Friday, December 12, 1980. It is reprinted in this issue at the request of the agency.

The Long Island Lighting Company filed updated information for Antitrust Review of an Operating License Application, dated September 30, 1980. The original submission of information for the antitrust review of the operating license application was filed by letter, dated January 12, 1976. This information was filed pursuant to 2.101 of the Commission's Rules and Regulations and is in connection with the plans of Long Island Lighting Company to operate a boiling water reactor located on the north shore of Long Island, the State of New York, County of Suffolk, in the town of Brookhaven. The reactor has been designated as the Shoreham Nuclear Power Station, Unit 1.

The portion of the application filed contains updated antitrust information for review pursuant to NRC Regulatory Guide 9.3 to determine whether there have been any significant changes since the completion of the antitrust review at the construction permit stage.

On completion of staff antitrust review of the above-named application,

the Director, Office of Nuclear Reactor Regulation will issue an initial finding as to whether there hasve been "significant changes" under section 105c(2) of the Act. A copy of this finding will be published in the Federal Register and will be sent to the Washington, D.C., and local public document room and to those persons providing comments or information in response to this notice. If the initial finding concludes that there have not been any significant changes, request for reevaluation may be submitted for a period of 60 days after the date of the Federal Register notice. The results of any reevaluation that are requested will also be published in the Federal Register and copies sent to the Washington, D.C., and local public document room.

A copy of the updated information for Antitrust Review for an Operating License Application is available for public examination and copying for a fee at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. and at the local public document room in the Shoreham—Wading River Public Library, Route 25A, Shoreham, New York 11786.

Any person who desires additional information regarding the matter covered by this notice or who wishes to have his views considered with respect to significant changes related to antitrust matters which have occurred in the licensee's activities since the construction permit antitrust review for the above-named plant should submit such requests for information or views to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555 Attention: Chief, Utility Finance Branch, Office of Nuclear Reactor Regulation, on or before February 10, 1981.

Dated at Bethesda, Maryland, this 3rd day of December, 1980.

For the Nuclear Regulatory Commission.

B. J. Youngblood,

Chief, Licensing Branch No. 1, Division of Licensing.

[FR Doc. 80-38401 Filed 12-11-80; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF MANAGEMENT AND BUDGET

Federal Domestic Assistance Program Information

AGENCY: Office of Management and Budget.

ACTION: Request for public comment.

SUMMARY: The Office of Management and Budget (OMB) is requesting comments on OMB Circular No. A-89 which is hereby revised to further implement the requirements of the Federal Program Information Act (Public Law 95-220). The circular prescribes the manner in which OMB and executive branch agencies that administer domestic assistance programs are to carry out their responsibilities under the Act.

DATE: Comments must be received on or before February 6, 1981.

ADDRESS: Please send comments concerning this request to the Federal Program Information Branch, Room 6001, Office of Management and Budget, Washington, D.C. 20503, Telephone No. (202) 395-3112.

SUPPLEMENTARY INFORMATION: Public comment is invited on the proposed circular. Comments should be sent to the address above and must be received by February 6, 1981. The response time for comments has been reduced to allow the final version of the circular and the 1981 Catalog of Federal Domestic Assistance to produced on schedule. All comments received by the closing date will be considered in preparation of the final version.

Robert Brown,

Chief, Federal Program Information Branch.

[Circular No. A-89 Revised]

Federal Domestic Assistance Program Information

1. *Purpose.* This revised Circular supersedes Circular No. A-89, dated December 31, 1970. It provides the basis for a systematic and periodic collection and uniform submission of information on all federally financed domestic assistance programs to the Office of Management and Budget (OMB) by Federal agencies. It also establishes Federal policies related to the delivery of this information to the public, including through the use of electronic media. The policies and responsibilities established by this circular apply to all executive departments and agencies as defined by Section 551(1) of Title 5, United States Code.

The information system established by this circular is designed to assist in identifying the types of Federal domestic assistance available, describing eligibility requirements for the particular assistance being sought and providing guidance on how to apply for specific types of assistance. In addition, it is intended to improve coordination and communication between the Federal Government and State and local governments.

2. *Rescissions.* The revised circular supersedes OMB Circular No. A-89 dated December 31, 1970, and Transmittal Memorandum No. 1, dated June 25, 1980.

3. *Authority.* The Federal Program Information Act (Pub. L. 95-220) was signed into law in December 1977. This Act provides for "the efficient and regular distribution of current information on Federal domestic assistance programs." The Act makes the Director of the Office of Management and Budget responsible for carrying out this function, outlines his duties in doing so, and directs Federal agencies to furnish information on their domestic assistance programs to the Director. It is the compelling mandate for the collection and distribution of current information on Federal domestic assistance programs.

4. *Background.* The requirements contained in this circular are a revision of those prescribed by OMB Circular No. A-89, dated December 31, 1970. The circular prescribes the manner in which OMB and executive branch agencies that administer domestic assistance programs are to carry out their statutory responsibilities under the Federal Program Information Act.

5. *Policy.* Comprehensive information on all Federal domestic assistance programs will be maintained by the Office of Management and Budget. Using that information as the source, *a Catalog of Federal Domestic Assistance* will be prepared and issued annually and updated periodically and a computerized retrieval system, the Federal Assistance Programs Retrieval System (FAPRS), will be maintained and updated by the Office of Management and Budget.

Executive branch agencies shall submit to OMB on a timely basis and in accordance with instructions provided by OMB, information on all domestic assistance programs and activities that are federally funded and that are administered by such agency.

The Catalog of Federal Domestic Assistance will be the single, authoritative, Government-wide comprehensive source document of Federal domestic assistance program information produced by the executive branch of the Federal Government. The Catalog is a guide to all domestic assistance programs and activities regardless of dollar size or duration. Specifically, these programs include general purpose aid to States and localities (general revenue sharing and shared revenues); payments in lieu of taxes; assistance to State and local governments to finance essential public services and productivity efforts; indirect assistance or benefits resulting from Federal operations; and automatic payments for which no application process is required. Any other executive branch publication that describes a group of Federal domestic assistance programs is considered a specialized catalog. Publications containing comprehensive descriptions of individual programs that specify application guidelines, administrative requirements, and other details, and pamphlets or leaflets containing conventional public information of a generalized nature are not considered specialized catalogs. Unless otherwise required by law, specialized catalogs may be published only when specifically authorized and developed within the following guidelines and criteria:

(1) Proposals for the development and publication of any specialized catalog of Federal domestic assistance programs will be submitted to the Office of Management and Budget for approval in the conceptual planning stages. The request for clearance will include full justification of the need for such a specialized catalog and will clearly indicate why the particular need cannot be

adequately served by the currently available "Catalog of Federal Domestic Assistance."

(2) Whenever feasible, justifiable ad hoc needs of an agency will be satisfied by the development of specialized user guides or supplements to material contained in the currently available "Catalog of Federal Domestic Assistance" in lieu of developing completely separate catalogs. Continuing needs for this type of information will generally be met by changes to the indexing schemes or substantive content of the "Catalog of Federal Domestic Assistance." Agencies will advise the Office of Management and Budget of their needs and proposed efforts in this area.

6. *Definitions.* For the purpose of this circular, the following definitions shall apply:

a. A "Federal domestic assistance program" is any function of a Federal Agency that provides assistance or benefits for a State or States, territorial possession, county, city, other political subdivision, grouping, or instrumentality thereof; any domestic profit or nonprofit corporation, institution, or individual, other than an agency of the Federal Government. A Federal domestic assistance program may in practice be called a program, an activity, a service, a project, a process, or some other name, regardless of whether it is identified as a separate program by statute or regulation. It will be identified in terms of its legal authority, administering office, funding, purpose, benefits, and beneficiaries.

b. "Assistance" or "benefits" refers to the transfer of money, property, services, or anything of value, the principal purpose of which is to accomplish a public purpose of support or stimulation authorized by Federal statute. Assistance includes, but is not limited to grants, loans, loan guarantees, scholarships, mortgage loans, insurance, and other types of financial assistance; provision or donation of Federal facilities, goods, services, property, technical assistance, counseling, statistical, and other expert information; and service activities of regulatory agencies. It does not include provision of conventional public information services.

c. Federal agency means any agency as defined by Section 551(1) of Title 5, United States Code.

d. Administering office means the lowest subdivision of any Federal agency that has direct operational responsibility for managing a Federal domestic assistance program.

7. *Action Requirements.* The head of each executive department and establishment shall establish internal policies, procedures, and responsibilities to implement the policies contained in this circular and shall provide overall direction for establishing a mechanism for collecting, coordinating, and submitting current program information.

In particular, the head of each executive department and establishment shall be responsible for assuring that information on each domestic assistance program administered by such agency is collected, maintained, and submitted to OMB. This includes narrative and financial program information on all funded programs as defined and outlined in special reporting instructions transmitted by OMB to the agencies and departments.

Toward this end, each agency shall:

a. Establish procedures of administrative control to assure the adequacy and timeliness of program information collected and submitted.

b. Designate a single office within the department or agency to:

Monitor and coordinate the federally funded domestic assistance program information of the agency;

Maintain a complete inventory of all funded programs that is derived from the basic program data of the individual agency information system. This inventory shall include information on one-time programs and programs of short duration, as well as on continuing programs; and

Assure that all new and amended program information shall contain the official OMB program number and title when published in the Federal Register as any type of Federal assistance program announcement. This includes but is not limited to entries published as final regulations and amendments under the Rules and Regulation Section, as well as notices of any kind pertaining to ongoing programs.

c. Request prior approval for the preparation, publication, and distribution of all specialized catalogs or supplements, except where there is statutory authorization for such catalogs or supplements. Any proposed specialized catalog format must be as nearly identical to the Catalog format as possible in order to eliminate inconsistencies in program data reporting. Anticipated continuous need for a particular type of information will be conveyed to OMB for consideration of Catalog reformatting to accommodate such requirements.

8. *OMB Responsibilities.* OMB is responsible for maintaining an efficient and effective program information system. Toward this end, OMB shall:

a. Issue detailed reporting instructions to Federal agencies and departments governing the collection of information needed for the Federal assistance information data base.

b. Maintain an information data base of Federal domestic assistance programs and activities.

c. Provide information to the general public through a printed catalog and electronic media on all Federal domestic assistance programs.

d. Plan and make improvements in the information data base and continue to seek ways to disseminate the information.

For each Federal domestic assistance program, the data base will include but not be limited to the following information:

a. Program and title.

b. Popular name, if applicable.

c. Federal department/agency or independent agency and primary organizational subunit administering the program.

d. Authorizing legislation, including popular name of the act, titles and sections, public law number, citation to the U.S. Code, and statute.

e. Objectives and goals of the program.

f. Type(s) of financial and nonfinancial assistance offered by the program.

g. Uses and restrictions placed upon a program.

h. Eligibility requirements, including applicant eligibility criteria, beneficiary eligibility criteria and required credentials and/or documentation.

i. Application and award processing, containing preapplication coordination; application and award procedure; application deadlines; range of approval/disapproval time; appeal procedure; and availability of a renewal or extension of assistance. Most circular coordination requirements are included in this section.

j. Assistance considerations, including an explanation of the award formula and matching requirements and the length and time phasing of the assistance.

k. Post assistance requirements, including any reports, audits, and records that may be required.

l. Financial assistance, containing the 11-digit account identification code; obligations for the past fiscal year and estimates for the current fiscal year and for the budget year; and a range and average of financial assistance.

m. Program accomplishments (where available), describing quantitative measures of program performance.

n. Regulations, guidelines, and literature containing citations to the Code of Federal Regulations and other pertinent informational materials.

o. The names of persons to be contacted (or telephone number) for detailed program information at the headquarters, regional, and local levels.

p. Programs that are related based upon objectives and uses.

q. Examples of funded projects to indicate proposals that are acceptable under particular programs, and

r. Criteria used in selecting proposals for award, i.e., additional information on application review and award procedure.

The Catalog will contain but not be limited to the following:

a. An introductory section that contains the Catalog highlights, an explanation of the Federal Assistance Programs Retrieval System, a section on how to use the Catalog, an explanation of the Catalog and its contents, and suggested proposal writing methods and grant application procedures.

b. A comprehensive indexing system that categorizes programs by their agency, eligible applicant, application deadlines, function, popular name, and subject area.

c. Listings showing the programs that have been deleted from or added to the Catalog and the various program number and title changes.

d. Program descriptions that will contain the information included in the Federal domestic assistance information data base.

e. Comprehensive appendices showing Federal assistance programs that require coordination through the system of Federal circulars, legislative and Executive Order authority for each program, commonly used abbreviations and acronyms, agency regional and local office addresses, and sources of additional information contacts.

The Catalog is issued as a complete looseleaf document in the spring of each year and updated periodically to accommodate subsequent changes in specifically selected

information. As required by the Act, OMB distributes free copies of the Catalog to Federal, State and local government offices. At the national level copies are provided to: Members of Congress, congressional staff, and executive branch agencies. At the State level, copies of the Catalog are provided to: Governors, State coordinators of Federal-State relations, Directors of State Departments of Administration and Budget Offices, Directors of State Departments of Community Affairs, Directors of State Planning Agencies, State clearinghouses, State Central Information Reception Agencies, Directors of State Agricultural Extension Services, State Municipal Leagues, State Association of Counties, chief State school officers, and State Employment Security Agencies. At the local level, copies are provided to: Mayors, County Chairmen, Chairmen of Boards of Commissioners, and city planners. Copies are also provided to the Federal Information Centers, Federal Regional Councils, Federal Executive Boards, Federal Depository Libraries and appropriate field and area offices of most Federal agencies. The Catalog is also provided to other agencies of State and local governments.

The Catalog is sold on a subscription basis to private individuals and organizations not specified above. The purchaser is entitled to issues at a subscription rate determined by the Public Printer. The Catalog is distributed by the Superintendent of Documents, U.S. Government Printing Office, as required by Section 1902 of Title 44 of the United States Code.

The Federal Assistance Programs Retrieval System (FAPRS) is an electronic medium of information dissemination, a computerized retrieval system that provides access to the data base of programs that are in the Catalog. The purpose of this system is to help the public identify sources of Federal assistance.

FAPRS operates on a question and answer format to retrieve information on applicable programs. It does this by matching the characteristics of a community and its needs (which are supplied by the prospective applicant) with Federal programs (identified by title and number) that might provide assistance to meet those needs. FAPRS serves as a research tool to help reduce the manual effort required (when using the Catalog) to identify Federal programs useful to a potential applicant.

9. *Information Contact.* Further information can be obtained by contacting the Federal Program Information Branch, Budget Review Division, Office of Management and Budget, Washington, D.C. 20503, telephone (202) 395-3112.

10. *Sunset Review Date.* The provisions of the circular are effective upon issuance. The policies promulgated in this circular will be reviewed no later than three years from date of issuance.

James T. McIntyre, Jr.,

Director.

[FR Doc. 80-39400 Filed 12-18-80; 8:45 am]

BILLING CODE 3110-01-M

Federal Support for Hospital Construction in Overbedded Areas

December 8, 1980.

SUMMARY: This memorandum establishes policies and procedures to limit Federal financial support for the construction of hospitals in overbedded areas. The policy for Federal hospitals is that no new or replacement hospitals will be built in an overbedded area unless suitable, existing, non-Federal facilities cannot reasonably be acquired through purchase or lease. The policy for non-Federal facilities is that no Federal grants, loans, loan subsidies, or loan guarantees will be provided for hospital construction or renovation in an overbedded area, unless the proposed project is consistent with an approved local hospital facility plan or the Secretary of Health and Human Services (HHS) determines that it is necessary. In addition, legislation and regulations will be proposed to revise the current Medicare and Medicaid reimbursement policies for costs related to hospital construction or renovation. Finally, legislation will be proposed to revise Federal tax exempt bond financing for hospital construction and renovation in overbedded areas. This memorandum also prescribes agency responsibilities and procedures for implementing these policies.

EFFECTIVE DATE: December 19, 1980.

FOR FURTHER INFORMATION CONTACT: Mr. Lynn Etheredge, Chief, Health Branch, Office of Management and Budget, Room 7002, New Executive Office Building, 726 Jackson Place, NW., Washington, D.C. 20503, (202) 395-4600.

SUPPLEMENTARY INFORMATION: On June 17, 1980, a proposed memorandum to establish new procedures regarding Federal support for hospital construction was published in the Federal Register (45 FR 41098-41099). The proposed memorandum set forth guidance from the Director of the Office of Management and Budget (OMB) to the heads of the Federal departments and agencies that administer programs which support construction and renovation of Federal and non-Federal hospitals. Interested persons were invited to submit written comments on or before July 17, 1980. By July 17, 218 comments had been received. An additional 55 comments were received after the deadline. All of the comments were considered in developing the final memorandum.

The major themes stressed in the comments and OMB's responses are set forth below.

Coverage of Federal facilities. Twenty-one public comments on the proposed memorandum advocated that the Administration adopt much stronger measures to limit the Veterans Administration's (VA) hospital system, including mandatory review of proposed VA hospital construction by State and local health planning agencies and requiring VA to use contract care for veterans living in overbedded areas. We have not accepted these recommendations. The Administration is committed to the integrity of the VA health care system, and we believe that the budget process and this memorandum provide for adequate review of VA's hospital system under policies established by the President.

Forth-nine comments objected to coverage of the VA by the proposed memorandum. These comments stressed that the VA's special mission and needs required that its hospital construction program should be carried out without regard for whether an area has an excess supply of non-VA beds. Four comments also were concerned that the proposed policies could adversely impact on the VA hospital system by requiring acquisition of unsuitable facilities or limiting the VA's ability to manage its hospitals.

OMB does not concur that the proposed memorandum will have adverse consequences for the VA hospital system or for the nation's veterans. The proposed policies would not affect either the capacity of the system or the VA's ability to manage its hospitals. If a decision were made that a new or replacement VA hospital were needed in an overbedded area, this memorandum would require the VA to determine if it could reasonably purchase or lease a suitable non-Federal facility for operation as a VA hospital as an altenative to construction. The VA will establish criteria for determining whether such suitable facilities are available.

These policies were developed through consultation with the VA and were endorsed by them. Moreover, these policies achieve two important objectives. First, they can result in a more rapid acquisition of needed hospital capacity than the lengthy process of constructing a new hospital. Second, these policies provide for mixing such an acquisition in a way that eliminates unneeded non-Federal hospital capacity—at considerable savings to residents of overbedded areas, including veterans and their families—and puts these resources to use to provide needed care for veterans.

After considering the varying views on these questions, we have not amended the memorandum's requirements.

Relation to State and local health planning agencies. Fifteen comments supported the policy of limiting Federal support for hospital construction in overbedded areas, but observed that the OMB memorandum seemed to abandon the local health planning effort and cause a more federalized health care system.

The intent of this hospital construction policy is quite the opposite. The policy is intended to apply the discipline of the local and State health planning process to Federal activities so that Federal funding supports health planning objectives. Implementation of the policy will strengthen the local and State health planning process by using its determinations of necessity and overbedding as key criteria in Federal funding decisions.

Seventeen comments also emphasized concern that the OMB memorandum will add an unnecessary layer of Federal review for capital expenditure proposals. We do not agree with this argument. The Federal Government has a special obligation to assure that Federal funds do not contribute to inflation in health care costs by supporting unnecessary hospital construction in overbedded areas. This requires a determination of whether areas are overbedded and whether proposed projects meet health planning criteria. The memorandum specifies that the Federal Government will rely completely on State and local planning agencies for such decisions where the planning for facility needs is acceptable to HHS. Where such planning is not fully acceptable, an HHS determination will be needed. It is intended, however, that such necessary HHS determinations will be made after full consideration of information and recommendations from State and local health planning agencies. The memorandum has been revised to require such consultation and to clarify that the HHS individual project review will be phased out as rapidly as permitted by the development of effective State and local health facilities planning.

Fifteen comments emphasized the need to define acceptable hospital facility plans and inquired how the facility plans related to requirements in Title XV of the Public Health Service Act to prepare local and State health plans. These issues will be addressed in the Department of Health and Human Services implementing criteria and procedures that are required to be submitted to OMB within 30 days.

Five comments, including two from national health organizations, suggested that the agency criteria, standards and procedures required by the OMB memorandum be made available for discussion with interested parties. Major national health organizations will be invited to discuss these materials and proposed regulation changes will be published for public comment in the Federal Register.

Four comments also expressed concern that the 30-day period allowed for submission of these documents would be too short for these agencies to prepare useful criteria. We do not concur that the 30 days will prevent timely submissions, since the agencies have been participating in the development of the hospital construction policy for over one year and have been preparing for implementation since publication of the draft memorandum in the June 17, 1980, Federal Register.

Determination of overbedded rural areas. Thirty-two comments were concerned about the impact on rural areas of the health planning guidelines used to define an overbedded area. One comment noted that the apparently strict adherence to the 4 beds per 1,000 population and 80 percent occupancy rate standards "does not take into account the rural nature of the greater part of the United States."

We stress that the hospital construction policy clearly recognizes the health care needs of rural areas. The OMB and agency implementing instructions will clearly reflect this policy and will provide ample means for considering local conditions and needs.

The OMB memorandum applies two of the 1978 National Guidelines for Health Planning to define an overbedded area—more than 4 short stay non-Federal hospital beds per 1,000 population or an average annual daily occupancy rate of 80 percent or less. The memorandum also provides that alternative standards for determining whether an area is overbedded may be established by a State Health Planning and Development Agency (SHPDA), subject to approval by HHS. Such alternative standards include but are not limited to the specific conditions stated in the regulations implementing the national guidelines that may justify adjustments to the needs of a particular Health Service Area, namely, the age distribution of the population, seasonal population fluctuations, rural composition, urban composition, and areas with referral hospitals.

For rural areas in particular, the HHS regulations implementing the guidelines (42 CFR Chapter I, Part 121, Subpart C) state that "Hospital care should be accessible within a reasonable period of time." Increased travel time may justify a bed-population ratio of greater than 4 beds per 1,000 population. Moreover, the regulations provide that "in rural areas with significant numbers of small hospitals (fewer than 4,000 admissions per year), an average occupancy rate of less than 80 percent may be justified, based on analysis by the HSA."

The intention of the OMB memorandum is to allow these considerations to be fully reflected in determining whether an area is overbedded. Thus, even if a rural area were overbedded in relation to the hospital bed/population and occupancy rate guidelines, the proposed policy is flexible enough so that alternative standards can be developed and applied as appropriate. The memorandum simply requires that a SHPDA propose such different standards to HHS for approval. We expect that, to the maximum extent possible, such alternative criteria will be developed and approved on a prospective basis as part of an overall plan for meeting the health care needs of rural and urban areas and will not require individual Federal project reviews. We have modified the memorandum to draw attention to the exceptions for rural areas already contained in the existing national health planning guidelines.

Financial impact on hospitals. Thirty-six comments stressed that implementation of the OMB memorandum would threaten the financial stability of many hospitals if further limits were placed on access to public capital markets (particularly tax-exempt bonds) and Medicare and Medicaid reimbursements. Two comments concluded that final implementation of the policies in the memorandum would bankrupt the hospital industry. Twenty comments concluded that the OMB memorandum would only eliminate lower cost financing alternatives and increase costs of the health care system, since higher construction costs would be passed on to the consumer and collected through higher third party reimbursements.

The proposed policies are directed at limiting unnecessary hospital expenditures and will not increase hospital costs for needed construction and renovation. These policies will, in fact, benefit most hospitals by targeting Federal assistance to necessary projects and by assuring better use of current underutilized hospital capacity. Moreover, there will be an opportunity for public presentation of views to Congress in considering legislative changes, e.g., for tax-exempt bond

financing and for Medicare and Medicaid reimbursements.

Gilbert S. Omenn,

Associate Director for Human Resources, Veterans and Labor.

December 15, 1980.

Memorandum to:

Secretary of the Treasury
Secretary of Defense
Secretary of the Interior
Secretary of Agriculture
Secretary of Commerce
Secretary of Health and Human Services
Secretary of Housing and Urban Development
Federal Cochairman, Appalachian Regional Commission
Administrator, Small Business Administration
Administrator, Veterans Administration

From: James T. McIntyre, Jr., Director.

Subject: Federal Support for Hospital Construction in Overbedded Areas.

1. Purpose. This Memorandum establishes policies for support of hospital construction and renovation in overbedded areas and procedures to implement these policies.

2. Background. Excess hospital capacity has been a major contributor to the escalation of health care costs. The Federal Government's activities continue to contribute to this problem through direct construction of Federal hospitals and through financial support for construction and renovation of non-Federal hospitals in areas where capacity is already excessive. For this reason, the President has directed that policies and procedures be established to limit Federal financial support for construction and renovation of hospitals in overbedded areas.

3. Coverage. These policies and procedures apply to the following departments and agencies which provide financing for hospital construction and renovation:

Department of Agriculture
Department of Commerce
Department of Defense
Department of Health and Human Services
Department of Housing and Urban Development
Department of the Interior
Department of the Treasury
Appalachian Regional Commission
Small Business Administration
Veterans Administration

4. Definitions. For purposes of this Memorandum, the following definitions will apply.

A. Overbedded Area. An overbedded area is a Health Service Area established under Section 1511 of the Public Health Service Act (42 U.S.C. 300l) which has more than 4 short-stay, non-Federal hospital beds per 1,000 individuals or has an annual average daily occupancy rate of 80% or less. Alternative standards for determining whether a Health Service Area is overbedded may be established by a State Health Planning and Development Agency, subject to approval by the Secretary of Health and Human Services (HHS). Such alternative standards shall be acceptable if they are adequately justified on the basis of adjustments to the National Guidelines for Health Planning for bed supply and occupancy rates in 42 CFR, Chapter 1, Part 121, Subpart C. These adjustments explicitly allow for recognizing special needs of rural areas.

B. Health Service Area/State Health Planning and Development Agency (SHPDA)/Health Systems Agency (HSA). Such areas and agencies as are so designed pursuant to Title XV of the Public Health Service Act (42 U.S.C. 300 k–l, *et seq.*).

C. Construction/Renovation. (1) Construction is building a new hospital or expanding the inpatient bed capacity of an existing hospital. (2) Renovation is alteration, remodeling or major repair of an existing hospital facility.

D. Non-Federal Hospital. A hospital not owned or operated by a department or agency of the Federal Government.

E. Short-Stay, Non-Federal Hospital Bed. Short-stay, non-Federal hospital beds include all non-Federal short-stay hospital beds, i.e., general medical/surgical, children's, obstetric, psychiatric, and other short-stay, specialized beds. A short-stay hospital bed is a hospital bed for which the average length of stay is less than 30 days.

F. Annual Average Daily Occupancy Rate. The annual average daily occupancy rate is the number of short-stay, non-Federal bed days used divided by the number of short-stay, non-Federal bed days available during a year.

5. Policies. The following policies shall govern Federal support for hospital construction and renovation in overbedded areas.

A. Federal hospitals. (1) No new or replacement Federal hospital shall be constructed in overbedded areas unless suitable existing non-Federal facilities cannot reasonably be acquired by the agency through purchase or lease for operation as Federal facilities. Determination of the suitability of such non-Federal facilities will include, but will not be limited to, whether they conform to, or can be economically modified, to meet the space, design and construction standards imposed on Federal facilities; and whether the agency maintains control of the facility's operations, management and quality assurance. (2) Exceptions to this policy may be requested if an agency can demonstrate that application of this policy would prevent acquisition and maintenance of sufficient beds to support a necessary initial defense mobilization capacity.

B. Non-Federal hospitals. (1) No Federal support through grants, loans, loan subsidies, or loan guarantees shall be provided for construction or renovation of non-Federal hospitals in overbedded areas, except in two circumstances:

(a) Federal support for construction or renovation may be provided to projects in health service areas where there is a hospital facilities plan approved by the SHPDA and the Secretary of Health and Human Services (HHS), if the SHPDA certifies that the project is consistent with the hospital facilities plan.

(b) For health service areas where there is no approved hospital facilities plan, Federal support for construction or renovation may be provided only if the Secretary of HHS determines that the health service area and facility are in need of the proposed construction or renovation. In making such determination, the Secretary of HHS shall give full consideration to information and recommendations from State and local health planning agencies.

(2) Legislation and regulations consistent with the above policies will be proposed to revise the current Medicare and Medicaid reimbursement policies for costs related to hospital construction or renovation.

(3) Legislation consistent with the above policies will be proposed to revise the current statutory provisions for Federal tax-exempt bond financing for hospital construction and renovation.

6. Implementation

A. Federal hospitals. (1) Each affected department or agency shall establish: (a) Procedures to insure that no Federal funds are obligated for the construction or new or replacement Federal hospital facilities in overbedded areas unless such projects are consistent with the policies established in this Memorandum; and (b) criteria and procedures for determining the availability of suitable existing non-

Federal facilities that may be purchased or leased.

(2) The Secretary of HHS shall establish procedures for providing timely notification to other Federal agencies of whether an area is currently overbedded or will be overbedded based upon current projections for population changes and planned hospital construction.

(3) Agency and HHS procedures and agency criteria will be submitted to OMB for approval within 30 days of the effective date of this Memorandum.

(4) The policies established by this Memorandum apply to all facilities for which construction funds have not been obligated as of the effective date of this Memorandum, unless such application is currently prohibited by statute. Exceptions may be considered for projects where site development funds have already been obligated. Such exceptions require OMB approval and must be requested by the agency no later than 30 days after final OMB approval of implementing procedures.

(5) Agencies shall not make budget proposals to fund Federal hospital construction that do not meet the policies set forth in this Memorandum. For each proposed hospital construction in an overbedded area, agency budget submissions to OMB shall include: a discussion of the need for the construction, a description of the overbedding situation in the relevant health service area and a detailed report on the consultations and studies that determined whether suitable existing non-Federal facilities can be acquired.

B. Non-Federal Hospitals.

(1) Each affected department or agency shall establish procedures to insure that no Federal funds are obligated for the construction or renovation of non-Federal hospitals in overbedded areas, unless such projects are consistent with the policies established in this Memorandum.

(2) These procedures shall rely on determination by SHPDAs and the Secretary of HHS of whether proposed construction or renovation is consistent with these policies.

(3) The Secretary of HHS shall establish procedures for providing timely notification of these determinations to other Federal agencies.

(4) The Secretary of HHS shall establish criteria and standards for acceptable hospital facilities plans and for determining when, in the absence of an approved hospital facilities plan, proposed construction or renovation may be eligible for Federal support. The Secretary of HHS shall work with the SHPDAs and HSAs to develop acceptable hospital facilities plans with the objective of phasing out the Federal project review system as expeditiously as possible.

(5) The Secretary of HHS shall recommend administrative and legislative proposals to revise current reimbursement policies for hospital construction and renovation costs through the Medicare and Medicaid programs in order to limit support for unnecessary construction and renovation of hospitals in overbedded areas.

(6) The agency and HHS procedures and the HHS criteria, standards and recommendations will be submitted to OMB for approval within 30 days of the effective date of this Memorandum.

(7) The policies established by this Memorandum shall apply to all hospital construction and renovation for which Federal funds have not been obligated as of the effective date of approved agency implementing procedures, unless such application is currently prohibited by statute.

(8) Agencies shall not make budget proposals to fund non-Federal hospital construction and renovation that do not meet the policies set forth in this Memorandum.

C. Rescissions, Deferrals and Budget Amendments. Agencies shall submit to OMB proposed rescissions, deferrals or budget amendments, as appropriate, for funds which cannot be obligated consistent with these policies.

D. Legislative proposals. Agencies which require new or amended statutory authority to implement these policies, such as for tax-exempt bond financing and Medicare and Medicaid capital reimbursement, shall submit to OMB, in accordance with the procedures set forth in OMB Circulars No. A-19 and No. A-70, proposed legislation to effect these statutory changes.

7. *Inquiries.* Questions concerning the policies established in this Memorandum may be addressed to the OMB Health Branch (Lynn Etheredge, 395-4600).

8. *Effective date.* The policies promulgated by this Memorandum are effective December 19, 1980.

James T. McIntyre, Jr.

Director, Office of Management and Budget.

[FR Doc. 80-39400 Filed 12-19-80; 8:45 am]

BILLING CODE 3110-01-M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. 11492; 811-2855]

Lehman Multi-Currency Assets Fund, Inc.; Filing of an Application Pursuant to Section 8(f) of the Act for an Order Declaring That Applicant Has Ceased to be an Investment Company

December 12, 1980.

Notice is hereby given that Lehman Multi-Currency Assets Fund, Inc. ("Applicant") 55 Water Street New York, New York 10041, an open-end, non-diversified, management investment company registered under the Investment Company Act of 1940 ("Act"), filed an application on October 23, 1980, for an order of the Commission, pursuant to Section 8(f) of the Act, declaring that Applicant has ceased to be an investment company. All interested persons are referred to the application on file with the Commission for a statement of the representation contained therein, which are summarized below.

Applicant was organized as a Maryland corporation. On July 31, 1978, Applicant registered under the Act and filed a registration statement pursuant to the Securities Act of 1933 with respect to an indefinite amount of shares of its common stock, par value $1.00 per share. Such registration was declared effective on December 6, 1978, and Applicant commenced the initial public offering of its shares in July of 1979.

On March 31, 1980, Applicant's board of directors, by unanimous vote, adopted resolutions authorizing the liquidation and dissolution of Applicant. The stockholders of Applicant approved such resolutions on May 20, 1980. Pursuant to the proposal for liquidation approved by Applicant's stockholders and upon expiration of the 60-day stockholder notice period prescribed by the Maryland General Corporation Law, Applicant distributed to all its stockholders a liquidating distribution equal to such stockholders' proportionate interests in Applicant's net assets. On June 11, 1980, Applicant filed articles of dissolution with the State of Maryland and, accordingly, Applicant has been dissolved under Maryland Law.

According to the application, Applicant has retained $375.00 of its assets in order to satisfy New York State and City Franchise Taxes for the fiscal year ended September 30, 1980, which are required to be paid on or before December 15, 1980. Applicant represents that it has no other assets and liabilities other than those described above, that it is not a party to

any litigation or administrative proceeding, and that it has no security holders. Applicant further represents that the expenses of liquidation amounted to about $5,859.00, approximately $515.00 of which was borne by Applcant's investment adviser, Lehman Management Co., Inc., with the remainder being allocated to Applicant's shareholders. Finally, Applicant states that it is not now engaged in, nor does it propose to engage in, any business activities other than those necessary for the winding up of its affairs.

Section 8(f) of the Act provides, in pertinent part, that when the Commission, upon application, finds that a registered investment company has ceased to be an investment company, it shall so declare by order, and that, upon the effectiveness of such order, the registration of such company shall cease to be in effect.

Notice is further given that any interested person may, not later than January 7, 1981, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the application accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personnally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 80-39508 Filed 12-18-80; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 21842; 70-6416]

Middle South Utilities, Inc. and Arkansas Power & Light Co.; Proposal To Extend Time Period During Which Subsidiary May Sell Common Stock to Its Parent

December 15, 1980.

Notice is hereby given that Middle South Utilities, Inc. ("Middle South"), 225 Baronne Street, New Orleans, Louisiana 70112, a registered holding company, and Arkansas Power & Light Company ("Arkansas"), Post Office Box 551, Little Rock, Arkansas 72203, an electric utility subsidiary of Middle South, have filed a post-effective amendment to an application-declaration previously filed with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Sections 6(b), 9(a), 10 and 12(f) of the Act and Rule 43 promulgated thereunder as applicable to the proposed transaction. All interested persons are referred to the amended application-declaration, which is summarized below, for a complete statement of the proposed transaction.

By an order dated March 25, 1980 in this matter (HCAR No. 21493) Arkansas was authorized to issue and sell to Middle South, from time to time during the 1980 calendar year, up to 5,600,000 shares of Arkansas' common stock, par value $12.50 per share. At December 1, 1980 Arkansas had issued and sold to Middle South 2,400,000 shares of common stock pursuant to such authorization for an aggregate price of $30,000,000. Arkansas had not sold the remaining 3,200,000 shares which it was previously authorized to sell in 1980 and does not intend to make such sales during 1980.

Arkansas and Middle South state that it is preferable that the sale of the remaining 3,200,000 shares of common stock be timed to coincide with Arkansas' cash needs from time to time during the 1981 calendar year. Such needs are determined primarily by the nature and pace of Arkansas' construction program. Accordingly, it is proposed that the time during which Arkansas may sell the remaining 3,200,000 common shares to Middle South be extended through the 1981 calendar year, such sales to occur in such installments and at such times as will be determined by Arkansas and Middle South.

The fees, commissions and expenses to be incurred in connection with the proposed transaction are estimated not to exceed $2,000. It is stated that the Arkansas Public Service Commission and the Tennessee Public Service Commission have jurisdiction over the proposed transaction. It is stated that no other state or federal regulatory authority, other than this Commission, has jurisdiction over the proposed transaction.

Notice is further given that any interested person may, not later than January 8, 1981, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by the filing which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicants-declarants at the above-stated addresses, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application-declaration, as amended or as it may be further amended, may be granted and permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices or orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 80-39509 Filed 12-18-80; 8:45 am]

BILLING CODE 8010-01-M

Midwest Stock Exchange, Inc.; Applications for Unlisted Trading Privileges and of Opportunity for Hearing

December 15, 1980.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following stocks:

American Business Products, Inc., Common Stock, $2 Par Value (File No. 7-5792).

Anthony Industries Inc., Common Stock, $1 Par Value (File No. 7-5793).

Wynn's International, Inc., Common Stock, $1 Par Value (File No. 7-5794).

These securities are listed and registered on one or more other national securities exchanges and are reported on the consolidated transaction reporting system.

Interested persons are invited to submit on or before January 8, 1981 written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549. Following this opportunity for hearing the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 80-39510 Filed 12-18-80; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 11491; 812-4716]

T. Rowe Price Growth Stock Fund, Inc., et al.; Filing of Application for an Order Pursuant to Section 6(c) of the Act for Exemption From Section 10(b)(2) of the Act

December 12, 1980.

In the matter of T. Rowe Price Growth Stock Fund, Inc., Rowe Price New Horizons Fund, Inc., Rowe Price New Era Fund, Inc., Rowe Price New Income Fund, Inc., Rowe Price Prime Reserve Fund, Inc., Rowe Price Tax-Free Income Fund, Inc. and Rowe Price International Fund, Inc., 100 East Pratt Street, Baltimore, Maryland 21202.

Notice is hereby given that T. Rowe Price Growth Stock Fund, Inc. ("Growth Stock Fund"), Rowe Price New Horizons Fund, Inc. ("New Horizons Fund"), Rowe Price New Era Fund, Inc. ("New Era Fund"), Rowe Price New Income Fund, Inc. ("New Income Fund"), Rowe Price Prime Reserve Fund, Inc. ("Prime Reserve Fund"), Rowe Price Tax-Free Income Fund, Inc. ("Tax-Free Fund"), and Rowe Price International Fund, Inc. ("International Fund") (collectively referred to as the "Applicants"), all open-end, diversified management investment companies registered under the Investment Company Act of 1940 ("Act"), filed an application on August 22, 1980, and an amendment thereto on November 12, 1980, pursuant to Section 6(c) of the Act for an order of the Commission exempting the Applicants and any other investment company or companies of which T. Rowe Price Associates, Inc. ("Price Associates"), or Rowe Price-Fleming International, Inc. ("Price-Fleming"), is the investment adviser from Section 10(b)(2) of the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

The application states that each of the Applicants is incorporated under Maryland law and currently sells its shares directly to the public, without the utilization of intermediary brokers and dealers. Each of the Applicants is a no-load fund which meets the requirements of Section 10(d) of the Act which permits investment companies meeting such requirements to have only one director who is not an interested person of their adviser. Price Associates serves as investment adviser to all the Applicants except International Fund, which is advised by Price-Fleming, a corporation jointly owned by Price Associates and Robert Fleming.

According to the application, each of the Applicants proposes to enter into an underwriting agreement with Rowe Price Marketing, Inc. ("Marketing"), a wholly-owned subsidiary of Price Associates, which, as agent, will offer Applicants' shares to investors in those states in which the shares are qualified for sale and in which Marketing is qualified as a broker-dealer. Applicants represent that marketing's registration as a broker-dealer has been declared effective by the Commission and that Marketing has filed an application for membership with the National Association of Security Dealers, Inc. ("NASD"), which is pending approval. The application indicates that the proposed underwriting agreement will provide that Marketing accept orders for shares of the Applicants at net asset value without sales commission or sales load. Marketing will have no responsibility with respect to redemptions.

Section 10(b)(2) of the Act provides that no registered investment company shall use as a principal underwriter of securities issued by it any director, officer or employee of such registered company or any person of which any such director, officer, or employee is an interested person, unless a majority of the board of directors of such registered company shall be persons who are not such principal underwriters or interested persons of any such principal underwriters.

According to the application, it has been the policy of each of the Applicants' board of directors to endeavor to have at least 40% of its members be disinterested persons of their respective investment advisers. The application states that the boards of directors New Era Fund, New Income Fund, Prime Reserve Fund, and the International Fund have a majority of disinterested persons of Marketing, the proposed principal underwriter; that 50% of the directors of New Horizons are not interested persons of Marketing; and that at least 40% of the directors of Growth Stock Fund and Tax-Free Fund are not interested persons. The application states that, if the Applicants enter into underwriting agreements with Marketing, it is almost inevitable that all of their directors who are interested persons of Price Associates would also be interested persons of Marketing. Thus, Applicants seek an order pursuant to Section 6(c) of the Act exempting them and any other investment company advised by Price Associates or Price-Fleming from Section 10(b)(2) of the Act to permit up to 60% of their respective boards of directors to be interested persons of Marketing.

Section 6(c) of the Act provides, in part, that the Commission, by order upon application, may conditionally or unconditionally exempt any person, security or transaction, from any provision or provisions of the Act or of any rule or regulation thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Applicants state that the proposed change in the method of distribution will eliminate duplicative and burdensome state registrations of each of the Applicants as broker-dealers, broker-issuers or dealers. In addition, the application states that distribution of securities through an underwriter would significantly reduce the number of individual agent registrations in the various states. Applicants further represent that the proposed distribution method will subject Marketing and the Price organization for the first time to broker-dealer regulation under the Securities Exchange Act of 1934 and the rules of the NASD.

According to the application, it is anticipated that sales and promotional expenses will continue to be borne by the Applicants' advisers under the proposed distribution method. In addition, Applicants intend to comply

with the provisions of Section 10(d) which prohibits them from incurring sales and promotional expenses. Applicants also submit that the reasons for permitting an investment company which meets the requirements of Section 10(d) to have only one director completely independent of the investment adviser are equally persuasive for permitting it to have only one director who is not an interested person of a principal underwriter which is wholly owned by the investment adviser.

As a condition to any order granting the relief requested Applicants have undertaken that they (1) will maintain the composition of their respective board of directors so that at least 40% of its members are persons who are not interested persons of its adviser or principal underwriter, barring temporary periods where the percentage is less due to death, resignation, or removal of one or more directors; (2) obtain from Price Associates an undertaking that Marketing will remain a wholly-owned subsidiary of Price Associates continuously during the period the Applicants operate under the order; and (3) obtain from their advisers separate representations that they do not believe the institution of the proposed new distribution method will give rise to the need for an increase in the respective rates of advisory fees currently being paid by the Applicants for which they act as investment adviser.

Notice is further given that any interested person may, not later than January 7, 1981, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the application accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 80-39511 Filed 12-18-80; 8:45 am]

BILLING CODE 8010-01-M

[File No. 1-7200]

Wynn's International, Inc., Common Stock, $1 Par Value; Application To Withdraw From Listing and Registration

December 15, 1980.

The above named issuer has filed an application with the Securities and Exchange Commission pursuant to Section 12(d) of the Securities Exchange Act of 1934 (the "Act") and Rule 12d2-2(d) promulgated thereunder, to withdraw the specified security from listing and registration on the American Stock Exchange, Inc. ("Amex").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

1. The common stock of Wynn's International, Inc. (the "Company") is listed and registered on the Amex. Pursuant a to Registration Statement on Form 8-A, the Company is also listed and registered on the New York Stock Exchange ("NYSE"). The Company has determined that the direct and indirect costs and expenses do not justify maintaining the dual listing of the common stock on the Amex and the NYSE, and believes that dual listing would fragment the market for its common stock.

2. This application relates solely to withdrawal of the common stock from listing and registration on the Amex and shall have no effect upon the continued listing of such stock on the NYSE. The Amex has posed no objection to this matter.

Any interested person may, on or before January 8, 1981 submit by letter to the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 80-39512 Filed 12-18-80; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 17371; File No. SR-NASD-78-3]

National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change

December 12, 1980.

On May 31, 1978, the National Association of Securities Dealers, Inc. (the "NASD"), 1735 K Street, N.W., Washington, D.C. 20006, filed with the Commission, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934,[1] (the "Act") and Rule 19b-4 thereunder, copies of a proposed rule change governing the giving and receiving of selling concessions, discounts and other allowances in connection with fixed price offerings of securities.[2] The proposal was subsequently amended on September 4, 1980.[3] As discussed below, the Commission has determined to approve the proposed rule change, as amended.

I. Background

The proposed rule change wil amend Sections 8 and 24 of Article III of the NASD's Rules of Fair Practice and will add a new Section 36 to Article III and a new Section 1(m) to Article II. Section 8, as amended, will impose a more explicit prohibition on a member's taking securities in trade at more than their fair market price. Section 24, as amended, will, among other things, prohibit the granting of selling concessions, discounts, or other allowances to persons other than brokers or dealers engaged in the investment banking or securities business and will permit such payments to be made or received only as consideration for services rendered in distribution. New Section 36 will prohibit an NASD member from selling to, or placing with, any related person of the member securities that are part of a

[1] 15 U.S.C. 78s(b)(1).

[2] Notice of the proposed rule change was given by Securities Exchange Act Release No. 15020 (August 2, 1978), 43 FR 35446 (August 9, 1978). Twenty-two letters of comment were received in response to that release. The Commission had also received twenty-one comment letters before the formal notice of the proposed rule change was published.

[3] Notice of the amendment was given by Securities Exchange Act Release No. 17129 (September 8, 1980), 45 FR 60529 (September 12, 1980). The Commission did not receive any comment letters in response to this release.

fixed price offering. Finally, new Section 1(m) of Article II contains a definition of "fixed price offering."

The proposed rule change was filed in response to the legal uncertainty created by a decision in the Southern District of New York, *Papilsky* v. *Berndt*,[4] in which the court held that, in the absence of a contrary ruling from the NASD or the Commission, "underwriting recapture" was available and legal under the NASD's Rules of Fair Practice. In *Papilsky*, shareholders of an investment company brought a derivative action against the directors of the company and its adviser, Lord Abbett & Co. ("Lord Abbett"), alleging that Lord Abbett, as an NASD member, could have purchased securities in underwritten offerings at the public offering price less the selling concession, resold them to the company at the public offering price and credited the amount of the selling concession against the management fee owed by the company.[5] The court found that Lord Abbett had a fiduciary duty to keep the disinterested directors of the fund fully and fairly informed about the possibility of recapture of selling concessions and that, having failed to perform that duty, Lord Abbett was liable for damages. The court did not reach the question whether Lord Abbett would have been insulated from liability if the company's disinterested directors had reached a reasonable business decision not to recapture selling concessions.[6]

II. Review of Prior NASD and Commission Action

After the *Papilsky* decision, Lord Abbett sent a letter to the NASD asking whether the NASD's Rule of Fair Practice prohibit the recapture of selling concessions in fixed price offerings.[7] The General Counsel of the NASD responded, by letter dated November 23, 1976, that Section 24 of the Rules of Fair Practice did indeed prohibit underwriting recapture. On February 17, 1977, the Commission wrote to the NASD, stating that the NASD's interpretation of Section 24 raised important issues of general applicability with regard to the public interest, the protection of investors and the appropriateness of burdens on competition, and that prior Commission decisions [8] cast doubt on the NASD's authority to interpret Section 24 in such a manner. For those and other reasons, the Commission stated that the interpretation should be filed as a proposed rule change under the Act.

The NASD then requested a conference with the Commission to consider the issue. At a public meeting on May 26, 1977, the Commission inquired whether the NASD's interpretation of Section 24 had been consistently applied to other practices of underwriters and dealers and, if not, whether the prohibition of recapture was an arbitrary application of the rule. the NASD agreed to consider the matter further and to prepare and file a comprehensive proposed rule change.

On September 23, 1977, the NASD circulated to its members for comment a draft of certain proposed amendments to its Rules of Fair Practice (the "1977 Draft"). After receiving comments on the 1977 Draft from its members, the NASD revised the proposal substantially, recirculated it to its members for comment and vote and, on May 31, 1978, filed it with the Commission (the "1978 Proposal").

In view of the complexity of the questions raised by the filing and the importance of the filing to the securities markets and the capital-raising process, the Commission issued a release soliciting additional comment on the issues involved and announcing that public hearings would be held.[9] Sixteen witnesses testified at the hearings, which concluded on November 20, 1979, and the Commission announced that it would accept comments through December 15, 1979.[10]

The hearing and comment process elicited the views of a wide variety of interested persons, including the Securities Industry Association (the "SIA"), regional and national brokerage firms, investment advisers, corporate issuers, industry trade groups, institutional investors, the Department of Justice and the Department of the Treasury. After considering these views, the Commission determined at a public meeting on July 3, 1980 to send to the NASD a letter (the "1980 Commission letter") requesting that the NASD consider amending proposed Sections 8 and 24 in certain respects.[11] The NASD then amended the proposed rule change and submitted it to a membership vote. The NASD membership approved the amended proposal by a vote of 1202 to 80, and the NASD filed its final amended version on September 4, 1980. Thereafter, the Commission published that amended proposal for comment.[12]

Pursuant to Section 19(b) of the Act, the Commission has reviewed the proposed rule change and has considered the data, views and arguments that were submitted in the hearings and in written comments received in this proceeding.

Section 19(b)(2) provides that, in order to approve the proposed rule change, the Commission must find it consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD. For the reasons discussed more fully below, the Commission has determined to approve the proposed rule change, as amended by the NASD. The balance of this order sets forth the Commission's basis for its determination, including: background information on fixed price underwritten offerings (Part III); the evolution of the rule change (Part IV); legal standards for approval of the rule change (Part V); policy considerations bearing on the

[4] [1976-77 Dec.] Fed. Sec. L. Rep. (CCH) ¶95,627 (S.D.N.Y. 1976).

[5] Lord Abbett acted, not only as adviser to the investment company, but also as principal underwriter of the company's own shares. As principal underwriter, it was registered as a broker-dealer and was a member of the NASD.

[6] *See also Fogel* v. *Chestnutt*, 533 F.2d 731 (2d Cir. 1975), in which the court held that the adviser was liable in damages for failing to disclose to the disinterested directors of the investment company the possibility of becoming a member of the NASD in order to recapture for the benefit of the company any fees or commissions it could have received as an NASD member. The court stated that there would have been "a different case" if fair disclosure had been made and the disinterested directors had concluded that because of "legal doubts, business considerations or both," the investment company should not attempt to recapture commision fees. 533 F.2d at 750. On remand, the District Court held the adviser liable to the company's shareholders for an amount that the court found could have been recaptured through various recapture techniques. [Current] Fed. Sec. L. Rep. (CCH) ¶97,550 (S.D.N.Y. 1980).

[7] In addition, Lord Abbett and several other investment advisers to investment companies have filed applications for exemptive orders with the Commission seeking relief from certain provisions of the Investment Company Act of 1940, including Section 17(a) [15 U.S.C. 80a-17(a)], which restricts securities transactions between registered investment companies and their investment advisers. *See, e.g.*, Application of Congress Street Fund, Inc., et al., August 27, 1976 (File No. 812-3092); Application of Lord Abbett & Co., et al., August 23, 1976 (File No. 812-4018); Application of Putnam Management Co., Inc., et al., November 19, 1976 (File No. 812-4055); Application of Fidelity High Yield Municipals, et. al., May 8, 1978 (File No. 812-4306). The Division of Investment Management informed these applicants that action could not be taken on their applications until the Commission decided whether to approve the NASD *Papilsky* rule proposal. Since the Commission is now approving the NASD rule proposal, it will not be possible for the Commission to find that the statutory requirements for granting these applications can be met. Accordingly, the Commission believes that these applicants should consider withdrawing their applications.

[8] *See* text at note 79, *infra*.

[9] Securities Exchange Act Release No. 15807 (May 9, 1979), 44 FR 28574 (May 15, 1979).

[10] Securities Exchange Act Release No. 16342 (November 14, 1979), 44 FR 66719 (November 20, 1979). Fifty comment letters were received in response to the May 1979 release announcing public hearings.

[11] Securities Exchange Act Release No. 16950 (July 3, 1980), 45 FR 46951 (July 11, 1980).

[12] *See* note 3, *supra*.

Commission's decision to approve the proposal (Part VI); and the Commission's conclusion (Part VII).

III. The fixed Price Underwriting System

As background for the discussion of the proposed rule change, this section of the release briefly summarizes the Commission's understanding of how the fixed price underwriting system currently operates. That understanding is based on the testimony at the hearings, the comment letters and the Commission's own knowledge and experience in administering the federal securities laws with respect to issuers, broker-dealers and the securities markets in general.

A corporation may acquire needed funds in several ways. It may, for example, borrow money from a bank. It may also sell securities in either a public offering or a private one. If the corporation decides to offer securities, it may engage the services of broker-dealers to sell the securities to the public in either "firm commitment" or "best efforts" underwritings.[13] In a firm commitment underwriting, one or more investment banking firms agree to purchase the securities from the issuer for resale to the public at a specified public offering price.[14] In a best efforts underwriting, broker-dealers do not purchase the securities from the issuer but instead agree for a fee to use their best efforts to sell the securities on behalf of the issuer at the offering price.

In a typical firm commitment offering of securities, investment banking firms organize an underwriting syndicate. Each member of the syndicate agrees to purchase from the issuer a specified amount of the securities and to resell those securities at a specified public offering price. The syndicate is managed by a managing underwriter who, on behalf of the syndicate, executes with the issuer an "underwriting agreement." The underwriting agreement spells out the terms of the offering and the amount of securities that each syndicate member is committed to buy or underwrite.

The syndicate members also execute an "agreement among underwriters" that establishes the obligations of each member. Typically, the agreement grants to the managing underwriter (or underwriters) broad discretionary authority to conduct the offering. Pursuant to that agreement, the managing underwriter may be authorized, among other things, to buy and sell in the open market and for the account of the underwriters the securities being offered, to charge each underwriter for expenses incurred by the manager and to terminate the agreement. The managing underwriter may also select additional broker-dealers to assist the syndicate in selling the securities. Those dealers, who may also be syndicate members (the "selling group"), will sign a "selected dealer agreement," setting forth their rights and obligations, including their agreement to sell the securities at the public offering price.

Both the underwriters and the selected dealers agree to sell the securities to the public[15] at a fixed public offering price. The difference between that price and the amount received by the issuer is known as the "gross spread." The spread may range in size from a fraction of 1% to 10% or more of the public offering price depending upon a number of factors, including the characteristics of the security, the risk to the underwriters, the amount of selling effort required and the costs of distributing the security.

The spread normally is composed of three parts: (i) the management fee for the managing underwriter, (ii), the underwriting compensation received by the underwriters, and (iii) the "selling concession" received for any securities sold to the public by any broker-dealer participating in the distribution. Usually, the amount of the selling concession is set in advance by the managing underwriter and may be as much as 60 to 65% of the spread depending upon the effort required to sell the security. The selling concession has increased as a percentage of the spread in recent years.[16]

In connection with some fixed price offerings, the underwriters may elect to "stabilize" the market for the offered security during the distribution. The managing underwriter places in the primary market for the security of a syndicate bid to purchase the security that is being underwritten. The bid price is usually set at or just under the public offering price. Stabilization is intended to facilitate an orderly distribution of securities by preventing or retarding a marked decline in the price of the offered security.[17]

As described above, the amount of securities underwritten by each syndicate member is set by agreement. Typically, however, each syndicate member retains control over and directly places only a portion of the securities it agrees to underwrite. This portion is known as its "retention." The remainder of the underwritten securities is placed in a general syndicate account, often called the "pot," under the control of the managing underwriter. During the course of the distribution, the managing underwriter allocates and reallocates securities among syndicate and selling group members for a variety of reasons, particularly the ability of the member to sell the securities. As explained below the "pot" also provides institutional customers with the convenience of centralized billing and delivery.

Purchasers that buy large amounts of a security, such as institutions, frequently may place their orders directly with the managing underwirtier. Customarily, the managing underwriter will deliver the securities and confirm the transactions, but the purchaser may direct that the sale be credited to the account of one or more dealers that are syndicate or selling group members ("designated orders"). The preference of some customers to place designated orders with the managing underwriter has caused some dealers to be included in the selling group at the request of prospective purchasers in cases where the dealers might not otherwise have been asked to participate.

Another method used for selling the underwritten securities involves "swapping." In a swap transaction, securities are taken in trade from a customer in exchange for the underwritten securities. Swaps allow a dealer to reduce his risk in a distribution by diversifying his holdings of securities, and they permit an institution to purchase the securities being distributed in circumstances where it does not have

[13] Other means of distributing securities may include Dutch auctions, English auctions, distributions pursuant to Rule 50 under the Public Utility Holding Company Act, 17 CFR 250.50 (sealed bidding), and shareholder dividend reinvestment and stock purchase plans. *See* letters from the NASD (August 10, 1979); the SIA (July 31, 1979). *See* testimony of Goldman Sachs & Co. *In re Papilsky Hearings—Proposed Rule Change by NASD*, File No. 4–282 at 755 (1979) [hereinafter "transcript"].

[14] The public offering price may be determined through negotiation with the issuer or by competitive bidding.

[15] Usually, the syndicate and selling group members are also permitted to sell the underwritten securities to one another and to any other NASD member at the public offering price less a dealer reallowance that does not exceed a stated percentage of the selling concession.

[16] Witnesses testified at the hearings that the spread negotiated by the issuer and the underwriters is often smaller in an offering that will be sold primarily to institutional purchasers since offerings of that type usually require less selling effort than offerings sold primarily to individuals. Testimony of Goldman Sachs & Co. (transcript at 776–77); Sanford C. Bernstein & Co., Inc. (transcript at 336–37).

[17] The syndicate's stabilizing activities during the offering must be conducted in accordance with the provisions of Rule 10b–7 under the Act (17 CFR 240.10b–7) or, in the case of offerings through rights, Rule 10b–8 (17 CFR 240.10b–8). Witnesses at the hearings testified that stabilization frequently occurs in offerings of equity securities, but almost never in offerings of debt securities. *See* testimony of the NASD (transcript at 91); McCarthy, Ried, Crisanti & Maffei, Inc. (transcript at 576).

available cash to pay for them or where, for other reasons, it prefers not to pay cash for them. Swaps are most common in debt offering and in offerings of other securities that trade on the basis of yield.[18]

If the securities which a dealer receives from the institution have a fair market price lower than that of the underwritten securities, the swap is an "overtrade" prohibited by Section 8 of Article III of the NASD's rules of Fair Practice.[19] Overtrades result, of course, in a type of discount from the public offering price and are most common when the underwritten securities are difficult to sell because the security was priced too high at the outset or because of intervening market conditions. In such a "sticky deal," overtrades enable the underwriter or selling group member in effect to adjust the public offering price to make the security more attractive, thus infringing on the managing underwriter's power to control the offering and on his decision whether to terminate the pricing restricitons.[20]

For reasons discussed below,[21] the growth in the economic power of institutional investors has exerted pressures on the traditional fixed price underwriting system. In response to those pressures, questions have arisen as to whether institutional investors should attempt to obtain discounts from the public offering prices in fixed price offerings through such practices as "underwriting recapture" [22] or overtrading. In addition, there has been uncertainty about the extent to which institutional fiduciaries should be able to purchase securities from the manager out of the pot, designating other broker-dealers to receive the selling concession to reward them for services or products, such as research, provided to the institution in the course of the offering or in other circumstances.[23]

In the NASD's view, practices such as overtrading and recapture threaten to erode the fixed price offering system. The NASD states that this erosion would result in an increase in (a) underwriting risks, (b) capital-raising costs, (c) unwillingness of individual investors to purchase securities in fixed price offerings and (d) concentration in the investment banking field.[24] In the NASD's opinion, Commission disapproval of the proposed rule change would lead to even greater institutional pressure on the system and to a deterioration of the existing ability of securities firms to raise capital for American industry. Accordingly, the NASD and others have urged the Commission to approve the proposed rules.

IV. Evolution of the Proposed NASD Rules

In developing its proposed rule change, the NASD sought to provide a measure of certainty concerning the operation of the fixed price underwriting system. As discussed briefly above, the NASD's rule proposals which the Commission is today approving have evolved over a period of years in response to an exhaustive examination conducted by commentators, the NASD and the Commission itself. That examination has included NASD proceedings and several public proceedings and meetings before the Commission. The evolution of those rules is described below as a prelude to a discussion of the Commission's reasons for finding them to be consistent with the Act.

A. Section 8: Swaps and Overtrading

1. *Existing Section 8.* Section 8 of the NASD's Rules of Fair Practice currently prohibits a member participating in a fixed price offering from taking other securities, in exchange for the offered ones, at more than their fair market price at the time of purchase. The section is designed to prevent overtrading, but, as currently drafted, provides little guidance to members or to the NASD in its enforcement efforts in differentiating between a permissible swap and a prohibited overtrade.

2. *1977 Draft.* In connection with its 1977 Draft, the NASD stated that swapping is a reasonable business practice that is important to the distribution of securities and should not be prohibited or discouraged. At the same time, however, the NASD noted that overtrading results in a customer's receiving the underwritten security at a price lower than the public offering price. Similarly, if a member effected a swap transaction as an agent and charged less than the normal commission, the customer would receive what in effect amounted to a discount from the public offering price.

In order to make its prohibition of these practices more effective, the NASD expanded Section 8 in the 1977 Draft to include a definition of "fair market price" as a price not lower than the highest independent bid and not higher than the lowest independent offer.[25] The NASD further specified that, if a member acted as agent in the sale of securities taken in trade, it would have to charge a normal commission in connection with the sale. With respect to equity securities that are traded on a national securities exchange or for which quotations are entered in an automated quotation system, the 1977 Draft would have required a member to obtain the quotations from the exchange or from the system. With respect to other types of securities, a member would have been required to obtain quotations from two or more independent dealers or to use an independent agent to obtain the quotations. The section also contained a definition of "normal commission" and "taken in trade." Finally, the 1977 Draft would have required the member to keep certain records to verify that the securities had been taken in trade at a fair market price.

Some NASD members criticized the 1977 Draft as too restrictive since it did not permit a swap transaction to take place at a price lower than the highest independent bid or higher than the lowest independent offer.[26] Others stated that fair market price could not

[18] The Commission understands that swapping is often the result of a selling effort on the part of dealers who suggest a swap to an institution to improve the overall quality or the yield of the institution's portfolio. Letter from the SIA (July 31, 1979); testimony of the NASD (transcript at 143–45).

[19] A swap transaction may be arranged before the effective date of the registration statement. For example, the parties sometimes agree to a "spread swap" in which the security to be swapped is valued in relation to another security, usually a government security. If market forces cause a narrowing of the spread so that the swapped security should be valued at less than the agreed spread in relation to the "benchmark" security, an overtrade may occur if the swap is executed at the previously agreed upon terms. In addition, the practice of spread swapping would raise questions under Section 5 of the Securities Act of 1933 [15 U.S.C. 77e] if the parties in fact reached what was regarded as a binding legal agreement concerning the underwritten securities before the effectiveness of the registration statement.

[20] Under both the agreement among underwriters and the selected dealers agreement, the managing underwriter has the power to keep the agreements and the pricing restrictions in force for a period not exceeding 30, or in some cases 60, days.

[21] *See* text at notes 111–14, *infra.*

[22] *See* text at note 4, *supra.*

[23] Whe research is in effect paid for by the managed account through brokerage commissions or selling concessions, it is said to have been purchased with "soft dollars" (as opposed to payments made by the account manager out of his own funds, known as "hard dollars").

[24] NASD Analysis of the Record Developed in the Matter of Papilsky Hearings from the Perspective of Statutory Authority (March 3, 1980) (the "NASD Analysis of the Record") at 15–19. *See* letter from the SIA (July 31, 1979) at 28–35; testimony of Morgan Stanley & Co., Inc. (transcript at 880); Sanford C. Bernstein & Co., Inc. (transcript at 310); The Robinson-Humphrey Co., Inc. (transcript at 843–45); Piper, Jaffray & Hopwood, Inc. (transcript at 656–59).

[25] The NASD noted that permitting sales at a price as high as the lowest independent offer might permit a dealer to pay a customer more than the customer would receive in an outright sale, but stated that it believed it not unusual for sell orders of institutional size to be executed at the offer.

[26] Letters from Piper, Jaffray & Hopwood, Inc. (October 31, 1977); The Robinson-Humphrey Co., Inc. (November 4, 1977).

be ascertained solely by reference to objective standards, such as prevailing quotations, because of the numerous factors involved in the determination.[27] A number of commentators also criticized the recordkeeping requirements as being too burdensome.[28]

3. *1978 Proposal.* In its 1978 Proposal, the NASD revised certain provisions in proposed Section 8 in response to its members' comments. The definition of fair market price was revised to include only the limitation that the securities received be valued "not higher than the lowest independent offer,"[29] and the section was expanded to permit members to effect a swap transaction at a higher price in "an exceptional or unusual case," taking into account all factors relevant to the transaction. The 1978 Proposal listed several factors relevant to determining whether the transaction was "exceptional" or "unsual," such as whether another customer of the member had given an indication of interest to purchase the securities taken in trade, the member's pattern of trading in those securities or in comparable securities, the member's position in and the availability of the securities, the size of the transaction and the amount by which the price paid exceeded the lowest independent offer. The proposal stated that the member would bear a heavy burden in justifying that the price paid was the fair market price when it exceeded the lowest independent offer.[30]

The commentators on this proposal generally did not object to the definition of fair market price, although some questioned whether any proposal in this area could prevent overtrading.[31]

One commentator objected to the "exceptional or unusual case" exception, stating that this provision would make the section unenforceable.[32] Again, some commentators also found the recordkeeping and record retention requirements overly burdensome.[33]

4. *1980 Commission letter.* In its July 3, 1980 letter to the NASD, the Commission stated that the proposed amendments to Section 8 should be strengthened in order to achieve their intended purpose. The Commission was concerned that the proposed amendments to Section 8 would sometimes permit the acceptance of swapped securities at a price in excess of their fair market price. The Commission noted that, since proposed Section 8 did not require that the lowest independent offer be determined with reference to the size of the transaction, it would permit a block of securities to be purchased in a swap at a price equal to that offered for a much smaller quantity even though the block might otherwise trade at a discount. The Commission also stated that since most dealers usually buy securities at their bid price and not at their offer, a dealer's purchase of securities at the lowest offer could, in many instances, constitute an overtrade when compared to the dealer's normal pattern of trading.

The Commission suggested two possible alternative approaches to Section 8. First, the NASD was asked to consider whether it would be appropriate to use the lowest independent offer as a guideline rather than a fixed standard for determining fair market price. Under such an approach, a transaction occurring at or below the lowest independent offer would be presumed to have taken place at the fair market price, although the NASD could rebut the presumption. Second, the Commission stated that the NASD should also consider a standard other than the lowest independent offer as the fair market price, such as the bid. Such a standard could provide a safe harbor only for those transactions occurring below the highest independent bid. The Commission asked the NASD to consider how it could account for the size of a transaction if it used either standard.

5. *1980 Proposal.* Proposed Section 8, as amended in 1980 and now presented for Commission approval, contains a different approach from the earlier drafts. The revision defines fair market price as a price not higher than the price at which the securities would be purchased from the customer or from a similarly situated customer in the ordinary course of business by a dealer in such securities in transactions of similar size and having similar characteristics but not involving a security taken in trade. The revision also contains the following standards and presumptions. First, the section contains a "safe harbor" for swap transactions involving securities other than common stocks if the price paid is not higher than the highest independent bid for the securities at the time of purchase. In such a case, a member will be deemed to have paid the fair market price. Second, the section contains a presumption of compliance for common stocks if the member values the common stocks at a price not higher than the highest independent bid. This presumption may be rebutted by the NASD upon a showing that the price paid in fact exceeded the fair market price. Third, the section contains a presumption of non-compliance if the member takes the securities in trade at a price higher than the lowest independent offer for the securities.[34] Finally, the section provides neither a presumption of compliance nor one of non-compliance if the member pays a price for the swapped securities between the highest independent bid and the lowest independent offer. The section, as amended, also contains revised interpretations that require a member to obtain quotations for the swapped security, other than common stocks, that must be for a size corresponding generally to the amount of the securities taken in trade, although they need not be for the specific size of the transaction. The other provisions of the section are substantially unchanged from the previous drafts.

B. Section 24: Selling concessions, discounts and other allowances

1. *Existing Section 24.* Section 24 currently provides that selling concessions, discounts, or other allowances, as such, shall be allowed only as consideration for services rendered in distribution and shall not be allowed to anyone other than a broker or dealer actually engaged in the investment banking or securities business. The section also contains a provision permitting a member to sell any security owned by him at any net price that may be fixed by him unless prevented therefrom by agreement.

The NASD and others maintain that this section has always prevented direct forms of discounting such as cash

[27] Letter from Transamerica Investment Management Co. (November 1, 1977).

[28] Letters from Piper, Jaffray & Hopwood, Inc., (October 31, 1977); Printon, Kane & Co. (November 7, 1977).

[29] The NASD determined that it was unnecessary to prohibit members from valuing swapped securities at less than the highest independent bid in the absence of known abuses and in view of the provisions of the Free-riding and Withholding Interpretation of Article III Section 1 of the Rules of Fair Practice. NASD Manual (CCH) ¶2151.08.

[30] The proposal was also revised to require that quotations for preferred stocks be obtained from two or more dealers in view of the fact that the trading characteristics of preferred stocks are more similar to those of debt instruments than to those of common stocks.

[31] Letter from Transamerica Investment Management Co. (September 21, 1978).

[32] Testimony of Sutro & Co., Inc. (transcript at 449-50).

[33] Letter from Transamerica Investment Management Co. (September 21, 1978); testimony of Sutro & Co., Inc. (transcript at 451).

[34] The same factors as listed in the 1978 Proposal are relevant to the rebuttal of this presumption. The member, however, bears a heavy burden in showing that it paid the fair market price for the security. If a member takes a security in trade and pays more than the lowest independent offer, it must keep records of all relevant factors it considered important in concluding that the price paid for the securities was the fair market price.

rebates.[35] The NASD also maintains that indirect forms of discounting such as recapture [36] are also prohibited by this section. The history of Section 24 is not clear on the latter point.

Section 24 apparently derives from codes approved by President Roosevelt acting under the authority of the National Industrial Recovery Act (the "NIRA"). In late 1933 President Roosevelt approved the Code of Fair Competition for the Investment Bankers Association of America.[37] A special committee of that association drafted fair practice provisions as an amendment to the Code of Fair Competition, and the President approved them in 1934.[38] Included among them were provisions that were described as "tend[ing] to establish one price for all investors irrespective of the size of the transaction or the importance of the purchaser."[39] In recommending the inclusion of this provision, the drafting committee stated that "[s]ecurities sold under the public offering price overhang the market after the syndicate distribution. If the concession is large enough, the holder of the security has a constant temptation to make a quick sale at a small proft, and the fact of such sale discourages all men from buying securities when publicly offered and at the offering price."[40]

Subsequently, in 1935, in response to perceived evasion of the "one price" provision, the drafting committee proposed an amendment requiring an investment banker who received a selling concession to certify that his purchase was solely for the account of clients or, if for his own account, that he intended to redistribute the securities to his clients in the ordinary course of business. This amendment was approved, on behalf of the President, by the National Industrial Recovery Board, which found that the "effect of the amendment would be to consistently maintain the principle of no discrimination between investors by putting all investment bankers on a level with private investors when they purchase securities solely for investment and not for distribution. It proceeds on the theory that an investment banker is entitled to a lower price than that available to the public only when that investment banker actively participates in the distribution to others of the securities in question." [41]

After the United States Supreme Court declared the NIRA to be unconstitutional,[42] the Investment Bankers Conference, Inc. was organized to continue self-regulation on a voluntary basis. The new organization was made up of substantially the same people who had composed the committee that drafted the fair practice provisions of the Investment Bankers Code. In 1937, the Conference adopted rules of fair practice, including a provision comparable to its predecessor in the Investment Bankers Code and virtually identical to existing Section 24.[43] The apparent intent of the new provision was to continue the restrictions on underwritings contained in the Investment Bankers Code.

The NASD was established in 1939,[44] and the Investment Bankers Conference passed out of existence. Many of the rules drafted by the Conference, including the restrictions on underwriting and selling concessions, were carried over as the NASD's rules.[45] In the context of reviewing the NASD's application for registration as a national securities association in 1939, the Commission stated that none of the prohibitions of then Section 15A(b)(7) of the Act, applicable to the rules of the NASD, appeared to be violated by the provisions of Section 24.[46] Since 1939 the various District Conduct Committees of the NASD have brought over 40 proceedings in which a violation of Section 24 has been found.[47]

2. *1977 Draft.* In 1977, the NASD stated that Section 24 serves a vital function in promoting fairness in the securities distribution process. It suggested that the section ensures that the "trade preference," offered to professionals to facilitate the distribution to investors and represented to the issuer and to the public as granted for that purpose, is not given to those who have not earned it and is not used as a means of unfairly granting a discount to selected investors. The NASD stated that the purposes of its 1977 Draft were to clarify Section 24 and to delineate the standards of eligibility for concessions, discounts, or allowances.

The 1977 Draft provided that a selling concession, discount, or other allowance could be granted only to brokers or dealers actually engaged in the investment banking or securities business and could be granted or received only as consideration for services rendered in distribution. The NASD proposed an interpretation that would have prohibited all designated sales except to members of the underwriting syndicate and then only to the extent of their underwriting commitment. This prohibition would have also applied to institutional purchases effected on a "bill and deliver" basis in which the institution purchased a block of securities, designated several dealers to receive credit for the sales and received from the manager a single bill and one certificate.

Second, the proposed interpretations to Section 24 by the NASD Board of Governors provided that a broker-dealer would be deemed to be improperly granting or receiving a discount if it furnished a purchaser of securities with

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[35] Letters from the NASD (August 10, 1979); Prudential Insurance Company of America (August 1, 1979).

[36] *See* text accompanying note 4, *supra.*

[37] Approved Code No. 141, Executive Order No. 6456 (Nov. 27, 1933), III National Recovery Administration Codes of Fair Competition 509 [hereinafter cited as "NRA Codes"].

[38] Approved Code No. 141—Amendment No. 2, Executive Order No. 6652 (Mar. 23, 1934), VIII NRA Codes 657.

[39] Letter from Administrator Hugh S. Johnson to President Franklin D. Roosevelt transmitting Approved Code No. 141—Amendment No. 2 for approval (Mar. 23, 1934), VIII NRA Codes 659–60.

[40] Brief submitted by Joseph C. Hostetler, Counsel, Investment Bankers Code Committee to the National Recovery Administration at the public hearings on the fair practice amendments (Mar. 15, 1934).

[41] Approved Code No. 141—Amendment No. 4, Report to the President and Order (Feb. 27, 1935), XXI NRA Codes 433.

[42] *A.L.A. Schecter Poultry Corp. v. United States,* 295 U.S. 495, 538–41 (1935). The Court held that the Congress, in the NIRA, had unconstitutionally delegated its authority by broadly authorizing the President, without sufficient limiting standards, to approve and enforce private trade organizations' codes of fair competition.

[43] Notice of Adoption of Rules of Fair Practice and Complaint Procedure of Investment Bankers Conference, Inc. (May 25, 1937).

[44] In 1938, in what is commonly called the Maloney Act, the Congress added Section 15A to the Act in order to permit the registration of national securities associations with the Commission. The Maloney Act authorized such associations to regulate the activities of their member broker-dealers. The NASD is the only national securities association registered with the Commission.

[45] The NASD, in adopting Section 24, incorporated a minor revision, inserting the words "as such" after "concessions, discounts, or other allowances." It has been variously argued that this provision emphasizes that selling concessions mean *payments* for activities performed in distributing securities or that it indicates that the section was intended to apply only to direct discounts. *Compare* letter from the NASD (June 13, 1977) *with* that of the Prudential Insurance Company of America (Aug. 1, 1979). The available history of the section does not indicate which interpretation is correct, and it may well be that the distinction was not clearly developed in 1939.

[46] *In re Application by National Association of Securities Dealers, Inc.,* 5 SEC 627, 632 (August 7, 1939).

[47] *E.g., District Business Conduct Committee No. 2 v. Paul C. Rudolph* (1956) (sale by member of mutual funds to customers at less than the public offering price); *District Business Conduct Committee No. 3 v. Ackerson-Hackett Investment Co.* (1957) (respondent sold debentures in distribution to officers and directors of issuer at a discount); *District Business Conduct Committee No. 3 v. Richard A. Chambers* (1970) (Respondent sold shares of a mutual fund at a discount); *District Business Conduct Committee No. 12 v. Samuel Weisberger* (1974) (member acting as a selling group member sold new issues to customers at prices below the stated public offering prices).

products or services for an "agreed upon consideration" or furnished "commercially available" services or products, unless the member were compensated for those services or products from sources other than selling concessions, discounts, or other allowances. A service or product would be "commercially available" if it, or a substantially identical service or product, were generally available on a commercial basis either from the member receiving the concession or from some other source. A service or product would be considered to be provided "for cash or other agreed upon consideration" if it, or a substantially identical service or product, were provided to any customer by the member or by others pursuant to an agreement.

The NASD stated that this section was intended (i) to prevent unfair discrimination against customers who were not able to generate sufficient business to receive products or services that could be offset by selling concessions and (ii) to prevent misrepresentations by members that the public offering price was fixed when in fact certain customers had received a discount. The NASD noted that the section would permit dealers and underwriters to continue to supply standard research not offered to anyone for cash or for an agreed upon consideration.

Commentators on this draft noted that its effect would have been to limit designated sales to the major bracket underwriters and would have defined services in distribution too narrowly. They strenuously objected on that basis and pointed out that designated sales did not necessarily imply an absence of direct selling contact or selling effort by the designated dealer.[48]

3. *1978 Proposal.* In response to member comment, the NASD revised the proposed amendment to Section 24 and the related interpretations. The proposal as revised expanded the interpretation of "services in distribution" to include sales efforts on the part of persons outside the underwriting syndicate. The interpretations of "commercially available" and "agreed upon consideration" remained substantially the same. In addition, certain recordkeeping and reporting provisions were added to assist the NASD in enforcing the section.

Commentators argued that this formulation of Section 24 unfairly discriminated against smaller firms and research-oriented firms in two respects. First, they suggested that research is a fundamental part of the distribution process since institutional customers' investment decisions usually are made on the basis of research, rather than because of broker-dealers' direct selling efforts, and they argued, therefore, that research should be considered *per se* a service in distribution.[49]

Second, the commentators stated that the effect of the "commercially available" and the "agreed upon consideration" interpretations would be to permit soft-dollar payments for in-house research furnished on an exclusively "goodwill" basis, while precluding such payments for third-party research that had been purchased by a broker-dealer (other than one who was acting as an exclusive distributor of that product or service) and then redistributed on a "goodwill" basis. In addition, a firm would be precluded from making its own in-house research available to one customer for cash and to another for "soft-dollars." Commentators stated that the proposal unfairly discriminated against, and imposed unnecessary competitive burdens on, firms that have limited in-house research capabilities or that derive a substantial portion of their revenues from research services and, therefore, cannot afford to provide research on a "goodwill" basis.[50]

4. *1980 Commission letter.* In its July 3, 1980 letter to the NASD, the Commission stated that the proposed amendments to Section 24 might not be consistent with the Act and indicated that the NASD should modify the proposed amendments to remove those aspects that appeared to be unfairly discriminatory. In that connection, the Commission discussed two alternative formulations of Section 24 that the NASD had discussed in its testimony at the hearings.

Alternative 1: Under the first alternative: (a) the "services in distribution" interpretation would be revised so that the furnishing of *bona fide* research, defined in a manner similar to the Commission's interpretation under Section 28(e) of the Act,[51] would be deemed to be a sufficient service in distribution; (b) the "commercially available" prohibition that derived from the NASD's interpretation would be redefined so as not to apply to such *bona fide* research; and (c) the "agreed upon consideration" limitation that derived from the NASD's interpretation would be modified to allow research that was supplied to one customer for cash or other agreed upon consideration to be also made available to another customer on a "goodwill" basis in connection with a fixed price offering.

This alternative would permit any broker-dealer, not just a member of the underwriting syndicate, to receive designations for research services without having to show that it had engaged in direct selling contact with the customer. Also, the determination whether the provision of research constituted a violation of Section 24 would depend only upon whether the research was provided on a "goodwill basis" and not on whether the research was otherwise commercially available or had a readily ascertainable cash or cash equivalent value.

The Commission noted that this interpretation would be more easily enforceable since it would not be necessary to determine whether a broker-dealer had some direct selling contact with a customer or whether substantially identical research was being offered by others on a cash or cash equivalent basis. Finally, the revised approach appeared to alleviate some potential anticompetitive burdens imposed on firms that deliver third-party research.

The Commission noted, however, that this alternative would still impose a burden on firms that cannot afford to provide research solely on a "goodwill" basis. It appeared to make an artificial distinction between research arrangements that provide for an explicit *quid pro quo* and those that do not. The Commission stated that this distinction tends to promote artificial compensation arrangements in which all parties know, but never explicitly state, that payment in some manner is expected for research. Finally, the Commission stated that the restrictions imposed on research oriented firms might not be necessary or appropriate in furtherance of the purposes of the Act.

Alternative 2: The second alternative suggested by the NASD at the hearings would be to treat the provision of *bona fied* research as a sufficient service in distribution and to place such research in a class by itself so that, unlike other products and services, it could be furnished for "soft dollars" (even if the consideration were explicitly agreed

[48] *E.g.*, letters from Adams Harkness & Hill (November 8, 1977); Birr Wilson & Co., Inc. (November 1, 1977); Howard, Weil, Labouisse, Friedricks (November 3, 1977); Loewi & Co. (October 31, 1977); Mesirow & Co. (October 31, 1977).

[49] Testimony of Sanford C. Bernstein & Co., Inc. (transcript at 305, 312); Prudential Insurance Company of America (transcript at 374–77); McCarthy, Ried, Crisanti & Maffei, Inc. (transcript at 577).

[50] *E.g.*, testimony of Sanford C. Bernstein & Co., Inc. (transcript at 310); letters from McCarthy, Ried, Crisanti & Maffei, Inc. (October 6, 1978 and August 8, 1979).

[51] 15 U.S.C. 78bb(e); Securities Exchange Act Release No. 12251 (March 24, 1976), 41 FR 13673 (March 31, 1976).

upon) without being considered to be an improper discount for purposes of Section 24.

The Commission recommended that the NASD amend Section 24 in the manner suggested by the second alternative. The Commission noted that the record contained several policy arguments for treating research as *sui generis* in this fashion. First, many commentators observed that providing research is a valuable service that constitutes a fundamental part of the distribution process and should, therefore, be protected.[52] Second, several commentators maintained that soft dollar payments for research have been prevalent for years without any adverse effect on the fixed price underwriting system and that this practice does not give rise to the abuses that Section 24 was designed to prevent.[53] The Commission noted that the second alternative appeared to eliminate most effectively the discrimination against firms that provide third-party research to their customers. In addition, the Commission stated that it believed the second alternative more clearly and honestly expresses the economic realities of current research compensation practices and that those practices do not appear to have harmed the underwriting system. For those reasons, the Commission concluded that the second alternative would be better designed to carry out that purposes under the Act that the proposed rule change is intended to promote.

5. *1980 Proposal.* The NASD followed the second alternative, as outlined above, in amending Section 24. The proposal, as amended, still prohibits the granting of selling concessions, discounts, or other allowances to anyone other than a broker or dealer actually engaged in the investment banking or securities business and prohibits the granting or receiving of such concessions, discounts, or other allowances except as consideration for services rendered in distribution. The section now contains a proviso that the section shall not prohibit a member from selling any securities to a person, or an account managed by such person, to whom it has provided or will provide *bona fide* research if the stated public offering price is paid by the purchaser. The section also contains a definition of *bona fide* research that is substantially the same as that in Sections 28(e)(3)(A) and (B) of the Act, as interpreted by the Commission. Section 24 specifically excludes from the definition of *bona fide* research "investment management and investment discretionary services," as well as products or services that are readily and customarily available and offered to the general public on a commerical basis.[54]

The section also requires a member who grants a selling concession, discount, or other allowance to another person to obtain from that person a written agreement that he will comply with Section 24. If a member grants a selling concession, discount, or other allowance to a non-member broker or dealer in a foreign country, he is also required to obtain from such broker or dealer a written agreement to comply, as though such broker or dealer were a member, with certain provisions of the NASD's Rules of Fair Practice. Section 24 also contains reporting and recordkeeping requirements.

C. Section 36: Sales to Related Persons

Section 36 will prohibit an NASD member, in connection with a fixed price offering of securities, from selling those securities to, or placing them with, any related person of the member. A "related person" is defined generally as a person who owns, or is owned by, or is under common ownership with, a member. The 1977 Draft, the 1978 Proposal and the 1980 Proposal are briefly discussed below.

1. *1977 Draft.* The 1977 Draft permitted a member to sell securities to, or to place securities with, a related person after the termination of the fixed price offering if the member had made a *bona fide* public offering but was unable to sell its entire allotment or retention. The section provided that a member would be presumed not to have made a public offering if the securities immediately traded in the secondary market at a price above the member's cost. Several commentators argued that this provision was too strict since it would have prohibited a member from placing securities in a related account if the price in the aftermarket was above the member's cost but below the public offering price.[55]

2. *1978 Proposal.* The 1978 Proposal differed from the earlier Draft in two respects. First, the section was revised to permit the placing of securities with a related person if that person was a foreign broker-dealer who entered into an agreement, required by Section 24(b), to make a *bona fide* public offering of the securities. The Proposal was also amended to remove the presumption in the 1977 Draft that a *bona fide* public offering had not been made if the price in the aftermarket was more than the member's cost and, in response to the views of the commentators, provided that a *bona fide* public offering would be presumed not to have been made if the price in the aftermarket were higher than the public offering price. The interpretation to that section stated that the determination as to whether a public offering had been made would be based on all the facts and circumstances.

Commentators generally approved of Section 36 as revised,[56] and the

[52] Letters from Prudential Insurance Company of America (August 1, 1979); McCarthy, Ried, Crisanti & Maffei, Inc. (October 6, 1978 and August 8, 1979); American Council of Life Insurance (July 31, 1979).

[53] Letter from Prudential Insurance Company of America (August 1, 1979).

[54] The NASD states that, in determining whether the exclusion for *bona fide* research under Section 24 is available in a given instance, members should refer to Commission and staff interpretations of Section 28(e). In that regard, in Securities Exchange Act Release No. 12251 (March 24, 1976), 41 FR 13678 (March 31, 1976), the Commission indicated that items such as "newspapers, magazines and periodicals, directories, computer facilities and software, government publications, electronic calculators, quotation equipment, office equipment, airline tickets, office furniture and business supplies" are examples of products and services that are readily and customarily available and offered to the general public on a commerical basis. The Commission stated that the Section 28(e) safe harbor would not apply to the furnishing of such products and services. Accordingly, they would also not qualify as *bona fide* research for purposes of the NASD's Section 24.

Bona fide research must also be "provided by" the member who receives or retains the selling concession, discount, or other allowance. Under Section 28(e) of the Act, the Commission has stated that the "safe harbor" provided by Section 28(e) extends only to research that is "provided by" the broker to whom brokerage commissions are paid. The Commission, in Securities Exchange Act Release No. 12251, stated that "Section 28(e) might, under appropriate circumstances, be applicable to situations where a broker provides a money manager with research produced by third parties. . . ." The Commission believes that a broker-dealer may be deemed to have provided third party research when it has incurred a direct legal obligation to a third party producer to pay for the research (regardless of whether the research is then sent directly to the broker's fiduciary customer by the third party or instead is sent to the broker who then sends it to its customer). The Commission does not believe, however, that Section 28(e) would apply where the broker was merely used as an alternative means of paying obligations incurred by the fiduciary in its direct dealings with the third party. *See* staff response to Fund Monitoring Services, Inc. [1979 Dec.] Fed. Sec. L. Rep. (CCH) ¶81,913 (Sept. 22, 1978). In that regard, a broker-dealer may be deemed to have provided third-party research that it is legally obligated to pay for even if its fiduciary customer participates in the selection of the research services or products to be provided to it by the broker-dealer.

[55] Letters from Sullivan & Cromwell (November 3, 1977); UBS-DB Corp. (October 31, 1977).

[56] Letter from the SIA (July 31, 1979). *But see* letter from Transamerica Investment Management Co. (November 1, 1977), in which it was alleged that Section 36 discriminated against broker-dealers related to institutional investors by preventing them from selling underwritten securities to such investors, while broker-dealers providing advisory services to an institutional investor were not so restrained. While it is true that Section 36 does not prohibit a broker-dealer from selling underwritten securities to an institution to which it provides

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Commission did not comment on Section 36 in its July 3, 1980 letter to the NASD. The Proposal was not amended by the NASD's 1980 revisions.

D. Section 1(m): Definition of fixed price offering

The proposed rule change also adds a new Section 1(m) to Article II of the Rules of Fair Practice to define the term "fixed price offering." The NASD proposed this amendment to clarify which offerings were subject to the proposed rule change and stated that the proposed rule change would not prohibit members from selling securities to anyone at any fair price so long as they have not represented that there is a fixed offering price.

1. *1977 Draft.* The 1977 Draft defined "fixed price offering" as a public offering of securities by a broker, dealer, or underwriter at a stated public offering price, whether or not such offering is registered under the Securities Act of 1933, except that the term would not have included offerings of "exempted securities" or "municipal securities" as those terms are defined in the Act.

2. *1978 Proposal.* The 1978 Proposal revised proposed Section 1(m) to clarify that the term does not include wholly foreign offerings, although securities publicly offered in United States territories are included, and that it does not include offeringss of redeemable securities of registered investment companies where the price is determined by the net asset value of the security. There were no comments on proposed Section 1(m), and the Commission did not raise any concerns about it in its July 3, 1980 letter to the NASD. It was not amended by the 1980 Proposal.

V. Legal Standards

Under Section 19(b)(2) of the Act, the Commission must approve the NASD's proposed rule change if it finds that the proposed rule change is consistent with the requirements of the Act and the rules thereunder applicable to the NASD. If the Commission is unable to make that finding, it must institute proceedings to consider whether to disapprove the proposed rule.

The statutory requirements relevant to such a determination are fund for the most part, in Section 15A(b) of the Act.[57] That section delineates purposes that NASD rules should be designed to achieve and other purposes that they may not be designed to achieve. Those purposes or objectives, whether positive goals such as investor protection or prohibitions such as those against unfair discrimination or inappropriate burdens on competition, are stated in the form of broad and elastic concepts. They afford the Commission considerable discretion to use its judgment and knowledge in determining whether a rule complies with the requirements of the Act.[58] Furthermore, the subsections of Section 15A(b) must often be read with reference to one another and to other provisions of the Act. For example, Section 15A(b)(9) provides that an NASD rule may not impose any "burden on competition not necessary or appropriate in furtherance of the purposes of [the Act]." Whether a burden on competition is permissible thus turns on whether and to what extent the proposed rule promotes one or more statutory objectives, such as the protection of investors or the public interest. Within that legal framework, the Commission must weigh and balance the strengths and weaknesses of a rule, assess the views and arguments of others and make predictive judgments about the consequences of a proposed rule.

A. Section 15A(b)(2): enforcement considerations.

Section 15A(b)(2) requires that the NASD have the capacity to enforce compliance by its members with NASD rules, as well as with the provisions of the Act and the rules thereunder. Although the Commission cannot approve NASD rules that are inherently incapable of being fairly and effectively enforced, the fact that a rule may be difficult to enforce or that the NASD may not be able to detect every violation of it would not alone mandate Commission disapproval.[59]

While Section 15A(b)(2) requires the Commission to make a predictive judgment in approving a proposed rule change, the Commission can monitor NASD enforcement of its rules and later reach a different conclusion regarding the NASD's enforcement ability if it finds that a rule cannot be fairly and effectively enforced. While certain provisions of Section 8 and 24 do raise issues of enforceability,[60] discussed below, the Commission believes that the NASD can enforce the proposed rule change, as amended, consistent with the requirements of Section 15A(b)(2).

1. *Section 8.* The overtrading prohibitions of Section 8 may present difficult enforcement questions. First, in order to detect overtrades, the NASD must be able to determine whether a swap transaction has actually occurred. Since the transactions involved in a swap may occur at different times, sometimes several days apart, several commentators and the NASD pointed out that the detection of overtrading can be, and has always been, difficult.[61] The NASD states that, although overtrades that do not involve simultaneous purchases and sales may be more difficult to detect, it will be possible to detect overtrades that occur during the same general time period, particularly if a pattern or practice of overtrading develops.[62] The recordkeeping requirements of Section 8 also should aid in the NASD's enforcement program through its examination of members' books and records.

The NASD must also be able to detect whether the quotations obtained for the swapped securities are authentic.[63] The NASD states that with respect to quotations for common stocks traded on an exchange or listed on an automated quotation system, it will not be difficult to determine the validity of the quotations. Although the determination will be more difficult for other types of securities, the NASD states that it is satisfied that the recordkeeping requirements of Section 8, which require recordation of the time and date of quotations and the names of dealers supply them, will enable the NASD to maintain adequate surveillance over swap transactions.

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advisory services, Section 24 would prohibit the broker-dealer from selling the securities to such a person at less than the public offering price, either directly or indirectly. Also, federal statutory provisions may prohibit or condition the sale. *See* Section 17(a) of the Investment Company Act of 1940 (15 U.S.C. 80a–17(a)); Section 206(3) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–6(3)); Rules 206(3)–1 and 206(3)–2 thereunder (17 CFR 275.206(3)–1 and 275.206(3)–2); Sections 406(a) and 406(b) of the Employee Retirement Income Security Act of 1974, Pub. L. No. 93–406; ERISA Prohibited Transaction Exemptions 79–1, 44 FR 5963 (January 30, 1979) and 75–1, 40 FR 50845 (October 31, 1975).

[57] 15 U.S.C. 78o–3(b).

[58] *Bradford National Clearing Corp. v. Securities and Exchange Commission,* 590 F.2d 1035 (D.C. Cir. 1978).

[59] Enforcement difficulties may be pertinent in evaluating the extent to which a rule may promote various purposes of the Act under other subsections of Section 15A(b). For example, if a rule, for practical purposes, is incapable of being enforced against a certain class of persons, the rule, as applied, may violate the prohibition against unfair discrimination.

[60] Commentators did not question whether the NASD could adequately enforce Section 36, and the Commission believes that the NASD should be able to enforce that section without any special difficulties.

[61] Letters from the NASD (August 10, 1979); the SIA (July 31, 1979).

[62] Letter from the NASD (August 10, 1979).

[63] A practice of asking for a "Section 8 quote" that would be higher than a *bona fide* bid might develop. If such a practice became widespread, but nevertheless virtually impossible to prove in a disciplinary proceeding, and if the practice di not adversely affect capital raising, questions would, of course, arise concerning the usefulness of the overtrading prohibition.

The Commission believes that Section 8, as amended, will be easier to enforce than the section as originally filed. Since the section, as amended, provides more objective standards for detecting overtrades and in some instances places the burden on a member to disprove a presumption that certain trades are overtrades, the Commission believes that it can be adequately enforced by the NASD.[64]

2. *Section 24.* Section 24, as drafted in the 1978 Proposal, raised questions concerning the NASD's capacity to enforce the rule. First, the proposal required a broker-dealer to render services in distribution, either by being an underwriter or by engaging in some direct selling effort, in order to receive a selling concession. The NASD admitted that the direct selling effort requirement would be difficult to police, but noted that the managers of the underwriting group would be of substantial assistance in enforcing that requirement.[65] As amended, however, Section 24 defines the term "services in distribution" to include furnishing of *bona fide* research. Accordingly, the NASD will not be required to verify that research providers made some perfunctory selling effort to satisfy the services in distribution requirement, and one source of potentially troublesome enforcement problems will be avoided in large measure.

Second, Section 24, as drafted in the 1978 Proposal, would have required the NASD to determine whether certain products or services including research were readily and customarily available on a commercial basis and whether a particular product or service was furnished for an agreed upon consideration. If such products or services were so provided, the member would have been required to be fully compensated from sources other than the selling concession or other allowance. Since the interpretations to Section 24 by the NASD's Board of Governors provided that a product or service would be commercially available if it or a substantially identical service or product were furnished to a customer on a commercial basis, the NASD would have been required to make complicated determinations as to whether one kind of research was "substantially similar" to another kind.[66] The NASD acknowledged that this requirement could create difficult interpretive and enforcement problems.[66] In addition, enforcing the "agreed upon consideration" provision would have required the NASD to make artifical distinctions between those research agreements in which the compensation was explicitly stated and those in which the compensation arrangement was merely implied.[67] By removing various limitations upon the providing of *bona fide* research in connection with a fixed price offering, the NASD has again substantially eliminated potential enforcement difficulties under Section 24.

The 1978 and 1980 Proposals also provide that if a member furnishes products or services that are commercially available or are provided for an agreed upon consideration, the member must be fully compensated from a source other than selling concessions. The NASD stated that a determination whether full compensation had been paid would be made with reference to the fair market price of the product or service,[68] but other commentators doubted such a requirement could be easily enforced.[69] Nevertheless, by excluding soft-dollar designations for research from the category of prohibited discounts, the NASD has eliminated the need to consider the one type of product for which it might often be particularly difficult to assess fair market value. That should simplify, although not solve completely, the enforcement difficulties.

The rule proposal also raises the question whether the NASD can enforce the requirement that a customer pay a fixed price for an underwritten security when the member and customer have a number of overlapping, negotiable business relationships. Several commentators pointed out that institutions and broker-dealers could evade Section 24 by adjusting prices or commissions paid or services received in other transactions while still paying a "fixed price" for underwritten securities.[70] The testimony of the institutional investors indicates, however, that they are satisfied with the fixed price offering system as it will operate under the rule as amended. Commentators have indicated that institutional investors and broker-dealers will comply with the rule proposal.[71] If that expectation is proven to be unreasonable and enforcement problems develop, the Commission may be forced to reconsider whether regulatory efforts in this area are feasible and whether additional Commission action is needed.

B. Section 15A(b)(6): An overview

As noted above, Section 15A(b) of the Act specifies certain objectives that the NASD's rules, as a group, must affirmatively foster and certain objectives that its rules must not be designed to achieve. Specifically, Section 15A(b)(6) of the Act provides that the rules of the NASD:

> [must be] designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, * * * to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and [must] * * * not [be] designed to permit unfair discrimination between customers, issuers, brokers, or dealers, to fix minimum profits, to impose any schedule or fix rates of commissions, allowances, discounts, or other fees to be charged by its members, or to regulate by virtue of any authority conferred by [the Act] matters not related to the purposes of [the Act] or the administration of the [NASD].

In determining whether a rule change proposed by the NASD is consistent with that section, the Commission must look to both the section's affirmative purpose and its negative injunctions. Of course, not every NASD rule need promote each affirmative purposes so long as the NASD's rules as a group promote those purposes. At the same time, however, a proposed rule change would not be consistent with the Act if it violated any one of the negative injunctions (*e.g.*, by being designed to permit unfair discrimination among brokers or dealers).

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[64] In May 1979 Release the Commission asked whether the NASD could effectively enforce the requirement in Section 8 that a member charge a "normal commission" in a swap transaction when acting as agent without also effectively fixing or establishing a schedule of commission rates for swap transactions. In response, the NASD stated that since Section 8 defines a normal commission as the amount the member would charge in a like transaction not involving taking securities in trade, the commission charged by one member would not have any bearing on whether another member's commission charges were normal. Accordingly, the NASD should be able to enforce the "normal commission" requirement without determining what would be a "normal" commission within the industry generally or establishing a schedule of commissions for swap transactions. Letter from the NASD (August 10, 1979).

[65] Letter from the NASD (August 10, 1979). *See* Opening Statement of Morgan Stanley & Co., Inc. (November 1, 1979).

[66] Letter from the NASD (August 10, 1979). *See* letters from Prudential Insurance Company of America (August 1, 1979); McCarthy, Ried, Crisanti & Maffei, Inc. (August 8, 1979).

[67] Testimony of Ray Garrett, Jr., on behalf of the NASD (transcript at 978–80). As Mr. Garrett pointed out, this interpretation would have the disadvantage of "moving into the area of the raised eyebrow and the timely simle and nod of the head and established practices of behavior, all of which will be as difficult to determine by the finders of fact in these cases as are comparable standards applied in other cases."

[68] Letter from the NASD (August 10, 1979).

[69] Letter from Prudential Insurance Company of America (August 1, 1979).

[70] Letter from McCarthy, Ried, Crisanti & Maffei, Inc. (August 8, 1979); testimony of Charles Schwab & Co., Inc. (transcript at 689–90).

[71] Testimony of the SIA (transcript at 244); Goldman Sachs & Co. (transcript at 768).

When it filed the proposed rule change with the Commission and in its comments and testimony, the NASD has argued that the proposed rule change is consistent with the requirements of Section 15A(b)(6). For the reasons discussed below, the Commission has concluded that the proposed rule does not violate the prohibitions of Section 15A(b)(6) and is consistent with that section.

C. Section 15A(b)(6): Unfair discrimination

Section 15A(b)(6) provides that a rule of the NASD must not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The NASD has maintained that the proposed rule change is consistent with this requirement since it is designed to prevent unfair discrimination among customers by banning practices that would otherwise allow certain classes of customers to receive an undisclosed, more favorable price in public offerings than other received. The NASD argues that, although price discrimination would not be unfair if done in a forthright manner with all investors knowning that they stand on their own bargaining power, the types of discounts precluded by the proposed rule change could never be adequately disclosed in the prospectus.[72]

Under the Act, the Commission need not find that a proposed rule change is designed affirmatively to prevent unfair discrimination against individual investors, but it must make the somewhat different finding that the proposal is not disigned to permit unfair discrimination against a class of investors. In that regard, disparate treatment of differently situated parties is not necessarily either fair or unfair, and it might not be unfair to permit one type of customer to obtain a more favorable price than another type of customer.[73] The question is whether the NASD's rule will permit (or for that matter require) broker-dealers to discriminate unfairly among investors by preventing institutional investors from obtaining various kinds of discounts from the offering price.

Fixed price offerings involve only short-term maintenance of a price that is separately negotiated for each offering by the issuer and the underwriters. It occurs in the context of a system for raising capital that has worked well and with which the participants find little fault. That underwriters and an issuer agree to sell securities at a fixed price would not appear to be "unfair" to customers, and the proposed rule change would not prevent an issuer and the underwriters from agreeing, for example, to offer the securities at different prices depending upon the amount of securities that a customer was willing to buy or other such arrangements that would provide different levels of prices. Furthermore, there simply does not appear to be any clear or substantial basis for concluding that those who buy securities in fixed price offerings regard the NASD's proposed rule change, as amended, or the fixed price offering system itself to be "unfair." For those reasons and in view of the rule proposal's beneficial purposes, discussed below, the Commission is not prepared to conclude that the proposed rule change is designed to permit unfair discrimination among customers.[74]

As noted above, the Commission initially had been concerned that the 1978 Proposal might permit unfair discrimination among brokers and dealers. The NASD had acknowledged, in connection with the 1978 Proposal, that Section 24 might have a greater impact on research firms than it would on others. The NASD asserted, however, that differences in impact would not constitute a unfair discrimination since the section would be applied to all research providers and to all types of research in the same manner. The NASD stated that all regulation affects business practices and that research broker-dealers would have no claim of unfair discrimination if the Commission found that the regulation was disigned to achieve some legitimate end.[75]

Commentators argued, however, that the 1978 Proposal unfairly discriminated against smaller firms and research firms who either distribute third-party research or cannot afford to distribute research on a "goodwill" basis.[76] As noted above, the Commission stated in its July 3, 1980 letter to the NASD that the proposal might not be consistent with the Act, and in response, the NASD revised Section 24 as suggested by the Commission. As so revised, the proposed rule does not retain any of the discriminatory elements identified by the commentators and is not designed to permit unfail discrimination among brokers and dealers.

D. Section 15A(b)(6): Minimum profits, schedule of commissions, allowances, discounts, or other fees; impediments to a free and open market

Among the more difficult issues raised by the NASD's prohibition against giving discounts from the offering price in a fixed price offering is whether that prohibition would impose any schedule or fix rates of commissions, allowances, discounts, or other fees, [77] or would create an impediment to a free and open market. [78] In 1945 the Commission considered substantially similar questions in an appeal from an NASD disciplinary action brought against several NASD members.[79] The members had been charged with violations of Article III, Section 1 of the NASD Rules of Fair Practice, which provides, "a member, in the conduct of his business, shall observe high standards of commerical honor and just and equitable principles of trade." More specifically, the members were alleged to have breached certain fixed price provisions of a syndicate agreement. The Commission overturned the disciplinary sanctions, concluding that an NASD rule or rule interpretation "specifically requiring adherence to

[72] Letter from the NASD (August 10, 1979). *See also* letters from Association of the Bar of the City of New York (August 7, 1979); Scudder, Stevens and Clark (September 26, 1979).

[73] When it prohibited the exchanges from fixing commission rates charged by its members (and earlier when it required the exchanges to introduce volume discounts for large orders), the Commission did not regard as unfair the ability of institutions to obtain more favorable commission rates than individual retail investors were likely to receive. Securities Exchange Act Release No. 11203 (January 23, 1975), 40 FR 7394 (February 20, 1975).

[74] While Section 24 prevents an institutional customer from directly or indirectly receiving a discount from the public offering prices, it would not prevent an institutional customer related to an NASD member from indirectly benefiting from its purchase of an underwritten security from that member. In such a situation, the institution would indirectly receive the benefit of the selling concession because of its ownership relation to the NASD member, even though the member did to violate Section 24. In order for the rule change to be consistently applied to all institutional investors, the NASD drafted Section 36 to prohibit, except in limited circumstances, a member from selling to, or placing with, a related person of the member securities that are part of a fixed price offering. One commentator stated that there are economies of scale in selling securities to institutions and that discounts to such purchasers, if disclosed, would not violate the Act. Letter from Charles Schwab & Co., Inc. (July 31, 1979). *Contra*, testimony of Sutro & Co., (transcript at 481–82); Goldman Sachs & Co. (transcript at 780), where it was indicated that the costs of selling to institutions are not lower than those of selling to individuals.

[75] NASD Analysis of the Record at 22–24. *See also* testimony of Goldman Sachs & Co. (transcript at 772–73).

[76] *E.g.*, letters from Sanford C. Bernstein & Co., Inc. (July 26, 1979); Adams, Harkness & Hill, Inc. (July 10, 1979); Northwestern Mutual Life Insurance Co. (December 12, 1978).

[77] Section 15A(b)(6) requires that NASD rules not be designed "to fix minimum profits, to impose any schedule or fix rates of commissions, allowances, discounts, or other fees to be charged by its members."

[78] Section 15A(b)(6) requires NASD rules to be designed "to remove impediments to and perfect the mechanism of a free and open market and a national market system."

[79] *In re National Association of Securities Dealers, Inc.*, 19 SEC 424 (1945) (the "PSI case" or "PSI").

price maintenance agreements would be contrary to the provisions of Section 15A(b)(7)." [80]

Two questions had arisen in the appeal under then Section 15A(b)(7): (i) whether Section 1, as interpreted, was designed "to fix minimum profits, to impose any schedule of prices, or to impose any schedule of commissions, allowances, discounts, or other charges"; and (ii) whether Section 1, as interpreted, was designed to remove impediments to and perfect the mechanism of a free and open market. In considering those two issues, the Commission analyzed the Act's prohibiton against imposing schedules of prices and discounts as "intimately related to the Congressional objective of keeping the association's activities from impeding the operation of free and open markets." [81] The Commission concluded, first, that by disciplining members for violations of pricing provisons of underwriting agreements, and by the threat of discipline, the NASD was attempting to "impose" schedules of prices and discounts. [82] The Commission then concluded that any rule "designed to promote minimum prices and discounts runs directly counter to the statutory requirement that the [NASD's] rules be designed to remove 'impediments to . . . a free and open market.'" [83] Accordingly, the Commission found the NASD's interpretation of Section 1 of Article III to be inconsistent with the Act. At the same time, however, the Commission stated that it was "inclined to the view that the price-maintenance agreements now before [it] were not illegal under the Sherman Act." [84]

The NASD's currently proposed rule change would not, of course, set or fix the public offering price or prescribe the minimim "spread" or underwriters' compensation for any particular offering or category of offerings in general. Under the proposed rule change, the issuer and the underwriters would remain free to agree among themselves as to the public offering price and the spread in each distribution. Similarly, the amount of the selling concession would be determined by the underwriters for each distribution according to its characteristics. Once an agreement had been reached, however, the proposed rule change would provide a basis for NASD disciplinary action against a member who violated it.

Section 15A(b)(6) clearly indicates that the Congress intended to prevent the NASD from fixing commission rates, as the exchanges did before 1975, and from itself setting the amount of the selling concession. To read the section otherwise would be to ignore the plain meaning of the terms "impose" and "fix". There is, however, no clear indication in the text of the section or in the legislative history that the words "fix" or "impose" should be read more expansively than they are in ordinary usage. [85]

Nothing in the proposed rule change would require that distributions of securities always be structured as "fixed price offerings." Instead, the provisions of the proposed rule change come into play only after the underwriters have themselves agreed to distribute securities through a fixed price offering. Accordingly, it seems inaccurate to speak of a schedule as having been imposed, or of discounts as having been fixed, by rules of the NASD when participants in a common enterprise work towards a joint goal by voluntarily assuming a price maintenance agreement as one of the terms upon which they will risk their capital and expend their energies. [86] As discussed above, broker-dealers enter into underwriting agreements for the express purpose of distributing to the public a particular offering of securities by a single issuer at a particular price. The underwriters act together for a limited time and with a limited objective in a manner more similar to a joint venture than an endeavor where competitors offer like or similar products or services in competition with one another.

While the Commission interpreted the provision "impose any schedule of commissions, allowances, discounts, or other fees to be charged by its members" expansively in 1945, [87] it is not today prepared to conclude that the Congress intended by the use of that phrase to prevent NASD disciplinary action against its members for granting discounts from the public offering price in an offering that is publicly represented to be at a fixed price. The Commission does not believe Section 15A(b)(6) requires it to conclude that the NASD would fix mimimum profits or impose a schedule of discounts or fees by prohibiting discounts from the public offering price of a security to be distributed in a fixed price underwriting where the participating broker-dealer members negotiate a lawful contract to distribute the security at a fixed price. [88]

In the PSI case, the Commission also concluded that the NASD's action to enforce the pricing provisions of an underwriting agreement created an impediment to a free and open market in violation of the Act even though it was "inclined to the view that the price-maintenance agreements [then] before [it] were not illegal under the Sherman Act." [89]

In considering the applicability of the Sherman Act to the PSI underwriting agreements and after reviewing the history of price maintenance agreements in the underwriting of securities, the Commission asked: "Does the policy of the Sherman Act require price competition among those who are engaged in a common undertaking under economic circumstances where it is necessary for the various participants to

[80] Section 15A(b)(7) was redesignated Section 15A(b)(6) by the Securities Acts Amendments of 1975 (the "1975 Amendments"). The sections are substantially the same although, before 1975, Section 15A(b)(7) provided that an NASD rule could not be designed to impose any "schedule of prices," in addition to the current prohibitions. This phrase was deleted from the Act by the 1975 Amendments, apparently for reasons not related to the fixed price offering system.

[81] 19 SEC at 440.

[82] 19 SEC at 438.

[83] 19 SEC at 440.

[84] 19 SEC at 462. Later, in *United States v. Morgan*, 118 F. Supp. 621 (S.D.N.Y. 1953), a federal district court found fixed price underwriting agreements reasonable restraints on trade in light of their limited duration and objective, having the purpose of efficiently promoting, rather than restraining, trade.

[85] Commenting on the antecedent to Section 15A(b)(6), the Senate Committee considering the Maloney Act stated: "As safeguards against abuse, and to make clear that activities of associations under this paragraph are to be consistent with the operation of free and open markets, this paragraph provides that the rules of an association may not be designed to permit unfair discrimination between customers, or issuers, or brokers or dealers, nor to fix minimum profits, nor to impose any schedule of prices, nor to fix minimum rates or impose any schedule of commissions, allowances, discounts, or other charges. Thus, to provide safeguards against unreasonable profits, it is contemplated that associations may adopt rules designed to prevent each member thereof from exacting in any particular transaction a profit which reasonable men would agree was unconscionable in the light of all of the concrete facts and circumstances of that transaction; but an association, whether in a *bona fide* attempt to prevent or under the pretext of preventing unreasonable profits, may not impose any schedule of prices or commissions." S. Rep. No. 1455, 75th Cong., 3d Sess. 7 (1938). *See also* H.R. Rep. No. 2307, 75th Cong., 3d Sess. 8 (1938), which contained identical language.

[86] *See United States v. Morgan*, 118 F. Supp. 689.

[87] In the PSI case, the Commission analyzed the provision concerning imposing schedules of fees as "intimately related to the Congressional objective of keeping the [NASD's] activities from impeding the operation of free and open markets," but as is discussed below that objective of Section 15A(b)(6) must today be read in light of new Section 15A(b)(9).

[88] Since the use of fixed price offerings of various types by investment bankers had become, by at least 1920, the principal method by which American industry raised capital from the public, it seems extremely unlikely that the investment bankers who participated in shaping the antecedent to Section 15A(b)(6), or the Congress that enacted that legislation, intended to prevent the NASD from sustaining that system but never clearly said so. *See* 1 *Loss, Securities Regulation* (1961) at 163–170. *See also United States v. Morgan*, 118 F. Supp. at 644–654, 687–688.

[89] 19 SEC 462.

act in combination if their economic function is to be performed at all?" [90]

The Commission noted that modern underwriting had evolved to meet several significant needs of a large and growing economy: the need to assure industries seeking capital that they will receive given amounts of money within given periods at an agreed cost and the need of the underwriting community to handle many large issues without risking or tying up almost impossibly vast amounts of capital.[91]

The Commission also observed that the Securities Act contemplated the fixing of an offering price and an agreement or understanding as to discounts [92] and that by its own rules the Commission regulated the practice of stabilizing prices during an underwriting.[93] In the context of considering the applicability of then Section 15A(b)(7) of the Act to the NASD's rules, however, the Commission characterized such observations and others as "irrelevant." [94] The NASD's action to discipline its members amounted to imposing a schedule of prices and discounts and was a *"per se* 'impediment to * * * a free and open market'." [95]

The Commission concluded that the Act simply did not permit the NASD to take any action to enforce pricing provisions of underwriting agreements.[96]

Regardless of the merits of the Commission's analysis in 1945, the Commission today is required to review NASD proposed rules under a different standard than was in effect in 1945. The Congress extensively amended the Act in 1975 and, specifically with respect to competitive issues, the Commission was directed to determine whether any "burden on competition" is "necessary or appropriate in furtherance of the purposes of [the Act]." [97] The Commission must apply that standard when reviewing rules and other actions of self-regulatory organizations and also when it adopts its own rules. As is discussed below, the Act's existing standard for reviewing anticompetitive restraints requires the Commission to weigh the competitive effects of the proposed rule and to assure that the regulatory purposes of the rule, on balance, warrant the imposition of the burden on competition.[98]

Issues of competition are significant in this proceeding, as they were in the Commission's consideration of NASD disciplinary actions in the PSI case, but in its PSI decision the Commission considered virtually irrelevant any beneficial aspects of the NASD's interpretation of its rules. The Commission believes it would not be correct to follow that *per se* approach today and accordingly is not prepared to conclude as a matter of law that the NASD's rule proposal runs counter to the requirement that the NASD's rules be designed to remove impediments to a free and open market. Furthermore, in weighing the beneficial purposes of the proposed rule change and any burdens on competition, the Commission must consider these factors in the context of securities underwriting today rather than the circumstances of 1945.

E. Section 15A(b)(9): Burdens on competition

Section 15A(b)(9), added to the Act in 1975, provides that the rules of the NASD may "not impose any burden on competition not necessary or appropriate in furtherance of the purposes of [the Act]." The legislative history of that section explains that the Commission is to balance the anticompetitive effects of the rule against the purposes of the Act to be furthered by the rule. The Senate Report on S.249, the Senate bill that became the 1975 Amendments, states:

> [T]he Commission's responsibility would be to balance the perceived anti-competitive effect of the regulatory policy or decision at issue against the purposes of the Exchange Act that would be advanced thereby and the costs of doing so. Competition would not thereby become paramount to the great purposes of the Exchange Act, but the need for and effectiveness of regulatory actions in achieving those purposes would have to be weighed against any detrimental impact on competition.[99]

During congressional hearings on S.249, the Justice Department had argued that the Commission should be required, in passing on self-regulatory organization rules, to adopt the least anticompetitive means or protecting investors and preserving fair and orderly markets in securities.[100] The Congress, however, declined to adopt that rigid standard and instead chose the balancing tests currently found in Section 15A(b)(9) and elsewhere in the Act. The Senate Reports states:

> [t]his explicit obligation to balance, against other regulatory criteria and considerations, the competitive implications of self-regulatory and Commission action should not be viewed as requiring the Commission to justify that such actions be the least anti-competitive manner of achieving a regulatory objective. Rather, the Commission's obligation is to weigh competitive impact in reaching regulatory conclusions. The manner in which it does so in to be subjected to judicial scrutiny upon review in the same fashion as are other Commission determinations, with no less deference to to the Commission's expertise than is the case in other matters subject to its jurisdiction.[101]

As noted above, the Commission did not follow that approach in the *PSI* case but instead found impediments to the NADS's authority that, in its view, made largely irrelevant any possibly beneficial aspects of the NASD's actions. In 1975, however, the Congress unmistakably indicated that the Commission should not disregard potentially beneficial effects of a rule that imposes some restraint on competition. In that regard, the NASD asserts that the proposed rule change is designed (i) to prevent fraudulent acts and practices by insuring that all public customers pay the public offering price disclosed in the prospectus, (ii) to protect investors and the public interest by maintaining public confidence in the securities markets by prohibiting practices which allow departures from a previously disclosed public offering price, (iii) to promote just and equitable principles of trade by preventing practices prohibited by agreements between members and the issuer an among themselves and (iv) to promote a free and open market by preventing certain undersirable consequences that could result from unrestrained discounting practices.

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[90] 19 SEC at 458.

[91] *Id.*

[92] 19 SEC at 460.

[93] *Id.*

[94] 19 SEC at 442.

[95] 19 SEC at 440.

[96] The Commission also stated "[n]o showing is made that the use of the NASD as an added instrumentality for enforcing price maintenance agreements is necessary to preserve the present system." 19 SEC at 444.

[97] Sections 6(b)(8), 11A(c)(4)(A), 15A(b)(9), 15B(b)(2)(C), 17A(b)(3)(I) and 23(a)(2); 15 U.S.C. 78f(b)(8), 78k-1(c)(4)(A), 78o-3(b)(9), 78o-4(b)(2)(c), 78q-1(b)(3)(I) and 78w(a)(2).

[98] Of course, the affirmative mandate of Section 15A(b)(6) (the successor to former Section 15A(b)(7)) still retains its vitality, and the rules of the NASD, taken as a whole, must be designed, among other things, to remove impediments to a free and open market and to perfect the mechanism of a national market system.

[99] Report of the Senate Comm. on Banking, Housing and Urban Affairs to Accompany S.249, S. Rep. No. 94-75, 94th Cong. 1st Sess. 13-14 (1975). *See* Conference Report to Accompany S.249, House Rep. No 94-229, 94th Cong., 1st Sess. 94-95 (1975).

[100] Statement of Donald L. Baker, Deputy Assistant Attorney General, Antitrust Division, Dep't of Justice, and Attachment A thereto, in *Securities Acts Amendments of 1975, Hearings before the Subcomm. on Securities of the Senate Comm. on Banking, Housing and Urban Affairs on S. 249*, 94th Cong., 1st Sess. 258, 261 (1975).

[101] Report of the Senate Comm. on Banking, Housing and Urban Affairs to Accompany S.249, S. Rep. No. 94-75, 94th Cong. 1st Sess. 13 (1975).

F. Related considerations: Certain statutory purposes

The NASD and several commentators have argued that the rule proposal would promote various statutory purposes. It was suggested that the rule proposal would prevent fraudulent acts and practices by requiring members to sell securities in a fixed price offering at the public offering price disclosed in the prospectus. The NASD believes that its proposed rule change is necessary to ensure that the prospectus accurately discloses the public offering price as required by the Securities Act of 1933 [102] and that many of the kinds of discounts prohibited by its proposed rule could not be adequately disclosed. The Commission believes, however, that the proposed rule is at best tenuously related to the prevention of fraud. It prohibits a relatively large spectrum of discounting practices in fixed price offerings, and the NASD has not demonstrated that all or most of those arrangements could not be disclosed.

Some commentators argued that disclosure would be an alternative approach to the issues raised by the proposed rule change, pointing out that if discounting practices are disclosed in the prospectus, investors would not be misled. The NASD and others argued that disclosure is not a viable alternative to the prohibition of discounts essentially because disclosure of rebating practices would contribute to the erosion of the fixed price offering system and of public confidence in the fairness of the securities markets.[103] The NASD suggested that individual investors would be discouraged from purchasing newly issued securities if they were informed that certain purchasers paid less that the public offering price.[104] Also, the disclosure of discounting practices could, in the NASD's view, further undermine the stability of the markets by increasing the pressure for discounts from the public offering price. The practice of stabilization would be especially threatened.[105] The NASD predicted that, if the practice of crediting selling concessions against legal hard dollar obligations becomes prevalent, money managers might purchase securities in offerings, pay off hard dollar obligations and then resell the securities into the stabilizing bid. In the case of offerings in which stabilization is attempted, a significant number of sales into the stabilizing bid could force the underwriters to lower the bid and cause the market price of the security to fall, further disillusioning investors as to the value of their purchase.[106] It is difficult to predict the consequences of disclosure of any of the practices that the NASD wishes to prohibit, but it appears that disclosure would not adequately resolve all the concerns underlying the NASD's proposed rule change.

Some commentators have argued that the proposed rule change would promote just and equitable principles of trade by providing a way to enforce underwriting agreements. A breach of contract without proper justification is generally regarded as unethical [107] and, while judicial remedies might be pursued for such violations, commentators argue that access to the courts is very costly, time consuming and particularly ineffective in the context of an underwritten offering. As noted above, fixed price offering agreements have been viewed as lawful by the *Morgan* court and by the Commission, and the NASD's rule proposal is reasonably designed to deter violations of those agreements.

Also, the NASD has argued that the proposed rule would prohibit the granting of discounts in circumstances that would be regarded by many to be unfair. It further suggests that those who come to believe that they have been unfairly treated by the underwriting system may lose confidence in it, concluding that the securities markets operate for the benefit of the large and powerful at the expense of others. Such perceptions can injure the Nation's capital-raising system, and the NASD has sought to use its power to promote just and equitable principles of trade in an effort to prevent those perceptions.

In addition, the NASD argues that the proposed rule change would remove impediments to a free and open market. The NASD believes that an erosion of the fixed price offering system, which could result without the rule, could lead to increased concentration in the underwriting business. Many commentators argued that, without a means of enforcing fixed price underwriting agreements, managers would form smaller syndicates limited mainly to major underwriting firms.[108] Commentators further feared that the inability to enforce these agreements would increase the risk of underwriting, causing firms to withdraw from the investment banking business. Finally, it was frequently asserted that the cumulative effect of these predicted results effectively would be to deny many issuers access to the securities markets, making it particularly difficult for small issuers to raise capital.

The Commission believes that the proposal is designed to achieve beneficial purposes. At the same time, the proposed rule change does limit the ability of underwriters and customers to negotiate separately any discount from the offering price in a fixed price offering. In the next section of this release, the Commission discusses its assessment of the rule change's intended purposes in light of any adverse competitive consequences that may result from its approval.

VI. Policy Considerations: Balancing of Competitive Implications and Regulatory Purposes

Participants in the Commission's proceedings, as well as the NASD, have stated that the NASD's proposed rule change is designed to further such statutory goals as the promotion of just and equitable principles of trade. Many of those participants, however, have urged the Commission to consider the proposal in light of public interest considerations that transcend any single statutory goal contained in, for example, Section 15A(b)(6) and to consider the importance of the NASD's proposed rule change to achieving those broader ends.

The arguments in favor of preserving the system as a means of raising capital are attractive, particularly since issuers, underwriters and institutional investors all seem to be reasonably satisfied with the relationships and distribution

[102] Item 16 of Schedule A to the Securities Act of 1933 requires the disclosure of the price at which it is proposed that the security shall be offered to the public or the method by which such price is computed and any variation therefrom at which any portion of such security is proposed to be offered to any persons or classes of persons, other than the underwriters, naming them or specifying the class. The Commission's approval of the proposed NASD rules today does not address the question of what disclosure, if any, of practices permitted by the rules is required.

[103] Letters from Prudential Insurance Company of America (August 1, 1979); Scudder, Stevens & Clark (September 26, 1979); testimony of Goldman, Sachs & Co. (transcript at 719–20).

[104] Letter from the NASD (August 10, 1979). *See* testimony of Goldman Sachs & Co. (transcript 719–20). Other commentators disagreed, stating that small investors would be unaffected by such disclosure, particularly if the disclosed practices were soft dollar designations for research that would be unavailable to individuals. Letters from American Council of Life Insurance (July 31, 1979); Prudential Insurance Company of America (August 1, 1979).

[105] *See* letter from the SIA (July 31, 1979).

[106] *See* testimony of Morgan Stanley & Co., Inc. (transcript at 917). *But see* testimony of Goldman Sachs & Co. (transacript at 777–79) (that it would be possible to stabilize an offering at the net price to broker-dealers).

[107] *E.g., Buchman* v. *SEC*, 553 F.2d 616, 620–21 (2d Cir. 1977); *Nassau Securities Service* v. *SEC*, 348 F.2d 133 (2d Cir 1965); *Friedman & Co.*, 45 SEC 393 (1973); *Southern Brokerage Co., Inc.*, 42 SEC 449 (1964).

[108] Letter from the SIA (July 31, 1979); testimony of Sutro & Co., Inc. (transcript at 440); Morgan Stanley & Co., Inc. (transcript at 880).

techniques currently employed in fixed price offerings. For the most part, the areas of disagreement that surfaced among participants were confined to the proposal's treatment of research and a few other specific problems and did not involve any wholesale condemnation of the existing underwriting system.

The fixed price offering system has served as an effective means of raising capital in this country. Through the years, the system has satisfied the underwriters' desire for reasonable risk capital raising. It has afforded investors an opportunity to participate in primary distributions at relatively low cost and has distributed large quantities of investment securities to investors without disturbing existing secondary markets unduly. The undisciplined erosion of that system, which some commentators have suggested could result without the NASD's proposed rule change, could be disruptive to the capital formation process.

At the same time, however, the issues at stake in the "Papilsky" proceeding are somewhat more complicated than simply whether the fixed price underwriting system *per se* should be preserved or abolished. The fixed price offering system that exists today does not preclude all practices that might be thought to result in indirect price discounts, nor would the NASD's proposed rule change eliminate all variations in the system. The issues involved in the approval of this proposed rule change, therefore, also involve a determination as to which practices should be tolerated and who should control them.

For this reason, the policy issues and the underlying economic issues in the "Papilsky" filing may have some bearing on the evolving relationship between underwriters (paricularly managing underwriters) and institutional investors as well as the preservation of the fixed price offering system. It appears that the NASD's rule proposal is dsigned in part to strengthen the existing underwriting system by preserving the ability of underwriters to resist the bargaining power of institutional investors and by providing a measure of discipline over the underwriting system's development. It is, of course, theoretically possible that some semblance of the current system could be maintained [109] even if the relative positions of economic power between the underwriters and institutions were allowed to shift in response to competitive pressure. Nevertheless, the Commission need not and should not analyze the proposal in light of only theoretically possible (and as yet untried) alternatives to the current system but instead may approve the filing because it allows competitive forces to continue to work in certain ways and at the same time provides appropriate support for a system that has well served the process of captial formation for American industry without countervailing abusive practices.

A. Historical Developments

One important factor that affects the current operation of the fixed price underwriting system is the fact that the securities industry no longer controls the investment process to the extent it once did. At the time the securities laws were passed in the 1930's, the securities industry enjoyed a much greater role in the investment process than it does today. Particularly after the enactment of the Glass-Steagall Act in 1933,[110] which barred commercial banks from underwriting corporate securities, the securities industry had virtually complete control over the process of corporate securities distribution and secondary market trading in corporate securities. To a much greater degree than was later to be the case, the securities industry had as its customers the individual retail investors of this Nation and performed an intermediation function that, in many cases, extended all the way from the individual investor to the corporate issuer, in the case of securities distributions, and to the specialist's post, in the case of exchange trading.

Over the next several decades, however, the securities industry's position changed dramatically. By the 1960's, it had become clear that institutional investors, including bank trust departments, insurance companies, mutual funds and pension funds, had been serious inroads, capturing a substantial portion of the intermediation function and thereby supplanting in considerable measure the securities industry in its dealings with individual investors.[111] By the 1960's, a large portion of the equity securities and debt securities being issued by corporations were bought by institutional investors acting as financial intermediaries for the individuals whom the securities industry had previously served.[112]

The reasons for that change are many and complex. One is the changing perception of fiduciary obligations that had previously hampered the growth of institutional investor participation, particularly in the equity markets. As fiduciaries gradually became interested in achieving economic growth in the portfolios they managed instead of concentrating primarily on safety and income, it became possible for savers to invest in the stock market through a financial intermediary, either by creating a trust or by establishing an account managed by a bank or other institutional investor.

Undoubtedly, the tax laws also played a major part in the growth of financial intermediaries as institutional investors. The growth of tax deferred corporate and union pension funds [113] meant that

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[109] The current method of conducting fixed price offerings is not immutable. Methods of underwriting corporate securities have evolved substantially over the years in response to business and legal considerations. The current method is different, for example, from the method that had been used before the federal securities laws were enacted. As described in 1934 by the Senate in its Report on Stock Exchange Practices, the earlier method involved a system of multiple step-ups in price that varies considerably from today's syndicate practices:

The mechanics of syndication ordinarily used by investment bankers in connection with a public offering are sometimes inexplicably complex. First, an original group or syndicate is formed which purchases the entire issue from the corporation. A subsequent larger group assumes the commitment of the original group. It is not unusual for three or four such groups or syndicates to be formed for the purpose of assuming the issue successively. The final group is a selling group or syndicate composed of investment dealers throughout the country, who effect the ultimate merchandising operation and place the issue in the hands of the investing public. These groups are variously known as "the originating syndicate," "the banking syndicate," "the intermediary syndicate," and "the retail or selling syndicate." As the issue is passed from one to the other, the price is "stepped up" or increased until the security reaches the public, which pays the maximum price.

Report of the Senate Comm. on Banking and Currency Pursuant to S. Res. 84 (72d Cong.), and S. Res. 56 and S. Res. 97 (73d Cong.). S. Rep. No. 1455, 73d Cong., 2d Sess. 93-94 (1934) [footnote omitted].

[110] 48 Stat. 162 [codified in scattered sections of 12 U.S.C.].

[111] The growth of institutional investors during that period is analyzed in a report issued by the National Bureau of Economic Research that was published as part of the Commission's Institutional Investor Study. Securities and Exchange Commission, Institutional Investor Study Report, H.R. Doc. No. 92-64, 92d Cong., 1st Sess. pt. 6 (1971). The conclusions of that study are summarized at pages 35-124 (pt. 1) of the study.

A similar change was observed in the case of secondary trading on the New York Stock Exchange. Whereas that market had largely been a retail market at the time of the enactment of the Act in 1934, during and after the 1960's approximately 70% of the public (*i.e.*, non-member) trading volume on the New York Stock Exchange represented trading by institutional investors. New York Stock Exchange, Fact Book 1980 at 51 (1980).

[112] *See, e.g.*, Private Pension Plan Reform, Report of the Senate Comm. on Finance, together with Additional and Supplemental Views, on S. 1179, S. Rep. No. 93-383, 93d Cong., 1st Sess. 12 (1973). In 1948, the United States Court of Appeals for the Seventh Circuit upheld a district court holding that pensions were a form of remuneration for labor within the terms of the National Labor Relations Act and, accordingly, were mandatory subjects for collective bargaining. *Inland Steel Company* v. *NLRB*, 170 F.2d 247 (7th Cir. 1948), *cert. denied*, 336 U.S. 960 (1949). That decision paved the way for the rapid growth of collectively bargained pension

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large new pools of money became available for investment in the securities markets. Because of the size and the number of such plans, the securities industry was unable to retain the grasp it had previously had on the entire gamut of intermediation between the investor and the market. Bank trust departments, investment advisers and insurance companies began to play a major role in managing the assets of those who received their compensation in the form of tax deferred pension contributions.

During the same period, mutual funds exhibited explosive growth. The growth in mutual fund investments brought into the market many investors who, if they had invested directly, would not have been able to achieve a diversified portfolio. It both augmented the volume of investor dollars that were available for investment in the market and magnified the existing trend toward "institutionalization" of the market.[114]

B. Continuing Support for the Fixed Price Underwriting System

Although the increased economic power of institutional investors as financial intermediaries has exerted some pressure on the traditional fixed price underwriting system, the continued use of that system has virtually universal support among the participants in the markets.[115] In the underwriting area, the existence of a fixed price from which discounts are available only to broker-dealers is predicated on the notion of a wholesale market for broker-dealers and a retail one for "public" customers. Now that institutions share in the intermediation process that was once largely confined to the securities industry, the continued effort to treat institutions as "public" customers and to sell securities to them at prices that do not recognize their intermediation function might, at first blush, appear to be unrealistic. Nevertheless, it currently appears that institutional investors remain generally willing to accept a role in the underwriting process that does not give them direct participation and direct discounts.[116]

At the same time, the NASD's proposed rule represents some effort to allow but regulate the ability of institutional investors to get some "mileage" out of their underwriting business.[117] The NASD's efforts to support the syndicate manager's discretionary responsibilities is evident in several respects. First, the NASD's proposed new Section 36 is aimed at preventing institutions from forming NASD subsidiaries and purchasing through those subsidiaries in fixed price offerings. That section would prevent institutions from directing selling concessions to themselves. Second, the proposed amendments to Section 24 would limit the ability of an institutional investor to allocate underwriting purchases on the basis of goods and services. The Section 24 provision (as interpreted by the NASD Board of Governors) would, however, allow an NASD member to receive a selling concession on the basis of bona fide research and other services in distribution but not on the basis of other types of goods or services. By imposing those limitations, the NASD recognizes some ability on the part of institutional purchasers to consider research in making allocation decisions but refuses to allow the institutional investor complete freedom to negotiate the purchase price of a security.

For the most part, the institutional investors have not urged that these particular restrictions are inappropriate,[118] and the NASD's proposal appears in accordance with the expressed expectations and needs of most of the participants in fixed price offerings.

C. Aftermath of Papilksy: Need for Certainty

The *Papilsky* case has created uncertainty as to the obligations of institutional investors, particularly fiduciaries, in connection with purchases in fixed price offerings. That uncertainty has generated considerable concern and questions about the underwriting system and the role of institutional investors. Those questions, however, should be resolved in order to allow fiduciaries to know what range of alternatives they have in purchasing securities in fixed price offerings.[119]

In that connection, underwriting "recapture" techniques have caused some to draw analogies between the fixed commission rate experience and the question of underwriting recapture, but those analogies, particularly if too facile, can be misleading. While in the case of both fixed commission rates and fixed price underwritings, institutional investors exerted economic pressure through their control of large pools of investors dollars, there are a number of differences.

One difference between fixed commission rates and fixed price offerings is that there has not been the collapse in the underwriting area that occurred in the fixed commission rate area. From what the Commission was told in the hearings and in the comment letters received in this proceeding, it appears that the pressures that eroded and ultimately destroyed the fixed commission rate system have not developed to the same degree in the underwriting area.

In addition, the fixed commission rate system was far more rigid than the fixed price underwriting system has been. Unlike the fixed minimum commission rate schedules that the exchanges devised, fixed price offerings are structured by the underwriters on a deal-by-deal basis, and the underwriting spread is frequently negotiated with a view to recognizing the presence of institutional investors.[120] From the institution's point of view there is a second difference. Unlike fixed commission rates on stock exchanges, institutions have many alternatives to purchasing securities in fixed price offerings. In the case of debt securities, they can buy comparable securities in the secondary markets. They can even buy the securities that are being offered,

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plans and the expansion of pension benefits to union members. Retirement Income Security for Employees Act of 1973, Report to Accompany S. 4, S. Rep. No. 93-127, 93d Cong., 1st Sess. 3 (1973).

[114] *See, e.g.*, Wharton School of Commerce and Finance, A Study of Mutual Funds, H.R. Rep. No. 2274, 87th Cong., 2d Sess. (1962); Securities and Exchange Commission, Report on the Public Policy Implications of Investment Company Growth, H.R. Rep. No. 2337, 89th Cong., 2d Sess. (1966).

[115] That support is strongly expressed in the comment letters, testimony and other materials filed by institutional investors and echoes the views expressed by both the issuers and the underwriters. *E.g.*, letters from SIA (July 31, 1979); Bacon Whipple & Co. (October 3, 1979); Chomerics (October 10, 1979); GAF Corp. (January 8, 1980); Mobil Corporation (January 18, 1980); Avon Products, Inc. (December 14, 1979); State Street (January 11, 1980). Testimony of Goldman Sachs & Co. (transcript at 712); Morgan Stanley & Co., Inc. (transcript at 875-76).

[116] Section 36, of course, explicitly prevents institutional investors from assuming this intermediation function by forming NASD subsidiaries. Most commentators did not object to this prohibition, and it appears to be necessary to prevent evasion of Section 24.

[117] *See* letter from the SIA at 10-11 (July 31, 1979).

[118] *But see* letter from the American Bankers Association (August 2, 1979) on the NASD's 1978 Proposal in which the Association stated that it was "opposed to the proposed rule changes particularly those proposed in Section 24." The Association did not comment on amended Section 24.

Section 36, of course, would impose no new restraints on banks, who long have been prohibited from participating in securities underwriting directly or through affiliates. 12 U.S.C. 24, 78, 335, 377, 378 (1976) (provisions of the Glass-Steagall Act precluding underwriting and dealings in corporate securities directly or through securities affiliate and prohibiting bank officers, directors, or employees from working for a securities affiliate and expressly prohibiting affiliates from engaging in securities activities); 12 U.S.C. 1843 (1976) (provision of the Bank Holding Co. Act imposing similar restraints on bank holding company subsidiaries); 12 CFR 225.4(a), 225.125 (1980). *See Investment Company Institute* v. *Camp, 401 U.S. 617, 625 n. 12 (1971).*

[119] *See* note 7, *Supra.*

[120] *See* note 16, *supra.*

if they are willing to wait until the pricing restrictions are lifted, without paying any fixed dealer spread. The fixed price offering system is far more flexible than the fixed commission rate system was and may be more capable of withstanding the economic pressures that ultimately destroyed the fixed commission rate system.[121]

Furthermore, it does not appear that the fixed price underwriting system has produced the economic distoritions and fiduciary corruption that characterized the final days of fixed commission rates. The experience with fixed commission rates in the secondary markets was attended by a substantial and ongoing incidence of abusive practices. Fiduciaries and broker-dealers devised intricate means of evading the fixed minimum broker rates and dealt with excess commission money in ways that frequently did not benefit the managed account holders who had paid the commissions ostensibly for brokerage services.[122] The Commission is not aware, however, of any comparable developments in the underwriting context, and the commentators on the Papilsky filing have strongly emphasized that the underwriting system has not collapsed as did the fixed commission rate system.

While the exchange-mandated system of fixed commission rates by means of uniform rate regulation did not work well as a method of pricing brokerage services, the current underwriting system has been a very effective means of pricing both securities and underwriting services. The system has satisfied the desires of issuers for efficient, low cost capital raising, as well as the underwriters' desire for reasonable risk allocation. Investors have been able to participate in new offerings of securities, and large quantities of securities have been distributed without serious disruption of secondary trading markets.

The underwriting system will no doubt continue to evolve, but the Commission believes that the NASD's proposed rule change should prevent an undisciplined erosion of that system without creating gross economic distortions and sham arrangements of the kind that developed during the later years of fixed commission rates. Most commentators have perceived some danger that various discounting arrangements could undermine the existing system, causing (i) increased underwriting risk, (ii) increased cost to issuers, (iii) increased unwillingness of individual investors to participate in offerings and (iv) increased concentration in investment banking.

Even if the fears of some commentators are exaggerated, the Commission's proceedings have shown that, in the absence of the NASD's proposed rule change, substantially increased pressure could be brought to bear on the fixed price offering system. That increased pressure might derive from perceptions of fiduciary obligation or simply from powerful economic forces, or both. Its effect might be to cause, or to hasten, some or all of the predicted adverse consequences that troubled many commentators.

In assessing whether such consequences are likely, it is also important to keep in perspective the likelihood of any theoretical benefits of allowing the fixed price offering system to evolve without any NASD intervention. That system is not shackled with industry-wide price fixing as was true in the case of fixed commission rates. Broker-dealers compete to participate in offerings. The public offering price and the underwriters compensation are negotiated by the issuer and the underwriters without regulatory restraint. The securities so priced are then offered to the public, who have many comparable alternative investment opportunities and may elect not to buy them if the pricing is inappropriate.

Permitting institutional investors to exert their own economic power to reduce the underwriters' compensation in each offering might in the short term effectively reduce the price paid for securities by some investors. The long-term effects on underwriting risk, the level of underwriters' compensation and costs to issuers and individual investors and the number of underwriters willing to participate in offerings are by no means necessarily beneficial, however. Institutional investors, underwriters and issuers have been well represented in the Commission's proceedings, and the testimony received strongly suggests that disapproval of the NASD's proposal would be likely to do more harm than good.

VII. Conclusion

For the reasons stated above, the Commission has concluded that the proposed rule change is consistent with the Act and the rules thereunder applicable to the NASD. In performing its customary oversight responsibilities, the Commission will continue to observe the operation of the fixed price offering system with a view to determining whether the NASD's rules are being complied with and enforced. If it should appear that the rules are not being observed and cannot be enforced effectively, in the future the Commission can revisit this matter. For today, however, the Commission has determined that the record of this proceeding strongly supports approval of the NASD's proposed rule change.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and it hereby is, approved.

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[121] In eliminating fixed commission rates in 1975, the Commission concluded that, among other things, the fixed commission rate system had not worked, that it could not reasonably be made to work, and that it had had a demonstrably bad effect on the markets:

> The basic reason for the Commission's decision to adopt Rule 19b-3 was the conclusion that, under present circumstances, the free play of competition can provide a level and structure of commission rates which will better serve the interests of the investing public, the securities markets, the securities industry, the national economy and the public interest than any system of price fixing which can reasonably be devised. . . .
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> The existing commission rate structure has demonstrably worked badly during that period. . . . It has led to distortions, evasions, conflicts of interest, and inefficiencies, and has obstructed at every step the ability of the securities markets to adapt themselves to the demands of our time. It has impeded the evolution of a central market system and has fragmented the markets, imparing their ability to concentrate the flow of orders and to mobilize marketmaking resources necessary to provide depth and liquidity in a market increasingly affected by institutional participation.

Securities Exchange Act Release No. 11203 (Jan. 23, 1975), 40 FR 7394 (February 20, 1975) at 23, 25 [footnote omitted].

[122] In that regard, the Commission stated in 1975 when it adopted Rule 19b-3:

> Since brokers provide a great variety of services which are compensated by commissions, institutional managers are constantly tempted to direct the brokerage business of their beneficiaries to brokers who will provide services for the benefit of the manager. The problem is aggravated by the fact that under prevailing accounting practices and tax law, commissions are treated as part of the purchase price of securities sold, rather than being accounted for as expenses incurred in the management of the portfolio. Under these circumstances, investment managers may be inclined to seek services in exchange for brokerage since the cost of such services may be buried in the carrying value of the portfolio securities rather than charged to the beneficiaries as an expense of administration. The tendency of this situation to corrupt fiduciary relationships is not the least of the evils resulting from the present commission rate system. Even where no misconduct is present, the situation leads to inefficiency in the management of assets. The foregoing does not mean that fiduciaries may not utilize commissions on transactions for beneficiaries to obtain for their beneficiaries research and other valuable services. . . .

Securities Exchange Act Release No 11203 (Jan. 23, 1975), 40 FR 7394 (February 20, 1975) at n. 42.

By the Commission, (Chairman Williams, Commissioners Loomis, Friedman, and Thomas), Commissioner Evans dissenting.*

George A. Fitzsimmons,
Secretary.

Commissioner Evans, dissenting.

I respectfully dissent from the action of my colleagues approving amendments to the National Association of Securities Dealers' Rules of Fair Practice because I do not believe it is appropriate as a matter of governmental policy, nor do I believe that the rule meets the standards required for its approval. The stated purpose of the amendments is to prohibit selling concessions, discounts or other allowances to persons other than brokers and dealers engaged in the investment banking or securities business and to permit such payments to be made or received only as consideration for services rendered in distribution. More plainly stated, this is an anti-competitive price maintenance rule which employs the regulatory power of the Federal Government to restrict the normal operation of economic market forces in determining the sale price of securities in certain underwritten offerings.[1]

Not only is this undesirable as a matter of governmental policy, I do not believe it is possible to maintain fixed prices effectively through regulation in a service industry where there are many particpants, where quality of service cannot be objectively measured, and where there are multi-faceted business relationships between buyers and sellers in which prices can be and are adjusted indirectly.

Experience with regulations of this kind over the past several decades has shown that to the extent these amendments in fact have an impact, it will be to foster inefficiency and misallocation of resources and will be detrimental to our capital-raising system over the long term. In addition, the Commission's order runs counter to what appears to be a national consensus that regulated industries should not be routinely granted exemptions from competitive principles that are considered to be essential elsewhere. In various industries protectionist regulations are being removed without apparent deleterious effects.

Because of the strong industry and institutional support for a price-fixing rule over the nearly four years that the Commission has been considering this issue, I have sought a satisfactory theoretical or empirical basis on which I could support the NASD rule proposals, but have been unsuccessful. We have, of course, received many conclusory statements to the effect that the fixed price underwriting system is the most efficient means of raising capital and that it cannot be maintained absent approval of the NASD rule proposal. I do not argue that contractual arrangements among syndicate members are inappropriate or should be prohibited[2] and I recognize that the fixed price underwriting system has operated in this country for well over half a century and raises many billions of dollars of capital for American business each year. There has been no showing, however, that the system cannot be maintained without a specific governmental order supporting it. If the system is better and more efficient than the alternatives, it should continue to exist on its merits and not require regulatory coercion by the Federal Government.

Also very troublesome to me is the effort to portray the fixed price underwriting system as one in which all purchasers receive equal value for the same price. The present rule proposal became acceptable to the securities industry and institutional purchasers only when it was changed to permit large investors to receive economic benefits which are not available to small investors. Thus the rule serves to perpetuate the present condition in which the fixed price is a facade behind which both direct and indirect discounts have been given in the form of various types of services for years.

The difficulty in trying to establish a rule to prohibit discounts in evident from the evolution of this NASD proposal. It began as an attempt to limit the payment or receipt of discounts from a fixed selling price to securities professionals who earned it by participating in the distribution to investors. In its original form, it would have precluded discounts, in the form of products or services granted for an "agreed upon consideration" or which were "commercially available," to any investor and would have limited designated sales to members of the underwriting syndicate. The intent of these restrictions was to prevent unfair discrimination against customers who were unable to bargain for goods and services that could be offset by selling concessions and to prevent misrepresentations that the public offering price was fixed when, in fact, certain customers were receiving discounts. Understandably, this created strong opposition from those who would have been prohibited from giving and receiving discounts.

Institutional purchasers who would have been limited in their ability to bargain for services and smaller firms that are usually members of the selling group, but are unable to be members of the underwriting group, argued that it favored large securities firms and was unfairly discriminatory. In response to this opposition, the proposal and interpretations relating to it were eventually altered to permit all *bona fide* research to be considered as facilitating distribution, even if the research had nothing to do with the issue being underwritten and came from or through a firm that was not participating in selling the securities. Thus, research can be obtained for "soft dollars" where the consideration is explicitly agreed upon without its being viewed as an unacceptable discount under Section 24 of the NASD's Rules of Fair Practice as long as the public offering price is paid by the purchaser.

In other words, the primary discounting problem has been "resolved" by defining it away in a manner that the Commission stated expresses more clearly the economic realities of current research compensation practices and apears to be acceptable to the industry and institutions. Just because the relationship is in accord with present research compensation practices, however, does not alter the fact that it embodies an economic discount from the fixed offering price.

The Commission's order approving the NASD's proposed rule change sets forth quite clearly the complex problems that the NASD filing presents. Knowing that the Commission would be called upon to resolve such problems, Congress has vested in the Commission both the power and the responsibility to make difficult judgments and has provided a legal framework within which to determine whether to approve or disapprove rule proposals. Within that

*Dissenting Opinion of Commissioner Evans follows.

[1] While it might be argued that the regulation is being imposed by the NASD and not by the Commission, I find that distinction not to be meaningful in this context. I do not mean to suggest, of course, that the NASD is an arm of the Federal Government. Indeed it is not, but it does exercise quasi-governmental authority. Moreover, this proposal would not be before the Commission if it could be implemented without our approval. *See* Securities Acts Amendments of 1975, Report of the Senate Comm. on Banking, Housing and Urban Affairs to Accompany S.249, S. Rep. No. 94-75, 94th Cong., 1st Sess. 22-26 (1975); *In re Abercrombie*, Securities Exchange Act Release No. 16285 (Oct. 18, 1979).

[2] Although I oppose the NASD proposal as unjustified intervention into our market economy, my dissent should not be taken to imply that I favor any governmental action to prohibit issuers and their underwriters from choosing fixed price offerings as the preferred method for distributing securities. *See United States* v. *Morgan*, 118 F. Supp. 621 (S.D.N.Y. 1953).

framework, I cannot justify aproval of the NASD proposal.

Under Section 19(b)(2) of the Securities Exchange Act of 1934 ("Exchange Act"), the Commission must find that a proposed rule is consistent with the Exchange Act and the rules and regulations applicable to the NASD. The applicable requirements, each of which must be satisfied, are found in subparagraphs (b)(2), (b)(6), and (b)(9) of Section 15A.

Section 15A(b)(2) requires that the NASD have the ability to enforce compliance by its members and associated persons with its rules. I have the utmost respect for the ability and dedication of the NASD and its staff. Nevertheless, given the sophistication of the participants, the economic interests at stake, and the complex structure of our securities markets, the NASD has not set forth facts upon which I can conclude that it is capable of detecting non-compliance and enforcing the provisions of the rule changes approved by the Commission.

Enforcement has been made less difficult, of course, by abandoning the attempt to prohibit those who are not involved in direct selling efforts from sharing in the underwriting proceeds and providing that the selling concession may be used to pay for all *bona fide* research. Moreover, standards by which to determine overtrading have also been made more objective. Nevertheless, there is no practical way even to detect overtrading in many instances, particularly those that do not involve simultaneous purchases, nor is it possible to enforce prohibitions against indirect adjustments in the prices at which securities are sold. The Commission's order recognizes these problems but states that "[c]ommentators have indicated that institutional investors and broker-dealers will comply with the rule proposal." I think the commentators are probably correct, but I do not consider voluntary compliance by most participants as meeting the required enforceability standards.

Section 15A(b)(6) establishes certain purposes that the NASD rules must be designed to achieve as well as certain prohibited purposes which they must not be designed to achieve. In order to be consistent with the Exchange Act, a particular rule need not be designed to achieve all of the purposes but it must not violate one of the prescribed prohibitions.

The first stated purpose which NASD rules may be designed to achieve is the prevention of fraudulent and manipulative acts and practices. The NASD contends it is misleading to allow discounts from the price per share stated in a prospectus in connection with a fixed price underwriting, that discounts cannot be disclosed with the necessary particularity in any event, and that an outright prohibition of such discounts is therefore necessary in order to prevent fraud.

I agree with the statement in the Commission's order that "the proposed rule at best is tenuously related to the prevention of fraud." Neither the NASD nor any other participant in this proceeding has demonstrated that discounting practices cannot be adequately disclosed. In my view, the potential for discounts from a fixed price in the form of soft dollar payments for unrelated research (permitted by the NASD rule) is required to be disclosed under Section 16 of Schedule A of the Securities Act of 1933. If that can be adequately described, and I believe it can, I see no reason why other forms of discounts could not also be appropriately disclosed. Thus, I do not see how the rule changes can be justified as necessary to prevent fraud.

Another purpose which NASD rules should be designed to accomplish is the promotion of just and equitable principles of trade. The *PSI* decision, discussed at length in the Commission's order, held under the predecessor provision of Section 15A(b)(6) that the obligation of the NASD to promote just and equitable principles of trade does not authorize it to impose sanctions for a breach of a fixed price underwriting agreement.[3]

Under Section 15A(b)(6) rules may not be designed to permit unfair discrimination between customers, issuers, brokers or dealers. In my opinion, serious questions are raised in that regard. It can be argued that by preventing institutions from obtaining discounts from the fixed offering price which, according to the record of this proceeding, their market power would permit them to obtain in the absence of the NASD rule, they are being unfairly discriminated against.

Section 15A(b)(6) also prohibits rules which are designed to fix minimum profits or impose any schedule or fix rates of commissions, allowances, discounts or other fees charged by its members. The NASD contends that the proposal does not mandate a fixed price but requires only that members adhere to any price maintenance agreements they enter into. The Commission's order asserts that since the provisions of the proposed rule change come into play only after the underwriters have themselves agreed to distribute securities through a fixed price offering, it seems "inaccurate to speak of a schedule as having been imposed or of discounts as having been fixed by rules of the NASD * * *." The Commission's response to that argument in the *PSI* case was that:

> Whether or not the * * * agreements were voluntarily adopted and whether or not the minimum profits and schedule of prices and discounts were "fixed" by the agreements, it is the NASD which is seeking to enforce the schedule, and thus to "impose" it and other similar schedules by its application of the rule in disciplinary proceedings.[4]

If an NASD rule is construed either to fix or to impose rates or fees, it contravenes an express and explicit prohibition. In such a case, the Commission is not permitted to look elsewhere in the Exchange Act in order to approve the rule under another standard. In particular, the balancing test in Section 15A(b)(9) of the Exchange Act would be neither available nor relevant.

My colleagues agree with this construction in their order, but they conclude that the NASD's proposed rule change should not be construed to impose or fix rates or fees. They suggest that the Commission in the *PSI* case interpreted the fixing or imposing prohibition more expansively than it needed to and state that the Commission is not today prepared to conclude that Congress intended to prevent NASD disciplinary action against its members for granting discounts from the public offering price in an offering that is publicly represented to be at a fixed price. Accordingly, they conclude that the *per se* prohibition against imposing or fixing prices does not apply and the Commission is authorized to look to the balancing test in Section 15A(b)(9), and to other provisions, in evaluating the proposed rule change.

On the basis of the record in this proceeding, I am uncomfortable with that analysis. The NASD and others stated that the proposed rule change is needed to prevent the collapse of the fixed price underwriting system. They also suggested that, in the years that have intervened since 1945, changes in the markets (including the increased use of securities depositories) have made it no longer possible to enforce underwriting agreements, and particularly their price-fixing terms, without direct intervention by the NASD. My colleagues seem to have accepted that argument in concluding that the NASD rules would afford the

[3] *In re National Association of Securities Dealers, Inc.*, 19 SEC 424 (1945).

[4] *Id.* at 438.

underwriting system "a needed measure of support" and would help to prevent an "undisciplined erosion" of the underwriting system.

Ironically, those conclusions by the Commission, and the arguments made by the NASD and others, can be used to support the position that the NASD rules do indeed impose rates, allowances, discounts or other fees. But for the NASD, the Commission was told, competitive pressures, coupled with the difficulties of resorting to private action to enforce underwriting contracts, would make it impossible to maintain the fixed rates. The NASD, therefore, could be viewed as a necessary instrumentality for imposing the price-fixing arrangement. That argumentation could certainly lead to the conclusion that the NASD was imposing the rates even though the amounts of discounts and allowances were established separately by underwriters and issuers.

Although I am not satisfied with the reasoning in the Commission's order overturning the *PSI* decision, I have not found it necessary to base my dissent on a contrary conclusion. It can be and is based primarily on an inability to conclude, in accord with Section 15A(b)(9), that the burdens placed on competition by the NASD rule proposal are necessary or appropriate in furtherance of the purposes of the Exchange Act.

I realize that deviation from the tried and true involves some risk, but risk is an integral part of a free market system. The genius of administrative agencies, and in my view one of the principal justifications for their existence, is the ability to anticipate as well as to respond to change. If we found issuers were unable to raise capital economically as a result of a failure to approve this rule change, I have enough confidence in this Commission and the participants in the market to believe that prompt action would be taken to correct the situation.

I am not pessimistic, however, as to the changes which would be brought about by market forces in the absence of this NASD rule. In all probability, the capital-raising system that has served this country well would not be destroyed but instead would evolve into a better system.

[FR Doc. 80-39472 Filed 12-18-80; 8:45 am]
BILLING CODE 8010-01-M

[Release 34-17374; File No. SR-NASD-80-23]

National Association of Securities Dealers, Inc.; Proposed Rule Change; Self-Regulatory Organizations

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), as amended by Pub. L. No. 94-29, 16 (June 4, 1975), notice is hereby given that on December 8, 1980, the above-mentioned self-regulatory organization ("SRO") filed with the Securities and Exchange Commission a proposed rule change as follows:

SRO's Statement of the Terms of Substance of the Proposed Rule Change

Text of Proposed Rule Change

The following are Proposed Amendments to Article III, Sections 33 and 35 of the Association's Rules of Fair Practice (new material italicized; deleted material in brackets).

Section 33

Section 24 to Appendix E under Section 33, "Advertisements and Sales Literature" is deleted in its entirety.

* * * * *

Section 35

* * * * *

(c) Filing Requirements and Review Procedures

(2) [This paragraph reserved for future use] *Advertisements pertaining to options, and other options-related communications to persons who have not received a current Options Clearing Corporation prospectus, shall be submitted to the Association's Advertising Department for review at least ten days prior to use (or such shorter period as the Department may allow in exceptional circumstances), unless such advertisement or communication is submitted to and approved by a registered securities exchange or other regulatory body having substantially the same standards with respect to options advertising as set forth in this Section. The Association shall, within the ten day review period specified herein, in the absence of highly unusual circumstances, either notify the member of its views with respect to the material filed or indicate that its comments are being withheld pending further analysis or the receipt of additional information.*

(f) Standards Applicable to Options-Related Communications

In addition to the provisions of subsection (d) of this Section, members' public communications concerning options shall conform to the following provisions:

(1) As there may be special risks attendant to some options transactions and certain options transactions involve complex investment strategies, these factors should be reflected in any communication which includes any discussion of the uses or advantages of options. Therefore, any statement referring to the opportunities or advantages presented by options should be balanced by a statement of the corresponding risks. The risk statement should reflect the same degree of specificity as the statement of opportunities, and broad generalities should be avoided. Thus, a statement such as, "by purchasing options, an investor has an opportunity to earn profits while limiting his risk of loss," should be balanced by a statement such as, "Of course, an options investor may lose the entire amount committed to options in a relatively short period of time."

(2) It should not be suggested that speculative option strategies are suitable for most investors, or for small investors and statements suggesting the certain availability of a secondary market for options should not be made.

(3)(A) Except as provided in subparagraph (B) below, no written material with respect to options issued by the Options Clearing Corporation ("OCC") may be sent to any person unless prior to or at the same time with the written material a current OCC prospectus is sent to such person.

(B) Advertisements may only be used (and copies of the advertisements may be sent to persons who have not received a prospectus) if the material meets the requirements of Rule 134 under the Securities Act of 1933, as that Rule has been interpreted as applying to OCC options. Under Rule 134, advertisements are limited to general descriptions of the security being offered and of its issuer. Advertisements under this Rule shall state the name and address of the person from whom a current OCC prospectus may be obtained (this would usually be the member sponsoring the advertisement). Such advertisements may have the following characteristics: (i) The text of the advertisement may contain a brief description of OCC options, including a statement that the issuer of every OCC option is the Options Clearing Corporation. The text may also contain a brief description of the general attributes and method of operation of the Options Clearing Corporation and/or a description of any of the options traded in different markets, including a discussion of how the price of an option is determined; (ii) The advertisement

may include any statement or legend required by any state law or administrative authority; (iii) Advertising designs and devices including borders, scrolls, arrows, pointers, multiple and combined logos and unusual type faces and lettering as well as attention-getting headlines and photographs and other graphics may be used, provided such material is not misleading.

(C) Advertisements and other written communications used prior to delivery of an OCC prospectus shall not contain recommendations, or past or projected performance figures, including annualized rates of return.

(4) Communications which contain comparisons, recommendations, statistics or other technical data, or claims made on behalf of options programs or the options expertise of sales persons, shall include, or offer to provide upon request, supporting documentation.

(5) Communications concerning an options program (i.e., an investment plan employing the systematic use of one or more options strategies) shall disclose the cumulative history of the program or its unproven nature, and its underlying assumptions.

(6) Standard forms of options worksheets, if adopted by a member for any particular options strategy, must, in addition to compliance with the other applicable provisions of this Section, be uniformly used by such member for that strategy.

(7) Communications which contain projected performance figures or records of the performance of past recommendations or of actual transactions shall disclose all relevant costs, including commissions and interest charges (if applicable with regard to margin transactions) and copies of such communications shall be kept at a place easily accessible to the sale office for the accounts or customers involved.

(8) Communications containing projected performance figures must also:

(A) be plausible and intended as a source of reference or a comparative device to be used in the development of a recommendation;

(B) discuss the risks involved in the proposed transactions and not suggest certainty of future performance;

(C) identify all material assumptions made in such calculations (e.g., "assume options exercised", etc.);

(D) clearly establish parameters relating to such performance figures (e.g., to indicate exercise price of option, purchase price of the underlying security and its market price, option premium, anticipated dividends, etc.);

(E) if related to annualized rates of return, be based upon not less than a sixty-day experience, clearly display any formulas used in making the calculations, and include a statement to the effect that the annualized returns cited might be achieved only if the parameters described can be duplicated and there is no certainty of doing so.

(9) Communications containing records or statistics relating to the performance of past recommendations or of actual transactions shall, in addition to complying with other applicable provisions of this section, state that the results presented should not and cannot be viewed as an indicator of future performance, and shall disclose all material assumptions used in the process of annualization if annualized rates of return are used. A Registered Options Principal shall determine that the record or statistics fairly present the status of the recommendations or transactions reported upon and shall initial the report.

SRO's Statement of Purpose of Proposed Rule Change

The proposed rule change is designed to coordinate, insofar as practical, the Association's rules on options advertising with the rules of the options exchanges. The exchanges have recently received Commission approval of revisions to their rules in response to several of the recommendations of the Options Study, and the Association has incorporated relevant portions of the exchanges' rules into its advertising regulations. This will reduce inconsistencies among the rules of the various self-regulatory organizations.

The proposed rule change, by deleting Section 24 of Appendix E, also presents the rules on options advertisements as part of the overall package of advertising rules rather than as a part of the option rules contained in Appendix E. The Association believes this editorial change will present the rules in a more logical fashion, and thereby make them more readily apparent to member firms.

The last sentence of subsection (c)(2) was added, and presented to the membership for approval, at the request of the Commission staff. It should be noted, however, that this provision would not excuse a violation of the rule when staff comments were not forthcoming within the specified 10-day period. Indeed, using an advertisement despite Association staff negative comments does not constitute a *per se* violation of Section 37 and receiving affirmative comments from the Association staff does not insure that disciplinary action will not arise from the use of an advertisement. It has been, and will continue to be, Association practice to promptly forward comments on proposed advertisements to members.

A section-by-section explanation of the proposed rule change is found in Notice to Members 80-40 which is attached as an exhibit to this filing.

SRO's Statement of Basis Under the Act for the Proposed Rule Change

Section 15A(b)(6) of the Act provides that the rules of a national securities association must be designed, among other things, "to remove impediments to and perfect the mechanism of a free and open market . . . and, in general, to protect investors and the public interest." By conforming its rules to those of the options exchanges, and, at the same time, maintaining regulation of advertising and sales literature, the Associaion believes the rule change is in futherance of the purposes of the Act.

Comments Received from Members, Participants or Others in Proposed Rule Change.—The substance of the rules regarding options advertisements were submitted to the membership as part of the Association's overall revisions of both its advertising and options rules. These proposed rules regarding options advertising are being submitted at this time as a separate filing at the request of the Commission staff. As such, the extensive comments from the membership are contained, summarized and discussed in File No. SR-NASD 79-5 (regarding advertising rules), and File No. SR-NASD 79-16 (regarding options rules) both of which are incorporated by reference into this filing.

Burden on Competition.—Much of the proposed rule change merely constitutes an editorial change by placing the advertising provisions of Apendix E into a more logical position in the Associaiton's advertising rules. This change neither increases nor decreases the burdens on competition of existing rules. The proposed rule change will also conform the Association's options advertising rules, so far as applicable, to those of the options exchanges. Since members of options exchanges must already observe these provisions, there should be no additional burden on competition as to these members. The proposed rule change will, however, place added regulations on NASD members engaged in options transactions who do not presently belong to an options exchange by requiring these members to meet the same basic standards as exchange

members. As such, this added regulation of these members may cause an additonal burden on competition, but the Association believes any such burden is fully consistent with the purpose of the Act.

On or before January 23, 1981 or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the above-mentioned self-regulatory organization consents, the commission will:

(a) by order aprove such proposed rule change, or

(b) institute proceedings to determine whether the proposed rule change should be disapproved.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons desiring to make written submission should file six (6) copies thereof with the Secretary of the Commission, Securities and Exchange Commission, Washington, D.C. 20549. Copies of the filing with respect to the foregoing and of all written submissions will be available for inspection and copying in the Public Reference Room, 1100 L Street, N.W. Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number referenced in the caption above and should be submitted within 21 days of the date of this publication.

For the Commission by the Divison of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 80-39473 Filed 12-18-80; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 34-17376; File No. SR-NYSE-80-44]

New York Stock Exchange, Inc.; Proposed Rule Change; Self-Regulatory Organizations

Pursuant to Section 19(b) of the Securities Exchange Act of 1934, as amended, 15 U.S.C. 78s(b)(1), as amended by Pub. L. No. 94-29 (June 4, 1975) ("Act") notice is hereby given that on November 17, 1980 the above mentioned self-regulatory organization filed with the Securities and Exchange Commission a proposed rule change as follows:

The Exchange's Statement of the Terms of Substance of the Proposed Rule Change

[Deletions [bracketed], *Additions italicized*]

	Monthly Charges	
NYSE Bond Ticker:[1]		
Cont'l. USA First Unit[2]	[$65-86]	*$70-93*
Additional Unit	[$54]	*$58*
NYSE Bond Ticker Display:[1 3]		
Cont'l. USA First Unit[2 4]	[$54-65]	*$58-70*
Additional Unit[5]	[$3.75]	*$4.00*
Delayed Prices Service:		
Cont'l. USA	[$130]	*$140*
Magnetic Tape Service:[6]		
Equity Total Transaction Tape	[$22]	*$24*
Bond Bid-Asked Tape	[$20]	*$22*
Equity Closing Price Tape	[$15]	*$17*
Range Tape	[$25]	*$27*
Bond Total Transaction		*$22*
Equity Closing Quote Tape		*$18*

[1] Charges are "per location" and do not include one time installation, relocation and other miscellaneous charges where applicable, which are generally a direct pass through from communications common carriers to subscribes.
[2] Dependent upon geographical area.
[3] Charges by vendor furnishing equipment are in addition to these charges.
[4] Only one first unit charge applies in an office subscribing to units from two or more vendors.
[5] Plus charges, if any, for interconnecting facilities required in connection with additional units.
[6] Services available in conjunction with Francis Emory Fitch, Inc.

The Exchange's Statement of Purpose of Proposed Rule Change

The purpose of this rate increase is to recover a portion of the increased operating expenses associated with providing these services. The last rate increase to the NYSE Bond Ticker, Bond Ticker Display, Delayed Prices, Equity Total Transaction Tape and Bond Bid-Asked Tape services was effected in January, 1980. The fees for the Closing Price Tape and the Range Tape services were not changed at that time as there were no subscribers to those services. While there are still no subscribers, it is necessary to adjust the fees to reflect the expected costs associated with providing such services. In addition, two new tapes, namely Bond Total Transaction and Equity Closing Quote will now be made available and fees for these services have been developed in line with prices for similar magnetic tape services.

The Exchange's Statement of Basis Under the Act for Proposed Rule Change

The basis under the Act for the proposed rule change is the requirement under Section 6(b)(4) of the Act that the rules of a national securities exchange provide for the equitable allocation of reasonable dues, fees and other charges among its members and issuers and other persons using its facilities.

The Exchange's Statement of Comments Received from Members, Participants or Others on Proposed rule Change

The Exchange has not formally solicited comments regarding this proposed rule change, nor has the Exchange received any unsolicited written comments from members or other interested parties.

The Exchange's Statement of Burden on Competition

The Exchange does not believe that the proposed rule change imposes any burden on competition.

The foregoing rule change is scheduled to become effective January 1, 1981 pursuant to Section 19(b)(3) of the Securities Exchange Act of 1934, as amended. At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons desiring to make written submissions should file 6 copies thereof with the Secretary of the Commission, Securities and Exchange Commission, Washington, D.C. 20549. Copies of the filing with respect to the foregoing and of all written submissions will be available for inspection and copying in the Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above mentioned self-regulatory organization. All submissions should refer to the file number SR-NYSE-80-44 and should be submitted on or before January 9, 1981.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

December 15, 1980.

[FR Doc. 80-39474 Filed 12-18-80; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 34-17375; File No. SR-PSE-80-24]

Pacific Stock Exchange Incorporated; Proposed Rule Change; Self-Regulatory Organization

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), as amended by Pub. L. No. 94-24, 16 (June 4, 1975), notice is hereby given that on December 4, 1980, the above-mentioned self-regulatory organization filed with the Securities and Exchange Commission a proposed rule change as follows:

The Exchange's Statement of the Terms of Substance of the Proposed Rule Change

The Pacific Stock Exchange Incorporated ("PSE") intends to amend its listing fee schedule by increasing its listing fees as follows: [Brackets indicate deletions; italics indicate additions.]

Listing Fee Schedule, Original Listing, Common Stock

Unlimited Number *of Shares*..... $5,000

Preferred Stocks

Unlimited Number *of Shares*..... $5,000

Warrants

Unlimited Number of duration..... $5,000

Bonds

Regardless of Principal Amount... [$2,500] *$5,000*

Listing of Additional Shares or Warrants

½ cent per share, [for first] *$500 minimum for* 100,000 shares *or less.*

[¼ cent per share for all shares over 100,000 shares.] *$2,500 maximum for* 500,000 shares or more.

Minimum [$250;] *$500;* maximum per application [$1,250;] *$2,500.* [maximum per year $5,000.]

Substitute Original Listing

(Resulting from change of state of incorporation, or reincorporation under laws of same state, or reverse stock split.)

Unlimited Number of Shares..... $2,500

Annual Listing Maintenance Fee

[$500] *$750* for one issue; $250 for each additional issue. Minimum [$500] *$750;* maximum $2,500.

Payable each January following year of listing.

The Exchange's Purpose of Proposed Rule Change

The proposed change in Exchange listing fees is intended to generate additional revenues to meet rising expenses. Current PSE fees are lower than those charged by other self-regulatory organizations. In addition, listing fees for original listings and annual listings maintenance have not been changed since 1975. Listing fees for additional listings have not been changed since 1973.

The Exchange's Basis Under the Act for the Proposed Rule Change

The proposed rule change is consistent with the Section 6(b)(4) of the Securities Exchange Act of 1934 in that it provides for the equitable allocation of reasonable dues, fees and other charges among its members and issuers and other persons using its facilities.

Comments Received From Members, Participants or Others

Comments were neither solicited nor received with respect to the proposed rule change.

Burden on Competition

The proposed rule change will not impose any burden on competition.

On or before January 23, 1981, or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the abovementioned self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons desiring to make written submissions should file six copies thereof with the Secretary of the Commission, Securities Exchange Commission, Washington, D.C. 20549. Copies of the filing with respect to the foregoing and of all written submissions will be available for inspection and copying in the Public Reference Room, 1100 L Street N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submission should refer to the file number referenced in the caption above and should be submitted on or before January 9, 1981.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: December 15, 1980.

George A. Fitzsimmons,

Secretary.

[FR Doc. 80-39475 Filed 12-18-80; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 21839; 70-6529]

Central and South West Corp.; Proposed Issuance and Sale of Common Stock Pursuant to Dividend Reinvestment and Stock Purchase Plan

December 12, 1980.

Notice is hereby given that Central and South West Corporation ("CSW"), 2700 One Main Place, Dallas, Texas 75250, a registered holding company, has filed a declaration with this Commission pursuant to Sections 6(a) and 7 of the Public Utility Holding Company Act of 1935 ("Act") and Rule 50(a)(5) promulgated thereunder regarding the following proposed transaction. All interested persons are referred to the declaration, which is summarized below, for a complete description of the proposed transaction.

By orders dated January 12, 1977, April 24, 1978, April 20, 1979, and January 16, 1980, in File No. 70-5948 (HCAR Nos. 19850, 20514, 21012, and 21396), CSW was authorized to issue and sell through December 31, 1981, not to exceed 1,000,000 shares of its authorized and unissued common stock, par value $3.50 per share, pursuant to CSW's Automatic Dividend Reinvestment and Stock Purchase Plan ("Plan"). As of September 30, 1980, CSW has issued and sold 661,920 shares of its common stock pursuant to the Plan.

CSW now proposes to increase the number of shares of common stock authorized to be issued under the Plan by 3,000,000 shares ("New Shares") to bring the total number of shares authorized to be issued under the Plan to 4,000,000 shares and to extend the time period authorized for such issuance through December 31, 1985. No other changes in the Plan are contemplated at this time.

It is stated that since the effective date of the Plan, participation by shareowners has increased each year. Based on CSW's current estimate, the Plan will generate approximately $44,000,000 for the period October 1, 1980, to December 31, 1985. Assuming that the purchase price of CSW common stock were $13.50 per share, approximately 3,259,259 additional shares would be issued under the Plan. The additional 3,259,259 shares added to the 661,920 shares already issued under the Plan would result in a total requirement of 3,921,179 shares. CSW believes that the new total of 4,000,000 shares is necessary to afford adequate leeway for the purchase of additional shares by the Plan while providing for the possibility that the purchase price per share may be less than the assumption thereby requiring substantially more additional shares.

Proceeds derived by CSW from the sale of the New Shares will be applied through loans or equity contributions towards the continuing construction programs of CSW's subsidiary companies. Such loans or equity contributions will be the subject of additional filings with the Commission.

The fees and expenses to be incurred in connection with the proposed transaction are estimated at $2,400. It is stated that no state commission and no federal commission, other than this

Commission, has jurisdiction over the proposed transaction.

Notice is further given that any interested person may, not later than January 12, 1981, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said application which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicant at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application, as filed or as it may be amended, may be granted as provided in Rule 23 of the general rules and regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices or orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 80-39422 Filed 12-18-80; 8:45 am]
BILLING CODE 8010-01-M

[File Nos. 2-61216 (33-9567)]

Moran Energy Inc.; Application and Opportunity for Hearing

December 12, 1980.

Notice is hereby given that Moran Energy Inc. ("the Company") has filed an application under clause (ii) of Section 310(b)(1) of the Trust Indenture Act of 1939 ("the Act") for a finding by the Commission that the trusteeship of the First City National Bank of Houston ("the Trustee") under two indentures is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify the trustee from acting as trustee under both of said Indentures.

Section 310(b) of the Act provides in part that if a trustee under an indenture qualified under the Act has or shall acquire any conflicting interest, it shall within ninety days after ascertaining that it has such conflicting interest either eliminate such conflicting interest or resign. Subsection (1) of such Section provides, that with certain exceptions, a trustee under a qualified indenture shall be deemed to have a conflicting interest if such trustee is trustee under another indenture under which any other securities of the same issuer are outstanding. However, under clause (ii) of Subsection (1), there may be excluded from the operation of this provision another indenture under which other securities of such issuer are outstanding, if the issuer shall have sustained the burden of proving, on application to the Commission and after opportunity for hearing thereon, that the trusteeship under such qualified indenture and such other indenture is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify such trustee from acting as trustee under any of such indentures.

The Company has currently issued and outstanding $15,000,000 principal amount of all 11½% Subordinated Debentures Due 1998 (the "Registered Debentures") issued pursuant to an Indenture, dated as of May 1, 1978 (the "Registered Indenture") entered into between the Company and the Trustee. The Registered Debentures were issued in a registered public offering in the United States (Registration Statement No. 2-61216) and the Registered Indenture was qualified under the Trust Indenture Act of 1939 (Registration No. 22-9567). As of November 13, 1980, the Company has entered into a second Indenture (the "Unregistered Indenture") with the Trustee pursuant to which Moran Energy International N.V. ("International"), a wholly-owned Netherlands Antilles subsidiary of the Company, issued $50,000,000 principal amount of 8% Convertible Subordinated Debentures Due 1995 (the "Convertible Debentures"), which Debentures are guaranteed (the "Guarantees"), on a subordinated basis, by the Company. Because of the guarantee by the Company of the Convertible Debentures, the trusteeship of the Trustee under the Unregistered Indenture may be deemed to create a conflict of interest within the meaning of Section 310(b)(1) of the Act and Section 10.05(a) of the Registered Indenture.

The Company alleges that:

1. Neither the Registered Debentures, nor the Guarantees are secured by any of the property or assets of the Company. Because each issue of Debentures is wholly unsecured, no conflict of interest would exist under Section 310(b)(1), since the Registered Indenture contains a provision, as comtemplated by Section 310(b)(1), providing that another indenture or indentures under which other securities of the issuer are outstanding will be deemed not to create a conflict of interest if (i) such other indenture is wholly unsecured and (ii) such other indenture is qualified under the Act or the Company shall have sustained on application to the Securities and Exchange Commission after opportunity for hearing thereon that trusteeship under the Registered Indenture and such other indenture is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify the trustee from acting as trustee under one of said indentures (see § 10.05 of the Registered Indenture). Since the Unregistered Indenture has not been qualified under the Act, it is necessary that this application be made to the Commission for an exemptive order, as contemplated by (ii) above. If such order is given, no conflict of interest under the terms of the Act, or under the terms of the Registered Indenture, will exist.

2. The Unregistered Indenture contains provisions relating to the subordination of the Guarantees which are the same in all material respects to those contained in the Registered Indenture, which provisions cause the Guarantees to rank equally with the Registered Debentures. (See Registered Indenture, Article 4; Unregistered Indenture, Article Thirteen.) Because each of the issues ranks equally with one another with respect to rights upon the liquidation of the Company, and because the issues would share, on a pro rate basis with any other subordinated debt which may from time to time exist, any assets remaining in the Company after the payment of all senior debt, it would appear that it would be highly unlikely that the Trustee would be subject to a conflict of interest with respect to issues of the priority of payment on the two issues. The Trustee is neither in a position to, nor required by the terms of either Indenture to argue that the securities outstanding under either such Indenture are entitled to payment prior to payment of claims under the other Indenture.

3. The default and remedies provisions of the Indentures are parallel, (see Registered Indenture, Section 7.01 *et seq.*; Unregistered Indenture, Section 5.01 *et seq.*) with only minimal differences reflecting principally the fact that the Unregistered Indenture relates to securities issued by International and

guaranteed by the Company, whereas the Registered Indenture relates to securities issued directly by the Company. Because of the parallelism of the default provisions, it is unlikely that the Trustee would be in a position of proceeding against the Company in default under one Indenture, while acting as a Trustee under the other Indenture while such other Indenture is not in default, unless there were a vote of outstanding debentureholders under one or the other of the Indentures expressing a desire not to declare such Indenture in default. Thus, it is highly unlikely that a conflict of interest would arise in this regard.

4. The Convertible Debentures are in the first instance the obligation of International, and not the obligation of the Company, and the fact that the Company is only secondarily liable on the Convertible Debentures decreases the likelihood that there would be any conflict of interest between the Trustee acting as such under the Registered Indentures and the Trustee acting as such under the Unregistered Indenture. Were the Convertible Debentures not guaranteed by the Company, no conflict of interest would exist at all under the terms of Section 310(b)(1). See Trust Indenture Act Release No. 39–16. (November 14, 1941). Thus, it is only the Guarantees that give rise to any potential conflict of interest, and such Guarantees rank equally with the outstanding Registered Debentures. Similarly, the Guarantees are wholly unsecured, and thus, a registered indenture relating solely to the Guarantees would, in fact, not be subject to the provisions of Section 310(b)(1). It is clear that, in adopting the Trust Indenture Act of 1939, Congress did not intend to prohibit trustees from acting as trustees under more than one indenture in all instances; rather, Congress specifically exempted unsecured indentures, provided only that they were subject to the scrutiny of the Commission, either pursuant to registration, or pursuant to an application pursuant to Section 310(b)(1)(ii). Here, not only are the two indenture unsecured, but, to the extent of the Company's obligation thereunder, each indenture ranks equally, with neither creating obligations of the Company senior to the other.

5. Because the Trustee is the transfer agent and registrar for the Company's common stock, it is highly desirable that the Trustee act as Trustee under the Indenture relating to the Convertible Debentures. The Convertible Debentures are convertible into share of the Company's common stock on the terms set forth therein. Because the Trustee is also the transfer agent and registrar of the Company's common stock, the Company believes that it is in the best interest of the Company and the Trustee, that the Trustee Act as Trustee under the Unregistered Indenture. The use of any other trustee under the Unregistered Indenture would lead to additional costs and expense for the Company in connection with any conversions to be made of the Convertible Debentures, since any such other trustee would not be in a position to effect such conversions as quickly and efficiently as can the Trustee in its role as transfer agent and registrar. For this reason, as well as for other reasons, the Company believes that, in the event that this application is not approved, it would seek a replacement trustee under the Registered Indenture rather than under the Unregistered Indenture. Therefore, in the event that this application is denied, the Company will be required to seek out a new trustee under the Registered Indenture, with the attendant expense that that entails. This will include the expense of preparing new debentures to reflect the change in the trustee and the change in the authorized signature of the trustee for future transfers of the Registered Debentures. It would appear that such a change, far from serving to advance the best interests of the holders of the Registered Debentures, could only serve as a source of confusion and irritation to such holders.

6. The Trustee, because of its long relationship with the Company as transfer agent and registrar, as trustee under indentures pursuant to which the Company has issued debentures, and as one of the Company's principal commercial banks, is familiar with the business and personnel of the Company, and would therefor appear to be better suited to act as a representative for creditors of the Company, including the holders of both the Registered Debentures and the Convertible Debentures, than would any other potential trustee. The Trustee's relationship with the Company is long-standing, and gives the Trustee a degree of knowledge of the affairs of the Company superior to that which could be enjoyed by any other potential trustee.

Because of the equal ranking and unsecured nature of the two issues in question, as well as the parallelism of the other provisions of such Indentures relating to the rights of debentureholders in the event of default, it would appear highly unlikely that the dual trusteeship by the Trustee under the Registered Indenture and the Unregistered Indenture would involve a material conflict of interest so as to make it necessary in the public interest or for the protection of investors to disqualify such Trustee from acting as such under one of such indentures.

The Company has waived notice of hearing and hearing, in connection with the matter referred to in this application.

For a more detailed statement of the matters of fact and law asserted here, all persons are referred to said application, which is a public document on file in the office of the Commission, at 100 L Street, N.W. Washington, D.C. 20549.

Notice is further given that any interested person may, not later than January 5, 1981, request in writing that a hearing be held on such matter, stating the nature of this interest, the reason for such request, and the issues of fact or law raised by said application which he desires to controvert, or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. At any time after said date, the Commission may issue an order granting the application, upon such terms and conditions as the Commission may deem necessary or appropriate in the public interest and the interest of investors, unless a hearing is ordered by the Commission.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 80-39423 Filed 12-18-80; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[License No. 03/03-5147]

Broadcast Capital, Inc.; Issuance of License

On October 1, 1980, a Notice was published in the Federal Register (45 FR 65103), stating that Broadcast Capital, Inc. located at 1771 N Street, N.W., Washington, D.C. 20036, has filed an application with the Small Business Administration (SBA) pursuant to 13 CFR 107.102 (1980) for a license to operate as a small business investment company under the provisions of Section 301(d) of the Small Business Investment Act of 1958, as amended.

Interested persons were given until the close of business October 16, 1980, to submit their written comments to SBA. No comments were received.

Notice is hereby given that having considered the application and other pertinent information the SBA has issued License No. 03/03-5147 to Broadcast Capital, Inc. on November 26, 1980.

(Catalog of Federal Domestic Assistance Program No. 59.011 Small Business Investment Companies)

Dated: December 12, 1980.

Michael K. Casey,

Associate Administrator for Investment.

[FR Doc. 80-39501 Filed 12-18-80; 8:45 am]

BILLING CODE 8025-01-M

[License No. 02/02-0409]

College Venture Equity Corp.; Issuance of a License to Operate as a Small Business Investment Company

On October 1, 1980, a Notice was published in the Federal Register (45 FR 65103) stating that College Venture Equity Corp., 654 Main Street, Aurora, New York 14052, had filed an application with the Small Business Administration pursuant to § 107.102 of the SBA Rules and 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 October 16, 1980, to submit their comments. No comments were received.

Notice is hereby given that, having considered the application and all other pertinent information, SBA on December 1, 1980, issued License No. 02/02-0409 to College Venture Equity Corp., 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: December 12, 1980.

Michael K. Casey,

Associate Administrator for Investment.

[FR Doc. 80-39496 Filed 12-18-80; 8:45 am]

BILLING CODE 8025-01-M

[Proposed License No. 04/04-0195]

Gulfstream Capital Corp.; Application for a License To Operate as a Small Business Investment Company

Notice is hereby given of the filing of an appliction with the Small Business Administration (SBA), pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1980)), under the name of Gulfstream Capital Corporation, First National Bank Building,801 Broad Street, Suite 616, Augusta, Georgia 30902, for a license to operate as a small business investment company (SBIC) under the provisions of the Small Business Investment Act of 1958, as amended (15 U.S.C. 661 *et seq.).*

The proposed officers, directors, and major stockholders are as follows:

J. Thomas Jones, President, Director, and 100 percent Stockholder, 801 Broad St., Augusta, GA 30902

Myrtis Barbara Clements, Secretary, Director, and Treasurer, 801 Broad St., Augusta, GA 30902.

Lynn Marie Jones, Vice President and Director, 2704 Bulter Place, Augusta, GA 30909.

The Applicant will begin operations with a capitalization of $995,000, which will be a source of both equity and debt financing to qualified small business concerns in a wide range of industries for normal growth, expansion and working capital.

The Applicant does not intend to use the services of an investment adviser but will provide consulting services to its clients and other small business concerns.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed management and owner, including adequate profitability and financial soundness in accordance with the Act and Regulations.

Notice is further given that any person may, on or before January 5, 1981, submit written comments on the proposed SBIC to the Associate Administrator for Investment, Small Business Administration, 1441 "L" Street, N.W., Washington, D.C. 20416.

A copy of this Notice shall be published in a newspaper of general circulation in Augusta, Georgia.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies).

Dated December 5, 1980.

Michael K. Casey,

Associate Administrator for Investment,

[FR Doc. 80-39497 Filed 12-18-80; 8:45 am]

BILLING CODE 8025-01-M

[License No. 10/10-0168]

Market Acceptance Corp.; Filing of Application for Transfer of Control and Ownership of Licensed Small Business Investment Company

Notice is hereby given that an application has been filed with the Small Business Administration pursuant to § 107.701 of the Regulations governing small business investment companies (13 CFR § 107.701 (1980)) for the transfer of control and ownership of Market Acceptance Corporation, 1718 Northwest 56th Street, Suite B, Seattle, Washington 98107.

Market was licensed on September 12, 1979. Its present combined paid-in capital and paid-in surplus (private capital) is $338,619. The proposed transfer of control and ownership is subject to and contingent upon approval by SBA.

All but one percent of the outstanding common stock of Market is presently owned by Archie E. Iverson, 507 West Mercur, Apartment 801, Seattle, Washington 98119. The sale of additional shares will increase Market's private capital from $338,619 to $2 million. Also, the name of the licensee will be changed to CH Capital Corporation.

The proposed officers, directors and stockholders are:

Elwood D. Howse, President, Treasurer, and Director, 11201 Southeast 8th, Suite 163, Bellevue, Washington 98004.

Thomas J. Cable, Executive Vice President, Secretary and Director, 11201 Southeast 8th, Suite 163, Bellevue, Washington 98004.

Harold H. Kawaguchi, Director, 11201 Southeast 8th, Suite 163, Bellevue, Washington 98004.

CH Partners, 100 Percent, 11201 Southeast 8th, Bellevue, Washington 98004.

Cable & Howse, Inc., Manager, 11201 Southeast 8th, Suite 163, Bellevue, Washington 98004.

Messrs. Cable and Howse are the general partners of CH Partners.

The limited partners owning ten or more percent are:

Citibank, N.A., as Trustee Special Equities Fund Commingled Benefit Trust, One Citicorp Center, 153 East 53rd Street, New York, New York 10043.

The First National Bank of Chicago, not individually but as Trustee of the First National Bank of Chicago Group Trust for Pension and Profit Sharing Trusts Institutional Venture Capital Fund. The Firstl National Bank of Chicago Trust Department, 15th floor, One First National Plaza, Chicago, Illinois 60670.

Sentry Insurance, 1800 North Point Drive, Stevens Point, Wisconsin 54481.

Trude & Co., for Continental Illinois National Bank, as Trustee of Sears Pension Trust, 30 North LaSalle Street, Chicago, Illinois 60693.

Matters involved in SBA's consideration of the application include the general business reputation and

character of the new owner and the probability of successful operation of Northwest under the new control and ownership arrangement (including adequate profitability and financial soundness) in accordance with the Act and Regulation.

Notice is hereby given that any interested persons may on or before January 5, 1981, submit to SBA, in writing, any relevant comments on the transfer of control and ownership. Any such comments should be addressed to the Associate Administrator for Investment, 1441 L Street NW, Washington, D.C. 20416.

A copy of this Notice shall be published by the transferee in a newspaper of general circulation in Seattle, Washington.

(Catalog of Federal Domestic Assistance Program No. 59.0001, Small Business Investment Companies)

Dated: December 12, 1980.

Michael K. Casey,

Associate Administrator for Investment.

[FR Doc. 80-39198 Filed 12-18-80; 8:45 am]

BILLING CODE 8025-01-M

[License No. 04/05-0086]

Market Capital Corp.; Filing of Application for Approval of Conflict of Interest Transaction

Notice is hereby given that Market Capital Corporation (MCC), 1102 N. 28th Street, P.O. Box 22667, Tampa, Florida 33622, a Federal Licensee under the Small Business Investment Act of 1958, as amended (Act), has filed an application with the Small Business Administration (SBA) pursuant to section 312 of the Act and covered by § 107.1004 of the SBA Rules and Regulations, governing small business investment companies (13 CFR 107.1004 (1980)) for approval of conflict of interest transaction falling within the scope of the above Section of the Act and Regulations.

Subject to such approval, MCC proposes to invest $100,000 in Futral Markets, Inc. (Futral), 205 North Scenic Highway, Frostproof, Florida 33843, to increase its working capital.

The proposed financing is brought within the purview of § 107.1004 of the SBA Regulations since Mr. Robert Herman Futral is a member of the Board of Directors of Affiliated of Florida, Inc., a retail grocery cooperative, the membership of which are the stockholders of MCC. Accordingly, Mr. Futral is considered by SBA to be an Associate of MCC.

Notice is hereby given that any interested person may, on or before December 29, 1980, submit written comments on the proposed transaction to the Associate Administrator for Investment, Small Business Administration, 1441 L Street, N.W., Washington, D.C. 20416.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies).

Dated: December 12, 1980.

Michael K. Casey,

Associate Administrator for Investment.

[FR Doc. 80-39193 Filed 12-18-80; 8:45 am]

BILLING CODE 8025-01-M

[Proposed License No. 06/06-0243]

Rainbow Capital Corp.; Application for a License to Operate as a Small Business Investment Company

Notice is hereby given that an application has been filed with the Small Business Administration pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1980)), under the name of Rainbow Capital Corporation, Suite 1470, One Allen Center, Houston, Texas 77005, for a license to operate as a small business investment company (SBIC) under the provisions of the Small Business Investment Act of 1958, as amended (the Act), (15 U.S.C. 661 *et seq.*), and the Rules and Regulations promulgated thereunder.

The proposed officers, directors and sole shareholder of the Applicant are as follows:

William A. Anderson, Jr., 45 Briar Hollow #1, Houston, Texas 77027—President & Director.

Patricia P. Anderson, 45 Briar Hollow #1, Houston, Texas 77027—Secretary & Director.

Lucian L. Morrison, Jr., 3031 Prescott, Houston, Texas 77025—Director.

Badak Corporation—Shareholder.

Badak Corporation, a Texas corporation, is wholly owned by Mr. Anderson.

There will be one class of stock authorized: one million shares of common stock. Initially, only 500,000 shares will be issued with a resultant private capital of $500,000. Applicant proposes to conduct its operations principally in the State of Texas.

Matters involved in SBA's consideration of the application include the general business reputation and character of shareholders and management, and the probability of successful operation of the new company in accordance with the Act and Regulations.

Notice is further given that any person may, on or before January 5, 1981, submit to SBA, in writing, comments on the proposed licensing of this company. Any such communication should be addressed to: Associate Administrator for Investment, Small Business Administration, 1441 "L" Street, N.W., Washington, D.C. 20416.

A copy of this notice shall be published by the Applicant in a newspaper of general circulation in Houston, Texas.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies).

Dated: December 12, 1980.

Michael K. Casey,

Associate Administrator for Investment.

[FR Doc. 80-39200 Filed 12-18-80; 8:45 am]

BILLING CODE 8025-01-M

[Proposed License No. 04/04-0198]

Reedy River Venture Inc.; Application for a License To Operate as a Small Business Investment Company

Notice is hereby given of the filing of an application with the Small Business Administration (SBA), pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1980)), under the name of Reedy River Venture Inc., 60 Camperdown Way, P.O. Box 831, Greenville, South Carolina 29604, for a license to operate as a small business investment company (SBIC) under the provisions of the Small Business Investment Act of 1958 (Act), as amended (15 U.S.C. 661 et. seq.).

The proposed officers, directors and major stockholders are as follows:

John M. Sterling, Jr., 419 Belmont Ave., Greenville, S.C., President, Treasurer, Director—6.25 percent.

Tecumseh Hooper, Jr., 6 Rock Creek Court, Greenville, S.C., Vice President, Secretary.

R. Hunter Park, 41 Stone Haven Dr., Greenville, S.C. 29608 Director—12.5 percent.

James M. Henderson, Rt. 7, Hickory Lane, Greenville, S.C. 29602, Director—12.5 percent.

Macon G. Patton, 18 Woodland Way Circle, Greenville, S.C. 29602, Director—6.25 percent.

N. Barton Tuck, Jr., 4 Brookside Way, Greenville, S.C. 29606, Director—6.25 percent.

Micco Corporation * 415 Crescent Ave., Greenville, S.C. 29602—12.5 percent.

The Applicant does intend to use the services of Sterling Capital Ltd as its investment adviser. Mr. John M. Sterling Jr., President and Director of the

* Micco Corporation is owned equally by Mrs. Minor H. Mickel and her three children, Buck A. Mickel, Charles C. Mickel and Minor Mickel Shaw.

applicant owns one-third of the investment adviser.

The Applicant will begin operations with a capitalization of $780,000 which will be a source of both equity and debt financing to qualified small business concerns in a wide range of industries for normal growth, expansion and working capital.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed management and owner, including adequate profitability and financial soundness in accordance with the Act and Regulations.

Notice is further given that any person may not later than 15 days from the date of publication of this Notice, submit written comments on the proposed SBIC to the Associate Administrator for Investment, Snall Business Administration, 1441 L Street, NW., Washington, D.C. 20416.

A copy of this Notice shall be published in a newspaper of general circulation in Greenville, South Carolina area.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies).

Dated: December 12, 1980.

Michael K. Casey,

Associate Administrator for Investment.

[FR Doc. 80-39502 Filed 12-18-80; 8:45 am]

BILLING CODE 8025-01-M

[Proposed License No. 06/06-0244]

SBI Capital Corp.; Application for a License To Operate as a Small Business Investment Company

Notice is hereby given that an application has been filed with the Small Business Administration pursuant to Section 107.102 of the Regulations governing small business investment companies (13 CFR Section 107.102 (1980)), under the name of SBI Capital Corp., Suite 324, 5701 Woodway, Houston, Texas 77057, for a license to operate as a small business investment company (SBIC) under the provisions of the Small Business Investment Act of 1958, as amended (the Act), (15 U.S.C. 661 et seq.), and the Rules and Regulations promulgated thereunder.

The proposed officers, directors and shareholders of the Applicant are as follows:

William E. Wright, 11710 Greenbay, Houston, Texas 77024—President, Director.

Paul W. Wright, 1122 Kingspark Drive, Tyler, Texas 75703—Vice President, Director.

William M. Wright, 6435 Edloe, Houston, Texas 77005—Secretary/Treasurer Director.

S & L Associates, Inc.—100 percent shareholder.

S & L Associates, Inc., a Texas corporation, is wholly owned by William E. Wright.

There will be one class of stock authorized: ten million shares of common stock. Initially only one million shares will be issued with a resultant private capital of $1,000,000. Applicant proposes to conduct its operations principally in the State of Texas.

Matters involved in SBA's consideration of the application include the general business reputation and character of shareholders and management, and the probability of successful operations of the new company in accordance with the Act and Regulations.

Notice is further given that any person may, not later than 15 days from the date of publication of this notice, submit to SBA, in writing, comments on the proposed licensing of this company. Any such communications should be addressed to: Associate Administrator for Investment, Small Business Administration, 1441 "L" Street, N. W., Washington, D.C. 20416.

A copy of this notice shall be published by the Applicant in a newspaper of general circulation in Houston, Texas.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies).

Dated: December 12, 1980.

Michael K. Casey,

Associate Administrator for Investment.

[FR Doc. 80-39503 Filed 12-18-80; 8:45 am]

BILLING CODE 8025-01-M

[License No. 06/06-0234]

Southwestern Venture Capital of Texas, Inc.; Issuance of License to Operate as a Small Business Investment Company

On August 6, 1980, a notice was published in the Federal Register (45 FR 52294), stating that an application had been filed by Southwestern Venture Capital of Texas, Inc., 108 La Plaza Building, 113 S. River Street, Seguin, Texas 78155, with the Small Business Administration (SBA) 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 (SBIC).

Interested parties were given until the close of business August 21, 1980, to submit their written comments to SBA. No comments were received.

Notice is hereby given that, pursuant to section 301(c) of the Small Business Investment Act of 1958, as amended, and after having considered the application and all other information, SBA issued License No. 06/06-0234, on November 24, 1980, to Southwestern Venture Capital of Texas, Inc. to operate as an SBIC.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies).

Dated: December 12, 1980.

Michael K. Casey,

Associate Administrator for Investment.

[FR Doc. 80-39504 Filed 12-18-80; 8:45 am]

BILLING CODE 8025-01-M

NATIONAL COMMISSION ON SOCIAL SECURITY

Meeting To Discuss Drafts for Final Report

December 16, 1980.

The National Commission on Social Security will hold a public meeting at the Washinton Hilton, at 1919 Connecticut Ave. NW., Washington, D.C. on January 6 and 7, 1981. The meetings will be in the Military Room. The purpose of the meeting is to discuss drafts for the final report of the Commission.

The meeting will begin each day at 9:00 a.m. and continue until the Commission business is completed, but not later than 5:00 p.m. The meeting will be open to the public, in accordance with the Federal Advisory Committee Act.

Additional information about the meeting may be obtained from the Commission office: Room 125 Pension Building, 440 G Street, NW., Washington, D.C. 202218, Phone: (202) 376-2622.

Laura Kreuzer,

Administrative Officer.

[FR Doc. 80-39505 Filed 12-18-80; 8:45 am]

BILLING CODE 6820-AC-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Determination With Regard to the Increase in the Rate of Duty of Certain Textile Articles From the European Communities

The Commission of the European Communties has informed this office that the quotas on polyester filament yarn and polyamide (nylon) carpet yarn imported into the United Kindom will expire on December 31, 1980 and that they will not be extended or renewed.

Under the authority delegated to me by paragraph (2) of Proclamation No. 4793 of September 17, 1980, I have therefore determined that these quotas will terminate prior to January 1, 1981. As a result of this determination, the modifications to the Tariff Schedules of the United States made by Proclamation No. 4793 shall not take effect.

Reubin O'D. Askew,

United States Trade Representative.

[FR Doc. 80-39333 Filed 12-18-80; 8:45 am]

BILLING CODE 3190-01-M

Addition to the List of Countries and Instrumentalities Determined To Be Parties to the Agreement on Trade in Civil Aircraft

On February 25, 1980, the Office of the United States Trade Representative published a list of countries and instrumentalities which were determined to be Parties under the Agreement on Trade in Civil Aircraft (45 FR 12349). The discriminatory purchasing requirements of the Buy America Act (41 U.S.C. 10a *et seq.*) were waived with respect to those countries and instrumentalities.

On March 17, 1980 Austria deposited instruments of acceptance of the Agreement, subject to ratification, with the Secretariat of the General Agreement on Tariffs and Trade (the GATT). Austria ratified the Agreement on June 23, 1980. Romania deposited instruments of unconditional acceptance with the Secretariat of the GATT on June 25, 1980. Therefore, the list of countries and instrumentalities is amended hereby to include, effective July 23, 1980, Austria and, effective July 25, 1980, Romania.

Reubin O'D. Askew,

United States Trade Representative.

[FR Doc. 80-39459 Filed 12-18-80; 8:45 am]

BILLING CODE 3190-01-M

Trade Policy Staff Committee; Review of Products for Removal of Eligibility Under the Generalized System of Preferences

Notice is hereby given that the Trade Policy Staff Committee (TPSC) is considering the removal of the following articles from the list of eligible articles receiving duty-free treatment under the U.S. 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):

Article Description	TSUSA[1] Item No.
Articles not specifically provided for, of feathers: Wearing apparel containing 50 percent or more by weight of cotton, wool, or man-made fibers, or any combination thereof, or containing 50 percent or more by weight of textile materials with wool comprising 17 percent or more by weight:	
With an outer shell of cotton: Coats, Jackets, and Vests:	
Men's and boys'	748.4042
Women's girls', and infants'	748.4044
Other: Coats, jackets, and vests:	
Men's and boys'	748.4054
Women's, girls', and infants'	748.4062

[1] Tariff Schedules of the United States, Annotated.

All interested parties are invited to submit their views in writing on this matter to the Chairman, GSP Subcommittee, Office of the U.S. Trade Representative, 1800 G Street, NW., Washington, D.C. 20506. Written briefs or statements should be received no later than close of business January 16, 1981. Rebuttal briefs or statements should be received no later than close of business January 30, 1981. This procedure is in lieu of a public hearing.

Written Briefs—Briefs should conform to the regulations codified at 15 CFR 2001–2003, 2007. They should be submitted in 20 copies in English, and should contain the name and address of the party submitting the brief. Information submitted as business confidential information must contain a nonconfidential summary and must be easily separable from other information.

Public Inspection of Information—Except for business confidential information, all written materials filed in connection with this matter will be open to public inspection by appointment with the Executive Director of the GSP Subcommittee of the TPSC (202/395–6971).

Ann H. Hughes,

Chairman, Trade Policy Staff Committee.

[FR Doc. 80-39448 Filed 12-18-80; 8:45 am]

BILLING CODE 3190-01-M

Sunshine Act Meetings

Federal Register
Vol. 45, No. 246
Friday, December 19, 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

COMMODITY FUTURES TRADING COMMISSION.

TIME AND DATE: 10 a.m., Tuesday, December 23, 1980.

PLACE: 2033 K Street NW., Washington, D.C., fifth floor hearing room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement Matter.

CONTACT PERSON FOR MORE INFORMATION: Jane Stuckey, 254–6314.

[S–2332–80 Filed 12–17–80; 11:13 am]

BILLING CODE 6351–01–M

2

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION.

TIME AND DATE: 9:30 a.m. (eastern time), Monday, December 22, 1980.

PLACE: Commission conference room 5240, fifth floor, Columbia Plaza Office Building, 2401 E Street NW., Washington, D.C. 20506.

STATUS: Part will be open to the public and part will be closed to the public.

MATTERS TO BE CONSIDERED: Open to the public.

1. Freedom of Information Act Appeal No. 80–10–FOIA–513, concerning a request for Sessions III and IV of the EEOC Systemic Training Manual.
2. Final Guidelines on Discrimination Because of National Origin.
3. Adoption of Privacy Act System Pertaining to Employee Grievances.
4. Report on Commission Operations by the Executive Director.

Closed to the Public.

1. Litigation Authorization; General Counsel Recommendations.

Note.—Any matter not discussed or concluded may be carried over to a later meeting.

CONTACT PERSON FOR MORE INFORMATION: Treva I. McCall, Acting Executive Officer, Executive Secretariat, at (202) 634–6748.

This Notice Issued December 16, 1980.

[FR Doc. S–2334–80 Filed 12–17–80; 3:15 pm]

BILLING CODE 6570–06–M

3

[FR S–2275]

FEDERAL ELECTION COMMISSION.

PREVIOUSLY ANNOUNCED DATE AND TIME: Thursday, December 19, 1980 at 10 am.

CHANGE IN MEETING: Due to extraordinary circumstances, the following matter will be added to the agenda for the above scheduled open meeing:

Election of Offices

* * * * *

PERSON TO CONTACT FOR INFORMATION: Mr. Fred S. Eiland, Public Information Officer; Telephone: 202–523–4065.

Marjorie W. Emmons,

Secretary to the Commission.

[S–2333–80 Filed 12–17–80; 11:54 am]

BILLING CODE 6715–01–M

4

FEDERAL ENERGY REGULATORY COMMISSION.

TIME AND DATE: 4 p.m., December 17, 1980.

PLACE: Room 9306, 825 North Capitol Street NE., Washington, D.C. 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Advisory Committee on the Revision of Rules of Practice and Procedure will brief the President-Elect's designated FERC Transition Team on the Advisory Committee's activities over the past year.

CONTACT PERSON FOR MORE INFORMATION: Kenneth F. Plumb, Secretary; Telephone (202) 357–8400.

Kenneth F. Plumb,

Secretary.

[FR Doc. S–2336–80 Filed 12–17–80; 3:48 pm]

BILLING CODE 6450–85–M

5

NUCLEAR REGULATORY COMMISSION.

DATE: Week of December 22, 1980.

MATTERS TO BE CONSIDERED: Monday, December 22:

2 p.m.

1. Discussion of Final Rule—10 CFR 60—Disposal of High Level Radioactive Waste in Giologic Repositories—Licensing Procedures (approximately 1½ hours, public meeting).
2. Affirmation Session (approximate 10 minutes, public meeting).

a. *Affirmations.*

1. Indian Point (Cooling Towers) (tentative).
2. Petition for a Hearing in the Matter of the Proposed Decontamination of the Dresden Nuclear Power Station.
3. Project for Open Government FOIA Appeal.
4. Revisions in Draft Dailly Show Cause Order.
5. Petition for Reconsideration of Commission Tyrone Decision.

b. Discussion and Vote of Above Affirmation Items, If Required.

AUTOMATIC TELEPHONE ANSWERING SERVICE FOR SCHEDULE UPDATE: (202) 634–1498.

Those planning to attend a meeting should reverify the status on the day of the meeting.

CONTACT PERSON FOR MORE IMFORMATION: Walter Magee (202) 634–1410.

Dated: December 15, 1980.

Walter Magee,

Office of the Secretary.

[S–2335–80 Filed 12–17–80; 3:15 pm]

BILLING CODE 7590–01–M

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AGENCY PUBLICATION ON ASSIGNED DAYS OF THE WEEK

The following agencies have agreed to publish all documents on two assigned days of the week (Monday/Thursday or Tuesday/Friday). This is a voluntary program. (See OFR NOTICE 41 FR 32914, August 6, 1976.)

Monday	Tuesday	Wednesday	Thursday	Friday
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DOT/COAST GUARD	USDA/FNS		DOT/COAST GUARD	USDA/FNS
DOT/FAA	USDA/FSQS		DOT/FAA	USDA/FSQS
DOT/FHWA	USDA/REA		DOT/FHWA	USDA/REA
DOT/FRA	MSPB/OPM		DOT/FRA	MSPB/OPM
DOT/NHTSA	LABOR		DOT/NHTSA	LABOR
DOT/RSPA	HHS/FDA		DOT/RSPA	HHS/FDA
DOT/SLSDC			DOT/SLSDC	
DOT/UMTA			DOT/UMTA	
CSA			CSA	

Documents normally scheduled for publication on a day that will be a Federal holiday will be published the next work day following the holiday. Comments on this program are still invited. Comments should be submitted to the Day-of-the-Week Program Coordinator, Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408

NOTE: As of September 2, 1980, documents from the Animal and Plant Health Inspection Service, Department of Agriculture, will no longer be assigned to the Tuesday/Friday publication schedule.

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

Note: There were no items eligible for inclusion in the list of Rules Going Into Effect Today.

ENERGY DEPARTMENT

Economic Regulatory Administration—

76431 11-19-80 / Priority supply of crude oil and petroleum products to Defense Department under Defense Production Act

Rules Going Into Effect Sunday, December 21, 1980

CIVIL AERONAUTICS BOARD

80098 12-3-80 / Air carriers; extension of credit to political candidates

List of Public Laws

Last Listing December 18, 1980

This is a continuing listing of public bills from the current session of Congress which have become Federal laws. The text of laws is not published in the Federal Register but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402 (telephone 202-275-3030).

H. J. Res 644 / Pub. L. 96-536 Making further continuing appropriations for the fiscal year 1981, and for other purposes (Dec. 16, 1980; 94 Stat. 3166) Price $1.

S. 2728 / Pub. L. 96-537 Indian Health Care Amendments of 1980 (Dec. 17, 1980; 94 Stat. 3173) Price $1.25.

S. 988 / Pub. L. 96-538 Health Programs Extension Act of 1980 (Dec. 17, 1980; 94 Stat. 3183) Price $1.25.

H.R. 7018 / Pub. L. 96-539 To extend the Federal Insecticide, Fungicide, and Rodenticide Act until September 30, 1981, and for other purposes (Dec. 17, 1980; 94 Stat. 3194) Price $1.

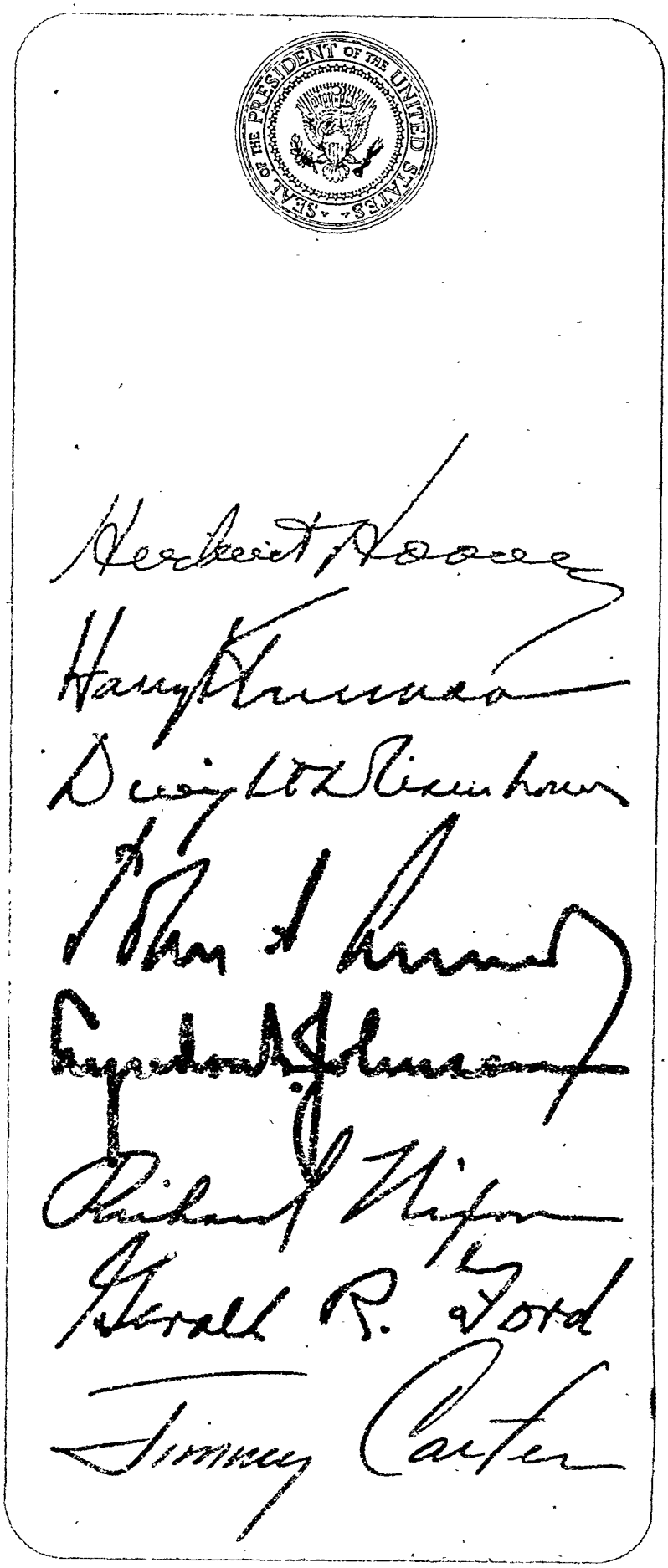
S. 3074 / Pub. L. 96-540 Department of Energy National Security and Military Applications of Nuclear Energy Authorization Act of 1981 (Dec. 17, 1980; 94 Stat. 3197) Price $1.

H.R. 6975 / Pub. L. 96-541 To extend certain temporary tax provisions, and for other purposes (Dec. 17, 1980; 94 Stat. 3204) Price $1.

S. 3235 / Pub. L. 96-542 To clarify certain effective date provisions of the Customs Courts Act of 1980 (Dec. 17, 1980; 94 Stat. 3209) Price $1.

H.R. 7385 / Pub. L. 96-543 To authorize the Secretary of the Interior to transfer certain land and facilities used by the Bureau of Mines, and for other purposes (Dec. 17, 1980; 94 Stat. 3211) Price $1.

H. J. Res. 601 / Pub. L. 96-544 Making an appropriation for the International Monetary Fund for the fiscal year ending September 30, 1981 (Dec. 17, 1980; 94 Stat. 3213) Price $1.



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BOOK 2:
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Federal Register

Book 2 of 2 Books
Friday, December 19, 1980

83772	Part II—HHS/HCFA: Medical Assistance Program
83780	Part III—Interior/BLM: Draft Wilderness Study Policy
83806	Part IV—Labor/ESA: Minimum Wages for Federal and Federally Assisted Construction
83816	Part V—HHS: Semiannual Agenda of Regulations
83868	Part VI—Interior/GS: Oil and Gas Lease Operations in the Arctic
83914	Part VII—Labor/WH: Labor Standards of Projects Assisted by National Foundation for the Arts and the Humanities
83920	Part VIII—Justice/Prisons: Central Inmate Monitoring System
83926	Part IX—Labor/ETA: Labor certification Process for the Permanent Employment of Aliens in the U.S.
83952	Part X—EPA: Benzene Emissions from Benzene Storage Vessels
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Friday
December 19, 1980

Part II

Department of Health and Human Services

Health Care Financing Administration

Medical Assistance Program; Title XIX Administrative Sanctions

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 455

Medical Assistance Program

Title XIX Administrative Sanctions

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

ACTION: Proposed rule.

SUMMARY: The proposed regulation would require State Medicaid agencies to suspend from program reimbursement all practitioners who are convicted of offenses related to their participation in the Medicaid program and to exclude from Medicaid program reimbursement providers who otherwise defraud or abuse the Medicaid program.

The proposed regulation also revises State Medicaid requirements with respect to the detection and investigation of Medicaid fraud and abuse. This revisions would further clarify State Medicaid agency responsibilities for the control of Medicaid fraud and abuse and strengthen the regulatory requirements so that States can adequately meet their responsibilities.

The intent of this proposed regulation is to prevent or discourage those practices which increase the cost of the Medicaid program without benefiting Medicaid recipients.

DATE: To assure consideration, comments should be received by: February 17, 1981.

ADDRESSES: Address comments to: Administrator, Health Care Financing Administration, Department of Health and Human Services, P.O. Box 17076, Baltimore, Maryland 21235.

If you prefer, you may deliver your comments to: Room 309–G, Hubert H. Humphrey Building, 200 Independence Avenue, S.W., in Washington, D.C.; or to Room 789, East High Rise, 6401 Security Blvd., in Baltimore.

Please refer to File Code BQC–5–P. Agencies and organizations are requested to submit comments in duplicate. Comments will be available for public inspection approximately two weeks after publication in Room 309–G of the Department's office at 200 Independence Avenue, S.W., Washington, D.C., on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (202–245–7890).

We cannot answer individual comments because of the large volume we receive. We will respond to them in the preamble of the final regulation.

FOR FURTHER INFORMATION CONTACT: Irvin Cohen, Health Care Financing Administration, Room 2–E–5, East Low Rise Building, 6401 Security Boulevard, Baltimore, Maryland 21235, Phone: 301–594–8213.

SUPPLEMENTARY INFORMATION: The Medicaid program is jointly funded by Federal and State monies administered by the States under title XIX of the Social Security Act (the Act). The Health Care Financing Administration (HCFA) is the component of the Department which administers the Federal aspect of the Medicaid program.

We have identified substantial error, fraud, and abuse in the Medicaid program resulting both in wasted expenditures of Federal and State funds and in loss of public confidence in the ability of Government to administer the program. These problems often remain unchecked due to the fact that many State Medicaid agencies lack the necessary administrative processes to deal effectively with fraud and abuse cases that are not taken to court.

A recent HCFA survey has established that a substantial number of the 53 Medicaid jurisdictions are either unable, due to current budgetary restrictions, or lack of authority, or unwilling to establish processes to resolve these problems.

HCFA State assessments and the Department's major initiative in this area, Project Integrity, have uncovered hundreds of cases involving millions of dollars of overpayments resulting from some form of fraud or abuse. We believe that if States had had greater regulatory authority to take sanctions appropriate to these uncovered offenses, the dollar recovery and sanctions imposed would have been substantially greater. Therefore, the efficient administration of the Medicaid program dictates that State Medicaid agencies establish and maintain processes to administer sanctions when appropriate.

The proposed State plan requirements contained within this proposed regulation will require the establishment of procedures for the exclusion and suspension of providers who defraud or abuse the Medicaid program. In addition, HCFA will, in the near future, propose regulations requiring States to establish mechanisms for withholding payments to providers who are suspected of fraud and to recover Medicaid program overpayments. Together, these administrative sanction mechanisms will enable the States to take effective action to deter fraud and abuse in the Medicaid program. These proposed administrative sanctions are a minimum requirement which the State must meet. At its option and within its legal limits, a State may add further sanctions to these minimum requirements.

Major Provisions and Policy Issues

1. Exclusion of Medicaid Providers

The proposed regulation would require that State Medicaid agencies exclude from Medicaid program reimbursement any provider the agency determines has:

a. Knowingly and willfully made or caused to be made any false statement or representation of a material fact in a request for payment under Medicaid;

b. Furnished items or services under Medicaid that are substantially in excess of the recipient's needs or of a quality that does not meet professionally recognized standards of health care; or

c. Submitted or caused to be submitted Medicaid bills or requests for payment containing charges (or costs) that are substantially in excess of customary charges (or costs). This pertains to the submission of bills for program reimbursement containing charges that are substantially in excess of charges for the same services rendered to patients who are not program recipients.

These provisions are the same as Medicare uses when considering an exclusion under section 1862(d)(1), and are intended to more closely align the exclusion processes in the two programs.

This exclusion would be effective only after the State Medicaid agency gives the provider a written notice of its intent to exclude and the opportunity to submit evidence opposing exclusion.

2. State Medicaid Action When Practitioners Are Convicted of Medicaid-Related Offenses

Current regulations at 42 CFR 455.212(c) require that a Medicaid agency suspend a practitioner from Medicaid whenever HCFA notifies the agency that it has suspended the practitioner from Medicare. The Medicaid agency is then required to suspend the practitioner from Medicaid effective on the same date and for at least the same length of time as the Medicare suspension. These requirements will remain unchanged under this proposed regulation.

The proposed regulation will require that Medicaid agencies also suspend from Medicaid those practitioners who are convicted of Medicaid-related offenses but who are not a member of a group or class of health care

professionals whose services are reimbursable under Medicare.

An example of a group or class of health care professionals who are not eligible to participate in Medicare is pharmacists. Under this proposal, if a pharmacist is convicted of a Medicaid-related criminal offense, the Medicaid agency will be required to suspend the practitioner from the Medicaid program effective 15 days after it learns of the conviction and must notify HCFA of its action. In this case, the State agency will be responsible for determining the length of program suspension, for handling any appeals resulting from this suspension and for reinstating the practitioner into the Medicaid program if and when the agency desires to do so.

Current regulations at 455.212(b) require that Medicaid agencies report to HCFA whenever a practitioner has been convicted of a Medicaid-related offense. These reporting requirements will remain unchanged under the proposed regulation. However, under the proposed regulation, State agencies will be required to identify those practitioners who are not eligible to participate in Medicare and suspend them within 15 days after the State agency learns of the conviction. This requirement will insure that prompt suspension action is taken in those cases where no Medicare suspension is possible.

For convicted practitioners who are eligible to participate in Medicare, the Medicaid agency must report the conviction to HCFA within 15 days after it learns of the conviction. However, the agency is not required to suspend the practitioner until the agency is notified that HCFA has suspended the practitioner from Medicare.

The proposed regulation would clarify the actions that the Medicaid agency must take under section 1902(a)(39). Becuase the action is based on a court conviction, we have not required an additional opportunity for a hearing before the Medicaid agency imposes the suspension. However, once suspended, a practitioner may appeal for reinstatement on certain specified grounds.

As explained above, the suspension, appeal, and reinstatement procedures contained within this proposed regulation require different actions to be taken by HCFA and State agencies depending on which of the following three situations apply to the convicted practitioner:

A. The practitioner is eligible to participate in both Medicare and Medicaid and is suspended from both programs for the same period of time, or

B. The practitioner is eligible to participate in both programs and the State agency chooses to extend the length of the Medicaid suspension beyond the Medicare suspension period, or

C. The practitioner is only eligible to participate in the Medicaid program.

To aid in the review of this proposed regulation, we have included a chart which uses the above letters to denote these situations, to state whether HCFA or the State agency is responsible for the action, and to show the regulation references which apply to them.

Group	Suspension		Appeals		Reinstatement	
	Medicare (HCFA)	Medicaid (State agency)	Medicare (HCFA)	Medicaid (State agency)	Medicare (HCFA)	Medicaid (State agency)
A	42 CFR 420.111 [1]	42 CFR 455.212(a)	42 CFR 420.113 [1]	NA (must appeal to HCFA)	42 CFR 420.120 [1].	42 CFR 455.212(d).
B	42 CFR 420.111 [1]	42 CFR 455.212(a) and 455.216(a)(2).	42 CFR-420.113 [1]	42 CFR 455.220	42 CFR 420.120 [1].	42 CFR 455.220.
C	NA	42 CFR 455.210(c)	NA	42 CFR 455.210(c)	NA	42 CFR 455.220.

[1] Not included in the proposed regulation.

The intent of this proposal is to require States to expeditiously suspend practitioners who are found guilty of fraud. HCFA will issue an action transmittal identifying those groups or classes of practitioners eligible to participate in Medicare.

3. Preliminary Investigation of Fraud and Abuse

Current regulations (§ 455.14) require that when a Medicaid agency receives a complaint of potential Medicaid fraud or abuse from any source, it must conduct a preliminary investigation to determine if the complaint warrants a full investigation. The proposed regulation would revise this section to make it clear that the agency must also act on any questionable practices it identifies through its own detection mechanisms. This is an essentially technical revision and would not require changes in State operations.

4. Full Investigation of Fraud and Abuse

Section 17 of Public Law 95-142, the Medicare/Medicaid Anti-Fraud and Abuse Amendments, provides for the creation of separate and distinct State Medicaid Fraud Control Units to investigate and prosecute all violations of applicable State laws pertaining to Medicaid fraud committed by providers. In a State with a certified fraud control unit, the responsibility for investigation of suspected fraud rests with that unit (see § 455.300(f)(1)). There is an apparent contradiction between § 455.15, which requires that "the agency must conduct a full investigation" and § 455.21(b), which requires referral to the State fraud control unit and absolves the State agency of certain responsibilities that are imposed on that unit. In order to avoid possible confusion, we propose to add to § 455.15 a paragraph that clarified State agency responsibility to refer cases of suspected provider fraud to the fraud control unit for full investigation.

5. Statements of Acknowledgement

Current regulations (§§ 455.18 and 455.19) allow States to print statements which notify providers either on Medicaid claims forms or on the checks that reimburse the provider for their services that they can be prosecuted for fraudulent acts. We are proposing to require these statements on both claims forms and checks. This change would provide for uniform nationwide practice and also aid in successful prosecution.

Statements on both claims forms and checks will ensure that providers are fully aware of the consequences of filing false statements or concealing material facts both in filing a claim for reimbursement and in receiving payment for that claim. Prosecutors will acquire an additional evidentiary tool to establish that when a provider committed a fraudulent act, the provider did so knowing his or her act could be

prosecuted under applicable Federal or State laws. This revision would make Medicaid practice consistent with Medicare practice.

Section 455.18 would also be revised to make clare that the acknowledgments must be imprinted on cost report forms, since cost reports represent a claim for payment. This requirement is consistent with established HCFA practice.

In addition to the proposed changes to 42 CFR Chapter IV Part 455 contained within this proposed regulation the Office of the Inspector General will propose revisions to the State Medicaid Fraud Control Unit regulations which affect subparts A and D of this part.

42 CFR Chapter IV, Part 455, is amended as set forth below:

1. The table of contents is amended as follows:

PART 455—PROGRAM INTEGRITY

Sec.
455.1 Basis and purpose.
455.2 Definitions.

Subpart A—Medicaid Fraud Detection and Investigation Program

* * * * *

Sec.
455.11 [Vacated and reserved]

Subpart B—Disclosure of Information by Providers and Fiscal Agents

* * * * *

Subpart C—Exclusion of Providers and Suspension of Practitioners

Sec.
455.200 State plan requirement.
455.202 Denial of FFP: Parties excluded under Medicare.
455.203 Exclusion of Medicaid providers.
455.204 Notice of proposed exclusion and opportunity for review.
455.205 Notice of exclusion.
455.210 Practitioners convicted of crimes against Medicaid.
455.212 Practitioners suspended from Medicaid under § 420.111.
455.216 Duration and effect of exclusion or suspension.
455.217 Exceptions to denial of State payments and FFP.
455.220 Procedures for reinstatement after exclusion or suspension.

Subpart D—State Medicaid Fraud Control Units

* * * * *

Authority: Sections 1102, 1902(a)(4)(A), 1902(a)(30), and 1902(a)(39) of the Social Security Act; (42 U.S.C. 1302, 42 U.S.C. 1396a(a)(4)(A), 42 U.S.C. 1396a(a)(30), 42 U.S.C. 1396a(a)(39)).

2. Sections 455.1 and 455.2 are added as follows:

§ 455.1 Basis and purpose.

This part sets forth requirements for the prevention of fraud and abuse in the Medicaid program and implements specific statutory provisions aimed at protecting the integrity of the program. This part is subdivided into four subparts.

(a) Under the authority of section 1902(a)(4), 1909 and 1903(i)(2) of the Social Security Act, subpart A provides State plan requirements for the identification, investigation, and referrel of suspected fraud and abuse cases. In addition, the subpart requires the reporting of fraud and abuse information to HCFA and requires that States have a method to verify whether services reimbursed by Medicaid were actually rendered to recipients.

(b) Subpart B implements Sections 1124, 1126, 1902(a)(38), and 1903(i)(2) and 1903(n) of the Act. It requires that providers and fiscal agents must agree to disclose ownership and control information to the Medicaid State agency.

(c) Subpart C is based on Sections 1902(a)(4)(A) and 1902(a)(30) and 1902(a)(39) of the Act. It requires that Medicaid agencies exclude or suspend from program reimbursement any provider that defrauds or abuses the Medicaid or Medicare programs.

(d) Subpart D implements sections 1903(a)(6), 1903(b)(3) and 1903(q) of the Act, and prescribes requirements for the establishment and operation of State Medicaid fraud control units. It also details conditions that must be met in order for the units to receive 90 percent Federal financial participation (FFP).

§ 455.2 Definitions.

As used in Subparts A, B, and C of this part unless the context indicates otherwise—

"Abuse" means provider practices that are inconsistent with sound fiscal, business, or medical practices, and result in an unnecessary cost to the Medicaid program, or in reimbusement for services that are not medically necessary or that fail to meet professionally recognized standards for health care.

"Conviction" or "Convicted" means that a judgment of conviction has been entered by a Federal, State, or local court, regardless of whether an appeal from that judgment is pending.

"Exclusion" means that items or services furnished by a specified provider will not be reimbursed under Medicaid.

"Fraud" means an intentional deception or misrepresentation made by a person with the knowledge that the deception could result in some unauthorized benefit to himself or some other person. It includes any act that constitutes fraud under applicable State law.

"Practitioner" means a physician or other individual licensed under State law to practice his or her profession.

"PSRO" stands for Professional Standards Review Organization.

"Suspension" means that items or services furnished by a specified provider who has been convicted of a program related offense in a Federal, State, or Local court will not be reimbursed under Medicaid.

3. Subpart A is amended by removing § 455.11, and revising §§ 455.14, 455.15, 455.18, and 455.19 to read as follows:

Subpart A—Medicaid Agency Fraud Detection and Investigation Program

* * * * *

§ 455.11 [Removed]

* * * * *

§ 455.14 Preliminary investigation.

If the agency receives a complaint of Medicaid fraud or abuse from any source or identifies any questionable practices, it must conduct a preliminary investigation to determine whether there is sufficient basis to warrant a full investigation.

§ 455.15 Full investigation.

If the findings of a preliminary investigation give the agency reason to believe that an incident of fraud or abuse has occurred in the Medicaid program, the agency must take the following action, as appropriate:

(a) If a provider is suspected of fraud or abuse, the agency must—

(1) In States with a State Medicaid fraud control unit certified under Subpart D of this part, refer the case to the unit under the terms of its agreement with the unit entered under § 455.300(e); or

(ii) In States with no certified Medicaid fraud control unit, conduct a full investigation or refer the case to the appropriate law enforcement agency.

(b) If there is reason to believe that a recipient has defrauded the Medicaid program, the agency must refer the case to an appropriate law enforcement agency.

(c) If there is reason to believe that a provider or recipent has abused the Medicaid program and a referral under paragraph (a) of this section is not required, the agency must conduct a full investigation of the abuse.

* * * * *

§ 455.18 Provider's statements on claims form.

(a) The agency must ensure that all provider Medicaid claims forms used by providers, including provider cost reports, are imprinted in boldface type

with the following statements, or with alternate wording that is approved by the Regional Administrator:

(1) "I performed the service or I supervised its performance and have identified the person who performed the service."

(2) "I understand that this claim will be paid from Federal and State funds, and that any falsification, or concealment of a material fact, may be prosecuted under Federal and State laws."

(3) "This is to certify that the foregoing information is true, accurate, and complete."

(b) The statements (or reference to them if they are printed on the reverse of the form) must appear immediately preceding the space for the claimant's signature.

(c) In States using claims processing systems that do not require hard copy claims forms, the agency must have procedures to ensure that providers make certifications comparable to those contained in paragraph (a) of this section.

§ 455.19 Provider's statement on check.

In addition to the statements required in § 455.18, the agency must print the following wording above the endorsement on the reverse of checks or warrants payable to providers: "I understand in endorsing or depositing this check that payment will be from Federal and State funds and that any falsification or concealment of a material fact, may be prosecuted under Federal and State laws."

* * * * *

4. Subpart C is amended by revising § 455.212, and adding §§ 455.200, 455.203, 455.204, 455.205, 455.210, 455.216, 455.217, 455.220, and 455.225 to read as follows:

§ 455.200 State plan requirement.

The plan must provide that the requirements of this subpart are met.

§ 455.202 [1] Denial of FFP: Parties excluded under Medicare.

(a) FFP is not available in payments for services furnished by a Medicare provider while that party is excluded from the Medicare program—

(1) Under § 420.101 of this chapter for submitting false statements, submitting excessive claims, or furnishing services that exceed the beneficiary's needs or are of unacceptable quality; or

(2) Because of a determination, under § 474.10 of this chapter, that the provider has failed to comply with his obligation, as set forth in section 1160(a) of the Act, to—

(i) Order or furnish only care that is medically necessary, of acceptable quality, and at an appropriate level; and

(ii) Furnish such evidence of the medical necessity and quality of the services as a Professional Standards Review Organization (PSRO) may reasonably require.

* * * * *

(b) Except as specified in paragraph (c) of this section, the denial of FFP will apply to services furnished on or after the effective date of the exclusion from Medicare.

(c) *Exception.* (1) In the case of impatient services furnished in a hospital, skilled nursing facility, or intermediate care facility to a recipient who was admitted before the effective date of the Medicare exclusion, FFP will be available in payments made for services furnished for up to 30 days after the exclusion date.

(2) In the case of home health services furnished under a plan established before the effective date of exclusion, FFP will be available in payments for services furnished through the end of the calendar year in which exclusion became effective.

(d) FFP will be available for services furnished by a Medicaid provider after reinstatement in the Medicare program.

§ 455.203 Exclusion of Medicaid providers.

(a) *Basis for exclusion.* The Medicaid agency must not make payments under Medicaid for items or services furnished by a provider who it determines has:

(1) Knowingly and willfully made or caused to be made any false statement or misrepresentation of material fact in claiming, or use in determining the right to, payment under Medicaid;

(2) Furnished services under Medicaid that are substantially in excess of the recipient's needs or that fail to meet professionally recognized standards for health care; or

(3) Submitted or caused to be submitted to the Medicaid program bills or requests for payment containing charges of costs that are substantially in excess of customary charges or costs. The agency must not deny Medicaid payment for bills or requests for payment that are substantially in excess of customary charges or costs, if it finds the excess charges are justified by unusual circumstances or medical complications requiring additional time, effort, or expense in localities in which it is accepted medical practice to make an extra charge in such case.

(b) *Reports to be considered.* The agency' determination that services were excessive or of unacceptable quality must be based on reports, including sanction reports, from the following sources:

(1) The PSRO for the area served by the provider;

(2) State or local licensing or certification authorities;

(3) Peer review committees of fiscal agents or contractors;

(4) State or local professional societies; or

(5) Other sources deemed appropriate by the Medicaid agency or HCFA.

§ 455.204 Notice of proposed exclusion and opportunity for review.

(a) *Notice.* If the agency proposes to exclude a provider under § 455.202a), it must send the provider written notice stating the reasons for the proposed exclusion and the right to review.

(b) *Request for review.* Within 30 days from the date on the notice, the provider may submit—

(1) Documentary evidence and written agrument against the exclusion; or

(2) A written request for a hearing to present evidence and argument to an official acting for the agency.

(c) *Review and subsequent action.* (1) Within 30 days of receipt of a timely request from the provider, the agency must schedule a hearing to be held within 60 days of receipt of the request.

(2) The agency must—

(i) Consider the arguments or the evidence submitted under subparagraph (b); and

(ii) Within 30 days from the date of the hearing (under subparagraph (b)(2)) or the receipt of evidence or written argument (under subparagraph (b)(1)), notify the provider whether the provider is to be excluded.

§ 455.205 Notice of exclusion.

If the decision is to exclude—

(a) The agency must send the provider written notice 15 days before the exclusion becomes effective;

(b) The notice must state—

(1) The reasons for the decision;

(2) The effective date;

(3) The effect of the exclusion on the party's participation in the Medicaid program;

(4) The earliest date on which the agency will accept a request for reinstatement (see section 455.216(a)(2)); and

(5) The requirements and procedures for reinstatement.

(c) The agency must also give notice of the exclusion and the effective date to HCFA, the public, and, as appropriate, to—

(1) Recipients;

(2) PSROs;

(3) Providers and organizations;

[1] § 455.202 was published on May 30, 1979 and is presented here for the convenience of the reviewer.

(4) Medical societies and other professional organizations;

(5) State licensing boards and affected State and local agencies and organizations; and

(6) Medicare carriers and intermediaries.

§ 455.210 Practitioners convicted of crimes against Medicaid.

(a) *Notification of State or local conviction.* The agency must notify HCFA whenever a State or local court has entered a judgment of conviction against a practitioner for a criminal offense related to his or her involvement in the Medicaid program.

(1) If the agency was involved in the investigation or prosecution of the case, it must send notice within 15 days after the conviction.

(2) If the agency was not so involved, it must give notice within 15 days after it learns of the conviction.

(b) *Practitioners eligible to participate in Medicare.* If the convicted practitioner is a member of a group or class recognized as eligible to participate in the Medicare program, and is suspended under Medicare under § 420.111, the agency must suspend the practitioner in accordance with procedures contained in § 455.212(a).

(c) *Other practitioners.* If the convicted practitioner is a member of a group or class who is eligible to prarticipate in Medicaid but not eligible to participate in Medicare, the agency must— (1) Within 15 days of learning of the conviction, send the practitioner a written suspension notice effective 15 days from the date on the notice;

(2) Include in that notice the information equivalent to that required for the exclusion notice in § 455.205; and

(3) Give notice of the suspension to HCFA and to the entities that must be notified of exclusions under § 455.205(c).

(d) *Notification to other Medicaid agencies of suspension.* HCFA will notify all Medicaid agencies of a suspension under paragraph (c) of this section.

(e) *Appeals subsequent to suspension.* A suspended practitioner may request a hearing before an official representing the agency on the following limited issues:

(1) Whether the practitioner was in fact convicted.

(2) Whether the conviction was related to involvement in the Medicaid program.

(3) Whether the length of the suspension is justified.

§ 455.212 Practitioners suspended under Medicare under § 420.111.

(a) *Suspension.* If the agency is notified by HCFA that a practitioner has been suspended from participation under Medicare under § 420.111, it must suspend that practitioner from participation under Medicaid, effective on the date established by HCFA, and at least for the period of the Medicare suspension.

(b) *Waiver of suspension.* (1) The agency may request HCFA to waive suspension if it concludes that, because of the shortage of practitioners in the area, individuals eligible to receive Medicaid benefits would be denied adequate access to medical care.

(2) HCFA will approve a request for waiver only if—

(i) The Secretary designates the community as a health manpower shortage area; and

(ii) An insufficient number of National Health Service Corps personnel has been assigned to meet the needs of the area.

(c) *Notice of waiver or lifting of suspension.* HCFA will notify the agency if and when it—

(1) Waives suspension in response to the agency's request; or

(2) Lifts the suspension and reinstates the practitioner under Medicare.

(d) *Reinstatement.* (1) The agency may not reinstate into the Medicaid program a practitioner who was suspended from Medicare until HCFA notifies the agency that the practitioner has been reinstated into the Medicare program.

(2) If HCFA notifies the agency that it has reinstated a practitioner under Medicare, the agency may automatically reinstate the practitioner under Medicaid effective on the date of reinstatement under Medicare.

(3) If the agency does not automatically reinstate the practitioner, but continues the Medicaid suspension for a longer period, it must follow the reinstatement procedures set forth in § 455.220 (b), (c) and (d).

§ 455.216 Duration and effect of exclusion or suspension.

(a) *Duration.* (1) An exclusion or suspension must continue in effect until the Medicaid agency reinstates the provider or practitioner in accordance with § 455.220.

(2) In setting the earliest date on which it will consider a request for reinstatement, the agency must consider—

(i) The number and nature of the program violations and other related offenses;

(ii) The nature and extent of any adverse impact the violations have had on recipients;

(iii) The amount of any damages incurred by the Medicaid program;

(iv) Whether there are any mitigating circumstances;

(v) The length of the sentence imposed on a convicted practitioner; and

(vi) Any other facts bearing on the nature and seriousness of the violations or related offenses.

(b) *Denial of payment.* (1) Except as provided in § 455.217, the agency must not make any payment under the plan for services furnished directly by, or under the supervision of, an excluded provider or suspended practitioner, during the period of exclusion or suspension.

(2) The agency may pay for services otherwise reimbursable under the plan, that are ordered by a suspended practitioner but furnished and billed for by a practitioner or provider in good standing.

(c) *Denial of FFP.* Except as provided in § 455.217, FFP will not be available in payments made by any Medicaid agency for services furnished by an excluded provider or suspended practitioner.

§ 455.217 Exceptions to denial of State payments and FFP.

(a) *Recipient admitted to a hospital, SNF, or ICF before the effective date of exclusion.* The agency must pay, and FFP will be available, for—

(1) Inpatient services furnished to the recipient for up to 30 days after the effective date of exclusion; and

(2) Inpatient services furnished by the admitting physician for up to 30 days after the effective date of the suspension.

(b) *Home health services.* In the case of home health services furnished under a plan established before the effective date of the exclusion, the agency may pay and FFP will be available in payments for services furnished through the end of the calendar year in which the exclusion became effective.

§ 455.220 Procedures for reinstatement after exclusion or suspension.

(a) *General.* (1) The provisions of the section apply to the reinstatement into the Medicaid program of all suspended practitioners or excluded providers except in those cases where the agency chooses to automatically reinstate a suspended practitioner in accordance with § 455.212(d).

(2) A party who has been excluded or suspended from Medicaid may be reinstated only by the Medicaid agency

that imposed the exclusion or suspension.

(b) *Request for reinstatement.* A party may submit to the agency a request for reinstatement at any time after the date specified in the notice of exclusion or suspension. The request for reinstatement must contain—

(1) The reasons in support of reinstatement; and

(2) A statement (or authorization for the agency to obtain a statement) from peer review bodies, professional associates, or other organizations, attesting to their belief, supported by fact, that the acts or practices that led to exclusion or conviction will not be repeated.

(c) *Action on request.* (1) The agency may grant reinstatement only if it is reasonably certain that the violation(s) that led to exclusion or conviction will not be repeated. In making this determination, the agency will consider, among other factors—

(i) Whether the provider or the practitioner has been convicted in a Federal, State, or local court of other offenses related to participation in the Medicare program which were not considered during the development of the suspension or exclusion; and

(ii) Whether the State or local licensing authorities have taken any adverse action against the provider or practitioner for offenses related to participation in the Medicare program which were not considered during the development of the suspension or exclusion.

(2) The agency must (within 60 days of receipt of a request), issue a written decision granting or denying reinstatement.

(3) If the agency approves the request for reinstatement, it must give written notice to the excluded or suspended party, and to all others who were informed of the exclusion in accordance with § 455.205(c), specifying the date on which Medicaid program participation may resume. That date must be not later than 60 days from the date on the notice of reinstatement.

(4) If the agency does not approve the request for reinstatement, it will notify the excluded or suspended party of its decision.

(d) *Review of denial of reinstatement.* (1) Within 30 days of the date on the notice of denial of reinstatement, the affected party may submit documentary evidence and written argument against the continued exclusion or suspension, or request an opportunity to present oral evidence before a representative of the Medicaid agency.

(2) Within 30 days of the receipt of additional written or oral evidence, the agency must send written notice—

(i) Approving reinstatement; or

(ii) Confirming the denial, and indicating that a subsequent request for reinstatement will not be accepted until 6 months after the date of confirmation.

(Sections 1102, 1902(a)(4)(A), 1902(a)(30), and 1902(a)(39) of the Social Security Act (42 U.S.C. 1302, 1396 (a)(4)(A), 1396(a)(6)(30), and 1396a(a)(39).)

(Catalog of Federal Domestic Assistance Program No. 13.714, Medical Assistance Program.)

Dated: October 31, 1980.

Howard Newman,

Administrator, Health Care Financing Administration.

Approved: December 8, 1980.

Patricia Roberts Harris,

Secretary.

[FR Doc. 80-38839 Filed 12-18-80; 8:45 am]

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Friday
December 19, 1980

Part III

Department of the Interior

Bureau of Land Management
Draft Wilderness Study Policy: Policies, Criteria and Guidelines for Conducting Wilderness Studies on Public Lands

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Draft Wilderness Study Policy; Policies, Criteria and Guidelines for Conducting Wilderness Studies on Public Lands

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability of Draft Wilderness Study Policy and Opening of Public Comment Period.

SUMMARY: This document gives notice of the availability of the Draft Wilderness Study Policy which describes how the Bureau of Land Management proposes to conduct wilderness studies on the public lands as mandated by the Federal Land Policy and Management Act of 1976. All wilderness studies will be conducted in accordance with the Bureau of Land Management planning regulations which are designed to ensure that actions on the public lands are based upon the best available information and sound resource management planning.

DATES: March 3, 1981. All comments must be received by March 3, 1981, in order to be fully considered by the Bureau of Land Management.

ADDRESS: Comments or suggestions should be sent to: Director (430), Bureau of Land Management, 1800 C Street NW., Washington, D.C. 20240. Comments will be available in Room 5600 of the above address during regular business hours (4:45 a.m. to 4:15 p.m.) Monday through Friday.

FOR FURTHER INFORMATION CONTACT: James R. Edward, Division of Wilderness and Environmental Areas, (202) 343-6064. Requests for copies of this draft should be addressed to: James R. Edward, Division of Wilderness and Environmental Areas (430), Bureau of Land Management, 1800 C Street NW., Washington, D.C. 20240. Copies will also be available from Bureau of Land Management State Directors in the Western States.

SUPPLEMENTARY INFORMATION: Publication of the Draft Wilderness Study Policy opens a 75-day public comment period beginning December 19, 1980, and closing March 3, 1981. Copies of this notive will be available from the Bureau of Land Management in approximately two weeks. To compensate for this delay, the 60-day public comment period that would otherwise have been held on the draft document has been extended to a 75-day period. During this time, the public is encouraged to comment on specific policy, criteria and guidelines proposed in this draft.

Dated: December 12, 1980.

Frank Gregg,

Director.

Draft

Wilderness Study Policy

Policies, Criteria, and Guidelines for Conducting Wilderness Studies on the Public Lands

Draft Wilderness Study Policy

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Chapter I. Introduction

The Federal Land Policy and Management Act of 1976 (FLPMA) requires the Secretary of the Interior to review areas of the public lands determined to have wilderness characteristics, and to report to the President his recommendations as to the suitability or nonsuitability of each such area for preservation as wilderness. The Secretary is required to report his recommendations to the President by October 21, 1991, and the President is required to report his recommendations to Congress by October 21, 1993. During the period of this review and until Congress acts on the President's recommendations, the Secretary is required to manage such lands so as not to impair their suitability for preservation as wilderness, subject to certain exceptions and conditions.

A. Purpose

The purpose of this draft document is to describe how the Bureau of Land Management (BLM) proposes to conduct the wilderness studies required by FLPMA. These wilderness studies will be conducted in accordance with the BLM planning regulations (43 CFR 1601), which establish the basic process for all multiple use planning decisions on the public lands. The planning regulations provide for the issuance of national policy and procedural guidance when appropriate for particular resource planning efforts. The draft policy and procedures in this document have been developed to serve as the Bureau's national guidance for conducting wilderness studies through the planning process.

This national guidance is intended to achieve two purposes: (1) to ensure that recommendations resulting from wilderness studies are based on full consideration of all multiple resource values of the public lands, (2) to ensure that recommendations resulting from wilderness studies are consistent with established national policy, and (3) to provide for effective involvement of all interested and affected members of the public and State and local governments throughout the wilderness study process.

The draft policies and procedures in this document are presented for public review and comment, so as to provide the public with an opportunity to participate in development of the final policies and procedures that will guide BLM wilderness studies.

B. The Wilderness Review Process

The BLM wilderness review program stems from section 603 of the Federal Land Policy and Management Act of 1976 (FLPMA). In FLPMA, Congress gave BLM its first unified, comprehensive mandate on how the public lands should be managed. The law establishes a policy of generally retaining the public lands in Federal ownership, and it directs the BLM to manage them under principles of multiple use and sustained yield. The BLM is to prepare an inventory of the public lands and their resources, including identification of areas having wilderness characteristics. Management decisions for the public lands are to be made through a resource management planning process that considers all potential uses of each land area. All public lands are to be managed so as to

prevent unnecessary or undue degradation of the lands.

Under FLPMA, wilderness preservation is part of BLM's multiple-use mandate, and wilderness values are recognized as part of the spectrum of resource values and uses to be considered in the inventory and in the resource management planning process. Section 603 of FLPMA specifically directs the BLM, for the first time, to carry out a wilderness review of the public lands. (The complete text of section 603 appears in Appendix A of this document.)

To carry out the wilderness mandate of FLPMA, the Bureau of Land Management has developed a wilderness review process with three phases: inventory, study, and reporting to Congress.

Inventory: In the wilderness inventory, the BLM examined the public lands, with public participation, and identified those areas that meet the definition of wilderness established by Congress. These areas were identified as wilderness study areas (WSA's). The inventory was completed by November 14, 1980, in the contiguous Western States, resulting in identification of approximately 24 million acres as wilderness study areas and in elimination from further wilderness consideration of approximately 150 million acres.

Study: Each wilderness study area will be studied through the BLM resource management planning system to analyze all values, resources, and uses within the area. The findings of the study, including public participation, determine whether the area will be recommended as suitable or nonsuitable for designation as wilderness. In practice, determining an area's "suitability or nonsuitability * * * for preservation as wilderness," in the words of FLPMA, means determining whether the area is more suitable for wilderness designation or more suitable for other uses.

Reporting: When the study has been completed, a recommendation as to whether the wilderness study area is suitable or nonsuitable for designation as wilderness is submitted through the Secretary of the Interior and the President to Congress. A mineral survey will be conducted by the U.S. Geological Survey and Bureau of Mines for any area recommended as suitable. Reports on all wilderness study areas must reach the President no later than October 21, 1991, and reach Congress by October 21, 1993. Only Congress can designate an area as wilderness.

Chapter II. Wilderness Study Process

A. Wilderness Studies in the BLM Planning System

This document consists of national guidance for wilderness studies which supplements the regulations of the BLM multiple resource planning system (43 CFR 1601). These BLM planning regulations apply to the public lands and all of their varied multiple resources. Each of the multiple resource programs (e.g., range, minerals, timber, wilderness, wildlife, etc.) administered by the BLM must comply with the planning regulations.

The planning regulations provide for issuance of guidance in the form of "national level policy and procedure guidance for planning * * *" (43 CFR 1601.0-4(a)). Since wilderness is a relatively new program in the BLM, this document is needed to provide such policy and procedural guidance for use in wilderness studies. These will be used along with guidance developed for BLM's other multiple resource programs to provide multi-program guidance for specific plans.

The primary national level policy guidance for wilderness, presented in this chapter, consists of (1) a wilderness program policy, and (2) wilderness study policy and planning criteria. The wilderness program policy states the Bureau of Land Management's view of wilderness in the context of multiple resource management. The wilderness study policy and planning criteria specify factors that must be considered through the multiple resource planning process in determining whether an area is suitable for preservation as wilderness or more suitable for other uses. The wilderness planning criteria will be applied in the planning process, along with guidance already issued for other resource programs, to determine the most appropriate alternative for use of the land under study.

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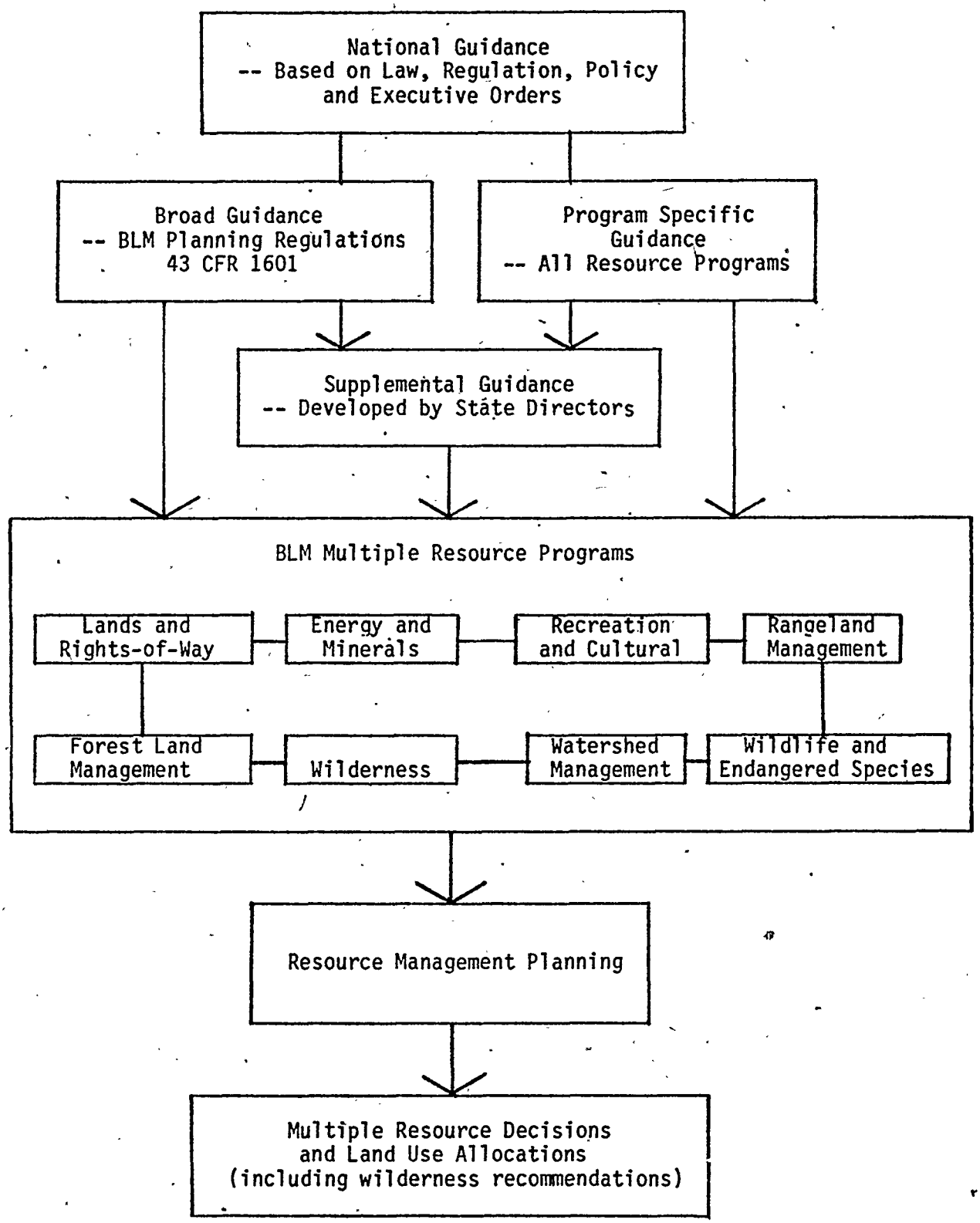
BLM Planning System



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B. Wilderness Program Policy

The policy of the Bureau of Land Management with respect to wilderness designation of public lands in the context of multiple use management is as follows:

The purpose of wilderness designation, as the Wilderness Act states, is to secure for the American people of present and future generations the benefits of an enduring resource of wilderness. The Bureau of Land Management recognizes wilderness as a resource deserving of full consideration with all other resources and uses on the public lands such as range, wildlife, minerals, rights-of-way, recreation, forestry, watershed, soils, cultural, and energy. The BLM also recognizes wilderness as a resource which fits within the framework of multiple-use planning and management on the public lands. In addition to its value as a setting for primitive recreation or solitude, wilderness can provide a range of benefits to other multiple resource values and uses which are of significance to the American people, including protection of watersheds, water yield, and water quality; protection of wildlife habitat; preservation of natural plant communities; preservation of cultural and archaeological resources; and protection of scenic quality and other natural values.

The Bureau of Land Management will identify all public lands with wilderness characteristics and recommend wilderness designation on selected areas for which wilderness has been determined, through careful multiple resource analysis, and public involvement, to be the most appropriate alternative use of the land. The BLM does not view wilderness designation as a form of temporary resource protection; therefore only those areas which can be managed in perpetuity as wilderness will be recommended as suitable for designation.

Once a wilderness area has been designated by Congress, the BLM will effectively manage it in perpetuity to preserve its wilderness character, and to provide for its use and enjoyment in such manner as will leave it unimpaired for future use and enjoyment as wilderness.

C. Wilderness Study Policy and Planning Criteria

The primary goal of the BLM wilderness study process is to recommend for wilderness designation those areas for which it has been determined; through the Bureau's multiple resource planning process and public involvement, that wilderness is the most appropriate alternative use of the land and its resources. The planning criteria which follow will be used in making the analysis on which that determination will be based. These criteria will be applied to BLM wilderness study areas through the BLM planning process, and each criterion will be fully considered and documented in determining whether a WSA is more suitable for wilderness or for other uses.

All BLM wilderness recommendations—both "suitable for preservation as wilderness" and "nonsuitable"—will be justified on the basis of the following criteria.

1. *Requirements for Areas Recommended as Suitable for Wilderness Designation.*

Areas recommended by the BLM as *suitable* for wilderness designation must, at a minimum, satisfy *both* of the following factors:

a. *Benefits:* The area's identified wilderness values, together with the full range of public benefits which designation would provide to multiple resource values and uses over time must be sufficient to offset the benefits of other resource values and uses which could be foregone due to wilderness designation; and

b. *Manageability:* The area must be capable of being effectively managed to preserve its wilderness character in perpetuity.

2. *Public Comment.*

In determining whether an area is suitable or nonsuitable for wilderness designation, the BLM wilderness study process will consider comments received from interested and affected publics at all levels—local, State, regional, and national—with special consideration given to the involvement of those local peoples and institutions that would be most directly affected by an area's designation. Wilderness recommendations will not be based on a vote-counting majority rule system. The BLM will develop its recommendations by considering public comment in conjunction with a full analysis of a wilderness study area's multiple resource and socio-economic values and uses.

3. *Local and Regional Socio-Economic Effects.*

In determining whether an area is suitable or nonsuitable for wilderness designation, the BLM will give special attention to any significant socio-economic effects, as identified through the wilderness study process, which designation of the area would have on local communities or surrounding regions.

4. *Energy and Critical Mineral Resource Values.*

Recommendations as to an area's suitability or nonsuitability for wilderness designation will also reflect a thorough consideration of any identified or potential energy and critical mineral resource values present in the area which are capable of meeting domestic energy and critical mineral production needs, and the extent to which wilderness management of such areas would be in the public interest.

5. *Consistency with Other Plans*

In determining whether an area is suitable or nonsuitable for wilderness designation, the BLM will fully consider and document the extent to which the recommendation is consistent with officially approved and adopted resource-related plans of other Federal agencies, State and local governments, and Indian tribes (and the policies and programs contained in such plans), as required by FLPMA and the BLM planning regulations.

6. *Impacts on Other Resources.*

Consider the extent to which other resource values or uses of the area would be foregone or adversely affected as a result of wilderness designation.

7. *Impacts on Wilderness.*

Consider the alternative use of the land under study if the area is not designated as wilderness, and the extent to which the wilderness values of the area would be foregone or adversely affected as a result of this use.

8. *Evaluation of Wilderness Values.*

Consider the extent to which each of the following components contributes to the overall value of an area for wilderness purposes:

a. *Mandatory wilderness characteristics:* The quality of the area's mandatory wilderness characteristics—size, naturalness, and outstanding opportunities for solitude or primitive recreation.

b. *Special features:* The presence or absence, and the quality, of the following optional wilderness characteristics—ecological, geological, or other features of scientific, educational, scenic, or historical value.

c. *Multiple resource benefits:* The benefits to other multiple resource values and uses which wilderness designation of the area could ensure.

9. *Diversity in the National Wilderness Preservation System.*

Consider the extent to which wilderness designation of the area under study would contribute to expanding the diversity of the National Wilderness Preservation System on (1) a statewide basis, (2) a regional basis, or (3) a national basis, from the standpoint of each of the factors listed below:

a. Expanding the diversity of natural systems and features, as represented by ecosystems and landforms.

b. Expanding the opportunities for solitude or primitive recreation within a day's driving time (five hours) of major pouplation centers.

c. Balancing the geographic distribution of wilderness areas.

The analysis should consider—in separate categories—all Federal and

State lands designated as wilderness, all areas officially recommended for wilderness, and all other Federal and State lands under wilderness study. (The State lands referred to here are those involved in State government's wilderness programs.)

D. Guidelines for Applying the Planning Criteria

This section explains how the BLM will apply each of the wilderness planning criteria listed in section II. C. above. This process is similar to the way BLM field officials apply planning criteria and other policy guidance already issued for other resource programs. In developing a resource management plan, BLM field officials apply the planning criteria for all resource programs concurrently, and use them to develop multi-program criteria for specific plans. These are then used to determine the most appropriate land use allocations for the affected public lands.

The criteria presented here represent national guidance for the BLM wilderness program. The BLM planning regulations also provide that supplemental planning criteria may be issued by State Directors and District Managers for all resource programs based on particular issues pertinent to a given State, District, of planning area. Any such additional criteria issued by a State Director or District Manager must be fully consistent with the national planning criteria.

The purpose of the guidelines below is to explain the meaning and intent of the criteria contained in the wilderness study policy (section II. C.) so as to foster consistency in the process used to arrive at wilderness recommendations throughout the BLM. The wilderness planning criteria must be individually applied to each wilderness study area according to the guidance contained in this section. Each criterion must be fully considered and documented in determining whether a WSA is more suitable for wilderness or other uses.

Criterion No. 1. *Requirements for Areas Recommended as Suitable for Wilderness Designation.*

Areas recommended by the BLM as *suitable* for wilderness designation must, at a minimum, satisfy *both* of the following factors:

a. *Benefits:* The area's identified wilderness values, together with the full range of public benefits which designation would provide to multiple resource values and uses over time, must be sufficient to offset the benefits of other resource values and uses which could be foregone due to wilderness designation; and

b. *Manageability:* The area must be capable of being effectively managed to preserve its wilderness character in perpetuity.

Application: This criterion is presented first because it specifies the minimum requirements which a wilderness study area (WSA) must meet in order to be recommended as suitable for wilderness designation. No area will be recommended as suitable for wilderness designation unless it meets these two criteria. Criterion No. 1 should actually be applied afer the other planning criteria have been applied through the planning process. The application of the other criteria will help to detemine whether the requirements of Criterion No. 1 can be met by each WSA.

Criterion No. 1. a.: The primary intent of this criterion is to ensure that wilderness designation is recommended only for those areas for which it has been determined, through careful multiple resource analysis and public involvement in the Bureau planning process, that wilderness is the most appropriate alternative for the use of the land.

This criterion contains two key concepts which can usefully be clarified here. The first is the reference to "* * * benefits * * * to multiple resource values and uses *over time* * * *." The inclusion of this phrase recognizes that the benefits of wilderness designation to other multiple resource uses (such as watershed protection, scenic quality, etc.) must be considered in a long-term perspective which recognizes the accumulation of benefits which could accrue as a result of permanent wilderness management. The phrase "over time" is critical, indicating that the long-term benefits on either side of the comparison (wilderness vs. nonwilderness) must be considered, as well as the short-term benefits. For example, an area might involve a tradeoff between local short-term uses under nonwilderness, as contrasted to maintenance and enhancement of long-term resource productivity under wilderness management.

The second concept for clarification is that "wilderness values and * * * benefits * * * must be *sufficient to offset* the benefits of other resource values and uses which could be foregone due to wilderness designation." The phrase "sufficient to offset" is critical, indicating that the benefits of wilderness management must be enough to make up for any other resources or uses of the area which could be adversely affected by the area's management as wilderness. As stated in FLPMA, consideration in multiple use management must be "given to the relative values of the resources and not necessarily to the combination of uses that will give the greatest economic return or greatest unit output."

In summary, this criterion requires that for an area to be recommended as suitable for wilderness designation, the planning process must have identified the other resources which would be adversely affected by wilderness designation, and, after giving full consideration to all effects, it must have been determined that the favorable effects of wilderness designation can balance the adverse effects in the long-term perspective.

Criterion No. 1.b.: The primary intent of this criterion is to ensure that those areas recommended as suitable for wilderness designation can be managed as wilderness in a manner which enables the *entire* area designated to remain as wilderness in perpetuity. The area must be capable of being managed over the long run to preserve its wilderness character—both to maintain the quality of its wilderness characteristics and to ensure continuation of its uses and multiple resource benefits.

To determine whether the area can be managed as wilderness, the BLM wilderness management policy must be considered. A detailed wilderness management plan for each area will not be developed during the wilderness study. The study should consider the basic thrust of wilderness management appropriate to the area in view of the expected uses and activities in the area. For instance, part of the area might be managed with emphasis on protecting undisturbed wildlife habitat, while another part might be managed with emphasis on primitive camping use. Attention should be given to means for protecting all wilderness characteristics (including special features) and for dealing with specific management problems anticipated as a result of permissible special uses within the areas or other conflicting uses outside of the area.

Two key items in this statement are "effectively managed" and "in perpetuity". "Effectively managed" means that an area can be managed to maintain the public benefits which justified wilderness designation under Criterion 1.a.

The term "in perpetuity" ties the manageability criterion to the basic BLM wilderness program policy, which states: "The BLM does not view wilderness designation as a form of temporary resource protection; therefore only those areas which can be managed in

perpetuity as wilderness will be recommended as suitable for designation." The Wilderness Act provides for exercise of existing private rights and for certain special uses that are not necessarily consistent with preservation of wilderness character existing at the time an area was designated wilderness. This creates the potential for some impairment of an area's wilderness character which is acceptable under wilderness management. Therefore it is seldom possible to be absolutely certain that an area can be managed in perpetuity without some degradation due to uses permitted by the law. To satisfy Criterion 1.b., BLM must be *reasonably* certain that the area can be managed as wilderness over the long run, based on present knowledge of the resources and private rights in the area, and recognizing congressional intent regarding allowed uses. On the other hand, if the allowed uses are certain to destroy the wilderness character of the area or a significant portion of it, then BLM would conclude that the affected portion cannot be managed in perpetuity as wilderness.

A thorough determination and documentation of the land status of the WSA must also be considered in determining the manageability of an area as wilderness. Subsurface rights in a WSA may be owned by a party other than the Federal government, thus limiting BLM's ability to preserve wilderness character on the surface. In examining the degree of BLM control over the surface of the WSA, the extent to which each of the following is present will affect the area's suitability for wilderness designation: private inholdings, State lands, valid mining claims, mineral leases, rights-of-way, and the overall pattern of land status. (BLM's authority to regulate access to private and State-owned wilderness within wilderness areas will be addressed in the forthcoming BLM wilderness management policy document; this authority is based on provisions in section 5 of the Wilderness Act). These circumstances and others which may limit BLM's ability to effectively manage the area as wilderness in perpetuity must be summarized and documented.

Criterion No. 2. *Public Comment.*

In determining whether an area is suitable or nonsuitable for wilderness designation, the BLM wilderness study process will consider comments received from interested and affected publics at all levels—local, State, regional, and national—with special consideration given to the involvement of those local peoples and institutions that would be most directly affected by an area's designation. Wilderness recommendations will not be based on a vote-counting majority rule system. The BLM will develop its recommendations by considering public comment in conjunction with a full analysis of a wilderness study area's multiple resource and socio-economic values and uses.

Application: A detailed outline of how the BLM will obtain public involvement during the wilderness study process appears in Chapter V. of this document.

Criterion No. 3. *Local and Regional Socio-Economic Effects.*

In determining whether an area is suitable or nonsuitable for wilderness designation, the BLM will give special attention to any significant socioeconomic effects, as identified through the wilderness study process, which designation of the area would have on local communities or surrounding regions.

Application: This criterion further emphasizes the BLM focus on local and regional concerns by undertaking a thorough consideration and documentation of any significant favorable or adverse socio-economic effects which wilderness designation would have on local communities or surrounding regions. "Significant effects" for the purposes of this criterion, shall utilize the definition of "significance" contained in BLM's Guidance for Social and Economic Analysis in Grazing EIS's (Instruction Memorandum No. 81-99). These effects will be identified and analyzed through the BLM planning process and subsequently documented and summarized for review by decisionmakers.

Criterion No. 4. *Energy and Critical Mineral Resource Values.*

Recommendations as to an area's suitability or nonsuitability for wilderness designation will also reflect a thorough consideration of any identified or potential energy and critical mineral resource values present in the area which are capable of contributing to domestic energy and critical mineral production needs, and the extent to which wilderness management of such areas would be in the public interest.

Application: This criterion reflects the mandates given to the Department of the Interior and BLM by the President and Congress that all Bureau programs be geared towards meeting the national goal of decreasing reliance on foreign production through increased domestic energy production. It also reflects the National need for those minerals that are critical to the economy and security of the United States and for which we are now dependent on potentially unreliable foreign sources. To identify critical minerals, field officials may refer to those minerals listed in the National Defense Stockpile Inventory of Strategic and Critical Materials (Federal Emergency Management Agency: Stockpile Report to the Congress, October 1979–March 1980).

Energy and critical mineral resource values and potential in a study area will be identified by BLM mineral resource specialists and/or through mineral surveys conducted by the U.S. Geological Survey (USGS) and the Bureau of Mines (BM). Section 603 of FLPMA requires USGS/BM mineral survey reports only for those areas recommended as suitable for wilderness designation. However, there may be other areas for which the BLM will request USGS/BM mineral surveys so as to provide this specialized information to decisionmakers. Where conducted, the results of the mineral survey report will be fully considered by the State Director in arriving at recommendations on wilderness suitability and will be fully available for public review and comment prior to the transmittal of the State Director's preliminary wilderness recommendations to the Director.

For all wilderness study areas the BLM will use its established minerals inventory and identify the potential of the area, or specific portions thereof, for occurrence of energy or critical mineral resources by type of commodity. Special provisions will also be made in each wilderness study to ensure that the energy and mineral industry has an opportunity to provide BLM with its estimate of the energy and mineral resource potential of WSA's. All persons and organizations knowledgeable of the energy and mineral resources of WSA's will be invited to submit this information.

Criterion No. 5. *Consistency with Other Plans.*

In determining whether an area is suitable or nonsuitable for wilderness designation, the BLM will fully consider and document the extent to which the recommendation is consistent with officially approved and adopted resource-related plans of State and local governments, and Indian Tribes, as required by FLPMA and the BLM planning regulations.

Application: FLPMA requires BLM plans to be consistent with State and local plans to the maximum extent the Secretary of the Interior finds consistent with Federal law and the purposes of FLPMA. Additionally, the BLM planning regulations, (43 CFR 1601.4-3[a]-[d])

provide that planning guidance and plans shall be consistent with officially approved and adopted resource-related plans of other Federal agencies, State and local governments, and Indian Tribes, so long as the guidance and resource management plans are also consistent with the purposes, policies and programs of Federal law and regulation applicable to public land. Where such plans do not exist, or are being developed, BLM guidance and plans shall to the extent practical be consistent with the officially approved and adopted resource-related policies and programs of the other entities so long as the guidance and resource management plans are consistent with Secretarial policies and programs. Therefore, the BLM cannot base its wilderness recommendations solely upon consistency with officially approved and adopted resource-related plans of State and local governments. All wilderness recommendations must be arrived at and supported by the BLM resource management planning process.

Criterion No. 6. *Impacts on Other Resources.*

Consider the extent to which other resource values or uses of the area would be foregone or adversely affected as a result of wilderness designation.

Application: For the sake of analysis, each plan and EIS containing wilderness recommendations will identify a range of alternatives allocating all or part or none of the WSA to wilderness designation. Regardless of whether the *preferred alternative* proposed in the plan recommends the area as suitable or nonsuitable for wilderness designation, BLM must identify the probable impacts to other resource values and uses present in the area which could result from wilderness designation. The other resource values and uses to be addressed in this regard include energy, forestry, minerals, rangeland, recreation, wildlife, and any other form of resource use practiced on the public lands.

The extent to which wilderness designation may cause adverse impacts on a particular resource use will vary from area to area, depending on a number of factors, including:

a. The degree to which the other resource is present in the WSA;

b. The realistic potential for further development of the other resource in the WSA;

c. The degree to which the other resource is present on other public and private lands *outside* the WSA;

d. Local or regional economic dependence on the resource in the WSA;

e. The degree to which use or development of the resource is compatible with or conflicts with management of the area as wilderness in perpetuity.

Criterion No. 7. *Impacts on Wilderness.*

Consider the alternative use of the land under study if the area is not designated as wilderness and the extent to which the wilderness values of the area would be foregone or adversely affected as a result of this use.

Application. For the sake of analysis, each plan and EIS containing wilderness recommendations will identify an alternative use for the land under study if the area is not designated as wilderness. In a resource management plan (RMP) where a WSA is being recommended as *nonsuitable* for wilderness designation, the preferred alternative would state a proposed use for the land which is some resource use or combination of uses other than wilderness. The probable effects of that alternative on the wilderness values of the WSA would be identified in the plan and EIS.

In RMP's where the preferred alternative is to recommend the WSA as *suitable* for wilderness designation, one of the other identified alternatives must be the proposed use of the land in case the area ultimately is *not* designated as wilderness by Congress. The probable impacts of that use on the wilderness values of the area must be thoroughly addressed in the related RMP and EIS. The need to emphasize this alternative arises from the possibility that preliminary wilderness recommendations made by State Directors may be altered during the administrative review and reporting process and ultimately may not be accepted by Congress. It is important for the public and the decisionmakers to be aware of the impacts that would occur if the area is not designated as wilderness.

The process described above addresses wilderness recommendations contained in resource management plans (RMP's). The identification of alternative uses of the land, and their related impacts on wilderness values should be handled similarly when a WSA is considered in the context of a transition MFP. In the MFP Step II Recommendations for wilderness, field personnel must identify an alternative for the use of the area under study should the WSA not be designated as wilderness. The impacts of this alternative on wilderness values will be evaluated in the wilderness EIS after completion of the MFP.

This criterion will be applied somewhat differently when a WSA is considered in an MFP amendment. In this case, if Congress decides not to designate the area as wilderness, the land will continue in essentially the same use, level, and management direction as it was before entering the wilderness review process. In an MFP amendment for wilderness, the "No Action" alternative represents the alternative use which would take place in the area if it is not designated as wilderness. Unlike RMP's and Transition MFP's, MFP amendments will not be presenting and analyzing new alternatives for the use of the land other than wilderness designation. Therefore, in such cases, application of this criterion only requires an identification and assessment (through the "No Action" alternative) of how the area would be used under the existing MFP if Congress decides not to designate it as wilderness, and how this use would affect wilderness values of the area.

Criterion No. 8. *Evaluation of Wilderness Values.*

Consider the extent to which each of the following components contributes to the overall value of an area for wilderness purposes:

a. *Mandatory wilderness characteristics:* The quality of the area's mandatory wilderness characteristics—size, naturalness, and outstanding opportunities for solitude or primitive recreation.

b. *Special features:* the presence or absence, and the quality, of the following optional wilderness characteristcs—ecological, geological, or other features of scientific, educational, scenic, or historical value.

c. *Multiple resource benefits:* the benefits to other multiple resource values and uses which wilderness designation of the area could ensure.

Application: While it is useful for analytical purposes to make a distinction between these components, all three components must receive equal attention in determining an area's wilderness values. Section 4(b) of the Wilderness Act of 1964 recognized the broad scope of values to be considered in wilderness designation by stating: "* * * wilderness areas shall be devoted to the public purposes of recreational, scenic, scientific, educational, conservation, and historical use." Therefore, when evaluating an area's wilderness values, emphasis should not be focused only on an area's recreational values or its mandatory wilderness characteristics. Instead, every effort should be made to provide an equal assessment of the full range of benefits and values which wilderness designation could ensure for the area. All three of these components must be fully evaluated and documented according to the folowing guidelines.

Component No. 1: *Quality of the Area's Mandatory Wilderness Characteristics.*

In the Wilderness Act of 1964, Congress defines wilderness and directs that each wilderness area be managed to preserve its wilderness character. Under the definition in Section 2(c) of the Wilderness Act, certain wilderness characteristics are mandatory, while others are optional. The mandatory wilderness characteristics—size, naturalness, and outstanding opportunities for solitude *or* a primitive and unconfined type of recreation—were the factors used in the BLM wilderness inventory to determine which roadless areas qualified to become wilderness study areas (WSA's). Therefore, the WSA's entering the wilderness study process *all* possess the mandatory wilderness characteristics, but these characteristics may be present in areas to varying degrees. One WSA may contain outstanding opportunities for both solitude and primitive recreation, while another area may possess outstanding opportunities only for solitude; one WSA's outstanding opportunities for solitude may be superior to those in another WSA. The size of a particular WSA—whether it is barely 5,000 acres or well over 200,000—may affect its suitability for wilderness. The degree of naturalness may also vary between areas, depending on the presence of incompatible uses, and on the number of vehicle ways and other imprints of man.

No standardized quality rating or ranking system will be used to determine an area's wilderness quality. The wilderness study will gather as much objective information as possible to enable judgment on the extent to which the quality of the area's mandatory wilderness characteristics contributes to its suitability for wilderness designation. This section defines each of these wilderness characteristics and outlines the key elements which must be addressed in evaluating this component of the area's wilderness values. The degree to which each of these key elements is present in the area under study determines the qulity of its mandatory wilderness characteristics. These elements must be documented and summarized as outlined below.

A. *Naturalness.* "Naturalness" refers to the requirement in Section 2(c) of the Wilderness Act that a wilderness area "generally appears to have been affected primarily by the forces of nature, with the imprint of man's work substantially unnoticeable." The language in the Act makes clear that areas may be designated as wilderness which "generally appear" natural and which may contain some imprints of man's work, so long as those imprints are "substantially unnoticeable" in the wilderness area as a whole. The BLM wilderness inventory process eliminated those areas which contained major imprints of man which were substantially noticeable. However, there are wilderness study areas which have minor human imprints within their boundaries which are substantially unnoticeable in the WSA as a whole. While these imprints may not have been sufficient to eliminate an area from WSA status, they must be further evaluated during the study process to determine the extent to which their presence affects the quality of overall naturalness of the area as perceived by the average visitor.

Human imprints present in the WSA should be evaluated both individually and on a cumulative basis as well. Such imprints should be summarized and documented according to each of the following factors:

a. General description of those imprints present;

b. Distinguish those imprints which are the result of activities occurring outside the area;

c. Location and size of the areas in the WSA which are subject to imprints;

d. Potential for separating imprinted portions from the rest of the area and recommending the remainder for wilderness designation;

e. Feasibility of rehabilitation of imprints in view of the constraints of time, money, and technology; and

f. The overall influence of human imprints on the naturalness of the area, as perceived by the average visitor.

B. *Outstanding Opportunities for Solitude or Primitive and Unconfined Recreation.* Section 2(c) of the wilderness Act states that a wilderness area must have "* * * outstanding opportunities for solitude or a primitive and unconfined type of recreation." The word "or" in this sentence means that it does not have to possess outstanding opportunities for *both* solitude and primitive recreation; it only has to possess one or the other. The BLM wilderness inventory has determined those areas which contain outstanding opportunities for either solitude or primitive recreation and those areas which exhibit both characteristics. The process described below will aid in determining and documenting the *degree* to which these characteristics are present in each area.

During the wilderness study, sights and sounds of human activities and works outside the boundaries of the wilderness study area may be taken into account in assessing an area's opportunities for solitude or primitive recreation. Any influence of outside sights and sounds upon opportunities for solitude or primitive recreation within the WSA should be documented with as much descriptive and objective data as possible. Congressional guidance on this issue in House and Senate reports on the endangered American Wilderness Act of 1978 cautioned Federal agencies on the consideration of outside sights and sounds in wilderness studies. For example, in the case of the Sandia Mountain Wilderness in New Mexico, the House Report (No. 95-540), stated:

> "The 'sights and sounds' of nearby Albuquerque, formerly considered a bar to wilderness designation by the Forest Service, should, on the contrary, heighten the public's awareness and appreciation of the area's outstanding wilderness values."

The reasonable standard to be applied with regard to outside sights and sounds is to determine whether they have such an imposing effect as to outweigh any benefits of wilderness designation.

Criteria for determining the presence or absence of outstanding opportunities for solitude or primitive and unconfined recreation were issued in the BLM Wilderness Inventory Handbook. As a result of the wilderness inventory, information is already on file in BLM field offices with respect to the opportunities for solitude or primitive and unconfined recreation in each wilderness study area. This information will be used in the study process.

1. *Solitude.* For the purposes of the BLM wilderness review process, solitude has been defined as (1) "the state of being alone or remote from habitations; isolation; (2) a lonely, unfrequented, or secluded place." The emphasis is on the opportunities a person has to avoid the sights, sounds, and evidence of other people within a particular WSA, rather than on opportunities for solitude in comparison to habitations of man. While the BLM recognizes that there is some inherent subjectiveness present in this characteristic, there are also certain intrinsic features of an area which can objectively be assessed with respect to an area's outstanding opportunities for solitude. The features of the area to be considered in evaluating its outstanding opportunities for solitude are:

a. Size and configuration;

b. Topographic screening;

c. Vegetative screening;

d. Presence of outside sights and sounds and whether they have such an imposing effect as to outweigh any benefits of wilderness designation; and

e. Ability of the user to find a secluded spot.

2. *Primitive and Unconfined Recreation.* For the purposes of the BLM wilderness review process, "a primitive and unconfined type of recreation" refers to those activities that provide dispersed, undeveloped recreation which do not require facilities or motorized equipment. Those areas which the BLM wilderness inventory has found to possess outstanding opportunities for this type of recreation contain either a diversity of possible activities or one activity of outstanding quality.

Some examples of primitive and unconfined types of recreation are: hiking, backpacking, fishing, hunting, spelunking, horseback riding, mountain or rock climbing, river running, cross country skiing, snowshoeing, dog sledding, photography, bird watching, canoeing, kayaking, sailing, and sightseeing for botanical, zoological, or geological features.

The evaluation of this characteristic should be based on an analysis of the intrinsic features of the area which make a primitive recreation experience possible and the quality and diversity of the area's specific primitive recreation opportunities.

Component No. 2: *Special Features: Quality of the Area's Optional Wilderness Characteristics.*

Section 2(c) of the Wilderness Act states that a wilderness area "* * * may also contain ecological, geological, or other features of scientific, educational, scenic or historical value." The presence and quality of each of these special features will contribute to the value of an area as wilderness.

These optional wilderness characteristics were considered "supplemental" during the BLM wilderness inventory and were not mandatory for an area to be identified as a wilderness study area, because the Wilderness Act definition of wilderness does not require them to be present. During wilderness studies, these features similarly are not mandatory for an area to be recommended as suitable for wilderness designation. However, as part of the wilderness study process, these characteristics should receive equal treatment with the mandatory characteristics when assessing an area's overall value as wilderness. For example, in some areas, outstanding opportunities for solitude may be the primary reason for recommending an area as suitable for wilderness designation. In other areas, the primary reason for recommending wilderness designation may be the presence of special wildlife or a special geological feature.

While these values and features do not need to be present in an area for wilderness designation to occur, section 4(b) of the Wilderness Act recognized the importance of such values in wilderness by stating that "* * * wilderness areas shall be devoted to the public purposes of recreation, scenic, scientific, educational, conservation and historical use."

These special features of the area and the degree to which their presence enhances its suitability for wilderness designation should be addressed through consideration of the area's ecological, geological, scenic, and cultural features, and its scientific and educational values. The evaluation should be based on an objective assessment of the estimated abundance or importance of each of these values to the area.

Component No. 3: *Multiple Resource Benefits: The Benefits to Other Multiple Resource Values and Uses Which Wilderness Designation of the Area Could Ensure.*

The report of the House Interior and Insular Affairs Committee on FLPMA (House Report 94–1163) states with respect to the BLM wilderness review:

> Emphasis should be on multiple natural values of roadless areas as part of an overall multiple use framework for a general area rather than primarily recreational uses. In addition to public use values, ultimate designation as wilderness should augment multiple use management of adjacent or nearby lands in protecting watershed and water yield, wildlife habitat preservation, preserving natural plant communities and similar natural values.

The same emphasis on multiple resource values of wilderness appears in the Endangered American Wilderness Act of 1978, which explicitly recognized watershed preservation and wildlife habitat protection as objectives of wilderness designation.

The BLM wilderness program policy recognizes the ability of wilderness areas to ensure multiple resource benefits, in these words:

> "In addition to its value as a setting for primitive recreation or solitude, wilderness can also provide a range of benefits to other multiple resource values and uses which are of significance to the American people, including protection of watersheds, water yield, and water quality; protection of wildlife habitat; preservation of natural plant communities; preservation of cultural and archaeological resources; and protection of scenic quality and other natural values."

The extent to which the area under study can provide such benefits will contribute to its suitability for wilderness designation. The following are the primary categories of resource uses (other than wilderness values) which could benefit from wilderness designation. These should be addressed in terms of both on-site benefits (those occurring within the WSA) and off-site benefits (those occurring outside the WSA) which could be ensured through wilderness designation of an area:

A. Multiple resource values and uses which already exist in the area whose continued viability could be ensured through the protective status of wilderness designation, such as wildlife habitat and archeological sites;

B. Multiple resource values and uses which do not exist in the area now, but which could occur in the future as a result of the protective status of wilderness designation and natural ecological processes being allowed to function unimpeded. Examples include the return of wildlife and fish species formerly found in the area, or an improvement in water quality as a result of wilderness designation; and

C. Specific benefits likely to accure to off-site areas not within the boundaries of the wilderness study area. Consider such benefits as protection of watersheds, water yield and water quality; and preservation of scenic vistas.

Criterion No. 9. *Diversity in the National Wilderness Preservation System.*

Consider the extent to which wilderness designation of the area under study would contribute to expanding the diversity of the National Wilderness Preservation System (NWPS) on (1) a statewide basis, (2) a regional basis, or (3) a national basis, from the standpoint of each of the factors listed below:

a. expanding the diversity of natural systems and features, as represented by ecosystems and landforms;

b. expanding the opportunities for solitude or primitive recreation within a day's driving time (five hours) of major population centers; and

c. balancing the geographic distribution of wilderness areas.

The analysis should consider—in separate categories—all Federal and State lands designated as wilderness, all Federal and State areas officially recommended for wilderness, and all other Federal and State lands under wilderness study. (The State lands referred to here are those involved in State governments' wilderness programs.)

Application: The principal tool in applying this criterion is the statewide wilderness status summary which will be developed to accompany each wilderness study report (WSR). This

summary will place individual wilderness recommendations in the broader context of other Federal and State lands either already designated as wilderness or recommended as wilderness. The summary will consider each of these factors on three levels: statewide, regionally, and within the NWPS.

Through the use of a statewide map, a series of associated tables, and narrative text descriptions, the wilderness status summary will display the most current information on the status of the NWPS within the State in relation to those areas being recommended in the report package and those under study by all Federal agencies. It will also summarize the ecosystem/landform representations of the areas being recommended in the report package and list those population centers which are within one day's driving time. The format for summarizing and displaying this data in tabular form is contained in Appendix C.

The statewide wilderness status summary will be used in applying this criterion at the planning area level and will be updated by the State Director for submission with the State's annual reporting package (containing preliminary wilderness recommendations) to the Director for administrative review.

The three factors consider in this criterion will be treated as explained below.

Factor A. *Expanding the diversity of natural systems and features, as represented by ecosystems and landforms.*

Application: BLM wilderness study areas (WSA's) contain a number of dominant physical and biological characteristics which can be integrated and classified into regional land units called ecosystems. The classification of ecosystems is based upon an integration of the natural factors of climate, vegetation, soils, and landform. Wilderness designation presents an opportunity to preserve examples of the basic ecosystems and landforms present in the United States in an unimpaired condition for future generations. Although there are many varied land classification systems available, the BLM has selected the Bailey-Kuchler Ecosystems of the United States system utilized by the U.S. Forest Service in its RARE II and "further planning" wilderness studies. (See Bailey, Robert G., 1976, Ecoregions of the United States, USDA, Forest Service and Kuchler, A. W., 1966, Potential Natural Vegetation of the United States, USDI, Geological Survey.) Land areas providing ecosystem and landform representations within the NWPS should be greater than 1,000 acres in size to typify the dynamics of an ecosystem. On a site-specific basis, the Bailey-Kuchler system may be further refined to reflect the presence of unique ecosystems or landforms within WSA's at a finer level of detail than a nationwide land classification system can provide.

After the Draft Wilderness Study Policy is released, BLM State Offices will be requested to list all existing and potential ecosystem and landform representations present within their respective States as shown in Appendix C, Table II. The BLM Washington Office will then compile a master list of all States' ecosystem and landform representations and redistribute the master list to each State for their use in applying this planning criteria. (See Appendix C, Table III.)

Factor B. *Expanding the opportunities for solitude or primitive recreation within a day's driving time (five hours) of major population centers.*

Application: This factor is based on the concept that there is a need to provide increased opportunities for solitude and primitive recreation experience within a day's driving time of the Nation's population centers. In fact, House Report No. 95–540, on the Endangered American Wilderness Act of 1978, states that one of the goals of Congress is "creating parks and locating wilderness areas within close proximity to population centers." For the purposes of applying this criteria, a day's driving time is considered to be five hours. The associated mileage figure will vary depending upon quality and availability of transportation routes and the accessibility of the area. Population centers are defined as Standard Metropolitan Statistical Areas (SMSA's) which have populations of 100,000 or greater. An SMSA is defined by the U.S. Bureau of the Census as a county containing at least one city of 50,000 inhabitants or more plus as many adjacent counties as are metropolitan in character and are socially integrated with that central city or cities. The BLM Washington Office will provide State Offices with the most recent listing of SMSA's for the Western States as compiled by the U.S. Office of Management and Budget.

When determining current opportunities for solitude or primitive recreation in the NWPS, it is important to consider the purpose which each wilderness areas serves under its particular management agency. For example, many Fish and Wildlife Service wilderness areas are managed primarily for wildlife conservation purposes and therefore may not provide for primitive recreation needs.

To apply this factor, first determine those population centers which are within one day's driving time of each area under study. Then identify all Federal and State Designated wilderness and those areas recommended by the President or Governor for wilderness designation which are within a day's driving time of each identified population center. Also identify all other BLM and other-agency WSA's which are within one day's driving time of the population centers. This information should be summarized and displayed as shown in Appendix C, Table IV, to provide a basis for analysis of the criteria.

Factor C. *Balancing the geographic distribution of wilderness areas.*

Application: Utilize the statewide wilderness status summary to document and display information concerning the size and location of all Federal lands under study for wilderness designation and all areas either already designated or recommended to Congress as wilderness within both the State and the surrounding region. State-administered wilderness should also be included in this assessment. The following types of area must be considered in analyzing the geographic distribution of wilderness in relation to the areas being recommended in the study (see Appendix C, Table I):

1. BLM WSA's;
2. BLM designated wilderness;
3. BLM WSA's which have been recommended as suitable for wilderness by the President;
4. Other agency disignated wilderness—includes U.S. Forest Service (USFS), U.S. Fish and Wildlife Service (FWS), and National Park Service (NPS);
5. Other agency areas which have been recommended as suitable for wilderness by the President;
6. USFS "further planning" areas, and all other Federal and State lands under wilderness review;
7. All State-administered areas either designated as wilderness or recommended as wilderness by the Governor or other responsible State official.

Chapter III. Relationship to the BLM Planning System

A. Relationship to the BLM Planning Regulations

All wilderness studies undertaken by the BLM will be conducted in accordance with the BLM planning regulations (43 CFR 1601). There are actually three ways to do wilderness

studies through the BLM planning system—Resource Management Plans (RMP's), Transition Period Management Framework Plans (MFP's), and MFP Amendments. "Management Framework Plan" is the term used in BLM's earlier planning system. Since September 6, 1979, when the regulations 43 CFR 1601 took effect, the BLM has been in transition to "Resource Management Plans."

Since wilderness studies will be conducted in three types of plans, there will be some procedural differences in certain aspects of these studies; pertinent differences are mentioned in this document where applicable. However, while procedural aspects of the plans may differ, all wilderness recommendations will be arrived at using the same policy guidance and planning criteria.

1. *Resource Management Plans (RMP's)* are the basic resource mangement planning documents being developed by the BLM under the new planning regulations (43 CFR 1601). The planning process for all RMP's encompasses the environmental analysis and environmental impact statement (EIS) requirements of the National Environmental Policy Act. The resource management planning process includes participation by the public and Federal, State, and local governments, and Indian Tribes; it maximizes use of the best available data; and it includes analysis of alternatives for all resources and uses present on the public lands.

2. *Transition Period MFP's* are management framework plans which were in the process of being prepared when the new planning regulations were issued. These ongoing MFP's and their associated EIS's specific to the component programs are scheduled for completion between FY 1980 and FY 1983. Wilderness recommendations developed through transition period MFP's must be treated in a separate wilderness EIS and may not be combined with a grazing EIS or EIS's for other resources.

3. *MFP Amendments* for wilderness are provided for in §§ 1601.8(b)(3) and 1601.6-3 of the BLM planning regulations. Amendments to existing MFP's are necessary in cases where an MFP was competed before the wilderness inventory was completed and where the established RMP schedule cannot accommodate the study of certain WSA's early enough to meet the established BLM and Departmental goals for completion of wilderness studies.

All wilderness studies conducted through RMP's and MFP amendments will utilize all the steps outlined in the resource managment planning process in the BLM planning regulations (43 CFR Part 1601), as follows:

Step 1: Identification of Issues
Step 2: Development of Planning Criteria
Step 3: Inventory Data and Information Collection
Step 4: Management Situation Analysis
Step 5: Formulation of Alternatives
Step 6: Estimation of Effects of Alternatives
Step 7: Selection of Preferred Alternatives (Draft Plan/EIS)
Step 8: Selection of Resource Management Plan (Final Plan/EIS)
Step 9: Monitoring and Evaluation

Public notices and opportunities for public participation are provided at steps 1, 2, 7, 8 and in case of any significant changes due to protest.

Wilderness studies conducted through Transition MFP's will follow the steps of the management framework planning process.

The public participation requirements of the Wilderness Act and the National Environmental Policy Act will be satisfied in all wilderness studies. Specific opportunities for public participation during the wilderness study process are outlined in Chapter V of this document.

B. Scope and Scheduling

1. *Scope of Studies.*

BLM wilderness studies will be carried out within the scope of BLM planning areas (which are Resource Areas for RMP's and generally smaller areas for transition MFP's). The scope of MFP amendments may include one or more planning areas. By studying the WSA's and scoping the EIS on planning area basis, BLM will readily be able to blend wilderness resource considerations into the multiple resource perspective of RMP's MFP's and MFP amendments, and at the same time provide adequate site-specific information on each WSA.

There may be cases where aggregation of wilderness studies beyond the boundaries of the planning area is desirable. This may be considered for the following situations:

a. When a WSA overlaps the boundaries of a State, district, resource area, or planning area.

b. When opportunities for joint studies with other Federal agencies exist.

c. When the study schedules for WSA's in neighboring planning areas coincide.

2. *Schedule Development.*

In order to minimize both uncertainty regarding land uses and delays in resolving resource conflicts, the Secretary has established several goals for completing wilderness studies. First, all studies will be completed no later than the end of Fiscal Year 1987. Second, wilderness study areas with significant resource conflicts, especially energy conflicts, will be scheduled for early completion within the overall 1987 completion goal. MFP amendments and transition MFP's will be used to achieve these goals to the extent that the schedule for RMP's will not accommodate these goals. In the near future, the public will be provided an opportunity to comment on the proposed study schedule for all WSA's.

C. Documentation.

1. *Planning System Documents.*

Wilderness studies will be conducted within the context of the Bureau's normal resource management planning process. Accordingly, studies information will be recorded as a component of the planning process and documented using standard BLM procedures.

2. *Wilderness Study Report.*

At the conclusion of the study process, a wilderness study report (WSR) will be prepared for each WSA or group of WSA's in a planning area, presenting the results of the study and containing the BLM's wilderness recommendations. The study report will draw from several elements of the study process, including the planning documents, the EIS, the results of public participation and, when required, the USGS/BM mineral surveys. This document will be prepared in a consistent format for each WSA or group of WSA's covered by a study and will be transmitted by the State Director in draft form when he forwards the preliminary wilderness recommendation and FEIS (in review form) to the BLM Director for administrative review in preparation for the Secretary's recommendation to the President.

A separate wilderness study report (WSR) will be prepared for each wilderness study, covering all WSA's in the planning area, regardless of whether the study was done in the context of a resource management plan, a transition MFP, or an MFP amendment.

The Wilderness Study Report (WSR) developed for each planning area will contain the following information:

a. A wilderness suitability recommendation for each WSA, with a summary documentation of the associated multiple resource analysis and application of the planning criteria for each WSA.

b. Summary and analysis of the public hearing on the wilderness recommendations.

c. A wilderness status summary explaining how the recommendations contained in the report relate to the

existing National Wilderness Preservation System (NWPS).

Supporting Documentation—The WSR will be supported by the following documents which will be available for public review in the WSA's permanent documentation files and sent to the Director to serve as back-up information, if necessary, during administrative review of the study reports.

a. Final wilderness EIS (review copy).

b. Draft plan/EIS containing preliminary wilderness recommendations.

c. Record of public hearing.

d. Record of Decision on the State Director's preliminary wilderness recommendations (in the context of an RMP, a transition MFP, or an MFP amendment).

e. USGS/BM mineral survey (required only for areas recommended as suitable for wilderness designation).

To facilitate administrative review, the wilderness study reports will be grouped into one annual reporting package in each State and submitted to the Director at the end of each fiscal year.

The *annual state wilderness reporting package* will contain each of the following items:

a. A *statewide* wilderness status summary describing how all recommendations being transmitted in the state package that fiscal year relate to the existing NWPS.

b. Wilderness study reports for each of the plans completed that fiscal year which contain preliminary wilderness recommendations.

When such a package is subjected to review by the Director and other Department officials, each WSR will be accompanied by associated FEIS's and, for areas recommended as suitable for wilderness, the associated mineral survey reports.

3. *Environmental Impact Statements.*

Depending on the planning system approach being utilized for the wilderness study one of the three procedures listed below will be employed for environmental impact statements (EIS's). All wilderness recommendations must be covered by an EIS since a wilderness designation constitutes a major Federal action significantly affecting the human environment.

a. *Wilderness Study is Conducted as Component of an RMP:*

*Draft plan containing preliminary wilderness recommendation and EIS are prepared as integrated document and filed by State Director. The final RMP/EIS is filed by the State Director with wilderness recommendations still in "preliminary recommendation" form.

*Final wilderness EIS is prepared based on the final RMP/EIS. The final wilderness EIS is submitted by the State Director, is reviewed and approved by the Director and other Department officials, and the Secretary and printed. It documents the final wilderness recommendations of the Secretary and could differ from those contained in the final RMP.

b. *Wilderness Study Is Conducted as Amendment to Existing Plan:*

*Draft EIS is prepared on preliminary wilderness recommendation and filed by State Director.

*Final EIS is prepared by State Director, and is filed by the Secretary and printed upon completion of administrative review.

c. *Wilderness Study is Conducted as Component of a Transition Period MFP:*

*Draft EIS on preliminary wilderness recommendation is prepared as a separate document from the Rangeland Management or Timber Management EIS's normally produced. DEIS is prepared and filed at State Director level.

*Final wilderness EIS is prepared by State Director, and is filed by the Secretary and printed after completion of administrative review.

All wilderness studies and resulting wilderness recommendations must be supported by and considered through an environmental impact statement. This may be accomplished through a single EIS for an individual WSA or by an EIS covering a group of WSA's being studied together and included in the scope of the EIS. While there is no limit on the number of WSA's which may be studied together and included within the scope of an EIS, NEPA standards for adequacy must still be met and may not be diluted or generalized because of the number of areas covered.

Existing Bureau guidance for format, preparation and quality control applies to all wilderness EIS's. However, the following specific factors are to be considered as well:

*While a draft EIS may address a range of proposed land use recommendations in the context of a multiple resource planning effort, the final EIS for wilderness will be a separate document covering the proposed wilderness recommendation and alternatives to it. (A final EIS is issued for the RMP, but the RMP contains only preliminary recommendations for wilderness.) Although this may result in preparation of an additional document, it is the most effective way to obtain administrative review of the wilderness recommendations without delaying implementation of parts of the plan that are unaffected by the wilderness recommendations.

*The EIS must be developed through a vigorous public participation opportunity in compliance with the Council on Environmental Quality (CEQ) Regulations (40 CFR 1501.7 and 1506.6) and BLM Planning Regulations (43 CFR 1601.3).

*The same weight must be given to the assessment of impacts on identified wilderness values when an area is recommended as nonsuitable as is given to the analysis of impacts resulting from wilderness designation when an area is recommended suitable.

*Each WSA must be described in sufficient detail to allow identification of all wilderness values associated with the area.

*The EIS must document or project, to the extent practicable, how WSA's will be used or managed if they are not recommended as suitable for wilderness designation.

*The range of alternatives considered in the EIS must represent a range of choices from those favoring resource protection to those favoring resource production. Reasonable variations of the basic alternatives shall be treated as subalternatives.

D. Reporting Process.

The wilderness *study* process ends with the State Director's decision adopting a preliminary wilderness recommendation for submission to the BLM Director. The wilderness *reporting* process represents the roles of the Director, the Secretary of the Interior, and the President in acting upon the State Director's preliminary recommendation. The only wilderness recommendations that can be termed "final" are those adopted by the Secretary and the President.

The final environmental impact statement on the Secretary's wilderness recommendation can only be filed by the Secretary of the Interior, because the Secretary is the responsible official. This differs from the normal EIS filing responsibility in the preparation of a resource management plan, for which the State Director is the responsible official, and therefore files the final EIS on that RMP. In the case of wilderness, the State Director is responsible for a preliminary wilderness recommendation contained in the RMP, but the Secretary is responsible for the final wilderness recommendation and therefore must file the final EIS on that recommendation.

The study process, in its latter stages, meshes with the early stages of the reporting process through consultation

between the State Director and the Director before the State Director takes action. The State Director's preliminary wilderness recommendations will be grouped into an annual reporting package for transmittal to the Director.

BLM's proposed wilderness reporting process is described in summary below. This reporting process includes the administrative reviews that will be conducted by the BLM Director and the Department of the Inerior, leading to recommendations by the Secretary to the President as to the suitability or nonsuitability of each WSA for preservation as wilderness. The same basic reporting process will be used regardless of the planning approach used for a particular wilderness study—a resource management plan, a transition period management framework plan (MFP), or an amendment to an existing MFP. In the following summary, the term "plan" will refer to all three approaches, except where otherwise noted.

1. District Manager transmits the draft plan with preliminary wilderness recommendations to the State Director for review and concurrence in accordance with the BLM planning regulations.

2. In preparation for publication of the draft plan, the State Director submits a draft of preliminary wilderness recommendation to the Director for review.

3. State Director files draft plan and draft environmental impacts statement (DEIS), in accordance with BLM planning regulations. Wilderness element of plan is prominently labeled as "preliminary recommendation—subject to change during administrative review" (or words to that effect), accompanied by a paragraph describing the roles of the Secretary, the President, and Congress in making wilderness decisions. In the case of a resource management plan, the DEIS states that it is the draft for both an FEIS on the entire plan and a separate legislative FEIS on the wilderness element of the plan. The following 90-day comment period, with hearings, satisfies Wilderness Act section 3(d) and CEQ regulations.

4. After making any needed revisions in the plan, based on public comment, the State Director submits the preliminary wilderness recommendation, FEIS on the plan, and summary of wilderness-related public comment to the Director for review.

5. State Director files proposed plan and FEIS on the plan, containing preliminary wilderness recommendations. Not earlier than 30 days after this, the District Manager, with the concurrence of the State Director and consistent with the requirements of the planning regulations, approves the plan and signs Record of Decision (ROD). In these documents, the wilderness element is labeled, "preliminary recommendation—subject to change during administrative review" (or words to that effect). When an MFP amendment is involved, amendment approval is delayed until the administrative review is completed.

6. State Director prepares wilderness study report incorporating a "review copy" of a wilderness legislative FEIS derived from contents of the plan and the associated FEIS. If the report/FEIS involves WSA's recommended as suitable for wilderness designation, State Director transmits the mineral survey report along with the other documents. State Director transmits the wilderness study reports to the Director in an annual reporting package.

7. BLM Director reviews wilderness study report/FEIS ("review copy") and, if acceptable, transmits it to the Assistant Secretary for Land and Water Resources with his wilderness recommendations. Following Assistant Secretary review and approval, the document is forwarded to the Secretary.

8. Wilderness study report/FEIS ("review copy") is reviewed by Department of the Interior. The Secretary may consult the Office of Management and Budget at this stage, with respect to interagency review of the proposed wilderness recommendation.

9. Secretary files legislative FEIS. BLM announces that legislative FEIS has been filed; public can obtain copies.

10. After 30 days, Secretary signs Record of Decision and transmits his recommendation with report/FEIS to the President.

11. The President transmits his recommendation with wilderness study report/FEIS to Congress and announces it to the public.

E. Decision Roles and Responsibilities

District Manager. The District Manager of each BLM District in which a wilderness study is planned is responsible for the following actions.

1. Conducts the wilderness study, develops wilderness recommendations, and prepares the wilderness study report/DEIS, regardless of whether study was part of a Resource Management Plan (RMP), Management Framework Plan (MFP), or MFP amendment.

2. Ensures that the required formal public hearings are held on the wilderness study/DEIS or RMP/DEIS.

3. Ensures that wilderness studies are conducted in accordance with the BLM planning regulations. This includes providing opportunities for public involvement in the planning process.

4. Prepares the final wilderness legislative EIS, wilderness study report and all other required documents. Maintains study records and the permanent documentation file for each area, and ensures availability for public review.

State Director.

1. Provides the State Director Guidance and any additional appropriate guidance, as indicated in the BLM planning regulations, for wilderness studies.

2. Prepares and updates as necessary the Public Participation Plan to guide public involvement in wilderness studies in the State.

3. Reviews and approves District Manager's draft of preliminary wilderness recommendation and DEIS. Forwards draft of preliminary recommendation and DEIS to Director for review.

4. Releases draft plan and DEIS for public comment.

5. Forwards preliminary wilderness recommendation and FEIS on the plan with related public comment to Director for review.

6. Files plan and FEIS on the plan containing preliminary wilderness recommendation. Signs Record of Decision on plan.

7. Reviews and approves the wilderness study reports, the associated wilderness legislative FEIS's, and prepares the statewide wilderness status summary. Forwards these documents to the Director for review in an annual state wilderness reporting package.

8. Prints final wilderness study report and legislative FEIS as approved by the Director, the Secretary and the President.

The Director.

1. Provides guidance in the form of BLM policy and procedures for wilderness studies.

2. Establishes Bureauwide schedule for wilderness studies.

3. Reviews draft of preliminary wilderness recommendations in plan and DEIS before public review.

4. Reviews preliminary wilderness recommendations in plan, FEIS, and related public comment before filing by State Director.

5. Reviews wilderness study report and wilderness legislative FEIS. Makes final Bureau recommendations on wilderness suitability and approves associated documents.

The Department.

1. Following the Director's decision, all wilderness study reports, EIS's, and other attached documents will be forwarded for review and approval by the Assistant Secretary for Land and Water Resources.

2. Upon approval of these documents the Assistant Secretary transmits his wilderness suitability recommendations for consideration by the Secretary.

3. The Secretary reviews the report packages, determines his final recommendations on wilderness suitability and approves the final report documents. The Secretary then files the legislative EIS and signs a Record of Decision.

4. Finally, the Secretary transmits his recommendations, with the final reports/EIS's, to the President.

5. After review of the documents, the President arrives at his final recommendations and transmits them with the final report/EIS, to Congress. A public announcement is made at that time.

F. Role of Mineral Survey Report

Section 60(a) of the Federal Land Policy and Management Act (FLPMA) requires that "prior to any recommendations for the designation of an area as wilderness the Secretary shall cause mineral surveys to be conducted by the Geological Survey and the Bureau of Mines to determine the mineral values, if any, that may be present in such areas." This provision of FLPMA requires mineral surveys only for those areas which are being recommended to the President and Congress as *suitable* for wilderness designation. Mineral surveys are not required for areas recommended as nonsuitable for wilderness designation.

The results of mineral surveys will be fully considered by the BLM State Director prior to arriving at his recommendation on wilderness suitability and transmitting it to the Director. The mineral survey results will also be fully available for public consideration and comments prior to the BLM State Director arriving at a recommendation for transmittal to the Director.

G. Joint Studies

1. *Within BLM.* There are numerous WSA's which cross BLM administrative boundaries—between resource areas, between Districts, or between States. The basis for developing joint wilderness studies within BLM involves: (a) opportunities for schedule coordination; (b) the type of planning effort in which the studies are contained (i.e., RMP, transition MFP, or MFP amendment), and (c) the proportion of the WSA's located in each planning area.

The above three factors will influence which of the following options is chosen for conducting joint wilderness studies between BLM administrative units:

1. Development of a single EIS to cover each of the planning areas into which the WSA's extend. This alternative would be most appropriate when utilizing the MFP amendment approach to studies.

2. Consider the boundary-crossing WSA's in the plan/EIS for only one of the administrative units in which it is located. In this case, the other DM or SD would concur in the wilderness recommendations developed in the plan/EIS for the unit having the lead responsibility for those particular WSA's.

3. Conduct two plan/EIS efforts concurrently for the planning areas into which the WSA's extend. In this case, a joint recommendation would be developed for the all boundary-crossing WSA's, but each of the plan-EIS's would cover only those portions of the WSA's located within its own planning area boundaries.

State Directors are responsible for ensuring effective coordination of wilderness studies on those WSA's which overlap administrative boundaries. The type of joint study to be conducted must be mutually agreed upon by all District Managers and/or State Directors involved, on a case-by-case basis. Inventory data collection and analysis, public comment analysis, and wilderness recommendations must be consistent between administrative units. Written Memorandums of Understanding (MOU's) may be developed to ensure proper coordination procedures. The use of MOU's is encouraged particularly in cases which involve WSA's crossing interstate boundaries.

2. *Joint Studies with Other Agencies.* Opportunities also exist to conduct joint studies in cases where BLM wilderness study areas are contiguous to areas being considered for wilderness designation by other Federal or State agencies.

This situation seems to occur most frequently in cases involving BLM WSA's and U.S. Forest Service (USFS) "further planning" areas. These "further planning" areas were identified during the USFS's RARE II wilderness review process as roadless areas to be considered for all uses, including wilderness, during the development of USFS land management plans. A cooperative agreement is being developed to facilitate joint wilderness studies by BLM and USFS where study lands administrated by the two agencies are contiguous. BLM District Managers and USFS Forest Supervisors will collaborate in preparing preliminary wilderness recommendations and study reports, with results to be forwarded jointly or independently as practicable and agreed upon. The cooperative agreement will contain criteria for determining the lead agency in a joint study and will outline the respective responsibilities for both the lead agency and the cooperating agency.

Where opportunities for joint studies with agencies other than the USFS exist (i.e., the National Park Service, U.S. Fish and Wildlife Service, and State wilderness agencies), BLM State Directors and District Managers are encouraged to initiate discussions to develop coordinated wilderness studies. The BLM Washington Office will work with the National Park Service and U.S. Fish and Wildlife Service to develop cooperative agreements for possible joint wilderness studies involving those agencies.

3. *BLM Studies Involving Existing or Proposed Wilderness Areas Administered by Other Federal Agencies.* In cases where BLM wilderness study areas are contiguous to lands administered by other Federal agencies which are either designated wilderness areas or have been proposed by the President for designation as wilderness, the BLM will conduct a wilderness study under the policies and criteria in this document, and the following additional factors will be considered and documented in the wilderness study report:

a. Will designation of the WSA as wilderness benefit the values and uses of the existing or proposed wilderness area? Among the points for consideration in this regard are the manageability of the total area and the possible enhancement of natural and public-use values of the lands already designated or proposed as wilderness.

b. In cases where the contiguous Federal lands are proposed as wilderness but have not yet been designated, determine whether the WSA would be a viable independent candidate for designation as wilderness if Congress does not designate the contiguous lands. Among the points for consideration are manageability of the BLM portion, and the views of the public.

c. Regarding the management of the WSA if it is designated as wilderness, determine whether the BLM portion could be more effectively managed as wilderness if the management responsibility were transferred to the

agency which administers the contiguous existing or proposed wilderness area. District Managers will cooperate with their counterparts in the other agencies to develop a response to this factor. Recommendations which contemplate transfer of administration of the public lands, if designated as wilderness, should clearly identify this point and document it in the narrative for Wilderness Planning Criterion No. 1(b) (manageability) and in the wilderness study report.

Chapter IV. Relationship to Other Policies

This chapter addresses certain policy issues with respect to wilderness studies about which members of the public have inquired. It is also anticipated that additional issues needing BLM policy clarification will be raised during the public and field reviews of this draft document. As a result, this section may be expanded in the final document to include responses to any additional topics identified as needing further clarification.

A. Relationship to BLM's Wilderness Management Policy

The BLM is currently in the process of developing a wilderness management policy under which the BLM will manage those public lands designated as wilderness by Congress. It is anticipated that the draft wilderness management policy will be released during the public comment period on this document. The purpose of releasing both the BLM study policy and the BLM management policy concurrently is to enable reviewers to consider their close interrelationship. One of the primary criteria of the study policy requires that an area recommended by the BLM as suitable for wilderness designation "* * * must be capable of being effectively managed to preserve its wilderness character in perpetuity." To determine whether or not an area can be "effectively *managed*" as wilderness, the wilderness management policy must be used in the wilderness study process to aid BLM personnel and the public in weighing the suitability of an area for wilderness designation. The wilderness management policy also is a key element in predicting the probable impacts of wilderness designation upon activities and uses in the areas being studied.

1. *Development of Site-Specific Wilderness Management Plans.* While the manageability of an area as wilderness must be determined during the study process, not until after Congress has designated an area as wilderness will the BLM develop a detailed management plan as part of the activity planning phase for each area. However, it is likely that some general management concepts for dealing with certain uses and activities in the area will need to be outlined during the study process. Such general concepts must be fully consistent with the policies and guidelines provided in the BLM wilderness management policy.

Until Congress acts on wilderness recommendations, the Interim Management Policy (IMP) for Lands Under Wilderness Review will guide the management of the area. Once an area is designated as wilderness, the site-specific management plan for that area will expeditiously be developed. Until a site-specific plan is completed and approved for a designated wilderness area, the BLM wilderness management policy itself will serve to guide activities.

2. *Congressional Wilderness Management Mandates for BLM.* There are a number of mandates for wilderness management which have been given to the BLM by Congress and which serve as the basis for formulation of BLM's wilderness management policy. Section 603 of the Federal Land Policy and Management Act of 1976 (FLPMA) directs that BLM wilderness areas be managed under provisions of the Wilderness Act which apply to national forest wilderness areas.

The mandates in FLPMA, the Wilderness Act, and other Acts of Congress designating specific areas as wilderness make up BLM's direction on the management of wilderness areas. All activities in wilderness areas, except those specifically exempted, must be carried out in conformance with these mandates.

There are three basic concepts in these congressional mandates:

**Wilderness Preservation Concept:* Congress has directed the BLM to perpetuate the wilderness resource by managing designated wilderness areas so their wilderness character is preserved unimpaired.

**Wilderness Use Concept:* Congress has directed the BLM to provide opportunities for the public to use designated wilderness areas for recreational, scenic, scientific, educational, conservation, and historical purposes in a manner so as to leave the wilderness areas unimpaired for future use and enjoyment as wilderness.

**Special Use Concept:* Congress has directed the BLM to accommodate in designated wilderness areas certain activities, existing uses, and private rights specified in the Wilderness Act and subsequent legislation.

Further detail on these concepts and on how they are proposed to be carried out will appear in the draft BLM wilderness management policy to be published January 1981, for public review and comment.

b. Formulation of Alternatives

This section provides general guidelines on the formulation of wilderness alternatives.

1. *Basic Principles.* The basic guidance available on the formulation of alternatives appears in the Bureau planning regulations (43 CFR 1601.5–5) and the Council on Environmental Quality (40 CFR 1502.14). As in all BLM resource management planning, alternatives for wilderness shall provide a range of choices, from those favoring resource protection to those favoring resource production. There must always be a "no-action" alternative proposing continuation of present levels of resource use and management.

Regardless of the scope of any wilderness study, the formulation of alternatives is a critical early function. Latitude and flexibility exist in developing the alternatives to be studied, but care must be taken to assure compliance with the requirements and intent of both the CEQ regulations and the BLM planning regulations.

Particular attentiom must be given to development of alternatives when more than one WSA is included in the scope of a study. While it may be impossible to array all possible combinations of suitable and nonsuitable recommendations for any group of WSA's, a reasonable number must be presented to provide a clear basis for choice among options by the decisionmaker and the public. Whatever set of alternatives is selected, it must be responsive to the public participation required both by the issue identification step in the Bureau planning system and by the NEPA scoping process.

2. *Range of Alternatives to be Addressed.* At a minimum, the following alternatives should be addressed in all wilderness studies. These should be applied either individually in single WSA studies or collectively when more than one WSA is included within the scope of a study.

a. *All Wilderness.* This alternative will represent the maximum possible acreage that could be recommended suitable for wilderness designation. This could involve either a single WSA in its entirety or all WSA's included in the planning area under study.

b. *No Wilderness.* This alternative represents the no-wilderness option and could involve recommending

"nonsuitable" for either a single WSA in its entirety or all WSA's in a study. When the wilderness study is done as part of a resource management plan, the "no-wilderness" alternative may include a number of subalternatives which provide a range of options from those favoring resource protection to those favoring resource production. The subalternative which is selected will be a key determinant in assessing the probable impacts to the wilderness values of an area, as required by Criterion No. 7—*Impacts on Wilderness*, which is explained in detail in Section II. D. In the case of transition MFP's, the alternative for the use of the area under study will be considered in the MFP-Step II recommendation for wilderness. In MFP Amendments, the "No Wilderness" alternative is the same as the "No-Action" alternative.

c. *"No-Action"*. A "no-action" alternative must be formulated and assessed for each WSA. This alternative proposes continuation of present levels of resource use and manangement, and represents the most likely condition expected to exist in the future if the current resource use and management direction (without regard to the interim management policy for lands under wilderness review) were to continue as documented in the existing MFP and if the area were not designated as wilderness.

d. *Partial Wilderness.* This alternative or group of alternatives represents the range of possible suitable or nonsuitable recommendations available between the "all wilderness" and the "no wilderness" options. Depending on the issues involved and the complexity of the study, certain options may be treated as subalternatives.

When an individual WSA is being reviewed, these alternatives will consider how the area recommended for wilderness might be less than the WSA boundary in order to allow for resource tradeoffs or manageability considerations. When more than one WSA is included in a single study, the "partial wilderness" alternative(s) allow for different combinations or mixes of areas to be recommended suitable and nonsuitable. In such cases, care must be taken to ensure consideration not only of various mixes of entire areas being recommended suitable or nonsuitable, but also of various approaches to recommending less than the entire area of each of the WSA's for wilderness in light of resource conflicts, manageability considerations or other relevant factors. Use of subalternatives is especially appropriate in these situations.

3. *Development of Alternatives Involving Less Than Entire WSA's.* There appear to be two general cases when it may be appropriate to consider recommending less than entire WSA's for wilderness: (1) resolution of conflicts and (2) manageability of wilderness. Any such instances will require the development of either an individual alternative or subalternative(s). Such situations must be clearly documented in the wilderness study report.

a. *Conflict Resolutions.* These types of alternatives are based on an overall objective of resolving existing or potential conflicts between wilderness and certain nonwilderness uses. For example, a conflict resolution alternative might be considered where a certain portion of a WSA has been identified as containing a known geothermal resource. This portion of the WSA might then be recommended as nonsuitable for wilderness designation, while the remainder of the WSA might still be eligible for wilderness.

b. *Wilderness manageability.* In some cases, it may be appropriate to consider recommending less than an entire WSA as suitable for wilderness based on a determination that some portion of the WSA cannot be effectively managed as wilderness over the long run. Again, this is a case where treatment of such matters as individual alternatives or subalternatives will enable a thorough analysis of impacts and allow for full public disclosure and review.

C. Relationship of Wilderness to ACEC's

There are significant distinctions between wilderness designation and Areas of Critical Environmental Concern (ACEC's). Section 103(a) of FLPMA defines ACEC's as "areas within the public lands where special management attention is required to protect and prevent irreparable damage to important historic, cultural, or scenic values, fish and wildlife resources or other natural systems or processes or to protect life and safety from natural hazards."

Identification of potential ACEC's and designation of ACEC's will be accomplished through BLM's Resource Management Planning (RMP) process. In this respect, wilderness and ACEC's are treated similarly in that both are forms of multiple-use management practiced on the public lands. However, one major distinction between wilderness and ACEC's was pointed out in the Senate Interior and Insular Affairs Committee Report on FLPMA (Senate Report 94-583) which stated: "Unlike wilderness areas * * * (ACEC's) are not necessarily areas in which no development can occur. Quite often, limited development, when wisely planned and properly managed, can take place in these areas without unduly risking life or safety or permanent damage to historic, cultural, or scenic values or natural systems or processes."

In general, wilderness designation of an area would imply more restrictive management controls than would ACEC designation, although both could provide some of the same types of protection to specific important resources in an area. In cases where identified ACEC's are located within the boundaries of a designated wilderness area, the ACEC will be subject to the management controls required by the wilderness designation.

D. Air Quality

The Clean Air Act (as amended, 1977) establishes three air quality classifications. Class I is the most stringent, allowing only minimal deterioration of air quality. Class II allows moderate deterioration associated with moderate, well controlled industrial and population growth. Class III allows deterioration up to the ambient air quality standard.

Neither the Clean Air Act nor any other laws or regulations require that BLM wilderness study areas or designated wilderness areas be classified as Class I. The recent report of the Senate Committee on Energy and Natural Resources on Colorado wilderness legislation (Report No. 96-914) said: "The only wilderness areas which are mandatory Class I areas are those which were established by Congress before August 7, 1977, the date of enactment of the Clean Air Act Amendments of 1977."

All BLM-administered public lands were designated as Class II by the 1977 Clean Air Act Amendments. Any further air quality reclassification is the prerogative of the State government, not of the BLM. The BLM will not recommend any change in air quality classification as part of the wilderness study or wilderness recommendations.

Chapter V. Public Involvement

A. General

Opportunities will be provided for full and open public participation in wilderness studies, in accordance with the BLM planning regulations and provisions of the Wilderness Act of 1964. The Bureau of Land Management considers public participation to be an essential element in every wilderness study. The following wilderness planning criterion appears in Chapter II of this document:

Criterion No. 2—*Public Comment.*

"In determining whether an area is suitable or nonsuitable for wilderness designation, the BLM wilderness study process will consider comments received from interested and affected publics at all levels—local, State, regional, and national—with special consideration given to the involvement of those local peoples and institutions that would be most directly affected by an area's designation. Wilderness recommendations will not be based solely on a vote-counting majority rule system. The BLM will develop its recommendations by considering public comment in conjunction with a full analysis of a wilderness study area's multiple resource and socio-economic values and uses."

To obtain the views of the public for consideration under this criterion, BLM will conduct vigorous public participation activities, which may include published and mailed requests for written comments, surveys, public meetings, public hearings, conferences, seminars, workshops, open houses, tours, or similar events. Detailed public participation plan will be developed by each State Director.

Public participation opportunities in each wilderness study must satisfy the requirements of the BLM planning regulations (43 CFR 1601), which provide for participation at several stages in the planning process. They must also satisfy the requirements of the Council on Environmental Quality (CEQ) regulations (40 CFR 1501.7 and 1506.6) with respect to environmental impact statements. In addition, they must satisfy section 3(d) of the Wilderness Act, which provides for a public hearing or hearings, the results of which must be made available to the Secretary and the President when they make their recommendations on the suitability or nonsuitability of an area for wilderness designation.

The public will be notified far enough in advance of any of these activities to allow for effective and meaningful participation. The BLM planning regulations (43 CFR 1601.3(i)) require at least 15 days public notice for public meeting, at least 30 days for requests for written comments, and 90 days for review of the draft plan and draft EIS. The Wilderness Act requires that at least 30 days notice by given to the public prior to the public hearing required to section 3(d) of the Act.

Aside from these formal requirements, BLM is committed to public participation as an effective tool in conducting wilderness studies. During the earliest stage in a wilderness study, the emphsis will be on identification of issues which the public believes should be considered with respect to a particular wilderness study area. (For example, some wilderness study areas may involve particular wildlife values of concern to the public; other areas may involve mineral values of special concern.) Knowing what is special concern to the public in each area will enable BLM to analyze those issues in sufficient depth during the wilderness study.

During the early stages of a study, BLM will also be seeking information from public about the values and resources in the wilderness study area, to augment BLM's current resource information. For example, the minerals industry will be invited to submit factual information about the area's mineral values.

During the later stages of a wilderness study, the empahsis shifts to the central question to be addressed in BLM's wilderness recommendations—is the area suitable for wilderness designation, or more suitable for other resource uses? The results of all public participation will help BLM in analyzing the information about a particular WSA, providing a sound basis for the wilderness recommendation.

BLM State Directors and District Managers are encouraged to provide such public participation opportunities as may be appropriate in a particular wilderness study. The formal opportunities for public involvement shown in Table 1 are mandatory in every wilderness study.

Table 1.—*Mandatory Opportunities for Public Involvement in Wilderness Studies*

Opportunity	Required by		
	BLM planning regulations	CEQ regulations	Wilderness Act
1. BLM announces scheduled wilderness studies			
2. Scoping	X	X	
3. Development of planning criteria	X		
4. Release of draft plan/DEIS containing preliminary wilderness recommendations	X	X	
5. Public hearing on draft plan/DEIS containing preliminary wilderness recommendations			X
6. Release of proposed plan/FEIS containing preliminary wilderness recommendations	X	X	
7. Opportunity for protest	X		
8. Comment on changes due to protest	X		

B. State and Local Governments

In recognition of their special expertise with respect to the social and economic effects of resource management decisions, State and local governments will have opportunities to participate effectively in BLM wilderness studies. This applies both to legislative bodies such as State legislatures and county boards, and to executive officials and agencies such as Governors and State and county agencies.

To allow these governments sufficient time to deliberate and adopt official recommendations for consideration by the BLM, State Directors and District Managers will take care to notify State and local governments as to when wilderness studies are scheduled to begin, and as to the timing of steps in the study process, so the governments will be prepared to participate at the proper times.

Certain formal intergovernmental coordination steps are required by the BLM planning regulations (43 CFR 1601.4) and by the Wilderness Act. In wilderness studies BLM also intends to coordinate with State and local governments informally so as to obtain the maximum information for use by BLM in developing the preliminary wilderness recommendations. The formal, mandatory coordination steps are described below:

1. Every year BLM publishes a schedule of resource management planning efforts due to start in the next 3 fiscal years. The State Director transmits this information to State and local governments.

2. Before starting a wilderness study, the BLM District Manager will send a notice of intent (as prescribed by BLM Planning Regulations 43 CFR 1601) and

general schedule of expected steps in the study process to State and areawide A-95 clearinghouses, to heads of county boards and other local governments affected, to the presiding officers of the State legislature, and to any other State or local government bodies that have asked to receive such notices.

3. As the actual study work begins, the District Manager consults State and local governments as to any relevant land use plans, policies, or resolutions, so these can be considered as early as possible in the study process.

4. State and local governments will be invited to participate in the scoping process.

5. State and local governments will be invited to participate in the development of planning criteria.

6. Data submitted by State and local governments will be used by BLM in preparing the following materials: (a) socio-economic analysis, (b) draft and final environmental impact statements (EIS's), and (c) evaluation of the effects of the alternatives. There is no separate comment period for submission of this information; it can be submitted at any time while these materials are in preparation. The general schedule referred to in step 2 above will show the target dates for completion of these materials.

7. BLM will release a draft plan and draft EIS (or draft plan amendment and draft EIS) containing preliminary wilderness recommendations; this will be sent to the State and local governments, which will have 90 days to respond with written comments, as well as opportunities to present comments in a public hearing or hearings, which are required by the Wilderness Act. Affected State and local governments must be notified of the hearings at least 30 days in advance, and must have at least 30 days after the hearing to submit their views.

8. The views submitted in step 7 above will be considered by the State Director in arriving at the revised preliminary wilderness recommendation which he sends to the BLM Director. The views of State and local governments will be transmitted verbatim—accompanying the BLM wilderness recommendation—to the Director, the Secretary, the President, and ultimately to Congress for consideration as decisions are made on the results of the wilderness study.

If a State or local government notifies the BLM in writing that the preliminary wilderness recommendation or any specific part of it is not consistent with that government's officially approved and adopted resource related plans, or with that government's policies and programs, BLM will respond to this comment in the wilderness study report, explaining how the consistency issue was resolved, and why. The applicable policy with respect to officially approved and adopted resource-related plans appears as Criterion 5 in Chapter II of this document and is repeated here for ready reference:

"Consistency with Other Plans: In determining whether an area is suitable or nonsuitable for wilderness designation, the BLM will fully consider and document the extent to which the recommendation is consistent with officially approved and adopted resource-related plans of other Federal agencies, State and local governments, and Indian tribes (and the policies and programs contained in such plans) as required by FLPMA and the BLM planning regulations."

The BLM will give due consideration to all views and information submitted by State and local governments, with greatest weight given to submissions representing an official action of a State or local government body, as contrasted to an expression by an individual member of such a body. For instance, a resolution adopted by a State legislature will be considered to represent the legislature's official position on the matter. On the other hand, if an individual member of the legislature submits comments, it will not be assumed that these comments represent the legislature's position, unless that member was officially authorized to file comments on behalf of the body.

Appendix A—Section 603 of the Federal Land Policy and Management Act of 1976 (Pub. L. 94-579)

Sec. 603. (a) Within fifteen years after the date of approval of this Act, the Secretary shall review those roadless areas of five thousand acres or more and roadless islands of the public lands, identified during the inventory required by section 201(a) of the Act as having wilderness characteristics described in the Wilderness Act of September 3, 1964 (78 Stat. 890; 16 U.S.C. 1131 et seq.) and shall from time to time report to the President his recommendation as to the suitability or nonsuitability of each such area or island for preservation as wilderness: Provided, that prior to any recommendations for the designation of an area as wilderness the Secretary shall cause mineral surveys to be conducted by the U.S. Geological Survey and the Bureau of Mines to determine the mineral values if any, that may be present in such areas: Provided further, that the Secretary shall report to the President by July 1, 1980, his recommendations on those areas which the Secretary has prior to November 1, 1975, formally identified as natural or primitive areas. The review required by this subsection shall be conducted in accordance with the procedures specified in section 3(d) of the Wilderness Act.

(b) The President shall advise the President of the Senate and the Speaker of the House of Representatives of his recommendations with respect to designation as wilderness of each such area, together with a map thereof and with a definition of its boundaries. Such advice by the President shall be given within two years of the receipt of each report from the Secretary. A recommendation of the President for designation as wilderness shall become effective only if so provided by an Act of Congress.

(c) During the period of review of such areas and until Congress has determined otherwise, the Secretary shall continue to manage such lands according to his authority under this Act and other applicable law in a manner so as not to impair the suitability of such areas for preservation as wilderness, subject, however, to the continuation of existing mining and grazing uses and mineral leasing in the manner and degree in which the same was conducted on the date of approval of this Act: Provided, that, in managing the public land the Secretary shall by regulation or otherwise take any action required to prevent unnecessary or undue degradation of the lands and their resources or to afford environmental protection. Unless previously withdrawn from appropriation under the mining laws, such lands shall continue to be subject to such appropriation during the period of review unless withdrawn by the Secretary under the procedures of section 204 of this Act for reasons other than the preservation of their wilderness character. Once an area has been designated for preservation as wilderness, the provisions of the Wilderness Act which apply to national forest wilderness areas shall apply with respect to the administration and use of such designated area, including mineral surveys required by section 4(d)(2) of the Wilderness Act, and mineral development, access, exchange of lands, and ingress for mining claimants.

Appendix B—Excerpts From the Wilderness Act of September 3, 1964 (Pub. L. 88-577)

Section 2(c):

A wilderness, in contrast with those areas where man and his own works dominate the landscape, is hereby recognized as an area

where the earth and its community of life are untrammeled by man, where man himself is a visitor who does not remain. An area of wilderness is further defined to mean in this Act an area of undeveloped Federal land retaining its primeval character and influence, without permanent improvements or human habitation, which is protected and managed so as to preserve its natural conditions and which (1) generally appears to have been affected primarily by the force of nature, with the imprint of man's work substantially unnoticable; (2) has outstanding opportunities for solitude or a primitive and unconfined type of recreation; (3) has at least five thousand acres of land or is of sufficient size as to make practicable it preservation and use in an unimpaired condition; and (4) may also contain ecological, geological, or other features of scientific, educational, or historical value.

Section 3(d):

Suitability. (d)(1) The Secretary of Agriculture and the Secretary of the Interior shall, prior to submitting any recommendations to the President with respect to the suitability of any area for preservation as wilderness.

Publication in Federal Register. (A) give such public notice of the proposed action as they deem appropriate, including publication in the Federal Register and in a newspaper having general circulation in the area or areas in the vicinity of the affected land;

Hearings. (B) hold a public hearing or hearings at a location or locations convenient to the area affected. The hearings shall be announced through such means as the respective Secretaries involved deem appropriate, including notices in the Federal Register and in newspapers of general circulation in the area: *Provided.* That if the lands involved are located in more than one State, at least one hearing shall be held in each State in which a portion of the land lies;

(C) at least thirty days before the date of a hearing advise the Governor of each State and the governing board of each county, or in Alaska the borough, in which the lands are located, and Federal departments and agencies concerned, and invite such officials and Federal agencies to submit their views on the proposed action at the hearing or by no later than thirty days following the date of the hearing.

(2) Any views submitted to the appropriate Secretary under the provisions of (1) of this subsection with respect to any area shall be included with any recommendations to the President and to Congress with respect to such area.

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APPENDIX C: Format for Wilderness Status Summary Tables

TABLE I

Statewide Wilderness Status Summary

A. Status of BLM Areas Under Study

County	BLM Districts	Unit Number	Total Acreage	Study Start and Completion Dates		Status
				Start	Completion	

B. Recommendations Transmitted by This Report

District	Resource Area	Plan Name	Unit Number	Unit Name	Total Acreage	Recommendations	
						Acres Suitable	Acres Nonsuitable

C. Completed BLM Studies -- Awaiting Presidential Recommendations

District	Resource Area	Plan Name	Unit Number	Unit Name	Total Acreage	SD's Preliminary Recommendations	
						Suitable	Nonsuitable

D. Statutory Wilderness (all agencies)

County	Number of Areas	Total Acreage
(1) BLM		
(2) USFS		
(3) FWS		
(4) NPS		
(5) State-administered		

TABLE I (continued)

E. Recommendations Pending Before Congress (all agencies)

County	Number of Areas	Total Acreage	Recommendations	
			Areas Suitable	Areas Nonsuitable
(1) BLM				
(2) USFS				
(3) FWS				
(4) NPS				

F. Other-Agency Areas Under Study

County	Number of Areas	Total Acreage
(1) USFS		
(2) FWS		
(3) NPS		
(4) State-administered		

G. Ecosystem/Landform Representations of Areas Recommended in This Report

Unit Number	Ecosystem/Landforms Represented by Unit		Number of Existing Representations in Statutory Wilderness						Number of Representations in Wilderness Endorsed by the President					
			State		Region		NWPS		State		Region		NWPS	
	No.	Name	BLM	Other Agency	BLM	Other Agency	BLM	Other Agency	BLM	Other Agency	BLM	Other Agency	BLM	Other Agency
	(1) suitable recommendations													
	(2) nonsuitable recommendations													

H. Population Centers Within One Day's Travel of Areas Recommended in This Report

Unit Number	Population Centers Within One Day's Driving Time of Unit	Number of Statutory Wilderness Areas Within One Day's Drive of Identified Population Centers		No. of Wilderness Areas Endorsed by the President Within One Day's Drive of Identified Population Centers	
	Names of Cities and States	BLM	Other Agency*	BLM	Other Agency*

* Includes areas administered by the State as Wilderness.

TABLE II

State Ecosystem/Landform Representation

A. Ecosystem/Landform		Existing Representations in Statutory Wilderness									
		BLM Areas		Other Agency Areas*			BLM Areas - Other States			Other Agency Areas*		
No.	Name	No. Areas	Acreage	Agency	No.	Acreage	State	No.	Acreage	State	No.	Acreage
Totals												

B. Ecosystem/Landform		Representations in Wilderness Endorsed by President - Pending Before Congress									
		BLM Areas		Other Agency Areas*			BLM Areas - Other States			Other Agency Areas*		
No.	Name	No. Areas	Acreage	Agency	No.	Acreage	State	No.	Acreage	State	No.	Acreage
Totals												

C. Ecosystem/Landform		Potential Sources of Representations						
		BLM WSA's			Other Agency WSA's*			
No.	Name	District	No.	Acreage	Agency	Region, Park, Refuge	No.	Acreage

* Includes areas administered by the State as Wilderness.

TABLE III

Master List -- Ecosystem/Landform Representation

A. Ecosystem/Landform		Existing Representations in Statutory Wilderness							
		BLM Areas				Other Agency Areas*			
No.	Name	State	District	No.	Acreage	State	Agency	No.	Acreage

B. Ecosystem/Landform		Representatives in Wilderness Endorsed by President - Pending Before Congress							
		BLM Areas /				Other Agency Areas*			
No.	Name	State	District	No.	Acreage	State	Agency	No.	Acreage

C. Ecosystem/Landform		Location of BLM WSA's with Potential Representations			
No.	Name	State	District	Number of Areas	Acreage

D. Ecosystem/Landform		Location of Other Agency Study Areas with Potential Representations*			
No.	Name	State	District	Number of Areas	Acreage

*Includes areas administered by the State as Wilderness.

TABLE IV

Proximity to Population Centers

A. Unit Number	Total Acres	Population Centers within One Day's Travel Time of WSA's	Statutory Wilderness Within One Day's Travel Time of Identified Population Centers					
			BLM			Other Agency *		
		Names of Cities and States	State	No.	Acreage	State	No.	Acreage

B. Unit Number	Total Acres	Population Centers within One Day's Travel Time of WSA's	Wilderness Areas Endorsed by the President Within One Day's Travel Time of Identified Population Centers					
			BLM			Other Agency *		
		Names of Cities and States	State	No.	Acreage	State	No.	Acreage

C. Unit Number	Total Acres	Population Centers within One Day's Travel Time of WSA's	Other Study Areas Within One Day's Travel Time of Identified Population Centers					
			BLM			Other Agency *		
		Names of Cities and States	State	No.	Acreage	State	No.	Acreage

* Includes areas administered by the State as Wilderness.

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Appendix D—Glossary

The following are definitions for terms commonly used in the BLM wilderness study process:

Management Framework Plan (MFP). The Bureau's basic planning decision document prior to the adoption of a new planning process in 1979, in which the decision document is a Resource Management Plan (RMP).

MFP Amendment: An amendment to a Management Framework Plan is initiated by the need to consider monitoring and evaluation findings, new data, new or revised policy, a change in circumstances, or an applicant's proposed action which may result in a significant change in a portion of the approved plan.

Multiple Resource Values and Uses: The present and potential uses of the various resources administered through multiple use management on the public lands and any public values associated with such uses.

Multiple Use: "* * * the management of the public lands and their various resource values so that they are utilized in the combination that will best meet the present and future needs of the American people; making the most judicious use of the land for some or all of these resources or related services over areas large enough to provide sufficient latitude for periodic adjustments in use to conform to changing needs and conditions; the use of some lands for less than all of the resources; a combination of balanced and diverse resource uses that take into account the long-term needs of future generations for renewable and nonrenewable resources, including, but not limited to, recreation, range, timber, minerals, watershed, wildlife and fish, and natural scenic, scientific and historical values; and harmonious and coordinated management of the various resources without permanent impairment of the productivity of the land and the quality of the environment with consideration being given to the relative values of the resources and not necessarily to the combination of uses that will give the greatest economic return or the greatest unit output." (From section 103, FLPMA)

Naturalness: Refers to an area which "generally appears to have been affected primarily by the forces of nature, with the imprint of man's work substantially unnoticeable." (From section 2(c), (Wilderness Act.)

Outstanding: 1. Standing out among others of its kind; conspicious; prominent; 2. Superior to others of its kind; distinguished; excellent.

Planning Area: The area for which resource management plans are prepared and maintained. In most instances, it is the same as the resource area, which is a geographic portion of a BLM district, under supervision of an area manager.

Planning Criteria: The factors used to guide development of the resource management plan, or revision, to ensure that it is tailored to the issue previously identified and to ensure that unnecessary data collection and analyses are avoided. Planning criteria are developed to guide the collection and use of inventory data and information, the analysis of the mangement situation, the design and formulation of alternatives, the estimation of the effects of alternatives, the evaluation of alternatives, and the selection of the preferred alternative.

Population Center: A Standard Metropolitan Statistical Area (SMSA) which has a population of 100,000 or greater. An SMSA is a county which contains at least one city of 50,000 inhabitants or more plus as many adjacent counties as are metropolitan in character and are socially integrated with that central city or cities.

Preliminary Wilderness Recommendation: Refers to a wilderness recommendation at any stage prior to the time when the Secretary of the Interior reports his recommendation to the President. Until the Secretary acts, the recommendation is "preliminary" because it is subject to change during administrative review.

Primitive and Unconfined Recreation: Nonmotorized and nondeveloped types of outdoor recreational activities.

Region: A homogeneous geographical area generally larger than the planning area under study, whose boundaries are determined through the EIS scoping process and the identification of issues. Its boundaries should encompass (1) all lands that would be affected by the land use allocations proposed for the planning area, and (2) all lands which have an effect on the activities occurring in the planning area.

Resource Management Plan (RMP): The basic decision document of BLM's resource management planning process, used to establish allocation and coordination among uses for the various resources within a Resource Area. An RMP is a "land-use plan" prescribed by Section 202 of the Federal Land Policy and Management Act. RMP regulations appear at 43 CFR 1601. (Refer to definition of Management Framework Plan).

SMSA: Standard Metropolitan Statistical Area—See definition under "Population Center."

Solitude: 1. The state of being alone or remote from habitations; isolation. 2. A lonely, unfrequented, or secluded place.

Suitability: As used in the Wilderness Act and in the Federal Land Policy and Management Act, refers to a recommendation by the Secretary of the Interior or the Secretary of Agriculture that certain Federal lands satisfy the definition of wilderness in the Wilderness Act and have been found appropriate for designation as wilderness on the basis of an analysis of the existing and potential uses of the land.

Substantially Unnoticeable: Refers to something that either is so insignificant as to be only a very minor feature of the overall area or is not distinctly recognizable by the average visitor as being manmade or man-caused because of age, weathering or biological change. An example of the first would be a few minor dams or abandoned mine buildings that are widely scattered over a large area, so that they are an inconspicuous part of the scene. Serious intrusions of this kind, or many of them, may preclude inclusion of the land in a wilderness study area. An example of the second would be an old juniper control project that has grown up to a natural appearance, the old fallen trees largely decomposed.

Wilderness: The definition contained in section 2(c) of the Wilderness Act of 1964 (78 Stat. 891). (See Appendix B for its full text).

Wilderness Area: An area formally designated by Act of Congress as part of the National Wilderness Preservation System.

Wilderness Characteristics: The definition contained in section 2(c) of the Wilderness Act of 1964. (78 Stat. 891) (See Appendix B for its full text).

Wilderness Inventory: An evaluation of the public lands in the form of a written description and map showing those lands that meet the wilderness criteria as established under section 603(a) of FLPMA and section 2(c) of the Wilderness Act, which will be referred to as Wilderness Study Areas (WSA).

Wilderness Management: The management of human use and influence on lands which have been designated by Act of Congress as wilderness areas.

Wilderness Program: Term used to describe all wilderness activities of the Bureau of Land Management including identification, management, and administrative functions.

Wilderness Recommendations: A recommendation by the Bureau of Land Management, the Secretary of the Interior, or the President, with respect to an area's suitability or nonsuitability for preservation as wilderness.

Wilderness Reporting: The process of preparing the reports containing wilderness recommendations on wilderness study areas and transmitting those reports to the Secretary of the Interior, the President, and Congress.

Wilderness Review: The term used to cover the entire wilderness inventory, study, and reporting phases of the wilderness program of the Bureau of Land Management.

Wilderness Study Area (WSA): A roadless area or island that has been inventoried and found to have wilderness characteristics as described in section 603 of FLPMA and section 2(c) of the Wilderness Act of 1964 (78 Stat. 891).

Wilderness Study: The process outlined in these guidelines which specifies how each wilderness study area must be studied through the BLM resource management planning system, analyzing all resources, values and uses within the WSA to determine whether the area will be recommended as suitable or nonsuitable for wilderness designation.

[FR Doc. 80-39089 Filed 12-18-80; 8:45 am]
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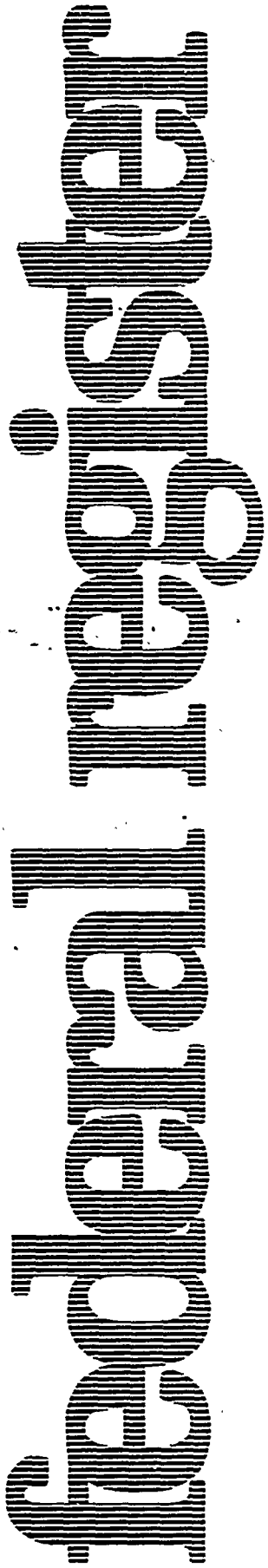

Friday
December 19, 1980

Part IV

Department of Labor

Employment Standards Administration

Minimum wages for Federal and federally-assisted construction; general wage determination decisions, modifications and supersedeas decisions

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor specify, in accordance with applicable law and on the basis of information available to the Department of Labor from its study of local wage conditions and from other sources, the basic hourly wage rates and fringe benefit payments which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of the character and in the localities specified therein.

The determinations in these decisions of such prevailing rates and fringe benefits have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 1.1 (including the statutes listed at 36 FR 306 following Secretary of Labor's Order No. 24–70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of part 1 of subtitle A of title 29 of Code of Federal Regulations, Procedure for Predetermination of Wage Rates (37 FR 21138) and of Secretary of Labor's Orders 12–71 and 15–71 (36 FR 8755, 8756). The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in effective date as prescribed in that section, because the necessity to issue construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions are effective from their date of publication in the Federal Register without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5.

Accordingly, the applicable decision together with any modifications issued subsequent to its publication date shall be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR, Part 5. The wage rates contained therein shall be the minimum paid under such contract by contractors and subcontractors on the work.

Modifications and Supersedeas Decisions to General Wage Determination Decisions

Modifications and suersedeas decisions to general wage determination decisions are based upon information obtained concerning changes in prevailing hourly wage rates and fringe benefit payments since the decisions were issued.

The determinations of prevailing rates and fringe benefits made in the modifications and supersedeas decisions have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 1.1 (including the statutes listed at 36 FR 306 following Secretary of Labor's Order No. 24–70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of part 1 of subtitle A of title 29 of Code of Federal Regulations, Procedure for Predetermination of Wage Rates (37 FR 21138) and of Secretary of Labor's Orders 13–71 and 15–71 (36 FR 8755, 8756). The prevailing rates and fringe benefits determined in foregoing general wage determination decisions, as hereby modified, and/or superseded shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects as laborers and mechanics of the specified classes engaged in contract work of the character and in the localities described therein.

Modifications and supersedeas decisions are effective from their date of publication in the Federal Register without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5.

Any person, organization, or governmental agency having an interest in the wages determined as prevailing is encouraged to submit wage rate information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Office of Government Contract Wage Standards, Division of Government Contract Wage Determinations, Washington, D.C. 20210. The cause for not utilizing the rulemaking procedures prescribed in 5 U.S.C. 553 has been set forth in the original General Determination Decision.

New General Wage Determination Decisions

None.

Modifications to General Wage Determination Decisions

The numbers of the decisions being modified and their dates of publication in the Federal Register are listed with each State.

Colorado:	
CO80-5138	Oct. 24, 1980.
New Mexico:	
NM80-4090	Nov. 28, 1980.
New York:	
NY80-3057	Sept. 19, 1980.
Pennsylvania:	
PA80-3033	Oct. 3, 1980.
PA80-3062	Oct. 31, 1980.
Utah:	
UT80-5148	Dec. 12, 1980.
West Virginia:	
WV80-3016	May 30, 1980.

Supersedeas Decisions to General Wage Determination Decisions

The numbers of the decisions being superseded and their dates of publication in the Federal Register are listed with each State. Supersedeas decision numbers are in parentheses following the numbers of the decisions being superseded.

Minnesota:	
MN77-2031 (MN80-2088)	Mar. 4, 1977.
New Mexico:	
MN79-4104 (NM80-4101)	Nov. 2, 1979.

Cancellation of General Wage Determination Decisions

The general wage decision listed below is canceled. Agencies with construction projects pending to which the canceled decision

would have been applicable should utilize the project determination procedure by submitting Form SF-308. See Regulations Part 1 (29 CFR), Section 1.5. Contracts for which bids have been opened shall not be affected by this notice. Also consistent with 29 CFR, § 1.7(b)(2), the incorporation of the canceled decision in contract specifications, the opening of bids is within ten (10) days of this notice, need not be affected.

MD77-3036—Wicomico County, Maryland, dated March 4, 1977, in 42 FR 12613—Residential Construction

Signed at Washington, D.C., this 12th day of December 1980.

Dorothy P. Come,

Assistant Administrator, Wage and Hour Division.

BILLING CODE 4510-27-M

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
DECISION NO. CO80-5138 - MOD. #3 (45 FR 70682 - October 24, 1980) El Paso County, Colorado					
Change:					
Electricians	$14.20	.75	3%+1.00		.015

DECISION NO. NM80-4090 - MOD. #1
(45 FR 79286)- November 28, 1980
Statewide, New Mexico

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ADD:					
CEMENT MASONS (Residential)					
Sandoval, Bernalillo and Valencia	$8.67	.77	.70	.20	.04
Rio Arriba, Santa Fe and Taos	10.07	.77	.70	.20	.04
OMIT:					
SOFT FLOOR LAYERS:					
ZONE I	8.50	.38	.10		.02
CHANGE:					
ELEVATOR CONSTRUCTORS:					
Chaves, Hidalgo, Dona Ana, Eddy, Grant, Lea, Luna, Otera and Sierra Cos.:					
Elevator constructors	9.605	1.195	.82	4%+a+b	.035
Elevator constructors' helper	6.72	1.195	.82	4%+a+b	.035
PAINTERS: (ZONE III)					
Class-A	8.43	.83			.02
Class-B	8.85	.83			.02
Class-C	8.575	.83			.02
Class-D	9.28	.83			.02
DECISION NO.NY80-3057-Mod.#2 (45 FR 62672-Sept.19,1980) Bronx,Kings,Queens,New York & Richmond Counties, N.Y.					
CHANGE:					
Electricians:					
Jobbing,maintenance,repair work;alterations & new work up to a contract price of $50,000.00	8.00	1½%+a	7½%+b	8½%+c	1%
All other contracts	14.65	1½%+a	7½%+b	8½%+c	1%

DECISION NO. PA80-3033
MOD. NO. 1
(45 FR - 65891 - October 3, 1980)
Elk, Forest, McKean & Warren Counties, Pennsylvania

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CHANGE					
Electricians:					
Elk, Forest and Warren Cos.	$14.55	.72	3%+.28	.75	1/2 of 1%
Marble Setters:					
Elk, McKean and Warren Cos.	13.15	.80	1.10		
Plasterers:					
Elk, McKean and Warren Cos.	13.15	.80	1.10		
Plumbers & Steamfitters					
McKean & Warren Cos.	14.97	.68	.55		.04
Forest County					
Contracts under $10,000	9.15	.95	1.30		.15
Contract over $10,000	14.00	.95	1.30		.15
Tile Setters and Terrazzo Workers					
Elk, McKean & Warren Cos.	13.15	.80	1.10		
Sheet Metal Workers	13.75	1.12	1.66		.23

DECISION NO. PA80-3062
MOD. NO. 1
(45 FR 72452 - October 31, 1980)
Bucks, Chester, Delaware, Montgomery & Philadelphia Counties, Pennsylvania

	PER DAY	Fringe Benefits Payments			
		HOURLY H & W	HOURLY Pensions	Vacation	Education and/or Appr. Tr.
ADD:					
Tunnel Compressed Air:					
Laborers:					
Blasters, shield drivers	$116.25	.95	.85		
Miners, miner's bore driver	120.00	.95	.85		
Brakemen, Trackmen, miners, helpers, groutmen, iron men, maintenance man, pump men, electrician, cement finisher, carpenters, hydraulic men, monorail men, conveyor men, powder carriers, pan men, riggers, lock tenders' helpers, muck lock tenders' helpers, nippers, derailed men, cablemen, hosemen, gravel men	107.73	.95	.85		
Mucking machine operators	124.00	.95	.85		
Laborers (Surface) per hour	9.75	.95	.85		
Between Locks					
Lock tenders, motor men	112.81	.95	.85		
All other men	107.73	.95	.85		
Outside of Locks					
Outside lock tenders, gauge tenders	107.73	.95	.85		
Outside lock tenders' helpers	102.65	.95	.85		
Air Pressure			AMOUNT IN ADDITION TO BASE RATE (NOT CUMULATIVE)		
15 lb. up to but less than 26 lb.				$1.50	
26 lb. up to but less than 31 lb.				2.00	
31 lb. up to but less than 36 lb.				2.50	
36 lb. up to but less than 41 lb.				3.00	
41 lb. or more				3.50	

DECISION NO. WV80-3016-Mod. #2 (45 FR 36771-May 30,1980) Statewide, West Virginia	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CHANGE:					
LABORERS:					
Heavy Construction:					
Group 1	$10.57	.70	.70		.05
Group 2	10.15	.70	.70		.05
Group 3	9.85	.70	.70		.05
Group 4	9.52	.70	.70		.05
Group 5	9.28	.70	.70		.05
Group 6	8.78	.70	.70		.05
Highway Construction:					
Group 1	10.37	.70	.70		.05
Group 2	9.96	.70	.70		.05
Group 3	9.64	.70	.70		.05
Group 4	9.32	.70	.70		.05
Group 5	9.02	.70	.70		.05
Group 6	8.56	.70	.70		.05

DECISION NO. UT80-5148 - Mod. #1 Dated December 12, 1980 Statewide Utah	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Change:					
Laborers, Heavy & Highway: Group 3, Area 2	$10.27	.50	.35	.25	.04

STATE: MINNESOTA COUNTIES: See Below*
DECISION NO: MN80-2088 DATE: Date of Publication
SUPERSEDES: Decision No. MN77-2031 dated March 4, 1977 in Federal Register 42 FR 12616
DESCRIPTION OF WORK: Heavy and Highway Construction

*COUNTIES: Becker, Clay, Cass, Todd, Hubbard, Ottertail, Wadena and Wilkin, Minnesota

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CARPENTERS	$8.90				
CEMENT MASONS	8.87				
PIPEFITTERS	8.70	.35	.15		
LABORERS:					
Unskilled	6.57				
Asphalt Raker	6.88	.41	.28		
POWER EQUIPMENT OPERATORS:					
Asphalt Distributor Spreader	8.27				
Asphalt Plant	8.30				
Backhoe	10.32	.75	.60		.05
Conveyer Operator	7.78	.41	.28		
Crushing & Screening Plant	9.08	.41	.28		
Fireman	8.36	.41	.28		
Front End Loader	10.10	.75	.60		.05
Grader Operator	8.93				
Mechanic	9.62				
Motor Patrol, Finishing	9.40	.41	.28		
Rollers, Base	7.78	.41	.28		
Rollers, Finish	7.84				
Scraper	9.15	.70	.55		
Truck Crane Operator	10.32	.75	.60		.05
Tractor w/powerstake over 50 hp	10.10	.75	.60		.05
Tractor w/power take-off	10.10	.75	.60		.05
TRUCK DRIVERS:					
Bituminus Distributor Driver	8.36	.41	.28		
Truck Driver (5 axle)	8.37				
Truck Driver (Tandem, 3 axle)	8.36	.41	.28		
Truck Mechanic	8.72	.41	.28		

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a) (1) (ii)).

SUPERSEDEAS DECISION

STATE: NEW MEXICO COUNTY: STATEWIDE
DECISION NO. NM80-4101 DATE: Date of Publication
Supersedes Decision No. NM79-4104 dated November 2, 1979 in 44FR63456
DESCRIPTION OF WORK: Street, highway, utility and light engineering construction shall include the construction, alteration, repair and demolition of roads, streets, highways, alleys, sidewalks, curbs, gutters, guard rails, fences, parkways, parking areas, airports (other than buildings thereon), bridle paths, athletic fields; highway bridges, median channels and grade separations involving highways; parks; golf courses, viaducts; uncovered reservoirs and uncovered sewage and water treatment facilities; canals, ditches and channels (including linings other than concrete linings); earth dams under one million (1,000,000) cubic yards; well drilling telephone and electrical transmission lines and site preparations which are part of street, highway, utility and light engineering projects; and shall include construction, alteration, repair, and demolition of utilities such as sanitary sewers, storm sewers, water lines, gas lines, including appurtenances thereto such as lift stations, inlets, manholes, sewer lagoons, septic tanks and service outlets (stub-outs), providing such utility construction is outside the property line or more than five (5) feet from a building or heavy engineering structure, including the Navajo Indian Reservation.

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CARPENTERS	$6.54	.10	.20	.10	.04
CEMENT MASONS	5.90	.26			
IRONWORKERS:					
Reinforcing	7.49	.25	.25		
Structural	7.99	.50	.75		.04
LABORERS:					
GROUP I	3.83	.20	.15		
GROUP II	4.13	.20	.15		
Group III	4.13	.20	.15		
Group IV	4.53	.20	.15		

LABORERS CLASSIFICATION DEFINITIONS

GROUP I
Common laborer; carpenter tender; concrete buggy operator (hand); concrete workers

GROUP II
Wagon, air track, drill and diamond drillers' tender (outside)

GROUP III
Air and power tool man; asphalt raker; batching plant scaleman; tenders (to cement masons and plasters); chain sawman; concrete touchup-man; concrete saw man; curbing machine; asphalt or cement; cutting torchman; metal form setter-road; grade setter; hod carrier; mortar mixer and mason tender; powderman; sealer; vibrator compactor (hand type); vibrator-man (hand -type); concrete power buggyman, wagon; air track drill and diamond drillers (outside)

GROUP IV
Gunite pumpcreteman & nozzleman; multiplate setter; pipelayer; Manhole builder; Powderman-blaster-make up

PAINTERS:					
Brush	4.57	.10	.20	.10	.04
Spray	6.30	.11	.07	.01	.01

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
POWER EQUIPMENT OPERATORS:					
Group I	$ 6.17	.15	.10		.01
Group II	6.37	.15	.10		.01
Group III	6.95	.15	.10		.01
Group IV	6.97	.15	.10		.01
Group V	6.97	.15	.10		.01
Group VI	7.12	.15	.10		.01
Group VII	7.17	.15	.10		.01
Group VIII	7.32	.15	.10		.01
Group IX	7.82	.15	.10		.01
Group X	8.62	.15	.10		.01

POWER EQUIPMENT OPERATORS CLASSIFICATION DEFINITIONS

GROUP I - Concrete paving curing machine

GROUP II - Belt type conveyors (material & concrete); broom (self-propelled); fork lift; grease truck operator; head oiler; hydro lift; tractor (under 50 drawbar HP with or without attachment); Industrial locomotive brake-man; front end loader (2 CY or less); fireman; oiler screedman; roller (pull type); mulching machine ; roller (self-propelled)

GROUP III - Concrete paving form grader; concrete paving gang vibrator; concrete paving joint or saw machine; concrete paving sub grader; tractor with backhoe attachment; subgrade or base finisher; power plant (electric general or welding machine)

GROUP IV -Bulldozer (including self-propelled roller with dozer attachment); batch or continous mix plant (concrete soil-cement, or asphalt); roller (steel wheel); front end loader (2 CY thru 10 CY); scraper operator; motor grader

GROUP V - Asphalt distributor; asphalt paving or laydown machine; asphalt retort heater; mixer, heavy duty, asphalt or soil cement; trenching; clam type shaftmucker; backhoe, clamshell, dragline, gradall, shovel (under 3/4 cy); elevating grader or belt loader; cranes (crawler or mobile) under 20 ton; air compressor (300 CFM & over); crushing screening and washing plants; drilling machine (cable core or rotary); mixer, concrete (1 cy and less); pump (6" intake or over); winch truck; hoist (1 drum); industrial locomotive motorman; lumber stacker; tractor (50 drawbar HP or over)

POWER EQUIPMENT OPERATORS CLASSIFICATION DEFINITION (CONT'D)

GROUP VI - Concrete paver mixer; host (2 drum and over); side-boom; traveling crane; piledriver; backhoe, clamshell, dragline, gradall, shovel (3/4 cy to 3 cy); cranes (crawler or mobile) 20 ton to 40 ton; front end loader (over 10 cy); mixer, concrete (over 1 cy); mechanic and/or welder)

GROUP VII - Concrete slip-form paving machine; concrete paving finishing machine; concrete paving longitudinal float; gunite machine; refrigerator; jumbo former drilling stage; slusher; concrete paving spreader; pumpcrete machine; grout pump operator

GROUP VIII - Mine hoist; bulldozer (multiple units); scraper (multiple units); mucking machine; backhoe, clamshell, dragline, gradall, shovel (over 3 cy); cranes (crawler or mobile) over 40 tons

GROUP IX--Belt loader (CMI types) overator; derrick, cableway

GROUP X - Pipemobile operator; mole operator

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
TRUCK DRIVERS:					
Distributor (asphalt)	$5.09	.26			
Dump or batch truck:					
Under 8 cy	4.69	.26			
8cy and under 16 cy	4.89	.26			
Diesel-powered transport	5.29	.26			
Flatbed, 1½ ton	4.69	.26			
Flatbed, over 1½ ton	4.89	.26			
Lowboy, heavy equipment	5.29	.26			
Lowboy, light equipment	5.09	.26			
Off-highway hauler	5.09	.26			
Pick-up truck 3/4 ton or under	4.69	.26			
Trailer or semi-trailer dump & transit mix	5.09	.26			
Warehousemen	4.69	.26			

LINE CONSTRUCTION AREA & ZONE DEFINITIONS

Bernalillo, Colfax, Catron, Chaves, Curry, DeBaca, Grant, Guadalupe, Harding, Lincoln, Los Alamos, McKinley, Mora, Quay, Rio Arriba, Roosevelt, Sandoval, San Juan, San Miguel, Santa Fe, Sierra, Socorro, Taos, Torrance, Union, Valencia and White Sands Missile Range and that portion of Fort Bliss in New Mexico

LINE CONSTRUCTION AREA AND ZONE DEFINITIONS (CONT'D)

ZONE I - Cities and Towns Basing Points - Miles from Main Post Offices

Albuquerque - 15 miles
Santa Fe - 10 miles
Las Vegas - 8 miles
Farmington - 6 miles
Raton - 6 miles
Tucumcari - 6 miles
Aztec - 6 miles
Roswell - 12 miles
Ruidoso - 12 miles
Portales - 12 miles
Carrisoso - 12 miles
Clovis - 12 miles
Gallup - 12 miles
*Pojoaque - 2 miles

*All areas adjacent to Pojoaque that are over two miles distant from the main post office in that town will be zoned out of Santa Fe.

ZONE II - Extending up to 20 miles beyond zone 1

ZONE III - Extending up to 30 miles beyond zone 1

ZONE IV - Anything beyond 30 miles from zone 1

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
LINE CONSTRUCTION:					
ZONE I					
Linemen - Technicians	$13.95	.60	3%+.70		1/2%
Cable splicers	15.35	.60	3%+.70		1/2%
Equipment Operator (includes Helicopter op.)	13.25	.60	3%+.70		1/2%
Equipment mechanic (includes Helicopter mechanic	12.14	.60	3%+.70		1/2%
Powderman	12.14	.60	3%+.70		1/2%
Groundman & Jackhammer Oprs	9.90	.60	3%+.70		1/2%
ZONE II					
Linemen - Technicians	15.07	.60	3%+.70		1/2%
Cable splicers	16.47	.60	3%+.70		1/2%
Equipment operator (includes Helicopter op.)	14.37	.60	3%+.70		1/2%
Equipment operator (includes Helicopter mechanic	13.26	.60	3%+.70		1/2%
Powderman		.60	3%+.70		1/2%
Groundman & Jackhammer oprs	11.02	.60	3%+.70		1/2%

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
LINE CONSTRUCTION (CONT'D)					
ZONE III					
Linemen - Technicians	$15.90	.60	3%+.70		½%
Cable splicers	17.30	.60	3%+.70		½%
Equipment Operator (includes Helicopter opr.)	15.20	.60	3%+.70		½%
Equipment mechanic (includes Helicopter mechanic	14.09	.60	3%+.70		½%
Powderman	14.09	.60	3%+.70		½%
Groundman & Jackhammer op.	11.85	.60	3%+.70		½%
ZONE IV					
Linemen - Technician	17.44	.60	3%+.70		½%
Cable splicers	18.84	.60	3%+.70		½%
Equipment operator (includes Helicopter opr.)	16.74	.60	3%+.70		½%
Equipment mechanic (includes Helicopter mechanic)	15.63	.60	3%+.70		½%
Powderman	15.63	.60	3%+.70		½%
Groundman & Jackhammer op.	13.39	.60	3%+.70		½%
Los Alamos County-Use Zone III Rates.					

LINE CONSTRUCTION AREA & ZONE DEFINITION

Applies to switching stations and substations adjacent to power plants in zone 1 and zone 2 in Luna, Dona Ana, Otero and Hidalgo Counties, exclusive of White Sands Missile Range and that portion of Fort Bliss in New Mexico.

ZONE I - The area within 25 miles radius from the downtown Post Office of El Paso, Texas, Fort Bliss and Biggs Field; the area within a five mile radius of any city, town or municipality within which an employer establishes or maintains his place of business; the area with a ten mile radius from the post office in Las Cruces, New Mexico, and within a five mile radius from the post office in Alamogordo, New Mexico.

ZONE II

All other areas of the jurisdiction except those specified in zone 1

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ZONE I					
Linemen - technicians	$10.15	.60	3%		1/2%
Cable splicers	10.40	.60	3%		1/2%
Equipment operator (includes Helicopter op.)	9.64	.60	3%		1/2%
Equipment mechanic (includes helicopter mechanic)	8.93	.60	3%		1/2%
Powderman	8.93	.60	3%		1/2%
Groundman & Jackhammer op.	7.21	.60	3%		1/2%
ZONE II					
Linemen - technicians	11.60	.60	3%		1/2%
Cable splicers	11.85	.60	3%		1/2%
Equipment operator (includes Helicopter op.)	11.02	.60	3%		1/2%
Equipment operator (includes Helicopter mechanic)	10.21	.60	3%		1/2%
Powderman	10.21	.60	3%		1/2%
Groundman & Jackhammer op.	8.24	.60	3%		1/2%

LINE CONSTRUCTION AREA AND ZONE DEFINITION

Applies to switching stations adjacent to power plants in Eddy and Lea Counties; the following zones listed shall be designated from main Post Office of Artesia, Carlsbad, Hobbs and Lovington.

ZONE A - 0 - 12 miles
ZONE B - 12 - 22 miles
ZONE C - 22 - 40 miles
ZONE D - 40 miles and beyond

LINE CONSTRUCTION					
ZONE A					
Linemen-technician	12.20	.60	3%		1/2%
Cable splicers	12.55	.60	3%		1/2%
Equipment op. (includes Helicopter operator)	11.59	.60	3%		1/2%
Equipment mechanic, (includes helicopter mechanic and Powderman	10.74	.60	3%		1/2%
Groundman & Jackhammer op.	8.66	.60	3%		1/2%

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	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
LINE CONSTRUCION (cont'd)					
ZONE B					
Linemen-technician	$12.55	.60	3%		1/2%
Cable splicers	12.90	.60	3%		1/2%
Equipment op. (includes helicopter operator)	11.94	.60	3%		1/2%
Equipment mechanic (includes helicopter mechanic & Powderman	11.09	.60	3%		1/2%
Groundman & jackhammer op.	9.01	.60	3%		1/2%
ZONE C					
Linemen-technician	12.70	.60	3%		1/2%
Cable splicers	13.05	.60	3%		1/2%
Equipment op. (includes helicopter operator)	12.09	.60	3%		1/2%
Equipment mechanic (includes helicopter mechanic & powderman	11.25	.60	3%		1/2%
Ground man & jackhammer op	9.16	.60	3%		1/2%
ZONE D					
Linemen-technician	12.95	.60	3%		1/2%
Cable splicers	13.30	.60	3%		1/2%
Equipment op. (includes helicopter operator)	12.34	.60	3%		1/2%
Equipment mechanic (includes helicopter mechanic & powderman	11.49	.60	3%		1/2%
LINE CONSTRUCTION-UTILITY LINE WORK FOR ELECTRIC AND TELEPHONE UTILITIES REA CO-OPS, RAILROADS AND MUNICIPALITIES:					
Linemen-technician	12.65	.60	3%+.70		1/2%
Cable splicer	13.54	.60	3%+.70		1/2%
Equipment op. (includes helicopter operator)	11.40	.60	3%+.70		1/2%
Equipment mechanic (includes helicopter mechanic)	11.40	.60	3%+.70		1/2%
Powderman	11.00	.60	3%+.70		1/2%
Groundman & jackhammer operator	8.97	.60	3%+.70		1/2%

Unlisted classifications needed for work not included within the scope of this classification may be added only after award as provided in the labor standards contract clauses (29 CFR, 5.5 (a)(1)(ii)).

Federal Register

Friday
December 19, 1980

Part V

Department of Health and Human Services

Office of the Secretary

Improving Government Regulations; Semiannual Agenda of Regulations

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

20 CFR Ch. 111

21 CFR Ch. 1

42 CFR Chs. I-IV

45 CFR Subtitle A Chs. II, III and XIII

Improving Government Regulations; Semiannual Agenda of Regulations

AGENCY: Department of Health and Human Services.

ACTION: Publication of the semiannual agenda of regulations (Improving Government Regulations).

SUMMARY: The President's Executive Order on Improving Government Regulations, Executive Order 12044, requires each Federal agency to publish at least twice a year a list of significant regulations under development. HHS published its last semiannual agenda on June 13, 1980 (45 FR 40356).

This semiannual agenda contains: (1) All non-FDA regulations being developed within the Department; and (2) FDA regulations classified as "policy significant". Many of the regulatory actions listed in this agenda will be reviewed by a new Secretary of Health and Human Services after January 20, 1981. Review by the new Secretary may result in modifications to the agenda.

FOR FURTHER INFORMATION CONTACT: For further inquiries or comments related to specific regulations listed in the agenda, the public is encouraged to contact the appropriate responsible individual. Questions or comments on the overall agenda should be sent to: Glenn Kamber, Deputy Executive Secretary (Regulations), Office of the Secretary, Department of Health and Human Services, 200 Independence Avenue, S.W., Washington, D.C. 20201, Telephone: (202) 245-3160.

Patricia Roberts Harris

Secretary of Health and Human Services.

REGULATIONS AFFECTING SERVICES AND OPPORTUNITIES TO INDIVIDUALS

AGE

Infants and Preschool Children

PHS-6 Protection of Human Subjects: Regulations on Research Involving Children
PHS-13 Grants for Detention, Treatment, and Prevention of Lead-Based Poisoning
PHS-85 Health Education—Risk Reduction Grants—Amendments to Include Programs to Discourage Smoking and the use of Alcoholic Beverages Among Children and Adolescents
HDS-4 Developmental Disabilities Program: General Rules
HDS-7 Child Abuse and Neglect Prevention and Treatment Program: General Rules
HDS-15 Eligibility Requirements and Limitations for Enrollment in Head Start
HDS-7 Adoption Assistance and Child Welfare Act of 1980
SSA-9 Inclusion of Child Receiving OASDI Benefits into an AFDC Assistance Unit (AFDC)
SSA-44 Determination of Assistance Payment When One or More Family Members Are SSI Beneficiaries (AFDC)
SSA-50 Additional Drop Out Years for Child Care (OASDI)
SSA-51 Proration of Shelter Utilities and Similar Expenses for AFDC Children Living with Ineligible Relative (AFDC)

School-Age Children

PHS-6 Protection of Human Subjects: Regulation on Research Involving Children
PHS-85 Health Education—Risk Reduction Grants—Amendments to Include Programs to Discourage Smoking and the use of Alcoholic Beverages Among Children and Adolescents
HDS-4 Developmental Disabilities Program: General Rules
HDS-7 Child Abuse and Neglect Prevention and Treatment Program: General Rules
HDS-16 Adoption Assistance and Child Welfare Act of 1980
SSA-9 Inclusion of Child Receiving OASDI Benefits into an AFDC Assistance Unit (AFDC)
SSA-44 Determination of Assistance Payment When One or More Family Members Are SSI Beneficiaries (AFDC)
SSA-50 Additional Drop Out Years for Child Care (OASDI)
SSA-51 Proration of Shelter Utilities and Similar Expenses for AFDC Children Living with Ineligible Relative (AFDC)
OS-1 Age Discrimination Regulations

Adolescents and Young Adults

HDS-4 Developmental Disabilities Program: General Rules
HDS- Adoption Assistance and Child Welfare Act of 1980
SSA-9 Inclusion of Child Receiving OASDI Benefits into an AFDC Assistance Unit (AFDC)
SSA-44 Determination of Assistance Payment When One or More Family Members Are SSI Beneficiaries (AFDC)
SSA-50 Additional Drop Out Years for Child Care (OASDI)
SSA-51 Proration of Shelter Utilities and similar Expenses for AFDC Children Living With Ineligible Relative
SSA-52 Age 18 Deeming
OS-1 Age Discrimination Regulations

Adults

HDS-5 Social Service Programs: Consolidated Grants to Insular Areas
HDS-6 Native American Program: General Rules
HDS-17 Medical and Social Services for Certain Handicapped Persons, Section 201(c) of Pub. L. 96-265
HDS-18 Social Services Programs under Titles IV-A and XX of the Social Security Act-Safeguarding Information
HDS-19 Social Service Program Under Title XX of the Social Security Act. Joint Regulation to Implement Sections 201(a) and (b) of Pub. L. 96-265
HDS-20 Social Service Programs under Titles I, IV-A, X, XIV, XVI and XX of the Social Security Act—Implementation of provisions in Title II of Pub. L. 96-272 and Revision of the Title XX Training Regulations
HDS-21 Joint Recodification Project—Fair Hearings
HDS-22 Joint Recodification Project-Application, Eligibility Determination
HDS-23 Work Incentive Program: Technical Amendments and Relocation to Chapter XIII of 45 CFR
HDS-24 Work Incentive Program: Period within which State Claims must be filed

TYPE OF SERVICE

Health

PHS-2 National Library of Medicine Programs: Revision of General Rules for the National Library of Medicine, National Library of Medicine Grants, National Institutes of Health and National Library of Medicine Traineeships, and National Institutes of Health and National Library of Medicine Training Grants
PHS-5 Protection of Human Research Subjects—Institutional Review Boards
PHS-6 Protection of Human Subjects: Regulations on Research involving Children
PHS-7 Protection of Human Subjects: Regulations on Research Involving Those Institutionalized as Mentally Disabled
PHS-15 Foreign Quarantine Regulations: Requirements and Inspections
PHS-17 Medical Examination of Aliens
PHS-24 Subpart F—Qualification of Health Maintenance Organizations
PHS-26 Subpart I—Continued Regulation of HMOs and Other Entities
PHS-31 Persons to Whom Services Will be Provided
PHS-33 Medical Care for Uniformed Service Personnel of the Coast Guard, Public Health Service and National Oceanic and Atmospheric Administration
PHS-34 Medical Care for Seafarers and Others at Public Health Service Facilities
PHS-35 Public Health Service Hospital and Clinic Management
PHS-38 Amendments to MCH CC Services Program
PHS-39 Grants to Plan, Develop and Operate Hospital-Affiliated Primary Care Centers
PHS-40 Project Grants for Community Health and Migrant Health
PHS-41 Demonstration Health and Nutrition Projects
PHS-42 Project Grants to States for Hypertension Services
PHS-46 Grants for Drug Abuse Prevention, Treatment, and Rehabilitation: Requirements for State participation in Formula Grants

PHS–48 Confidentiality of Alcohol and Drug Abuse Patient Records; Minimum Requirements for Protecting
PHS–57 Area Health Education Centers
PHS–69 Grants for Nurse Practitioner Traineeships Programs
PHS–72 National Guidelines for Health Planning
PHS–73 Health Systems Agency Review of Certain Proposed Uses of Federal Health Funds
PHS–74 Health Systems Agency Review of Certain Proposed Uses of Federal Funds; Proposed Uses for Research and Training
PHS–75 Health Systems Agency and State Agency Reviews of the Appropriateness of Existing Institutional Health Services
PHS–80 Inclusion of Computed Tomographic Scanning Services Under Capital Expenditure Review
PHS–81 Limitation on Federal Participation for Capital Expenditures
PHS–83 National Institutes of Health Center Grants
PHS–84 Clinical Laboratories: Revision of Quality Control Regulations to Include Additional Requirements for Alpha-fetoprotein Testing
PHS–86 NIOSH Investigations of Places of Employment
PHS–87 NIOSH Grant Regulations; Conformance with Part 74
PHS–88 Fees for Direct Training, Center for Disease Control
PHS–90 Possession, Use, and Transport of Smallpox and Whitepox viruses
PHS–91 Indian Health
PHS–92 Redesignation of Health Service Areas
PHS–93 Funding of Health Systems Agencies—General
PHS–94 Discretionary Funding of Health Systems Agencies
PHS–95 National Guidelines for Health Planning (Standards) Other than CT scanners
PHS–97 Governing Body Requirement for Health Systems Agencies
PHS–98 Drug Abuse Project Grant Program
PHS–99 Employee Protection Mental Health System Act
PHS–100 Mental Health Service Programs
PHS–101 Grants for Mental Health Service Programs
PHS–102 Mental Health Rights and Advocacy
PHS–103 Rape Prevention and Control
PHS–104 Project Grants for Preventive Health Services—Subpart I—Grants for Other Preventive Health Programs (42 CFR Part 51b)
PHS–105 Cooperative Agreements for Nutrition Surveillance Systems
PHS–106 Administrative and Managerial Arrangements
PHS–107 "ERISA" Rule
PHS–108 National Guidelines for Health Planning (CT Scanner Standards)
PHS–109 Health Education Assistance Loans (HEAL).
PHS–110 Amendments to 42 CFR Part 124, Subpart F—Reasonable Volume of Uncompensated Services to Persons Unable to Pay
PHS–111 Redesignation of the Contract Health Services Delivery Area (CHSDA) for the Penobscot Reservation
PHS–112 Redesignation of the Contract Health Service Delivery Area (CHSDA) for the Passamaquoddy Reservation
PHS–113 Redesignation of the Contract Health Service delivery Area (CHSDA) for the Reservation of the Mississippi Band of Choctaw Indians
PHS–114 National Center for Health Care Technology Research Grant Program
OCR–2 Provisions of Services to Limited English Speaking Persons
OS–1 Age Discrimination Regulations

Health Financing

PHS–28 New Subpart I—Loans and Loan Guarantees for Acquisition and Construction of Ambulatory Health Care Facilities
PHS–96 Tax-exempt Refinancing of Health Facilities Construction Loans
HCFA–2 Payment for Services Which Are Not Medically Necessary and/or Not Rendered in the Appropriate Setting
HCFA–3 Professional Standards Review Organizations (PSROs) Reconsideration and Appeals
HCFA–4 Hospital Utilization Review
HCFA–5 Validation of Accreditation Surveys of Hospitals
HCFA–6 Conditions of Participation for Hospitals
HCFA–7 Funding of PSRO Hospital Review
HCFA–8 Confidentiality and Disclosure of Information of Professional Standards Review Organizations (PSROs)
HCFA–13 Conditions of Participation for Skilled Nursing Facilities and Intermediate Care Facilities
HCFA–15 Automatic Extinguishment Systems for New Long Care Facilities
HCFA–16 Termination of Federal Financial Participation in Long Term Care Facilities
HCFA–17 Radiological Services
HCFA–18 Reimbursement of Prepaid Health Plans
HCFA–21 Provider Reimbursement Determinations
HCFA–22 Fiscal Intermediary Performance
HCFA–23 Durable Medical Equipment
HCFA–25 Part A Entitlement and Copayments
HCFA–26 Reimbursement: Intership and Residency Programs
HCFA–27 Teaching Hospitals' Physicians Costs
HCFA–28 Special Care Units
HCFA–29 Reimbursement to Related Organizations
HCFA–30 End-Stage Renal Disease Networks
HCFA–31 Incentive Reimbursement for End-Stage Renal Disease Services
HCFA–32 Deeming of Income Between Spouses
HCFA–33 Educational Program Reimbursement
HCFA–34 Proposed List of Additional Items and Services Subject to the Lowest Charge Level
HCFA–35 Prospective Reimbursement of Rural Health Clinic Services
HCFA–36 Family Planning
HCFA–37 Reasonable Cost-Related Reimbursement for Skilled Nursing and Intermediate Care Facility Services
HCFA–38 State Medicaid Contracts
HCFA–39 Hearing Aid and Eyeglass Reimbursement
HCFA–41 Medicaid Quality Control (MQC) Time Requirements for Review; Technical Amendments
HCFA–43 Medicaid Quality Control Fiscal Disallowance—Michel Amendment
HCFA–44 Psychosurgery
HCFA–45 Verification of Services
HCFA–46 Withholding of Payments to Practitioners, Providers, and Suppliers of Services
HCFA–47 Title XIX Administrative Sanctions
HCFA–48 Medicaid Recodification: General Requirements
HCFA–49 Annual Hospital Report—Requirements for Hospital Cost Reporting
HCFA–50 Skilled Nursing Facility/Intermediate Care Facility Uniform Cost Reports
HCFA–52 Skilled Nursing Facility/Intermediate Care Facility Discharge and Bill Data
HCFA–53 Home Health Agency Cost and Utilization
HCFA–54 Home Health Agency Discharge and Bill Data
HCFA–55 Prohibition Against Payment for Less Than Effective Drugs
HCFA–56 Common Audit Requirements
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HCFA–31 Incentive Reimbursement for End-Stage Renal Disease Services
HCFA–34 Proposed List of Additional Items and Services Subject to the Lower charge Level
HCFA–36 Family Planning
FDA 72—Recommendations on Exposure from Diagnostic X-Ray Examinations
FDA 73—Recommendations for Referral Criteria for Diagnostic Radiological Examinations
FDA 84—Patient Information for Medical Devices

Pharmaceutical Manufacturers and Distributors

FDA 13—Bioresearch Monitoring; Standards for Institutional Review Boards for Clinical Investigators
FDA 14—Bioresearch Monitoring; Informed Consent
FDA 17—Bioresearch Monitoring; Obligations of Sponsors and Monitors of Clinical Investigations
FDA 18—Bioresearch Monitoring; Obligations of Clinical Investigators
FDA 19—Drug Efficacy Study Implementation; Abbreviated New Drug Applications for Post-1962 Drugs
FDA 22—New Drug Evaluation; Public Disclosure of Specifications
FDA 23—New Drug Evaluation; Revision of IND/NDA Regulations
FDA 66—Maximum Residue Limits for Ethylene Oxide, Ethylene Chlorhydrin, and Ethylene Glycol

Medical Devices and Equipment Manufacturers and Distributors

HCFA–13 Conditions of Participation for Skilled Nursing Facilities and Intermediate Care Facilities
HCFA–34 Proposed List of Additional Items and Services Subject to the Lowest Charge Level
HCFA–36 Family Planning
HCFA–39 Hearing Aid and Eyeglass Reimbursement
FDA 13—Bioresearch Monitoring; Standards for Institutional Review Boards for Clinical Investigators
FDA 14—Bioresearch Monitoring; Informed Consent
FDA 17—Bioresearch Monitoring; Obligations of Sponsors and Monitors of Clinical Investigations
FDA 18—Bioresearch Monitoring; Obligations of Clinical Investigators
FDA 58—Classification of Preenactment Devices
FDA 60—Premarket Approval Procedural Regulation
FDA 64—Restricted Device Regulation
FDA 65—Mandatory Experience Reporting
FDA 66—Maximum Residue Limits for Ethylene Oxide, Ethylene Chlorhydrin, and Ethylene Glycol
FDA 83—Restrictions on Alpha-Fetoprotein Test Kits
FDA 84—Patient Information for Medical Devices
FDA 89—Device Risk Notification
FDA 90—Prosthetic Fiber for Implantation into the Human Scalp; Banning

Cosmetic Manufacturers and Distributors

FDA 13—Bioresearch Monitoring; Standards for Institutional Review Boards for Clinical Investigators
FDA 14—Bioresearch Monitoring; Informed Consent

Biomedical Research Facilities

HCFA–44—Psychosurgery
FDA 13—Bioresearch Monitoring; Standards for Institutional Review Boards for Clinical Investigators
FDA 14—Bioresearch Monitoring; Informed Consent
FDA 17—Bioresearch Monitoring; Obligations of Sponsors and Monitors of Clinical Investigations
FDA 18—Bioresearch Monitoring; Obligations of Clinical Investigators

Animal Drug Manufacturers and Distributors

FDA 55—Procedural Regulations for Cyclic Review of Animal Drugs
FDA 56—Sensitivity of Method
FDA 75—Sulfonamide Containing Animal Drugs
FDA 77—Teat Dips
FDA78—Animal Drugs for Minor Species
FDA 79—Sterility and Pyrogenicity of Animal Drugs
FDA 80—Approval of Supplemental New Animal Drug Application

Animal Feed Manufacturers and Distributors

FDA 70—Recommendations for State and Local Agencies Concerning Accidental Radioactive Contamination of Human Food and Animal feed
FDA 76—Medicated Feed Task Force Implementation
FDA 81—Prohibited Substances; Deodorizer Distillates
FDA 87—Current Good Manufacturing Practice Relating to Poisonous and Deleteric Substances in Food, Feed, and Food-Packaging Materials Plan

Biological Product Manufacturers and Distributors

FDA 1—Antigen E Assay; Potency Standards
FDA 3—Allergenic Source Material Standards
FDA 4—Radioallergosorbent Test (RAST); Potency Test
FDA 5—Error and Accident Reports; Amend Blood GMPs
FDA 6—Reorganize Whole Blood Regulations
FDA 7—Uniform Blood Labeling Requirements
FDA 8—Notification of FDA Regarding Adverse Reaction; Recordkeeping and Reporting Requirements
FDA 9—Panel on Review of Allergenic Extracts; Product Effectiveness
FDA 10—Panel on Review of Viral Vaccines and Rickettsial Vaccines; Product Effectiveness
FDA 11—Panel on Review of Blood and Blood Products; Product Effectiveness
FDA 12—Panel on review of Bacterial Toxoids and Bacterial Vaccines with

U.S. Standards of Potency; Product Effectiveness
FDA 13—Bioresearch Monitoring; Standards for Institutional Review Boards for Clinical Investigators
FDA 14—Bioresearch Monitoring; Informed Consent
FDA 17—Bioresearch Monitoring; Obligations of Sponsors and Monitors of Clinical Investigations
FDA 18—Bioresearch Monitoring; Obligations of Clinical Investigators
FDA 23—New Drug Evaluation; Revision of IND/NDA Regulations
FDA 84—Patient Information for Medical Devices

Food Manufacturers and Distributors

FDA 13—Bioresearch Monitoring; Standards for Institutional Review Boards for Clinical Investigators
FDA 14—Bioresearch Monitoring; Informed Consent
FDA 17—Bioresearch Monitoring; Obligations of Sponsors and Monitors of Clinical Investigations
FDA 18—Bioresearch Monitoring; Obligations of Clinical Investigators
FDA 28—Cholesterol-Free Egg Substitute
FDA 29—Plant Protein; Common or Usual Names for Foods, Vegetable Protein Products Which Resemble and Substitute for Meats, Seafood, Poultry, Eggs, or Cheese
FDA 30—Sugar Labeling of Foods
FDA 33—Aflatoxin in Peanuts
FDA 34—Color Certification; Procedures for Non-Conforming Batches
FDA 35—Use of Food Preservatives BHT
FDA 36—Procedural Regulations for the Cyclic Review and Priority Listing of Food and Color Additives
FDA 37—Net Weight
FDA 38—Caffeine
FDA 39—GRAS Whey; Whey Products and Hydrogen Peroxide Used in Whey Treatments
FDA 40—Retortable Pouch
FDA 41—Xylitol
FDA 43—Trichloroethylene
FDA 44—Use of Chlorine Gas in an Aqueous Solution
FDA 45—Nitrite as Color Additive in Bacon
FDA 46—Prior Sanction Status of Nitrites in Poultry Products
FDA 47—Safety of Food Ingredients Sucrose and Corn Sugar
FDA 48—Optional Ingredient Labeling Regarding Certain Food Standards
FDA 49—National Shellfish Safety Program
FDA 50—Dietary Supplement of Vitamins and Minerals
FDA 51—Labeling of Sodium and Potassium Content of Foods
FDA 70—Recommendations for State and Local Agencies Concerning Accidental Radioactive Contamination of Human Food and Animal Feed
FDA 82—Descending Order of Predominance Ingredient Labeling Statement
FDA 86—Infant Formulas Quality Control Labeling Regulation
FDA 87—Current Good Manufacturing Practice Relating to Poisonous and Deleterious Substances in Food, Feed, and Food-Packaging Materials Plants
FDA 88—Infant Formula; Recall Procedures

All Organizations

OS-1 Age Discrimination

Mining Industry

PHS-86 NIOSH Investigations of Places of Employment
PHS-87 NIOSH Grant Regulations; Conformance With Part 74

Alcohol and Drug Facilities

PHS-46 Grants for Drug Abuse Prevention Treatment and Rehabilitation; Requirements for State Participation in Formula Grants
PHS-48 Confidentiality of Alcohol and Drug Patient Records;
PHS-98 Drug Abuse Project Grant Program

Indian Tribes and Tribal Organizations Health Facilities

PHS-30 Indian Health Care Improvement Act Programs
PHS-32 Grants for Development, Construction, and Operations of Facilities and Services

State Medicaid Agencies

HCFA-36 Family Planning
HCFA-37 Reasonable Cost-Related Reimbursement for Skilled Nursing and Intermediate Care Facility Services
HCFA-38 State Medicaid Contracts
HCFA-39 Hearing Aid and Eyeglass Reimbursement
HCFA-41 (MQC) Time Requirement for Review; Technical Amendment
HCFA-44 Psychosurgery
HCFA-47 Title XIX Administrative Sanctions
HCFA-55 Use of Federal Funds for Certain Prescribed Drugs
HCFA-56 Common Audit Requirements
HCFA-57 Medicaid Overpayment Reporting Requirements
HCFA-59 Limits on Costs and Charges for New Technology
HCFA-60 Limitations on Reasonable Charges for Computerized Tomography Scan Services
HCFA-67 Requirements for Federally Funded Hysterectomies
HCFA-68 Permissable Charges to Patient Funds
HCFA-71 Survey and Certification
HCFA-46 Withholding of Payment to Practitioners, Providers, and Suppliers of Services
HCFA-47 Title XIX Administrative Sanctions
OCR-2 Provisions of Services to Limited English Speaking Persons
HCFA-75 Proposed Medicaid Management Information System (MMIS) Performance Standards and Systems Requirements
HCFA-76 Conditions of Approval and Reapproval for Mechanized Claims Processing and Information Retrieval Systems Procedures for Reduction of Federal Financial Participation (FFP)
HCFA-77 Deeming of Income Between Spouses

Colleges and Universities

PHS-74 Health Systems Agency Review of Certain Proposed Uses of Federal Funds; Proposed Uses for Research and Training
FDA 13—Bioresearch Monitoring; Standards for Institutional Review Boards for Clinical Investigators
FDA 14—Bioresearch Monitoring; Informed Consent
FDA 17—Bioresearch Monitoring; Obligations of Sponsors and Monitors of Clinical Investigations
FDA 18—Bioresearch Monitoring; Obligations of Clinical Investigators
FDA 71—Recommendations for National Standards for Medical Radiation Technologists

Graduate and Professional Schools

PHS-56 Project Grants for Establishment of Departments of Family Medicine
PHS-57 Area Health Education Centers
PHS-63 Interdisciplinary Team Training and Curriculum Development for Health Manpower Training
PHS-69 Grants for Nurse Practitioner Traineeships Programs
PHS-74 Health Systems Agency Review of Certain Proposed Uses of Federal Funds; Proposed Uses for Research and Training

All Organizations

OS-1 Age Discrimination Regulations

Other

OCR-2 Provisions of Services to Limited English Speaking Persons

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State and Local Governments

SSA-4 Quality Control Reviews—General Administration
SSA-25 Coverage of Employees of State and Local Governments
SSA-41 Interim Assistance Provisions
SSA-44 Determination of Assistance Payment When One or More Family Members Are SSI Beneficiaries (AFDC)
SSA-46 Application Eligibility Determinations and Furnishing Assistance
SSA-51 Proration of Shelter Utilities and Similar Expenses for AFDC Children
SSA-68 Adjustment for Federal Share for Uncashed Checks (AFDC)
SSA-69 Determination of Disability (OASDI-SSI)
SSA-70 Experiments and Demonstration Projects Under Disability Insurance and Supplemental Security Income Programs (OASDI-SSI)
SSA-71 Federal Financial Participation in the Cost of a Statewide Mechanized Claims Processing and Information Retrieval System (AFDC)
SSA-72 Time for Making of Social Security Contributions for Covered State and Local Employees (OASDI)

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OS-1 Age Discrimination Regulations

Other

OCR-2 Provisions of Services to Limited English Speaking Persons
SSA-65 Claims in Trust Territories (OASDI)
SSA-70 Experiments and Demonstration Projects Under DI and SSI Programs (OASDI-SSI)

SOCIAL SERVICES

State and Local Government Agencies

HDS–6 Developmental Disabilities Program: General Rules
HDS–7 Child Abuse and Neglect Prevention and Treatment Programs: General Rules
SSA–45 Applications Eligibility Determination and Furnishing Services
HDS–17 Medical and Social Services for Certain Handicapped Persons, Section 201(c) of Pub. L. 96–265
HDS–18 Social Services Programs Under Titles IV–A and XX of the Social Security Act—Safeguarding Information
HDS–19 Social Service Program Under Title XX of the Social Security Act. Joint Regulation to Implement Sections 201 (a) and (b) of Pub. L. 96–265
HDS–20 Social Service Programs Under Titles I, IV–A, X, XIV, XVI, and XX of the Social Security Act—Implementation of Provisions in Title II of Pub. L. 96–272 and Revision of the Title XX Training Regulations
HDS–21 Joint Recodification Project—Fair Hearings
HDS–22 Joint Recodification Project—Application, Eligibility Determination
HDS–23 Work Incentive Program: Technical Amendments and Relocation to Chapter XIII of 45 CFR
HDS–24 Work Incentive Program: Period within which State Claims must be filed
HDS–16 Adoption Assistance and Child Welfare Act of 1980

Child Care Facilities

HDS–7 Child Abuse and Neglect Prevention and Treatment Program: General Rules

Residential Care Facilities

HDS–6 Developmental Disabilities Program: General Rules
HDS–7 Child Abuse and Neglect Prevention and Treatment Programs: General Rules
HDS–16 Adoption Assistance and Child Welfare Act of 1980

Local Services (i.e., nutrition and counseling)

HDS–1 Grants for States and Community Programs on Aging: General Rules

All Organizations

OS–1 Age Discrimination Regulations
OS–2 Day Care Requirements

Other

HDS–5 Social Service Programs: Consolidated Grants to Insular Areas
HDS–6 Native American Program: General Rules
HDS–15 Eligibility Requirements and Limitations for Enrollment in Head Start
HDS–17 Medical and Social Services for Certain Handicapped Persons, Section 201(c) of Pub. L. 96–265
HDS–18 Social Services Programs Under Titles IV–A and XX of the Social Security Act—Safeguarding Information
HDS–19 Social Service Program Under Title XX of the Social Security Act. Joint Regulation to Implement Sections 201 (a) and (b) of Pub. L. 96–265
HDS–20 Social Service Programs Under Titles I, IV–A, X, XIV, XVI and XX of the Social Security Act—Implementation of Provisions in Title II of Pub. L. 96–272 and Revision of the Title XX Training Regulations
HDS–21 Joint Recodification Project—Fair Hearings
HDS–22 Joint Recodification Project—Application, Eligibility Determination
HDS–23 Work Incentive Program: Technical Amendments and Relocation to Chapter XIII of 45 CFR
HDS–24 Work Incentive Program: Period within which State Claims must be filed
HDS–16 Adoption Assistance and Child Welfare Act of 1980

SUNSET REVIEW REGULATIONS

The following regulations are listed for the purposes of Section 4 of Executive Order 12044, which requires a periodic review of existing regulations. They are described in more detail elsewhere in this agenda.

FDA 6—Reorganize Whole Blood Regulations
FDA 23—New Drug Evaluation; Revision of IND/NDA Regulations
FDA 76—Medicated Feed Task Force Implementation
HCFA–6 Medicare/Medicaid Program: Conditions of Participation for Hospitals—Revised Conditions for Participation
HCFA–13 Medicare/Medicaid Program: Conditions of Participation for Skilled Nursing Facilities (SNFs) and Intermediate Care Facilities (ICFs)—Conditions of Participation
HCFA–21 Medicare Program: Provider Reimbursement Determinations—Criteria and Procedures for PRRB Hearings and Decisions
HCFA–25 Medicare Program: Part A Entitlement and Copayments—Clarification of Eligibility Requirements
HCFA–65 Medicare Program: Recodification: Medicare Provider Reimbursement Determinations and Appeals
PHS–30 Indian Health Care Improvement Act Programs
PHS–32 Grants for Development, Construction, and Operations of Facilities and Services
PHS–33 Medical Care for Uniformed Services Personnel of the Coast Guard, Public Health Service, and National Oceanic and Atmospheric Administration, 42 CFR 31
PHS–34 Medical Care for Seafarers and Others at Public Health Service Facilities
PHS–35 Public Health Service Hospital and Clinic Managment, 42 CFR 35
PHS–2 National Library of Medicine Programs
PHS–15 Foreign Quarantine Regulations
PHS–17 Medical Examinations of Aliens
PHS–31 Persons to Whom Services Will Be Provided
PHS–48 Confidentiality of Alcohol and Drug Abuse Patient Records
PHS–86 NIOSH Investigations of Places of Employment
PHS–87 NIOSH Grant Regulations
SSA–25 Old Age, Survivors, Disability Insurance Program—Coverage of Employees of State and Local Governments, 20 CFR Part 404, Subpart M
SSA–27 Old Age, Survivors, Disability Insurance and Supplemental Security Income Programs—Disability, 20 CFR Part 404, Subpart P and Part 416, Subpart I
SSA–29 Old Age, Survivors, Disability Insurance and Supplemental Security Income Programs—Representative Payee, 20 CFR Part 404, Subpart Q and Part 416, Subpart F
SSA–30 Supplemental Security Income Program—Eligibility, 20 CFR Part 416, Subpart B
SSA–45 Fair Hearings, 45 CFR Part 205.10
SSA–46 Application Eligibility Determinations, and Furnishing Assistance 45 CFR Part 206
OCSE–2 Office of Child Support Enforcement—Strengthening of CSE, Audit and Penalty Regulations, 45 CFR Parts 301, 302, 304 and 305
OCSE–3 Office of Child Support Enforcement—Optional Procedures for Distribution of Child Support Collections (Immediate Distribution), 45 CFR Parts 302 and 304
OCSE–4 Office of Child Support Enforcement—OCSE Recodification, Phase I 45 CFR Parts 302 and 304
OCSE–5 Office of Child Support Enforcement—OCSE Recodification, Phase II, 45 CFR 302 and 303
HDS–4 Developmental Disabilities Program: General Rules
HDS–6 Native American Program: General Rules

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Title	Summary	Contact
PHS–2—National Library of Medicine Programs: Revision of General Rules for the National Library of Medicine, National Library of Medicine Grants, National Institutes of Health and National Library of Medicine Traineeships, and National Institutes of Health and National Library of Medicine Training Grants.	A. *Description:* There are 4 NLM regulations undergoing revision. The regulations at 42 CFR Part 4 relate to the access of facilities and library collections. Those at 42 CFR Part 59a deal with the NLM extramural programs. These rules provide guidance for applying for grants for establishing, expanding and improving basic library resources and for establishing Regional Medical Libraries. The regulations at 42 CFR Part 63 deal with both NIH and NLM traineeships. The regulations at 42 CFR Part 64 govern the training grants of NIH and NLM. B. *Why Significant:* These proposed amendments will bring up to date the NLM regula-	

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Title	Summary	Contact
	tions by (1) improving readability by the use of the HEW Operation Common Sense principles, and (2) allowing for inclusion of updated nondiscrimination language. In addition, the regulation at 42 CFR Part 59a will be revised to remove the requirement of providing photocopies of biomedical materials without charge to users. C. *Regulatory Analysis:* Not required. D. *Need:* These revisions are necessary to comply with the Department's programs of recodification and "Operation Common Sense." E. *Legal Basis:* 42 USC 216, 42 USC 278 and 42 USC 280b-2. F. *Chronology:* Notice of Decision to Regulate published November 21, 1979 (44 FR 66852)	Kenneth Carney, Acting Executive Officer, National Library of Medicine, Bethesda, Md. 20209, (301) 496-643.
PHS-5—Protection of Human Research Subjects—Institutional Review Boards.	A. *Description:* These revised regulations will govern the IRB mechanism. The purpose of IRBs is to assure that biomedical and behavioral research, conducted or supported by HEW, meets the requirements concerning informed consent by persons involved as subjects in research. The revision is based on recommendation of the National Commission for the Protection of Human Subjects of Biomedical and Behavioral Research. B. *Why Significant:* These regulations are significant in that review of proposed research by IRBs is the primary mechanism for assuring that the rights of human subjects are protected. C. *Regulatory Analysis:* Not required; however, under consideration. D. *Need:* The National Research Act created the Nat'L Comm. One of the topics of study identified in the mandate to the Commission was "Institutional Review Boards". The Commission was required to make recommendations to the Secretary, regarding IRB mechanisms and appropriate enforcement mechanisms for carrying out decisions. The Commission's report was published in the FEDERAL REGISTER and public comments were received. After reviewing the recommendations and comments, the Secretary decided to issue regulations on this subject. E. *Legal Basis:* 5 U.S.C. 301. F. *Chronology:* Recommendations of the Commission regarding IRBs published Nov. 30, 1978 (43 FR 56174). Comment period ended Jan. 29, 1979. NPRM published August 14, 1979 (44 FR 47688). Comment period ended Nov. 12, 1979.	F. William Dommel, Jr., J.D., Assist. Dir. for Regs., Office for Protection from Research Risks, National Institutes of Health, Bethesda, Md. 20205, (301) 496-7163.
PHS-6—Protection of Human Subjects: Regulations on Research Involving Children.	A. *Description:* These regulations will provide additional protections for children who are research subjects of DHEW conducted or supported research. B. *Why Significant:* These regulations define the circumstances under which such research can be conducted or supported, describe procedures for the review and approval of the research, and identify the requirements for informed consent to participate in research by and for such subjects. C. *Regulatory Analysis:* Not required. D. *Need:* The National Research Act, requires the Secretary to publish all recommendations of the National Commission for the Protection of Human Subjects of Biomedical and Behavioral Research in the FEDERAL REGISTER, to solicit public comment, to consider the recommendations and relevant comments and to take appropriate administrative action with respect to the recommendations. After reviewing the recommendations and comments, the Secretary decided to issue regulations on this subject. E. *Legal Basis:* 5 U.S.C. 301. F. *Chronology:* Recommendations of the Commission regarding children published Jan. 13, 1978 (43 FR 2084). Comment period ended March 14, 1978. NPRM published July 21, 1978 (43 FR 31786). Comment period originally ended Sept. 19, 1978, but was extended by the NPRM on IRBs to Nov. 12, 1979.	F. William Dommel, Jr., J.D., Assist. Dir. for Regs., Office for Protection from Research Risks, National Institutes of Health, Bethesda, Md. 20205, (301) 496-7163.
PHS-7—Protection of Human Subjects: Regulations on Research Involving Those Institutionalized as Mentally Disabled.	A. *Description:* These regulations will provide additional protections for those institutionalized as mentally disabled persons who participate as subjects in DHEW conducted or supported research. B. *Why Significant:* These regulations would implement the recommendations of the National Commission for the Protection of Human Subjects of Biomedical and Behavioral Research by defining the circumstances under which research projects involving the institutionalized mentally disabled can be conducted or supported. The implementing regulations would also spell out requirements for consent or, in the absence of competence, assent of the institutionalized mentally disabled. The regulations would also require increasing evidence of benefit to the subjects as the risks of the research escalated. C. *Regulatory Analysis:* Not required. D. *Need:* The National Research Act, requires the Secretary to publish all recommendations of the National Commission for the Protection of Human Subjects of Biomedical and Behavioral Research in the FEDERAL REGISTER, to solicit public comment, to consider the recommendations and relevant comments and to take appropriate action with respect to the recommendations and comments. The Secretary decided to issue regulations on this subject. E. *Legal Basis:* 5 U.S.C. 301. F. *Chronology:* Recommendations of the Commission regarding Those Institutionalized as Mentally Disabled published March 17, 1978 (43 FR 11328). Comment period ended May 16, 1978. Notice of decision to develop regulations published April 24, 1978 (43 FR 17375). Notice of Proposed Rulemaking published Nov. 17, 1978 (43 FR 53950). Comment period originally ended Jan. 16, 1979, but was extended by the NPRM on IRBs to Nov. 12, 1979.	F. William Dommel, Jr., J.D., Assist. Dir. for Regs., Office for Protection from Research Risks, National Institutes of Health, Bethesda, Md. 20205, (301) 496-7163.C04
PHS-10—Health Incentive Grants for Comprehensive Public Health Services.	A. *Description:* Establishes requirements for health incentive grants to States to assist them in providing comprehensive public health services. Will provide a method for the equitable distribution of funds among State and local public health entities within the State and define program accountability measures. B. *Why significant:* State and local health agencies have the primary responsibility for a broad area of public health: health protection and health maintenance directed at populations, and personal health services directed at disadvantaged persons and those at special risk. This program makes grants to provide a Federal sharing in the costs of those vital services, in a manner designed to encourage State and local health entities to increase their own investments. C. *Regulatory Analysis:* Not required. D. *Need:* To implement Section 314(d) of the Public Health Service Act, as amended by the Health Services and Centers Amendments of 1978. E. *Legal Basis:* 42 U.S.C. 246d. F. *Chronology:* Notice of Decision to Develop Regulations published on May 1, 1979 (44 FR 25476). Development of NPRM in abeyance pending legislative action.	Mr. Dennis D. Tolsma, Office of the Center Director, Center for Disease Control, 1600 Clifton Road, NE, Atlanta, Georgia 30333. Phone: (404) 329-3243, FTS: 236-3243.
PHS-12—Grants for Preventive Health Services (42 CFR Part 51b): Subpart F—Grants	A. *Description:* Established requirements for research, demonstrations and public information and education grants for the prevention and control of venereal disease and	

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Title	Summary	Contact
for Research, Demonstrations, and Public Information and Education for the Prevention and Control of Venereal Diseases.	Implements an amendment to Section 318 of the Public Health Service Act that at least 5 percent of grant funds appropriated under Section 318 for the prevention and control of venereal diseases be expended for this program. B. *Why significant:* Provides regulatory base to expand capability to refine venereal disease prevention and control technology. C. *Regulatory Analysis:* Not required. D. *Need:* To implement changes made to Section 318(b) of the Public Health Service Act by the Health Services and Centers Amendments of 1978. E. *Legal Basis:* Section 318 of the Public Health Service Act (42 U.S.C. 247c), as amended by the Health Services and Centers Amendments of 1978. F. *Chronology:* Notice of Decision to Develop Regulations published April 13, 1979 (44 FR 22133). Comment period will end 45 days after publication of NPRM. NPRM published July 17, 1980 (45 FR 47878). Comment period ended Sept. 2, 1980.	Dr. Paul J. Wiesner, Director, Venereal Disease Control Division, Bureau of State Services, Center for Disease Control, Atlanta, Georgia 30333, Phone: (404) 329-3343, FTS: 236-3343.
PHS-13—Grants for Preventive Health Services (42 CFR Part 51b): Subpart H—Grants for Detection, Treatment, and Prevention of Lead-Based Paint Poisoning.	A. *Description:* Governs the award of grants for lead-based paint poisoning prevention programs. B. *Why significant:* Reflects the transfer of statutory authority for the program and revisions in the law pertaining to advisory committees and the use of local resources. C. *Regulatory Analysis.* Not required. D. *Need:* The revised regulation is necessary to reflect both the transfer of the authority for this program from the Lead-Based Paint Poisoning Prevention Act to Section 316 of the Public Health Service Act and the amendments to the authority. E. *Legal Basis:* Section 316 of the Public Health Service Act (42 U.S.C. 247a), as amended by the Health Services and Centers Amendments of 1978. F. *Chronology:* Notice of Decision to Develop Regulations published September 27, 1979 (44 FR 55602). NPRM published July 17, 1980 (45 FR 47878). Comment period ended Sept. 2, 1980.	Dr. Vernon N. Houk, Director, Environmental Health Services Division, Bureau of State Services, Center for Disease Control, 1600 Clifton Road, NE, Atlanta, Georgia 30333, Phone: (404) 262-6645, FTS: 236-6645.
PHS-15—Foreign Quarantine Regulations: Requirements and Inspections.	A. *Description:* Provides procedures on preventing the introduction, transmission, or spread of communicable diseases from foreign countries into the United States. B. *Why significant:* The procedures affected all international traffic arriving in the U.S. by ship, aircraft, or land conveyances. C. *Regulatory Analysis:* Not required. D. *Need:* To update the regulations in accordance with current concepts of disease surveillance, investigation, and control. E. *Legal Basis:* Section 361 of the Public Health Service Act (42 U.S.C. 264) F. *Chronology:* Notice of Decision to Develop Regulations published June 29, 1979 (44 FR 37963). Comment period will end 60 days after publication of the NPRM.	Mr. Joseph F. Giordano, Director, Quarantine Division, Bureau of Epidemiology, Center for Disease Control, 1600 Clifton Road, NE, Atlanta, Georgia 30333, Phone: (404) 329-3674, FTS: 236-3674.
PHS-17—Medical Examination of Aliens.....	A. *Description:* Provides for the physical and mental examination of aliens within the United States or in other countries as required by the Immigration laws. B. *Why significant:* The regulations provide the basis for the physical and mental examination of aliens to determine whether the aliens are afflicted with any of the excludable conditions as stated in the Immigration and Nationality Act. C. *Regulatory Analysis:* Not required. D. *Need:* To implement changes in accordance with current epidemiological concepts and medical diagnostic standards. E. *Legal Basis:* Section 325 of the Public Health Service Act (42 U.S.C. 264) and Section 212(a) of the Immigration and Nationality Act (8 U.S.C. 1182). F. *Chronology:* Notice of Decision to Develop Regulations published June 29, 1979 (44 FR 37962). Comment period will end 60 days after publication of NPRM.	Mr. Joseph F. Giordano, Director, Quarantine Division, Bureau of Epidemiology, Center for Disease Control, 1600 Clifton Road, NE, Atlanta, Georgia 30333, Phone: (404) 329-3674, FTS: 236-3674.
PHS-24—Subpart F—Qualification of Health Maintenance Organizations.	A. *Description:* This regulation establishes the requirements for determining whether an entity is a qualified HMO. E. *Legal Basis:* Sec. 215, 58 Stat. 690 (42 U.S.C. 216); Secs. 1301-1318, as amended, 92 Stat. 2131-2141 (42 U.S.C. 300e-300e-17). F. *Chronology:* —Notice of Decision to Revise Regulations. 44 FR 22133. —Interim Regulations—42 CFR Part 110, subpart F. 42 FR 29400-16. (Under revision.) —Further revisions to be made through a NPRM.	Howard R. Veit, Director, Office of Health Maintenance Organizations, Park Building, 12420 Parklawn Drive, Rockville, Maryland 20857, 301/443-4106. B. *Why Significant:* This regulation describes the procedures and information that an HMO must provide in making application to become federally qualified. C. *Regulatory Analysis:* Not required. D. *Need:* To update program changes in the qualification process and information provided the public.
PHS-26—Subpart I—Continued Regulation of HMOs and Other Entities.	A. *Description:* This regulation establishes the requirements for continued compliance of federally qualified HMOs. B. *Why Significant:* This regulation describes the enforcement and compliance procedures with respect to HMOs and other entities which fail to comply with such requirements. C. *Regulatory Analysis:* Not required. D. *Need:* To amend the enforcement and compliance procedures to reflect the operating experience of the program. E. *Legal Basis:* Sec. 215, 58 Stat. 690 (U.S.C. 216); Secs. 1301-1318, as amended, 92 Stat. 2131-2141 (42 U.S.C. 300e-300e-17). F. *Chronology:* —Notice of Decision to Revise Regulations. 44 FR 22133. —Final Regulations—42 CFR Part 110, subpart I. Comment period: none. 43 FR 32254-6. —Further revisions to be made through a NPRM.	Howard R. Veit, Director, Office of Health Maintenance Organizations, Park Building, 12420 Parklawn Drive, Rockville, Maryland 20857, 301/443-4106.
PHS-27—Subpart J—Reconsiderations and Hearings (NPRM).	A. *Description:* This regulation would have established requirements for investigating and determining whether HMOs have violated the HMO Act or the regulations. In addition, it would have established procedures for requesting reconsiderations and hearings with respect to denial of qualification applications. B. *Why Significant:* This regulation described the requirements for investigating and determining whether HMOs have violated the HMO Act or regulations and procedures to follow in requesting reconsiderations and hearings in the denial of qualification applicants. C. *Regulatory Analysis:* Not required. D. *Need:* To establish grievance and appeals procedures. E. *Legal Basis:* Sec. 215, 58 Stat. 690 (42 U.S.C. 216); Secs. 1301-1318, as amended, 92 Stat. 2131-2141 (42 U.S.C. 300e-300e-17). F. *Chronology:* —Notice of Decision to Revise Regulations. 44 FR 22133. —NPRM—Comment period: 9/17/76-11/1/76. 41 FR 40292-5.	Howard R. Veit, Director, Office of Health Maintenance Organizations, Park Building, 12420 Parklawn Drive, Rockville, Maryland 20857, 301/443-4106.

Department of Health and Human Services Semiannual Regulations Agenda and Review List—Continued

Title	Summary	Contact
	—Notice to withdraw this NPRM was submitted for official clearance on 4/28/79. Since the conditions that prompted the NPRM to be issued have changed, there is no need for this rule to be published.	
PHS-28—New Subpart J—Loans and Loan Guarantees for Acquisition and Construction of Ambulatory Health Care Facilities.	A. *Description:* This regulation establishes the requirements for qualified HMOs to obtain loans and loan guarantees to acquire or construct ambulatory health care facilities and acquire equipment for those facilities. B. *Why Significant:* This regulation allows the Secretary to make and guarantee loans to qualified HMOs. C. *Regulatory Analysis:* Not required. D. *Need:* To implement the HMO Amendments of 1978 concerning the authority to provide loan assistance to eligible HMOs. E. *Legal Basis:* Sec. 215, 58 Stat. 690 (42 U.S.C. 216); Secs. 1301-1318, as amended, 92 Stat. 2131-2141 (42 U.S.C. 300e-300e-17). F. *Chronology:* Interim Final Regulations published April 9, 1980 (45 FR 24352). Comment period ended June 9, 1980.	Howard R. Veit, Director, Office of Health Maintenance Organizations, Park Building, 12420 Parklawn Drive, Rockville, Maryland 20857, 301/443-4106.
PHS-29—Subpart K—Grants and Cooperative Agreement for Training and Technical Assistance.	A. *Description:* This regulation establishes the requirements for the award of grants and cooperative agreements for management and technical assistance. B. *Why Significant:* This regulation allows the Secretary to make grant funds available to support the training of qualified management personnel. D. *Need:* To implement the HMO Amendments of 1978 to support management training activities. E. *Legal Basis:* Sec. 215, 58 Stat. 690 (42 U.S.C. 216); Secs. 1301-1318, as amended, 92 Stat. 2131-2141 (42 U.S.C. 300e-300e-17). F. *Chronology:* —Draft NPRM under development.	Howard R. Veit, Director, Office of Health Maintenance Organizations, Park Building, 12420 Parklawn Drive, Rockville, Maryland 20857, 301/443-4106.
PHS-30—Indian Health Care Improvement Act Programs.	A. *Description:* Amends 42 CFR 36, Subpart J—Indian Health Care Improvement Act Program (Pub. L. 94-437)—to reflect conformance with the Department's new regulations on grant administration which should result in greater standardization and simplification for IHS grant administration and a greater reliance on the grantee's own management systems. B. *Why Significant:* The regulations will conform existing IHS grant administration regulations to the Department's new regulations which establishes uniform requirements for the administration of HHS grants and principles for determining costs applicable to activities assisted by HHS grants. C. *Regulatory Analysis:* Not required. D. *Need:* IHS has been directed by the Department to revise 42 CFR 36, Subpart J, as required by the Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments, Circular No. A-102, Revised (published September 12, 1977, 42 FR 45828), to conform to the Department's new regulations on grant administration (45 CFR Part 74). E. *Legal Basis:* 5 U.S.C. 301; 42 FR 45828; 25 U.S.C. 1601. F. *Chronology:* Changes to subpart J are governed by Section 702(b) of Pub. L. 94-437. That section requires that any changes be published in the FEDERAL REGISTER with at least a 60 day comment period and that IHS will consult with appropriate national or regional Indian organizations to the extent practicable. G. *Citation:* 42 CFR 36, Subpart J.	Richard J. McCloskey, Indian Health Service, Room 6A-20, 5600 Fishers Lane, Rockville, Maryland 20857, (301)-443-1116).
PHS-31—Persons to whom services will be provided.	A. *Description:* The regulation will amend 42 CFR 36.12 to specify eligibility for services for dependent members of an eligible Indians' household and will correct the illegal sex-discrimination clause so that the eligibility status of non-Indian spouses will be the same regardless of sex. B. *Why significant:* The regulation will amend basic eligibility criteria and, therefore, affect delivery of IHS services to the Indian population. C. *Regulatory Analysis:* Not required. D. *Need:* To amend current regulation because OGC and the Justice Department have advised that the current regulation which provides eligibility only for non-Indian wives of eligible Indians is legally indefensible being an illegal discrimination based on sex and OGC has also advised that IHS policy of serving dependent members of an eligible Indians' household both Indian and non-Indian should be provided for in regulation rather than only in the IHS manual. E. *Legal Basis:* 25 U.S.C. 13 (Snyder Act) and 42 U.S.C. 2001 (Transfer Act). F. *Chronology:* Intent to issue a NPRM dealing with these issues was published in the preamble to the final regulations for Contract Health Services, 42 CFR 36, Subpart C, 43 FR 34649, August 4, 1978. Notice of decision to amend regulations was published on April 13, 1979 (44 FR 22132). G. *Citation:* 42 CFR 36.12.	Richard J. McCloskey, Room 6A-20; 5600 Fishers Lane, Rockville, Maryland 20857; (301-443-1116).
PHS-32—Grants for Development, Construction, and Operations of Facilities and Services.	A. *Description:* Amends 42 CFR 36, Subpart H—Grants for Development, Construction, and Operations of Facilities and Services (Pub. L. 93-638)—to reflect conformance with the Department's new regulations on grant administration which should result in greater standardization and simplification for IHS grant administration and a greater reliance on the grantee's own management systems. B. *Why Significant:* The regulation will conform existing IHS grant administration regulations to the Department's new regulations which establishes uniform requirements for the administration of HHS grants and principles for determining costs applicable to activities assisted by HHS grants. C. *Regulatory Analysis:* Not Required. D. *Need:* IHS has been directed by the Department to revise 42 CFR 36 Subpart H, as required by the Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments, Circular No. A-102, Revised (published September 12, 1977, 42 FR 45828), to conform with the Department's new regulations on grant administration (35 CFR Part 74). E. *Legal Basis:* 5 U.S.C. 301; 42 FR 45828; 25 U.S.C. 450. F. *Chronology:* Changes to Subpart H are governed by the procedures outlined in Section 107(c) of Pub. L. 93-638 which require any changes to be submitted to the committees on Interior and Insular Affairs of the respective Houses of Congress and be published in the FEDERAL REGISTER with at least a 60 day comment period. IHS is also to consult with appropriate national or regional Indian organizations to the extent practicable. In addition to the legislative requirements, the current regulation itself requires that IHS consult with the tribes and that the final rule not go into effect until 30 days after publication in the FEDERAL REGISTER. G. *Citation:* 42 CFR 36, Subpart H.	Richard J. McCloskey, Indian Health Service, Room 6A-20, 5600 Fishers Lane, Rockville, Maryland 20857, (301-443-1116).

Department of Health and Human Services Semiannual Regulations Agenda and Review List—Continued

Title	Summary	Contact
PHS-33—Medical Care for Uniformed Services personnel of the Coast Guard, Public Health Service, and National Oceanic and Atmospheric Administration 42 CFR 31.	A. *Description:* Provides Conditions under which beneficiaries will receive medical, dental, and surgical care at Public Health Service and Non-Public Health Service facilities. B. *Why significant:* Explains benefits available to beneficiaries and the rules they must follow to secure benefits. Rules may serve to enhance or deny care to certain beneficiaries. C. *Regulatory Analysis:* Not required. D. *Need:* Regulations are needed to implement Public Health Service Act, administrative decisions. E. *Legal Basis:* Sec. 326 of the Public Health Service Act (42 U.S.C. 253) F. *Chronology:* None.	Mr. Walter W. Ward, Procedural Implementation Section, Policy Coordination Branch, Bureau of Medical Services, 6525 Belcrest Road, West Hyattsville, Md. 20782, (301) 436-6261.
PHS-34—Medical Care for Seafarers and others at Public Health Service facilities.	A. *Description:* Provides conditions under which beneficiaries will receive medical, dental, and surgical care at Public Health Service and Non-Public Health Service facilities. B. *Why significant:* Explains benefits available to beneficiaries and the rules they must follow to secure benefits. Rules may serve to enhance or deny care to certain beneficiaries. C. *Regulatory Analysis:* Not required. D. *Need:* Regulations are needed to implement Public Health Service Act, administrative decisions. E. *Legal Basis:* Sec. 322 of the Public Health Service Act (42 U.S.C. 249). F. *Chronology:* Previous (existing) regulations published 6/17/75.	Mr. Walter W. Ward, Procedural Implementation Section, Policy Coordination Branch, Bureau of Medical Services, 6525 Belcrest Road, West Hyattsville, Md. 20782, (301) 436-6261.
PHS-35—Public Health Service Hospital and Clinic Management, 42 CFR 35.	A. *Description:* Provides how the Public Health Service will manage facilities and relate to patients and visitors; and generally describe how health care should be provided. B. *Why significant:* Established the responsibilities, standards, and authorities under which managers operate Public Health Service facilities, and rules of conduct for patients and visitors. C. *Regulatory Analysis:* Not required. D. *Need:* Regulations are needed to implement Public Health Service Act, administrative decisions. E. *Legal Basis:* Sec. 321 of the Public Health Service Act (42 U.S.C. 248).	Mr. Walter W. Ward, Procedural Implementation Section, Policy Coordination Branch, Bureau of Medical Services, 6525 Belcrest Road, West Hyattsville, Md. 20782, (301) 436-6261.
PHS-38—Amendments to MCH CC Services Programs.	A. *Description:* This regulation will implement statutory amendments dealing with reasonable costs and will make clarifying administrative changes. B. *Why Significant:* These are technical amendments. C. *Regulatory Analysis:* Not Required. D. *Need:* To improve implementation of Title V, Social Security Act, based on minor statutory changes and experience in administering the program. E. *Legal Basis:* Sections 503 and 504, Social Security Act, as amended. F. *Chronology:* None.	James J. Corrigan, Director, Division of Policy Development, BCHS, Rm. 6-40, Parklawn Building, 5600 Fishers Lane, Rockville, Md. 20857, (301) 443-1034.
PHAS-39—Grants to Plan, Develop and Operate Hospital-Affiliated Primary Care Centers.	A. *Description:* Regulations will implement a demonstration program for providing comprehensive primary health care services to medically underserved communities by community hospitals through reorganized outpatient resources. B. *Why Significant:* Within the limits of a demonstration program, the impact will be on medically underserved populations. C. *Regulatory Analysis:* Not required. D. *Need:* To implement Section 328, Public Health Service Act. E. *Legal Basis:* 42 U.S.C. 254a-1. F. *Chronology:* Notice of Decision to Develop Regulations was published 4/13/79.	James J. Corrigan, Director, Division of Policy Development, BCHS, Rm. 6-40, Parklawn Building, 5600 Fishers Lane, Rockville, Md. 20857, (301) 443-1034.
PHS-40—Project Grants for Community Health and Migrant Health.	A. *Description:* Regulations will implement statutory provisions requiring that pharmaceutical services be mandatory, some supplemental services be defined as priority services, and allowing grantees to retain half of earned income. Migrant high impact area is reduced from 6,000 migrants to 4,000. B. *Why Significant:* These regulations have impact on the primary care delivery capacity in medically underserved areas. C. *Regulatory Analysis:* Not required. D. *Need:* To implement Sections 329 and 330 of the Public Health Service Act, as amended by Pub. L. 95-626. E. *Legal Basis:* 42 U.S.C. 247 and 254c. F. *Chronology:* NOI published 4/13/79.	James J. Corrigan; Director, Division of Policy Development, BCHS, Rm. 6-40, Parklawn Building, 5600 Fishers Lane, Rockville, Md. 20857, (301) 443-1034.
PHS-41—Demonstration Health and Nutrition Projects.	A. *Description:* These regulations will implement a statute for multicounty health and demonstration projects in economic development regions. B. *Why Significant:* These projects will provide health and nutrition services and contribute to regional economic development. C. *Regulatory Analysis:* Not needed. D. *Need:* To implement Section 516 of the Regional Development Act of 1975. E. *Legal Basis:* Section 516, Regional Development Act of 1975. F. *Chronology:* None.	James J. Corrigan; Director, Division of Policy Development, BCHS, Rm. 6-40, Parklawn Building, 5600 Fishers Lane, Rockville, Md. 20857, (301) 443-1034.
PHS-42—Project Grants to States for Hypertension Services.	A. *Description:* Regulations will implement statutory amendments changing formula grants to project grants, requiring greater accountability and more effective service programs. B. *Why Significant:* State hypertension programs previously funded under formula grants will now be funded under project grants, requiring greater accountability for Federal funds. C. *Regulatory Analysis:* Not required. D. *Need:* To implement Section 317 of the Public Health Service Act, as amended by Pub. L. 95-626. E. *Legal Basis:* 42 U.S.C. 247b. F. *Chronology:* Notice of Intent published 4/13/79. Announcement requesting grant applications published 6/27/79.	James J. Corrigan; Director, Division of Policy Development, BCHS, Rm. 6-40, Parklawn Building, 5600 Fishers Lane, Rockville, Md. 20857, (301) 443-1034.
PHS-46—Grants for Drug Abuse Prevention, Treatment, and Rehabilitation; requirements for State participation in formula grants.	A. *Description:* These regulations establish requirements for receiving and administering formula grants to assist States in designing, establishing, conducting, coordinating, and evaluating projects for the development of more effective training, treatment, rehabilitation, and research projects to deal with drug abuse and drug dependence. B. *Why Significant:* To receive an allotment, a State must submit to and have approved by the Secretary a State plan or modification of a State plan which meets the requirements specified in the statute and these regulations. (Formula grants are currently being awarded under National Institute on Drug Abuse guidelines developed in 1973 and updated annually.) C. *Regulatory Analysis:* Not required. D. *Need:* These regulations are required to implement section 409 of the Drug Abuse Office and Treatment Act of 1972, as amended. The regulations required by section 409(c)(1)(B)(iii) were published as a Final Rule on June 24, 1976 (41 FR 26012).	Nancy Soulen, Legal Assistant, Office of Director, National Institute on Drug Abuse, Room 10-14, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443-6482.

Department of Health and Human Services Semiannual Regulations Agenda and Review List—Continued

Title	Summary	Contact
	E. *Legal Basis:* Section 409 of Pub. L. 92-255, the Drug Abuse Office and Treatment Act of 1972, as amended by Pub. L. 94-237 (90 Stat. 245-247), Pub. L. 94-371 (90 Stat. 1040), Pub. L. 95-83 (91 Stat. 397), and Pub. L. 95-461 (92 Stat. 1268-1269) (21 U.S.C. 1176). F. *Chronology:* Notice of Proposed Rulemaking was published August 28, 1973 (38 FR 22968) with a 30-day comment period. A second Notice of Proposed Rulemaking was published January 14, 1977 (42 FR 2385) with a 45-day comment period.	
PHS-48—Confidentiality of Alcohol and Drug Abuse Patient Records; minimum requirements for protecting.	A. *Description:* These regulations apply to the records of the identity, diagnosis, prognosis, or treatment of alcohol and drug abuse patients. They require that records be kept confidential and be disclosed only (1) with the written consent of the patient, (2) pursuant to an authorizing court order based upon a finding of good cause, or (3) without either a written consent or an authorizing court order in the following limited circumstances: for a medical emergency, for the conduct of scientific research, an audit, or program evaluation. B. *Why significant:* This rule applies to alcohol and drug abuse patient records maintained in connection with any alcohol abuse or drug abuse program conducted, regulated, or directly or indirectly assisted by any department or agency of the United States. It implements statutory requirements which encourage alcohol and drug abusers to seek treatment by removing the fear that attempts to enroll in treatment programs would lead to disclosure to employers and other members of the public or lead to police harassment and/or arrest. C. *Regulatory Analysis:* Not required. D. *Need:* These regulations are required by section 333(g) of the Comprehensive Alcohol Abuse and alcoholism Prevention, Treatment, and Rehabilitation Act of 1970, as amended, and by section 408(g) of the Drug Abuse Office and Treatment Act of 1972, as amended. Rewrite of these regulations will fulfill the Department's commitment to make regulations clearer and more concise and will take into consideration the Departments experience with the regulation over the past four years. E. *Legal Basis:* Section 408 of Pub. L. 92-255, the Drug Abuse Office and Treatment Act of 1972 (21 U.S.C. 1175) as amended by section 303 of Pub. L. 93-282 (88 Stat. 137); and section 333 of Pub. L. 91-616, the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act of 1970, (42 U.S.C. 4582), as amended by section 122(a) of Pub. L. 93-282 (88 Stat. 131). F. *Chronology:* Final Rule, published July 1, 1975 (40 FR 27802), has been reviewed under Operation Common Sense and a decision made to recodify.	Judith T. Galloway, Legal Assistant, Alcohol, Drug Abuse, and Mental Health Administration, Room 13C-06, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (301) 443-3200. Notice of Decision to develop, Regulations published January 2, 1980 (45 FR 53) with a 60 day comment period.
PHS-56—Project Grants for Establishment of Departments of Family Medicine.	A. *Description:* To govern grants to schools of medicine and osteopathy to meet the projects to establish and maintain academic administrative units to provide clinical instruction in family medicine. B. *Why Significant:* Promotes the adequate supply and equitable distribution of health manpower throughout the United States. C. *Regulatory Analysis:* Not required. D. *Need:* Required by statute to implement the Public Health Service Act. E. *Legal Authority:* 42 U.S.C. 295g F. *Chronology:* None. NPRM published 10-16-80 (45 FR 68902) Comment period ends 12-15-80	Kenneth Moritsugu, Bureau of Health Professions, HRA, Center Building, 3700 East-West Highway, Hyattsville, Md. 20782, (301) 436-6418.
PHS-57—Area Health Education Centers	A. *Description:* To govern programs to improve the distribution, supply, quality, utilization, and efficiency of health personnel in the health services delivery system and to encourage the regionalization of educational responsibilities of health professions schools. B. *Why Significant:* Promotes the adequate supply and equitable distribution of health manpower throughout the United States. C. *Regulatory Analysis:* Not required. D. *Need:* Required by statute to implement the Public Health Service Act. E. *Legal Authority:* 45 FR 55242. F. *Chronology:* Interim-final published November 27, 1978 (43 FR 55242). The comment period closed Jan. 26, 1979.	Kenneth Moritsugu, Bureau of Health Professions, HRA, Center Building, 3700 East-West Highway, Hyattsville, Md. 20782, (301) 436-6418.
PHS-63—Interdisciplinary Team Training and Curriculum Development for Health Manpower Training.	A. *Description:* To establish requirements for grants for interdisciplinary team training among schools in various health disciplines and for curriculum development in various areas related to health manpower. B. *Why Significant:* Promotes the adequate supply and equitable distribution of health manpower throughout the United States. C. *Regulatory Analysis:* Not required. D. *Need:* Required by statute to implement the Public Health Service Act. E. *Legal Authority:* 42 USC 295g-7. NPRM published 8-1-80 (CF42FR51241)	David B. Hoover, Bureau of Health Professions, HRA, Center Building, 3700 East-West Highway, Hyattsville, Md. 20782, (301) 436-6838.
PHS-69—Grants for Nurse Practitioner Traineeship Programs.	A. *Description:* To set forth requirements for grants to schools of nursing, medicine, and public health, public or nonprofit private hospitals, and other nonprofit entities to meet the costs of traineeships for the training of nurses who reside in health manpower shortage areas having shortages of primary medical care manpower. B. *Why Significant:* Promotes the adequate supply and equitable distribution of health manpower throughout the United States. C. *Regulatory Analysis:* Not required. D. *Need:* The Department has decided that regs are needed to implement the Public Health Service Act. E. *Legal Authority:* 2 USC 296m. F. *Chronology:* Interim final regulations published May 6, 1980 (45 FR 29303). The Comment period closed July 7, 1980.	Dr. Mary Hill, Bureau of Health Professions, HRA, Center Building, 3700 East-West Highway, Hyattsville, Md. 20782, (301) 436-6681.
PHS-72—National Guidelines for Health Planning (Goals).	A. *Description:* The guidelines consist of National Health Planning goals with respect to health status, health promotion, and disease prevention, and access to services. B. *Why Significant:* Sets goals for health planning.	James Stockdill, Office of Planning, Evaluation, and Legislation, HRA, Center Building, 3700 East-West Highway, Hyattsville, Md. 20782, (301) 436-7270.

Department of Health and Human Services Semiannual Regulations Agenda and Review List—Continued

Title	Summary	Contact
	C. *Regulatory Analysis:* Not required. D. *Need:* Required by statute to implement the Health Planning and Resources Development Act. E. *Legal Authority:* 42 USC 300k-1. F. *Chronology:* Notice of availability of Draft Regulations October 19, 1979 (44 FR 60342). NPRM Published 11-25-80. Comment period ends 2-23-81.	
PHS-73—Health Systems Agency Review of Certain Proposed Uses of Federal Health Funds.	A. *Description:* Amends regulations establishing requirements governing the review and approval or disapproval by Health Systems Agencies of certain proposed uses of Federal funds. B. *Why significant:* Implements one aspect of the Federal health planning program to promote access to health care services and control health care costs through State and local review of health services and expenditures. C. *Regulatory Analysis:* Not required. D. *Need:* Required by statute to implement the Health Planning and Resources Development Amendments of 1979. E. *Legal Authority:* The Health Planning and Resources Development Amendments of 1979. F. *Chronology:* NPRM was published May 9, 1978 (43 FR 19988) Final published August 10, 1979 (44 FR 47064). Regulations to be amended to implement the Health Planning and Resource Amendments of 1979.	Colin C. Rorrie, Jr., Ph. D., Director, Bureau of Health Planning, HRA, Center Building, 3700 East-West Highway, Hyattsville, Md. 20782, (301) 436-6850.
PHS-74—Health Systems Agency Reviews of Certain Proposed Uses of Federal Funds; Proposed Uses for Research and Training.	A. *Description:* Establishes requirements governing the review and approval or disapproval by health systems agencies of certain proposed uses of Federal health funds through research and training grants and contracts. B. *Why significant:* Implements one aspect of the Federal health planning program to promote access to health care services and control health care costs through State and local review of health services and expenditures C. *Regulatory Analysis:* Not required. D. *Need:* Required by statute to implement the Health Planning and Resources Development Act of 1976. E. *Legal Authority:* 42 USC 300 1-2. F. *Chronology:* None.	Colin C. Rorrie, Jr., Ph. D., Director, Bureau of Health Planning, HRA, Center Building, 3700 East-West Highway, Hyattsville, Md. 20782, (301) 436-6850.
PHS-75—Health Systems Agency and State Agency Reviews of the Appropriateness of Existing Institutional Health Services.	A. *Description:* Establishes minimum procedures and criteria for health systems agencies to review the appropriateness of all existing institutional health service in their areas. B. *Why Significant:* Implements one aspect of the Federal health planning program to promote access to health care services and control health care costs through State and local review of health services and expenditures. C. *Regulatory Analysis:* Not required. D. *Need:* Required by statute to implement Health Planning and Resources Development Act of 1976 and Amendments of 1979. E. *Legal Authority:* 43 FR 21274 and the Health Planning and Resources Development Amendments of 1979. F. *Chronology:* NPRM published May 16, 1978 (43 FR 21274) The comment period closed June 30, 1978. Final regulations published December 11, 1979 (44 FR 71754). Regulations to be amended to implement the Health Planning and Resource Amendments of 1979.	Colin C. Rorrie, Jr., Ph. D., Director, Bureau of Health Planning, HRA, Center Building, 3700 East-West Highway, Hyattsville, Md. 20782, (301) 436-6850.
PHS-76—Designation and funding of Health Systems Agencies.	A. *Description:* Amends regulations establishing criteria for the designation and funding of health systems agencies. B. *Why Significant:* Implements one aspect of the Federal health planning program to promote access to health care services and control health care costs through State and local review of health services and expenditures. C. *Regulatory Analysis:* Not required. D. *Need:* Required by statute to implement Health Planning and Resources Development Amendments of 1979. E. *Legal Authority:* The Health Planning and Resources Development Amendments of 1979. F. *Chronology:* NPRM was published October 17, 1975 (43 FR 48802). The comment period closed November 17, 1975. The final was published March 26, 1976 (41 FR 12812). Regulations to be amended to implement the Health Planning and Resource Amendments of 1979.	Colin C. Rorrie, Jr., Ph. D., Director, Bureau of Health Planning, HRA, Center Building, 3700 East-West Highway, Hyattsville, Md. 20782, (301) 436-6850.
PHS-77—Designation of States Health Planning and Development Agencies.	A. *Description:* Amends regulations establishing criteria for the designation of State Health Planning and Development Agencies. B. *Why Significant:* Implements one aspect of the Federal health planning program to promote access to health care services and control health care costs through State and local review of health services and expenditures. C. *Regulatory Analysis:* Not required. D. *Need:* Required by statute to implement the Health Planning and Resources Development Amendments of 1979. E. *Legal Authority:* The Health Planning and Resources Development Amendments of 1979. F. *Chronology:* NPRM was published March 19, 1976 (41 FR 11688). Comment period closed May 3, 1976. Interim-final published June 3, 1976 (41 FR 22524). Final was published March 10, 1978 (43 FR 10100). Regulations to be amended to implement Health Planning and Resource Development Amendments of 1979.	Colin C. Rorrie, Jr., Ph. D., Director, Bureau of Health Planning, HRA, Center Building, 3700 East-West Highway, Hyattsville, Md. 20782, (301) 436-6850.
PHS-80—Inclusion of Computed Tomographic Scanning Services under Capital Expenditure Review.	A. *Description:* Amends regulations for the capital expenditure review program by establishing rules regarding reviews of proposed capital expenditures for computed tomographic scanner services. B. *Why Significant:* Implements one aspect of the Federal health planning program to promote access to health care services and control health care costs through State and local review of health services and expenditures. C. *Regulatory Analysis:* Not required. D. *Need:* Required by statute to implement the Health Planning and Resources Development Act of 1976. E. *Legal Authority:* 44 FR 24428. F. *Chronology:* Interim-final regulations were published April 25, 1979. The comment period closed June 25, 1979.	Colin C. Rorrie, Jr., Ph. D., Director, Bureau of Health Planning, HRA, Center Building, 3700 East-West Highway, Hyattsville, Md. 20782, (301) 436-6850.
PHS-81—Limitation on Federal Participation for Capital Expenditures.	A. *Description:* Amends regulations for the capital expenditure review program to take into account certain requirements respecting 1122 reviews imposed by Title XV of the Public Health Service Act. B. *Why Significant:* Implements one aspect of the Federal health planning program to promote access to health care services and control health care costs through State and local review of health services and expenditures. C. *Regulatory Analysis:* Not required. D. *Need:* Required by statute to implement the Health Planning and Resources Development Act of 1976.	Colin C. Rorrie, Jr., Ph. D., Director, Bureau of Health Planning, HRA, Center Building, 3700 East-West Highway, Hyattsville, Md. 20782, (301) 436-6850. E. *Legal Authority:* 41 FR 11688. F. *Chronology:* NPRM published March 19, 1976 (41 FR 11688). The comment period closed May 3, 1976.

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Title	Summary	Contact
PHS-83—National Institutes of Health Center Grants.	A. *Description:* These regulations would provide for the operation of NIH Research and Demonstration Centers. They would replace similar rules that now apply to centers of the National Heart, Lung, and Blood Institute. B. *Why significant:* Legislation has authorized research and demonstration centers for other diseases such as arthritis and diabetes. C. *Regulatory Analysis:* Not required.	Lowell D. Peart, NIH Regulations Officer, Division of Management Policy, National Institutes of Health, Bethesda, MD 20205, Phone: (301) 496-4606. D. *Need:* To implement legislation that extend to other NIH programs the present regulations regarding research and demonstration centers for the National Heart, Lung, and Blood Institute. E. *Legal Authority:* Section 415(b) of the Public Health Service Act; Pub. L. 93-354; and Pub. L. 93-640. F. *Chronology:* Notice of Decision to Regulate was published July 17, 1978 (43 FR 31583).

Center for Disease Control

Title	Summary	Contact
PHS-84—Clinical Laboratories: Revision of Quality Control Regulations to include Additional Requirements for Alpha-fetoprotein Testing (42 CFR Parts 74 and 405).	A. *Description:* Current regulations include quality control and testing requirements of a general nature applicable to measurement of alpha-fetoprotein (AFP) levels. The revision of these regulations proposes to amend the quality control regulations applicable to clinical laboratories by including additional quality control and testing requirements for procedures which measure AFP levels in mid-pregnancy maternal sera, plasma, and amniotic fluids. B. *Why significant:* To assure the safe and effective use of AFP testing kits.	Dr. Joseph F. Boutwell, Deputy Director, Bureau of Laboratories, Center for Disease Control, 1600 Clifton Road, N.E., Atlanta, Georgia 30333, Phone: (404) 329-3263, FTS: 236-3263. C. *Regulatory analysis:* Not required. D. *Need:* The Food and Drug Administration has decided to announce its intent to approve for marketing commercial test kits for use by clinical laboratories in measuring AFP levels in maternal sera, plasma, and amniotic fluid in prenatal detection of neural tube defects. Additional quality control and testing requirements are being proposed in order to assure the safe and effective use of AFP testing kits. E. *Legal Basis:* For laboratories licensed under the Clinical Laboratories Improvement Act of 1967, see Section 353 of the Public Health Service Act (42 U.S.C. 263a). For laboratories certified under the Medicare program, see Section 1961(s) (3), (10), and (11) of the Social Security Act (42 U.S.C. 1395x(s) (3), (10), and (11)), and Section 1861(e)(3) of the Social Security Act (42 U.S.C. 1395x(e)(3)). F. *Chronology:* Notice of Decision to Develop Regulations published on April 15, 1980 (45 FR 25412). NPRM published 11-7-80. Comments due by 1-6-81.
PHS-86—NIOSH Investigations of Places of Employment (42 CFR Part 85).	A. *Description:* This rule proposes to integrate existing provisions pertaining to NIOSH health hazard evaluations and research investigations (42 CFR Parts 85 and 85a) into a single regulation as part of the Department's "Operation Common Sense" program. Procedures for investigations will be revised as necessary based on past experience in conducting investigations. B. *Why significant:* To eliminate duplicate provisions and possible procedural errors, and to permit current employees greater access to the health hazard evaluation program. C. *Regulatory Analysis:* Not required.	Philip J. Bierbaum, Deputy Director, Division of Surveillance, Hazard Evaluations, and Field Studies, National Institute for Occupational Safety and Health, 4676 Columbia Parkway, Cincinnati, Ohio 45226, Phone: (513) 684-2422, FTS: 684-2422 D. *Need:* To comply with "Operation Common Sense" and to update procedures. E. *Legal Basis:* Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.) and Federal Mine Safety and Health Act of 1977 (30 U.S.C. 801 et seq.). F. *Chronology:* Notice of Decision to Develop Regulations published on December 4, 1979 (44 FR 69683).
PHS-87—NIOSH Grant Regulations; Conformance with Part 74 (42 CFR Parts 55, 86, and 87).	A. *Description:* The following grant regulations are being combined into a single regulation and are being revised to conform them to 45 CFR Part 74: (1) Grants for research and demonstrations relating to occupational safety and health (42 CFR Part 87); (2)grants for advancement of health in coal mining. B. *Why Significant:* These regulations provide the regulatory base for these grants programs. C. *Regulatory Analysis:* Not required. D. *Need:* to conform the regulations to 45 CFR Part 74 and to implement changes made by the Federal Mine Safety and Health Act of 1977. E. *Legal Basis:* (1) Occupational Safety and Health Act of 1970 (29 U.S.C. 669(a)(1)); and Federal Mine Safety and Health Act of 1977 (30 U.S.C. 801 et seq.). F. *Chronology:* Notice of Proposed Rulemaking published on March 13, 1980.	Ms. Mary L. Flint, Regulations Specialist, National Institute for Occupational Safety and Health, 5600 Fishers Lane, Room 8-11, Rockville, Maryland 20857, Phone: (301) 443-4453, FTS: 443-4453.
PHS-88—Fees for Direct Training, Center for Disease Control (42 CFR Part 65).	A. *Description:* Under Section 311(b) of the Public Health Service Act, the Center for Disease Control provides technical training to help ensure that health workers throughout the country possess the necessary skills and knowledge to achieve the objectives of disease control programs. The existing regulation sets forth a fee policy for this training and provides for a fee schedule. A waiver procedure to permit States time to include training costs in their budgets was included in the final rule. Subsequent amendments to legislation eliminated the need for a waiver of fees. Therefore, the proposed revision will delete this requirement in the regulation. B. *Why significant:* The proposed revision will clarify the policy regarding tuition for training. It will specify who shall pay tuition for training, and the outdated waiver provision will be removed from the existing regulation. C. *Regulatory analysis:* Not required. D. *Need:* To update the existing regulation to delete the procedure requiring written requests for waiver of fees. Section 311(b) of Public Health Service Act was amended by Public Law 94-317 (June 1976) to eliminate the need for waivers. E. *Legal Basis:* Section 311(b) of the Public Health Service Act (42 U.S.C. 243). F. *Chronology:* The Regulations Proposal is the first step in the development of the proposed amendment.	Dr. Seth N. Leibler, Director, Bureau of Training, Center for Disease Control, 1600 Clifton Road, N.E., Atlanta, Georgia 30333, Phone: (404) 262-6671, FTS: 236-6671.
PHS-90—Possession, Use, and Transport of Smallpox and Whitepox Viruses.	A. *Description:* Establishes regulations restricting the possession, use, and transportation of smallpox (variola major and variola minor) and whitepox viruses. B. *Why significant:* Natural transmission of smallpox was last reported in October 1977 and the disease was declared eradicated by the World Health Organization on October 26, 1979. Smallpox and whitepox viruses now exist only in laboratories. The Foreign Quarantine regulations (42 CFR, Section 71.156) authorize restrictions on the importation or subsequent receipt by transfer of imported materials. Similar authority regulating the possession, use, or transportation of indigenous strains of smallpox virus does not exist. C. *Regulatory analysis:* Not required. D. *Need:* Required by statute to implement the final consolidation of all smallpox and whitepox viruses and all activities with these agents in a single national facility located at the Center for Disease Control, Atlanta, Georgia.	Dr. John H. Richardson, Director, Office of Biosafety, Center for Disease Control, 1600 Clifton Rd., N.E., Atlanta, Georgia 30333, Phone: (404) 329-3885, FTS: 236-3885.

Center for Disease Control—Continued

Title	Summary	Contact
	E. *Legal Basis:* Section 361 of the Public Health Service Act (42 U.S.C. 264). F. *Chronology:* The RP is the first step in the regulations development process.	
PHS-91-Indian Health	A. *Description:* Subpart A, Scope and Definition, and Subpart B, Availability of Services, are revised as part of the Department's "Operation Common Sense" to make them clearer. Subpart D, Contagious and Infectious Diseases, is being proposed for recision because it is no longer necessary given present day treatment modalities. B. *Why Significant:* These are technical amendments. C. *Regulatory Analysis:* Not required. D. *Need:* Required by Executive Order No. 12044. E. *Legal Basis:* 25 U.S.C. 13 (Snyder Act) and 42 U.S.C. 2001 (Transfer Act). F. *Chronology:* NOI published February 7, 1980. G. *Citation:* 42 CFR, Subparts A, B, and D. NPRM published 11-19-80 (45 FR 76497). Comment period will end 1-5-81.	Richard J. McCloskey, Indian Health Service, Room 6A-20, 5600 Fishers Lane, Rockville, Maryland 20857, (301-443-1116).

Health Resources Administration

Title	Summary	Contact
PHS-92—Redesignation of Health Service Areas.	A. *Description:* Sets down criteria for revising health service area boundaries. B. *Why Significant:* May result in changes to health service area boundaries. C. *Regulatory Analysis:* Not required. D. *Need:* Required by statute to implement the Health Planning and Resources Development Amendments of 1979. E. *Legal Authority:* The Health Planning and Resources Development Amendments of 1979. F. *Chronology:* None.	Colin C. Rorrie, Jr., Ph. D., Director, Bureau of Health Planning, Health Resources Administration, 3700 East-West Highway, Hyattsville, Maryland 20782, Phone: (301) 436-6850.
PHS-94—Discretionary Funding of Health Systems Agencies.	A. *Description:* Allows up to five percent of the total appropriation for HSAs to be used to supplement the base grant of selected HSAs to assist them in meeting extraordinary expenses, such as those resulting from interstate status or from serving a large geographic area. B. *Why significant:* Impacts funding of HSAs. C. *Regulatory Analysis:* Not required. D. *Need:* To implement the Health Planning and Resources Development Amendments of 1979. E. *Legal Authority:* The Health Planning and Resources Development Amendments of 1979. F. *Chronology:* None. Interim Final published 9-5-80 (45 FR 59132). Comment period ended 11-4-80.	Colin C. Rorrie, Jr., Ph. D., Director, Bureau of Health Planning, Health Resources Administration, 3700 East-West Highway, Hyattsville, Maryland 20782, Phone: (301) 436-6850.
PHS-95—National Guidelines for Health Planning Standards (Other than CT Scanners).	A. *Description:* The guidelines consist of national health planning standards respecting the supply, distribution and organization of health resources. B. *Why Significant:* Sets standards for health planning. C. *Regulatory Analysis:* Not required. D. *Need:* Required by the Health Planning and Resources Development Act of 1976 and Amendments of 1979 to issue resource standards by regulation and to annually review and revise these standards as necessary. E. *Legal Authority:* 42 USC 300k-1 and Health Planning and Resources Development Amendments of 1979. F. *Chronology:* None.	James Stockdill, Director, Office of Planning, Evaluation and Legislation, Health Resources Administration, 3700 East-West Highway, Hyattsville, Maryland 20782, Phone: (301) 436-7270.
PHS-96—Tax-exempt Refinancing of Health Facilities Construction Loans.	A. *Description:* Provides criteria for determining "the best financial interest of the United States" as it relates to tax-exempt refinancing of health facilities construction loans. B. *Why Significant:* Impacts tax revenues received by U.S. Treasury. C. *Regulatory Analysis:* Not required. D. *Need:* Department has decided that regulations are necessary because of continuing discussions as to the appropriateness of tax-exempt refinancing. E. *Legal Authority:* 42 U.S.C. 291j-3; 42 U.S.C. 300q-2; 42 U.S.C. 293i. F. *Chronology:* Notice of moratorium on approving "refinancing" of certain Federally guaranteed loans published in the FEDERAL REGISTER on October 15, 1979 (44 FR 59291). NPRM published 11-18-80 (45 FR 76212). Comment period ending 1-19-81.	William R. Berry, Bureau of Health Facilities, Health Resources Administration, 3700 East-West Highway, Hyattsville, Maryland 20782, Phone: (301) 436-7702.
PHS-97—Governing Body Requirements of Health Systems Agencies.	A. *Description:* Amends composition requirements and the characteristics members must have to meet these requirements, and mandates a technical assistance program for governing body members as well as selection procedures. B. *Why Significant:* Impacts the composition of governing bodies. C. *Regulatory Analysis:* Not required. D. *Need:* Required by the Health Planning and Resources Development Amendment of 1979. E. *Legal Authority:* Health Planning and Resources Development Amendment of 1979. F. *Chronology:* NPRM published May 26, 1978 (43 FR 22858). The comment period closed July 10, 1978.	Colin C. Rorrie, Jr., Ph. D., Director, Bureau of Health Planning, Health Resources Administration, 3700 East-West Highway, Hyattsville, Maryland 20782, Phone: (301) 436-6850.
PHS-98—Drug Abuse Project Grant Program.	A. *Description:* These regulations would establish requirements for drug abuse treatment and prevention programs. An eligible applicant for the treatment and rehabilitation services program is the institution, organization, agency, department or other accountable entity of State government that assumes legal and financial responsibility for the administration and performance of the Statewide Services Grant Program. Applications for the State Grants Program are limited to the States and jurisdictions (the District of Columbia, the Commonwealth of Puerto Rico, and the Trust Territories of the Mariana Islands, Virgin Islands, Guam, and American Samoa) through their respective Single State Agencies for Drug Abuse Prevention or the officially designated State unit responsible for drug abuse prevention programs. B. *Why Significant:* This rule would implement Section 410 of P.L. 92-255, the Drug Abuse Office and Treatment Act of 1972, as amended, and replace the current guidelines. C. *Regulatory Analysis:* Not required. D. *Need:* These regulations would implement Section 410 of the Drug Abuse Office and Treatment Act of 1972, as amended. Further, the Public Health Service Grants Administration Manual requires PHS agencies to publish in the FEDERAL REGISTER program rules, program priorities for funding and statements regarding the availability of funds. E. *Legal Basis:* Section 410 of P.L. 92-255, the Drug Abuse Office and Treatment Act of 1972 (21 U.S.C. 1177) as amended by P.L. 94-237 (90 Stat. 247-248), P.L. 94-371 (90 Stat. 1040-1041), and P.L. 95-461 (92 Stat. 1268) (21 U.S.C. 1177). F. *Chronology:* None.	Nancy Soulen, Legal Assistant, Office of the Director, National Institute on Drug Abuse, Room 10-14, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443-6482.
PHS-99—Employee Protection—Mental Health Systems Act.	A. *Description:* These regulations establish requirements for each State mental health authority to have in effect equitable arrangements to protect the interests of employees affected adversely by actions taken by State mental health authorities to emphasize	Dr. Alex Rodriquez, Special Assistant to the Secretary, Department of Health and Human Services, Washington, D.C. 20201, (202) 245-7593.

Health Resources Administration—Continued

Title	Summary	Contact
	outpatient mental health services. These arrangements include those designed to preserve employee rights and benefits and to provide training and retraining of employees, where necessary, for work in mental health or other fields and arrangements under which maximum effort will be made to place employees in employment. B. *Why Significant:* These regulations are necessary to ensure that efforts planned and undertaken by state mental health authorities to emphasize out patient treatment do not cause significant adverse effects amoong employees currently working in other settings.	
PHS-100—Mental Health Service Programs...	A. *Description:* These regulations would set out the form and manner in which each State's Mental Health Service Program is to be submitted and establish other responsibilities of State mental health authorities. B. *Why Significant:* Neither State mental health authority nor other entities within a State is eligible to receive a grant under Title II of the Mental Health Systems Act unless the State has in effect a State Mental Health Service Program. C. *Regulatory analysis:* Not required. D. *Need:* These regulations are needed to implement provisions of the Mental Health Systems Act regarding State Mental Health Service Programs. E. *Legal Basis:* Mental Health Systems Act (P.L. 96-398) F. *Chronology:* None.	Dr. Alex Rodriquez, Special Assistant to the Secretary, Department of Health and Human Service, Washington, D.C. 20201, (202) 245-7593.
PHS-101—Grants for Mental Health Service Programs.	A. *Description:* These regulations would govern the awarding of grants for mental health services under the State mental health service programs. B. *Why Significant:* These regulations would set forth the requirements for the awarding of grants for mental health services. C. *Regulatory analysis:* Not required. D. These regulations are needed to implement provisions of the Mental Health Systems Act regarding grants for state mental health services. E. *Legal Basis:* Mental Health Systems Act. (P.L. 96-336). F. *Chronology:* None.	Dr. Alex Rodriquez, Special Assistant to the Secretary, Department of Health and Human Services, Washington, D.C. 20201, (202) 245-7593.
PHS-102—Mental Health Rights and Advo<cacy.	A. *Description:* These regualtions would govern the award of grants to public or nonprofit private entities for projects to protect and advocate the rights of mentally ill individuals. B. *Why Significant:* These regulations would establish a system to assure that mental health patients receive the protection and services they require. C. *Regulatory analysis:* Not required. D. *Need:* These regulations are needed to implement provisions in Title V of the Mental Health Systems Act regarding grants to protect and advocate the rights of mentally ill individuals. E. *Legal Basis:* Mental Health Systems Act (P.L. 96-398). F. *Chronology:* None.	Dr. Alex Rodriquez, Special Assistant to the Secretary, Department of Health and Human Services, Washington, D.C. 20201, (202) 245-7593.
PHS-103 Rape Prevention and Control.....	A. *Description:* These regulations would govern grants to public and private nonprofit entities to provide services to rape victims. B. *Why significant:* Grants would be awarded to provide counseling for rape victims and the immediate family; assistance to victims in securing mental health, social, medical, and legal services, and prevention of rape. C. *Regulatory Analysis.* Not required. D. *Need:* To implement the provisions of Title VI of the Mental Health System Act regarding grants to provide services to rape victims. E. *Legal Basis:* Mental Health Systems Act (P.L. 96-398). F. *Chronology:* None.	Dr. Alex Rodriquez, Special Assistant to the Secretary, Department of Health and Human Services, Washington, D.C. 20201, (202) 245-7593.
PHS-104-Project Grants for Preventive Health Services—Subpart 1—Grants for Other Preventive Health Programs (42 CFR Part 51b).	A. *Description:* Amends 42 CFR Part 51b by adding a new subpart which would be applicable to any grant program implemented under Section 317(a)(2) of the Public Health Service Act not governed by any other subpart in Part 51 except Subpart A—General Provisions. B. *Why significant:* Provides a regulatory base for other preventive health programs which may be implemented under Section 317(a)(2) and covered by appropriations authorized under Section 317(j)(5). C. *Regulatory Analysis.* Not required. D. *Need:* The general grant authority in Sction 317(j)(5) was provided primarily to address health problems which could not be anticipated when the legislation was being developed. Since such problems generally will require a quick response, prior establishment of a regulatory base will be helpful. E. *Legal Basis:* Section 317(a)(2) 42 U.S.C. 247b) of the Public Health Service Act, as amended by the Health Services and Centers Amendments of 1978. F. *Chronology:* Regulations Proposal currently being developed.	Windell R. Bradley, Associate Director, Bureau of State Services, Centers for Disease Control, 1600 Clifton Road, N.E., Atlanta, Georgia 30333, Phone: (404) 329-3773, FTS 236-3773.
PHS-105-Cooperative Agreements for Nutrition Surveillance Systems.	A. *Description:* Establishes requirements for cooperative agreements to States to assist them in developing, implementing, and managing nutrition surveillance as an integral part of their service delivery programs. B. *Why significant:* Provides regulatory base for cooperative agreements to enable States to provide data which will result in minimization of nutrition-related health problems, a possibly "early warning" of broader community problems, improvement in the delivery of health-related nutritional services, the evaluation and improvement of various food delivery and supplementation programs, and other nutrition intervention activities. C. *Regulatory Analysis.* Not required. D. *Need:* The regulation is necessary to establish requirements to implement these programs in response to the Congressional mandate contained in the Food and Agriculture Act of 1977 (Public Law 95-113) which directed the Secretaries of Agriculture and Health and Human Services to establish a comprehensive nutritional status monitoring system throughout the United States. E. *Legal Basis:* Section 301(b)(3) of the Public Health Service Act (42 U.S.C. 241(b)(3)) as amended. F. *Chronology:* The Regulations Proposal is the first step in the regulations development process.	Gordon E. Robbins, Center for Health Promotion and Education, Centers for Disease Control, 1600 Clifton Road, N.E., Atlanta, Georgia 30333, Phone: (404) 329-2564, FTS: 236-2564.
PHS-106—Administrative and Managerial Arrangements.	A. *Description:* This rule proposes to amend the requirements for the organization and operation of federally qualified HMOs by adding a provision concerning the amount of time the executive director devotes to the managing of the HMO. B. *Why significant:* The rule would require the executive to devote at least 60 percent of his or her professional activity to the management of the HMO, unless a waiver was requested by the HMO and granted by the Secretary. C. *Regulatory Analysis.* Not required. D. *Need:* (P) To provide more specificity to the requirements for the executive director based on the HMO program's experience in administering the Federal Program. E. *Legal Basis:* Sec. 215, 88 Stat. 690 (42 U.S.C. 216); Secs. 1301-1318, as amended, 92 Stat. 2131-2141 (42 U.S.C. 300e-300e-17). F. *Chronology:* None.	Howard R. Veit, Director, Office of Health Maintenance Organizations, Park Building, 12420 Parklawn Drive, Rockville, Maryland 20857, (301) 443-4106.

Health Resources Administration—Continued

Title	Summary	Contact
PHS-107—"ERISA" Rule	A. *Description:* This rule amends the requirements for the operation of federally qualified HMOs regarding the disclosure of information by HMOs to members, potential members, and employers. Publication of this PHS regulation is being coordinated with the Department of Labor which administers the Employee Retirement Income Security Act of 1974 (ERISA). B. *Why Significant:* This rule requires federally qualified HMOs to disclose clearly (1) certain information similar to that required by the Department of Labor's Employee Retirement Income Security Act of 1974 (ERISA) regulations, 29 CFR Part 2520, and (2) information about the financial conditions of the HMO. C. *Regulatory Analysis:* Not required. D. *Need:* (L) To avoid any duplicative or unnecessary requirements that might result with respect to ERISA and Title XIII of the PHS Act. E. *Legal Basis:* Section 215, 88 Stat. 690 (42 U.S.C. 216); Secs. 1301-1318, as amended, 92 Stat. 2131-2141 (42 U.S.C. 300e-300e17). F. *Chronology:*—Notice of Decision to Revise Regulations. 44 FR 22133. —NPRM-42 CFR § 110.108(c)(1) Full and Fair Disclosure; § 110.108(c)(2) Broadly representative enrollment; § 110.108(s) Reporting and Disclosure under the Employee Retirement Income Security Act of 1974 ("ERISA"). Comment period: 6/22/79-8/21/79. 44 FR 36862-5.	Howard R. Veit, Director, Office of Health Maintenance Organizations, Park Building, 12420 Parklawn Drive, Rockville Maryland 20857, (301) 443-4106.
PHS-108—National Guidelines for Health Planning (CT Scanner Standards).	A. *Description:* The guidelines consist of national health planning standards respecting the supply, distribution and organization of health resources. B. *Why Significant:* Sets standards for health planning. C. *Regulatory Analysis:* Not required. D. *Need:* Required by the Health Planning and Resources Development Act of 1976 and Amendments of 1979 to issue resource standards by regulation and to annually review and revise these standards as necessary. E. *Legal Basis:* 42 U.S.C. 300k-1 and Health Planning and Resources Development Amendments of 1979. F. *Chronology:* None.	James Stockdill, Director, Office of Planning, Evaluation, and Legislation, HRA, 3700 East-West Highway, Hyattsville, Maryland 20782, (301) 436-7270.
PHS-109—Health Education Assistance Loans (HEAL).	A. Description: These amendments raise the maximum amount a student may borrow under the HEAL program and make other technical changes. B. Why Significant: Students will be able to borrow higher amounts of money necessary for their education. C. Regulatory Analysis: Not required D. Need: These amendments are necessary to implement statutory changes to the HEAL legislation and to meet needs program as identified. E. Legal Basis: 42 U.S.C. 216 and 42 U.S.C. 294c. F. Chronology: Interim Final regulations were published on August 3, 1978 (43 FR 34320).	Alice Swift, Bureau of Health Professions, HRA, Room G-66, Center Building, 3700 East-West Highway, Hyattsville, Maryland 20782, (301) 436-6788.
PHS-110—Amendments to 42 CFR Part 124, Subpart F—Reasonable Volume of Uncompensated Services to Persons Unable to Pay.	A. Description: These amendments will revise the existing regulations to better reflect the characteristics of long-term care facilities and public health laboratories and hospitals. B. Why Significant: Long-term facilities and public health hospitals and laboratories will be better able to respond to regulatory requirements. C. Regulatory Analysis: Not required. D. Need: The program has identified a need for these amendments. E. Legal Basis: 42 U.S.C. 3000-1(6). F. Chronology: NPRM was published on 10/25/78 (43 FR 49954). The comment period closed 12/26/78. Final Rules were published on 5/18/79 (44 FR 29371).	Martin J. Frankel, Bureau of Health Facilities, HRA, Center Building, 3700 East-West Highway, Hyattsville, Maryland 20782, (301) 436-7795
PHS-111—Redesignation of the Contract Health Services Delivery Area (CHSDA) for the Penobscot Reservation.	A. *Description:* Amends 42 CFR 36.22(a)(6) to change the counties included in the CHSDA for the Penobscot Reservation. B. *Why significant:* This is a technical amendment affecting only the Penobscot Nation. C. *Regulatory Analysis:* None required. D. Need: The Penobscot Nation has requested a change in their reservation's CHSDA. E. *Legal Basis:* 25 U.S.C. 13 (Snyder Act) and 42 U.S.C. 2001 (Transfer Act). F. *Chronology:* None. Since it is a technical amendment, a Notice of Intent is not required.	Richard J. McCloskey, Indian Health Service, Room 5A-39, 5600 Fishers Lane, Rockville, Maryland 20857, (301-443-1116).
PHS-112—Redesignation of the Contract Health Services Delivery Area (CHSDA) for the Passamaquoddy Reservation.	A. *Description:* Amends 42 CFR 36.22(a)(6) to change the counties included in the CHSDA for the Penobscot Reservation. B. *Why significant:* This is a technical amendment affecting only the Penobscot Nation. C *Regulatory Analysis:* Not required. D. *Need:* The Penbscot Nation has requested a change in their reservation's CHSDA. E. *Legal Basis:* 25 U.S.C. 13 (Snyder Act) and 42 U.S.C. 2001 (Transfer Act). F. *Chronology:* None. Since it is a technical amendment, a Notice of Intent is not required.	Richard J. McCloskey, Indian Health Service, Room 5A-39, 5600 Fishers Lane, Rockville, Maryland 20857, (301-443-1116).
PHS-113—Redesignation of the Contract Health Services Delivery Area (CHSDA) for the Reservation of the Mississippi Band of Choctaw Indians.	A. *Description:* Amends 42 CFR 36.22(a)(6) to change the CHSDA for the Mississippi Band of Choctaw Indians. B. *Why significant:* This is a technical amendment affecting only the Mississippi Band of Choctaw Indians. C. *Regulatory Analysis:* None required. D. *Need:* The CHSDA for the Mississippi Choctaw Reservation needs to be amended to add two counties which were inadvertently omitted when the regulation was initially published. E. *Legal Basis:* 25 U.S.C. 13 (Snyder Act) and 42 U.S.C. 2001 (Transfer Act). F. *Chronology:* None. Since it is a technical amendment, a Notice of Intent is not required.	Richard J. McCloskey, Indian Health Service, Room 5A-39, 5600 Fishers Lane, Rockville, Maryland 20857, (301-443-1116).
PHS-114—National Center for Health Care Technology Research Grant Program.	A. *Description:* Governs the awards of grants to support research on health care technologies. B. *Why significant:* These regulations would provide a basis for awarding grants to conduct systematic assessments of new, emerging, and established health care technologies in response to national needs and priorities. C. *Regulatory Analysis:* None required. D. *Need:* These regulations are needed to implement grants to support research on health care technologies under Section 309(b) of the Public Health Service Act. E. *Legal Basis:* Section 309(b) of the Public Health Service Act (42 U.S.C. 242n) as amended by the Health Services Research, Health Statistics, and Health Care Technology Act of 1978. P.L. 95-623. F. *Chronology:* None.	Norman Weisman, Ph. D., Associate Director of Extramural Research NCHCT, Room 17A-32, Parklawn Bldg., 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443-1820.

Health Care Financing Administration—Significant Regulations

Title	Summary	Contact
HCFA-2—Medicare-Medicaid Programs: Payment for Services Which Are Not Medically Necessary and/or Not Rendered in the Appropriate Setting.	A. *Description:* This regulation would propose criteria for determining when a patient or provider would not be held liable for knowing that the services were medically unnecessary or otherwise inappropriate, before the services have been disapproved by PSROs for Medicare and Medicaid payments. B. *Why Significant:* The regulation would reduce waste by eliminating Federal payments for unnecessary care. In addition, there is strong public interest in completing regulations for PSROs. C. *Regulatory Analysis:* Not required. D. *Need:* To implement the 1972 and 1977 amendments to the Social Security Act. E. *Legal Basis:* Secs. 1158(a) and 1158(d) of the Social Security Act; Pub. L. 92-603; Sec. 22 of Pub. L. 95-142. F. *Chronology:* The proposal is currently under review. When the review is completed it will be submitted to the Department for approval.	Marcia Lebron, Senior Analyst, IRB, DPR, HSQB, 1st Flr., Dogwood East Bldg., 1849 Gwynn Oak Ave., Baltimore, MD 21207, 301-594-3960.
HCFA-3—Medicare/Medicaid Program: Professional Standards Review Organizations (PSROs) Reconsideration and Appeals—Procedures for Reconsiderations.	A. *Description:* This regulation contains procedures for the reconsideration of the medical necessity determinations of PSROs and the review of such reconsiderations by Statewide Professional Standards Review Councils. B. *Why Significant:* This regulation would clarify the process for appealing PSRO determinations. In addition, there is strong public interest in completing regulations for PSROs. C. *Regulatory Analysis:* Not required. D. *Need:* To implement 1972 amendments to the Social Security Act. E. *Legal Basis:* Sec. 1159(a) of the Social Security Act (42 U.S.C. 1320c-8); Sec. 249F of Pub. L. 92-603. F. *Chronology:* NPRM was published on March 5, 1979 (44 FR 12067). The comment period closed on May 4, 1979. The final is currently under review in the Department.	Paul Mashove, Program Analyst, IRB, DPR, HSQB, 1st Flr., Dogwood East Bldg., 1849 Gwynn Oak Ave., Baltimore, MD 21207 301-594-3960.
HCFA-4—Medicare/Medicaid Program: Hospital Utilization Review—Revised Requirements and Procedures for Utilization Review.	A. *Description:* The regulations will revise requirements and procedures for utilization review in health care institutions participating in Medicare and Medicaid programs. These regulations will provide for review of the medical necessity of admissions and continued stays, the appropriateness and quality of patient care, and the effectiveness of utilization of facility and health professional services. B. *Why Significant:* This regulation would assure quality care by establishing requirements for conducting concurrent and retrospective review of the health care provided to Medicare beneficiaries and Medicaid recipients. C. *Regulatory Analysis:* Not required. D. *Need:* To implement the 1976 amendments to the Social Security Act regarding utilization review requirements in hospitals not covered by PSROs. E. *Legal Basis:* Sec. 1902(g)(1)(C) of the Social Security Act; Sec. 110 of Pub. L. 94-182. F. *Chronology:* NPRM was published on March 3, 1980. Correction Notice was published on May 2, 1980. Comment period closed July 1, 1980.	Beverly Christian, Program Analyst, IRB, DPR, HSQB, 1st Flr., Dogwood East Bldg., 1849 Gwynn Oak Ave., Baltimore, MD 21207 301-594-3960.
HCFA-6—Medicare/Medicaid Program: Conditions of Participation for Hospitals—Revised Conditions for Participation.	A. *Description:* This regulation will revise conditions of participation for hospitals in Medicare and Medicaid. It would simplify the language and update the requirements to reflect changes in legislation and advances in technology. B. *Why Significant:* This regulation would simplify the regulatory requirements hospitals must meet to be certified for participation in Medicare and Medicaid. The amendments are intended to hold down costs while maintaining an acceptable level of patient care. C. *Regulatory Analysis:* Not required. D. *Need:* To add greater requirements for accountability while allowing flexibility for hospitals in performing administrative and managerial functions; and to implement the 1975 amendments to the Social Security Act. E. *Legal Basis:* Secs. 1102, 1861(e), 1861(f), 1861(g), 1864, and 1871 of the Social Security Act (42 U.S.C. 1302, 1395 et seq.); Sec. 102 of Pub. L. 94-182. F. *Chronology:* General Notice published on November 2, 1977 (42 FR 57351). NPRM was published on June 20, 1980 (45 FR 41794). The comment period closed on August 19, 1980.	Susan Anderson, Standards and Certification Analyst, HSQB, 2nd Floor, Dogwood East Bldg., 1849 Gwynn Oak Ave., Baltimore, MD 21207 301-594-9714.
HCFA-8—Medicare/Medicaid Program: Confidentiality and Disclosure of Information of Professional Standards Review Organizations (PSROs)—Criteria Governing Confidentiality and Disclosure of Information.	A. *Description:* These regulations set forth criteria governing the acquisition, protection, and disclosure of information obtained or generated by PSROs. B. *Why Significant:* These regulations place limits on the disclosure of PSRO information and establish penalties for unauthorized disclosure. These regulations are intended to assure that PSROs have access to necessary information, that confidential information is adequately safeguarded and that the information may be used as effectively as possible. C. *Regulatory Analysis:* Not required. D. *Need:* To implement the 1977 amendments to the Social Security Act. E. *Legal Basis:* Secs. 1166(a) of the Social Security Act; Sec. 5(h) of Pub. L. 95-142. F. *Chronology:* Interim regulation was published on January 16, 1978 (43 FR 2292). NPRM was published on January 15, 1979 (44 FR 3359). The comment period closed on March 16, 1979.	Tony Tirone, Legal Analysts, OPDC, HSQB, 2nd Floor, Dogwood East Bldg., 1849 Gwynn Oak Ave., Baltimore, MD 21207, 301-597-2753.
HCFA-11—Medicare/Medicaid Program: Protection of Patients for Patient Funds—Procedures for Protection of Funds.	A. *Description:* This regulation expands standards for protection of personal funds of Medicare and Medicaid patients in skilled nursing facilities and intermediate care facilities. B. *Why Significant:* The regulation will curtail the reported misuse of patient funds and assure that personal funds are fully accounted for and made not commingled with facility funds. In addition, there is strong public interest in adequately safeguarding patient funds. C. *Regulatory Analysis:* Not required. D. *Need:* To implement the 1977 and 1978 amendments to the Social Security Act. E. *Legal Basis:* Sec. 1861(j)(14) and 1905(c) of the Social Security Act, Sec. 21(a) of Pub. L. 95-142; Sec. 6(a) of Pub. L. 95-292. F. *Chronology:* NPRM was published on September 1, 1978 (43 FR 39154). The comment period closed on October 31, 1978. The final was published on July 24, 1980 (45 FR 49440). A notice was published on October 1, 1980, announcing a stay of effective date pending approval of recordkeeping requirements from the Office of Management and Budget (45 FR 64913). A notice will be published in December 1980.	Janet Packer, Reg. Analyst, ORM, 785 East High Rise Bldg 6401 Security Boulevard Baltimore, MD 21235, DLTC, HSQB, 2nd Floor, Dogwood East Bldg., 1849 Gwynn Oak Ave., Baltimore, MD 21207 301-594-5014.
HDFA-13—Medicare/Medicaid Program: Conditions of Participation for Skilled Nursing Facilities (SNFs) and Intermediate Care Facilities (ICFs)—Conditions of Participation.	A. *Description:* The regulations will recodify, revise and consolidate present regulations governing conditions of participation for skilled nursing and intermediate care facilities under the Medicaid and Medicare programs. B. *Why Significant:* This regulation, will focus on patient care, promote cost containment while improving quality care, and achieve more effective compliance. C. *Regulatory Analysis:* Yes, being conducted. D. *Need:* Change in methods of delivering health care and the need to control the cost of long term care while improving quality patient care. E. *Legal Basis:* Secs. 1102, 1814, 1832, 1833, 1861, 1863, 1865, 1866, and 1871 of the Social Security Act (42 U.S.C. 1302, 1395, 1395f, 1395k, 1395x, 1395z, 1395bb, 1395cc, 1395hh, 1396(d)(8), and 1905(c)). F. *Chronology:* Notice was published on June 8, 1978 (43 FR 24973). NPRM was published on July 14, 1980 (45 FR 47368). Notice of public meetings was published on July 29, 1980 (45 FR 50373). A notice was published on September 15, 1980, which extended the comment period to October 15, 1980 (45) FR 60345).	J. Richard Lenehan, Jr., Program Analyst, HSQB, 2nd Flr., Dogwood East Bldg., 1849 Gwynn Oak Ave., Baltimore, MD 21207, 301-594-7651.

Health Care Financing Administration—Significant Regulations—Continued

Title	Summary	Contact
HCFA-15—Medicare/Medicaid Programs: Automatic Extinguishment Sprinkler Systems for New Long Term Care Facilities—Requirements for Fire Extinguishment Systems.	A. *Description:* The regulation will expand requirements for fire extinguishment systems in skilled nursing and intermediate care facilities. B. *Why Significant:* Automatic extinguishment systems are an important aspect to patient safety in long term care facilities, but are also costly to install; especially in existing facilities. C. *Regulatory Analysis:* Not required. D. *Need:* Concern by the public to extent requirements for automatic extinguishment systems to all facilities. E. *Legal Basis:* Secs. 1102, and 1861(j) (13) of the Social Security Act (42 U.S.C. 1302.) F. *Chronology:* Notice of Intent was published on December 6, 1978 (43 FR 57166. The comment period closed on January 30, 1979. NPRM was published 7-28-80 (45 FR 50373). The comment period closed on 10-26-80.	Robert Jevec, Program Analyst, HSQB, 2nd Flr., Dogwood East Bldg., 1849 Gwynn Oak Ave., Baltimore, MD 21207, 301-594-3314.
HCFA-16—Medicare/Medicaid Program: Termination of Federal Financial Participation (FFP) in Long Term Care Facilities—Change of FFP Requirements.	A. *Description:* The regulation would amend the Medicaid regulations concerning Federal financial participation (FFP) in cases where a Medicaid nursing home's provider agreement is not renewed or is terminated because the home is out of compliance with Federal requirements. B. *Why Significant:* Guidelines for the termination of FFP in long term care facilities. C. *Regulatory Analysis:* Not required. D. *Need:* This regulation is needed to establish a uniform nationwide Medicaid policy. E. *Legal Basis:* Sec. 1102 of the Social Security Act (42 U.S.C.1302). F. *Chronology:* The proposal is currently under review in the Dept.	Stanley Katz, Director, BPP, 2nd Flr., Dogwood West Bldg. 6401 Security Blvd., Baltimore, MD 21235, 301-594-9595.
HCFA-18—Medicare Program: Reimbursement Prepaid Health Plans—Conditions and Principles of Reimbursement.	A. *Description:* This regulation will establish qualifying conditions and principles of reimbursement for Health care prepayment plans (HCPPs), other than health maintenance organizations, (HMOs), which elect to receive reimbursement under the Medicare Supplementary Medical Insurance Program. B. *Why Significant:* The requirements on this regulation for HCPPs are similar to the extent possible, to those provided by the Medicare payment for HMOs reimbursed on a reasonable cost basis. C. *Regulatory Analysis:* Not required. D. *Need:* The consistency in qualifying conditions and reimbursement principles will assure uniform treatment of both these types of prepayment organizations under Medicare. E. *Legal Basis:* Secs. 1802 and 1833(a)(1)(A) of the Social Security Act. F. *Chronology:* NPRM was published on 10-31-80 (45 FR 72538). The comment period closes 12-30-80.	Marimos Svolos Dep'y Director, DMSCP, Rm. 469 EHR, ELR, 6401 Security Blvd., Baltimore, MD 21235, 301-597-2968.
HCFA-21—Medicare Program: Provider Reimbursement Determinations—Criteria and Procedures for PRRB Hearings and Decisions.	A. *Description:* This regulation criteria for reopening certain provider cost reimbursement determinations. It would also contain procedures for final review of Provider Reimbursement Review Board (PRRB) decisions. B. *Why Significant:* Include more detailed guidelines for PRRB decisions and hearings. C. *Regulatory Analysis:* Not required: D. *Need:* To streamline procedures and to resolve a number of problems which have been identified through experience under current regulations. E. *Legal Basis:* Secs. 1102, 1861(v)(1)(A)(ii), and 1878(f)(1) of the Social Security Act (42 U.S.C. 139500.) F. *Chronology:* NPRM was published on February 14, 1980 (45 FR 9953). The comment period closed on April 14, 1980.	Stanley Katz, Director, DTPL, BPP, 2nd Flr., Dogwood West Bldg. 6401 Security Blvd., Baltimore, MD 21235, 301-594-9595.
HCFA-25—Medicare Program: Part A Entitlement and Copayments—Clarification of Eligibility Requirements.	A. *Description:* This regulation will clarify, simplify and update existing regulations pertaining to (1) entitlement to Medicare hospital insurance for certain groups and (2) the Medicare inpatient hospital coinsurance, the post-hospital extended care coinsurance, and the blood deductible. B. *Why Significant:* Beneficiaries and potential beneficiaries can more easily understand the conditions that will make them eligible for Medicare and how much money they will have to contribute toward the cost of their hospital care.	Luisa Iglesias, Regulation Analyst BPP, 357G Humphrey Bldg., Washington, D.C. 20201, 202-755-1290. C. *Regulatory Analysis:* Not required. D. *Need:* To clarify certain portions of the Medicare, Part A regulations so that beneficiaries and potential beneficiaries can more easily understand the conditions that would make them eligible for Medicare and how much money they would have to contribute toward the cost of their hospital care. E. *Legal Basis:* Secs. 226, 1102, 1813 and 1871 of the Social Security Act (42 U.S.C. 426, 426a, 1302, 1395e, and 1395hh). F. *Chronology:* NPRM was published on May 30, 1980 (45 FR). The Comment period closed on 7-29-80.
HCFA-26—Medicare/Medicaid Program: Reimbursement: Internship and Residency Program—Change in Reimbursement Requirements.	A. *Description:* This regulation will eliminate the requirement that a provider's costs be reduced by the amounts of certain grants and donations when calculating the reimbursement allowed under Medicare, Medicaid, or the Maternal and Child Health Program. These grants and donations are those which support approved internship and residency programs in family practice, general medicine, and general pediatrics. The regulation will also require providers to report primary care program costs and revenues. B. *Why Significant:* The regulation will allow providers to realize the full benefit of grants for primary care residency programs by not deducting these grants from incurred provider cost before determining Medicare and Medicaid reimbursement.	William J. Goeller, Chief, PRB, BPP, Rm. 1-D-1 ELR, 6401 Security Blvd., Baltimore, MD 21235, 301-597-1802. C. *Regulatory Analysis:* Not required. D. *Need:* To avoid nullifying the purpose of specific grants for primary care internship and residency programs. E. *Legal Basis:* Secs. 1102, 1814(b) and 1833(a)(2) of the Social Security Act. F. *Chronology:* NPRM was published on August 10, 1979 (44 FR 47117). The comment period closed on October 9, 1979. The final was published on August 5, 1980 (45 FR 51783). A correction notice was published on September 8, 1980 (45 FR 59158). The reporting requirements will not be effective until they are approved by the Office of Management and Budget (OMB). A notice will be published to announce the outcome of the OMB review.
HCFA-27—Medicare Program: Teaching Hospitals' Physicians Costs—Criteria for Payments to Teaching Hospitals.	A. *Description:* This regulation proposes criteria under which Medicare would pay reasonable charges for physician services in teaching hospitals or would reimburse teaching hospitals for the reasonable costs of physician services. It would also specify the manner and extent to which payments would be made for certain medical school costs and for services of volunteer physicians. B. *Why Significant:* The regulation provides that the reasonable cost of physician services would be based on that portion of each physician's total compensation which is properly attributable to furnishing services to Medicare beneficiaries; and specifies the conditions under which physician services in a teaching hospital may be reimbursed on a reasonable charge basis under the "grandfather clause" or "private patient" exceptions.	Bill Birney, Chief, PPR Section, BPP, Rm. 1-E-5, ELR, 6401 Security Blvd., Baltimore, MD 21235, 301-594-5431.

Health Care Financing Administration—Significant Regulations—Continued

Title	Summary	Contact
HCFA-30—Medicare Program: End-stage Renal Disease (ESRD) Networks—Requirements for ESRD Networks.	A. *Description:* The proposed regulation requires that networks establish goals to maximize use of self-dialysis and kidney transplantation and that there be at least one patient representative on each network coordinating council and executive committee. It will also require networks to submit annual reports; ESRD facilities to make individual patient information available to their network medical review boards upon request; and that network meetings be advertised and open to the public.	Tony Colotta, Program Analyst, Office of End Stage Renal Disease, OSP, Rm. 1-D-3, Dogwood West Bldg., 1849 Gwynn Oak Ave., Baltimore, MD 21235, 301-594-6530. B. *Why Significant:* This regulation is intended to: 1) given ESRD patients and the general public a more active role in network decision making processes; 2) encourage maximum use of the lower cost forms of treatment, self-dialysis and kidney transplantation; and 3) encourage greater objectivity in network decision-making. C. *Regulatory Analysis:* Not required. D. *Need:* To implement the 1978 amendments to the Social Security Act. E. *Legal Basis:* Sec. 1881(c) of the Social Security Act; Pub. L. 95-292. F. *Chronology:* NPRM was published on July 18, 1979 (44 FR 41841). The comment period closed on September 17, 1979. The final notice is currently under review in the Department.
HCFA-31—Medicare Program: Incentive Reimbursement for End-Stage Renal Disease (ESRD) Services—Methods and Procedures for Reimbursement.	A. *Description:* The regulation sets forth methods and procedures for reimbursing providers and facilities for outpatient renal dialysis services provided to ESRD patients. B. *Why Significant:* The regulation will provide for prospective payment on various types of dialysis treatment through national rates, periodically adjusted. The rates will be paid subject to an exception process.	Bernadette Schumaker, Chief, Alter. Reim. Systems Branch, Rm. 1-A-1 ELR, 6401 Security Blvd., Balto., MD 21235, 301-597-1048. C. *Regulatory Analysis:* Not required. D. *Need:* The regulation provides for an incentive reimbursement method to encourage economies in the delivery of ESRD services. E. *Legal Basis:* Secs. 1102, 1814(b), 1833, 1861(v)(1), 1871, and 1881 of the Social Security Act (42 U.S.C. 1302, 1395(f), 1395e, 1395(b)(1), 1395hh and 1395rr). F. *Chronology:* NPRM was published on 9-26-80 (45 FR 64008). The comment period closed on 11-25-80.
HCFA-33—Medicare Program: Educational Programs Reimbursement.	A. *Description:* This proposal would revise the regulation governing the amount of reasonable cost reimbursement due health care providers under Medicare. B. *Why Significant:* The regulation would more clearly identify the provider costs for approved medical, nursing, and paramedical education programs that are allowable and to specify procedures for calculating a provider's net costs of these programs.	William Goeller, Chief, Provider Reimbursement Br., BPP, Rm. 1-D-1 ELR, 6401 Security Blvd., Baltimore, MD 21235, 301-597-1802. C. *Regulatory Analysis:* Not required. D. *Need:* Changes which have occurred in the way health care education programs are operated and financed necessitate the revision. Providers and the public generally need to be informed of clarifications of Medicare reimbursement policy. E. *Legal Basis:* Secs. 1102, 1814(b) and 1833(a)(2) of the Social Security Act (42 U.S.C. 1302, 1395f(b), and 1395d(a)(2)). F. *Chronology:* The proposal is currently under review. When the review is completed it will be submitted to the Department for approval.
HCFA-34—Medicare/Medicaid Program: Proposed List of Additional Items and Services Subject to the Lowest Charge Level—List of Items and Services Subject to Lowest Level Charge Criteria 93A. *Description:* This regulation will add to the list of items and services subject to the lowest charge criteria, 15 of the frequently performed laboratory services for Medicare-Medicaid beneficiaries and 5 items of durable medical equipment most frequently rented or purchased. A laboratory test or service on this list could be subject to the lowest charge provision regardless of whether it was performed on an individual basis (manually or on an automated equipment) or as part of an automated battery. B. *Why Significant:* The lowest charge level regulation implements certain cost containment provisions as set forth by law. C. *Regulatory Analysis:* Not required. D. *Need:* To implement the 1974 and 1975 amendments to the Social Security Act. E. *Legal Basis:* Secs. 1102, 1842(b), 1971, and 1903(i)(1) of the Social Security Act (42 U.S.C. 1302, 1395(b), 1395hh, and 1396(b)(i)(1)). F. *Chronology:* Notice was published on March 26, 1979 (44 FR 18116). The comment period closed on May 10, 1979.	Paul Reesel, Branch Chief, FPRB, BPP, Rm. 1-A-3 6401 Security Blvd., Baltimore, MD 21235, 8-594-1843.
HCFA-35—Medicare/Medicaid Program: Prospective Reimbursement of Rural Health Clinic Services—Principles of Reimbursement93A. *Description:* This regulation provides for a prospective payment method for reimbursement of rural health clinic services under Medicaid and Medicare. B. *Why Significant:* The regulation will increase efficiency and increase beneficiary access to rural health services. C. *Regulatory Analysis:* Not required. D. *Need:* To implement the 1977 and 1978 amendments to the Social Security Act. E. *Legal Basis:* Secs. 1833(a)(3), 1861(v)(1)(A) and 1902(a)(13) of the Social Security Act; Pub. L. 95-210 and Pub. L. 95-292.	

Health Care Financing Administration—Significant Regulations—Continued

Title	Summary	Contact
F. *Chronology:* NPRM was published on September 10, 1980 (45 FR 59734). A notice was published on November 7, 1980, which extended the comment period to December 10, 1980 (45 FR 73978). A correction notice was published on November 13, 1980..		
		Bernie Truffer, Acting Section Chief Health Organization, BPP, Rm. 181, EHR, 6401 Security Blvd., Baltimore, MD 21235, 301-597-2584. Francina Spencer, Health Insurance Policy Specialist, BPP, Rm. 431 EHR, 6401 Security Blvd., Baltimore, MD 21235, 301-594-9825.
HCFA-36—Medicaid Program: Family Planning—Requirements for Family Planning Services93A. *Description:* This regulation will specify Federal requirements for provision of family planning services under Medicaid. It also will specify types and ranges that may be included by States.. B. *Why Significant:* Regulations will assure that States will provide a uniform minimum set of family planning services to carry out the statutory requirement.. C. *Regulatory Analysis:* Not required..... D. *Need:* To implement the 1972 amendments to the Social Security Act.. E. *Legal Basis:* Secs. 1102, 1905(a)(4)(C) of the Social Security Act (42 U.S.C. 1302, 1396d(a)(4)(C)).. F. *Chronology:* NPRM was published on August 9, 1979 (44 FR 46899). The comment period closed on October 9, 1979..		
HCFA-37—Medicaid Program: Reasonable Cost-Related Reimbursement for Skilled Nursing and Intermediate Care Facility Services—Requirements for State Methods of Payment93A. *Description:* This regulation will clarify and expand requirements for State methods of payment for skilled nursing and intermediate care facility services under State Medicaid programs.. B. *Why Significant:* The regulation will make cost-related reimbursement for long-term care facilities a more effective, more accurate form of payment.. C. *Regulatory Analysis:* Not required..... D. *Need:* The regulations are needed to clarify inconsistancies in the cost-related reimbursement rules published in the FEDERAL REGISTER July 1, 1976. (41 FR 27300). E. *Legal Basis:* Secs. 1102, and 1902(a)(13)(E) of the Social Security Act.. F. *Chronology:* NPRM was published on April 18, 1979 (44 FR 23095). The comment period closed on June 18, 1979..		Milton Dezube, Section Chief, Issues Section, BPP, Rm. 1-A-1 ELR, 6401 Security Blvd., Baltimore, MD 21235 301-597-1804.
HCFA-38—Medicaid Program: State Medicaid Contracts—Procedures for Contract Practices93A. *Description:* This regulation proposes requirements to strengthen protections against questions on contract practices and possible program abuse and to remedy ambiguities and omissions in existing regulations.. B. *Why Significant:* The regulation would improve Medicaid program administration by ensuring proper contracting procedures and maximum appropriate competition.. C. *Regulatory Analysis:* Not required..... D. *Need:* The regulation is needed to implement Federal prior approval authority under 45 CFR Part 74, Administration of Grants.. E. *Legal Basis:* Sec. 1102 of the Social Security Act (42 U.S.C. 1302).. F. *Chronology:* The proposal is currently under review in the Department..		Leonard Monfred, Branch Chief, Div. of Procurement, BPO, Rm. 264 EHR, 6401 Security Blvd., Baltimore, MD 21235, 301-594-8004.
HCFA-39—Medicaid Program: Hearing Aid and Eyeglass Reimbursement—Procedures for Purchasing Hearing Aids and Eyeglasses93A. *Description:* The regulations will require Medicaid agencies to establish an acquisition cost (AC) program, volume purchase plan (VPP), or some combination of both as a method of purchasing eyeglasses and hearing aids for Medicaid recipients.. B. *Why Significant:* The regulation will limit payment to providers to the lower of the actual acquisition cost plus a reasonable dispensing fee, or the provider's usual and customary charge to the general public.. C. *Regulatory Analysis:* Not required..... D. *Need:* The regulations are needed to lower the cost and improve the quality of hearing aids and eyeglasses paid for under the State Medicaid program..		Pete Rodler, Acting Chief, Pharmaceutical & Medical Services Reimbursement Branch, BPP, Rm. 1-A-3, ELR, 6401 Security Blvd., Baltimore, MD 21235, 301-597-1845.

Health Care Financing Administration—Significant Regulations—Continued

Title	Summary	Contact
E. *Legal Basis:* Sec. 1102 of the Social Security Act.. F. *Chronology:* NPRM was published on May 25, 1979 (44 FR 30382). The comment period closed on July 24, 1979. The final is currently under review in the Dept..		
HCFA-41—Medicaid Program Medicaid Quality Control (MQC) Time Requirements for Review; Technical Amendments93A. *Description:* The regulations will amend the current Medicaid Quality Control (MQC) regulations by requiring States, within specific time frames to: (1) complete a set percentage of eligibility reviews (active cases and negative case actions); and (2) submit individual case review findings.. B. *Why Significant:* The regulations will make it easier for States to understand and operate the Medicaid Quality Control program, and improve Federal and State program management by ensuring timely completion of reviews and reports.. C. *Regulatory Analysis:* Not required..... D. *Need:* The regulations are needed to amend Medicaid Quality Control regulations by specifying time periods for completion of reviews of the cases in the monthly MQC samples.. E. *Legal Basis:* Sec. 1102 of the Social Security Act (42 U.S.C. 1302).. F. *Chronology:* NPRM was published on October 24, 1980 (45 FR 64912). The comment period closed December 23, 1980..		Carlton Stockton, Director, DOCR, BQC, 2-E-5 ELR, 6401 Security Blvd., Baltimore, MD 21235, 301-597-1350.
HCFA-44—Medicare/Medicaid Program: Psychosurgery—Requirements for Psychosurgery Procedures93A. *Description:* This regulation would mandate specific requirements for the performance of psychosurgical procedures. The regulation would establish a mechanism for assuring that any psychosurgical procedures would be performed with appropriate safeguards and offer a model for State and local governments as well as for other concerned organizations.. B. *Why Significant:* The regulation would provide specific procedures and constraints in regard to psychosurgical procedures. It should adequately protect human subjects by requiring approval by a panel before procedure takes place.. C. *Regulatory Analysis:* Not required..... D. *Need:* The regulation addresses the concern of the public and Congress which generated the report by the National Commission for the Protection of Human Subjects of Biomedical and Behavorial Research in psychosurgery.. E. *Legal Basis:* Sec. 1102 of the Social Security Act; (42 U.S.C. 1302).. F. *Chronology:* The proposal is currently under review in the Department..		Mendel J. Kaufman, Chief, Special Cov. Issues Br., BPP, Rm. 463 EHR, 6401 Security Blvd., Balto., MD 21235, 301-594-8569.
HCFA-46—Medicare Program: Withholding Payments to Practitioners Providers, and Suppliers of Services 93A. *Description:* This regulation will clarify due process procedures that must be followed when payments to providers, practitioners and suppliers of services under the Medicare program are withheld because of suspected fraud or willfull misrepresentation.. B. *Why Significant:* The regulation will clarify existing procedures providing timely notice and administrative review.. C. *Regulatory Analysis:* Not required..... D. *Need:* Current regulations do not provide clear notification and review procedures. The regulation will establish procedures to safeguard Federal financial interest as well as the interests of the affected party.. E. *Legal Basis:* Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395).. F. *Chronology:* NPRM was published on December 1, 1980. The comment period closes January 30, 1981..		James F. Patton, Director, DVPS, OPV, BQC, Rm. 2-E-5, ELR, 6401 Security Blvd., Baltimore, MD 21235, 301-594-8000.
HCFA-47—Medicaid Program: Title XIX Administrative Sanctions93A. *Description:* This regulation would establish State plan requirements and procedures which require State Medicaid agencies to exclude from Medicaid program reimbursement providers who defraud or abuse the Medicaid program..		

Health Care Financing Administration—Significant Regulations—Continued

Title	Summary	Contact
B. *Why Significant:* This regulation will give States a clear regulatory authority to pursue appropriate administrative sanctions in the cases of fraud or abuse.. C. *Regulatory Analysis:* Not required..... D. *Need:* To strengthen and clarify State Medicaid agency responsibilities for the control of Medicaid fraud or abuse.. E. *Legal Basis:* Secs. 1102, 1902(a)(4)(A), and 1902(a)(30) of the Social Security Act; Pub. L. 95-142.. F. *Chronology:* The proposal is currently under review in the Department.79James F. Patton, Director, DVPS, OPV, BQC, Rm. 2-E-5 ELR, 6401 Security Blvd., Baltimore, MD 21235, 301-594-8000..		
HCFA-49—Medicare/Medicaid Program: Annual Hospital Report Requirements for Hospital Cost Reporting93A. *Description:* The regulations require all hospitals that receive payments under the Medicare and Medicaid programs to report cost-related information, such as cost of operation, volume of services, and capital assets, in a prescribed uniform manner.. B. *Why Significant:* The purpose is to obtain comparable cost and related data on all participating hospitals for reimbursement, effective cost, and policy analysis, assessment of alternative reimbursement mechanisms and health planning.. C. *Regulatory Analysis:* Yes..... D. *Need:* To implement the 1977 amendments to the Social Security Act.. E. *Legal Basis:* Secs. 1121, 1861(v)(1)(F) and 1902(a)(40) of the Social Security Act (42 U.S.C. 1320(a)); Sec. 19 of Pub. L. 95-142.93. F. *Chronology:* NPRM was published on January 23, 1979 (44 FR 4741). The comment period closed on April 23, 1979. A new NPRM was published on March 19, 1980 (45 FR 17894). because of the large number of comments received in response to the original notice published and because of the extensive changes made in the system. The comment period closed on May 28, 1980. Comments are currently under review. When the review is completed, a final rule will be submitted to the Department for approval..		Bill Cresswell, ORDS, Rm. 1-E-6, Oak Meadows Bldg., 6340 Security Blvd., Balto., MD 21207, 301-597-2380.
HCFA-50—Medicare/Medicaid Program: Skilled Nursing Facility/Intermediate Care Facility (SNF/ICF) Uniform Cost Reporting—Requirements for Cost Reporting 93A. *Description:* This regulation would propose uniform systems that SNFs and ICFs participating in the Medicaid or Medicare program must use to report cost of operation, volume of services, and capital assets.. B. *Why Significant:* This regulation would enable the Department to obtain comparable cost and related data on all participating SNFs and ICFs for effective cost and policy analysis, assessment of alternative reimbursement mechanisms and health planning.. C. *Regulatory Analysis:* Decision pending on completion of preliminary study.. D. *Need:* To implement the 1977 amendments to the Social Security Act.. E. *Legal Basis:* Secs. 1121, 1861(v)(1)(F) and 1902 (a)(40) of the Social Security Act (42 U.S.C. 1320a); Sec. 19 of Pub. L. 95-142.. F. *Chronology:* The proposal is currently under review. When the review is completed, it will be submitted to the Department for approval..		Bill Cresswell, ORDS, Rm. 1-E-6, Oak Meadows Bldg., 6340 Security Blvd., Balto, MD 21207, 301-597-2380.
HCFA-51—Medicare/Medicaid Program: Hospital Discharge and Data Reports—Requirements for Discharge and Bill Data Reports.	A. *Description:* This regulation would require all hospitals to report discharge and billing data in a uniform manner. B. *Why Significant:* This regulation would enable the Department to obtain uniform discharge and bill data on all hospital patients in order to conduct retrospective profile analysis, and to support cost containment legislation and future cost control efforts. C. *Regulatory Analysis:* Decision pending on completion of preliminary study. D. *Need:* To implement the 1977 amendments to the Social Security Act. E. *Legal Basis:* Secs. 1121, 1861(v)(1)(F), and 1902 (a)(40) of the Social Security Act (42 U.S.C. 1320a); Sec. 19 of Pub. L. 95-142. F. *Chronology:* The proposal is currently under review. When the review is completed, it will be submitted to the Department for approval.	Bill Cresswell, ORDS, Rm. 1-E-6, Oak Meadows Bldg., 6340 Security Blvd., Balto, MD 21207, 301-597-2380.
HCFA-52—Medicare/Medicaid Program: Skilled Nursing Facility/Intermediate Care	A. *Description:* This regulation would require all SNFs/ICFs to report discharge and billing data in a uniform manner.	Bill Cresswell, ORDS, Rm. 1-E-6, Oak Meadows Bldg., 6340 Security Blvd., Balto., MD 21207, 301-597-2380.

Health Care Financing Administration—Significant Regulations—Continued

Title	Summary	Contact
Facility (SNF/ICF) Discharge and Bill Data—Requirements for Discharge and Bill Data Reports.	B. *Why Significant:* This regulation will enable the Department to obtain uniform discharge and bill data on all SNF/ICF patients in order to conduct retrospective profile analysis and to support cost containment legislation and future cost control efforts. C. *Regulatory Analysis:* Decision pending on completion of preliminary study. D. *Need:* To implement the 1977 amendments to the Social Security Act. E. *Legal Basis:* Secs. 1121, 1801(v)(1)(F) and 1902(a)(40) of the Social Security Act (42 U.S.C. 1320a) and Sec. 19 of Pub. L. 95-142. F. *Chronology:* The proposal is currently under review. When the review is completed, it will be submitted to the Department for approval.	
HCFA-53—Medicare/Medicaid Program: Home Health Agency (HHA) Cost and Utilization Requirements for Cost Reporting.	A. *Description:* This regulation would propose uniform systems that HHA's participating in the Medicaid or Medicare program must use to report cost of operation, volume of services and capital assets. B. *Why Significant:* This regulation would enable the Department to obtain comparable cost and related data on all participating HHAs for effective cost and policy analysis, assessment of alternative reimbursement mechanisms and health planning. C. *Regulatory Analysis:* Yes, being conducted. D. *Need:* To implement the 1977 amendments to the Social Security Act. E. *Legal Basis:* Secs. 1121, 1861(v)(1)(F), and 1902(a)(40) of the Social Security Act (42 U.S.C. 1320a) Sec. 19 of Pub. L. 95-142. F. *Chronology:* The proposal is currently under development. When it is completed, it will be submitted to the Department for approval.	Bernard Patashnik, Director, DISR, BFP, Rm. 1-G-1, ELR, 6401 Security Blvd., Baltimore, MD 21235, 301-597-1335.
HCFA-54—Medicare/Medicaid Program: Home Health Agency (HHA) Discharge and Bill Data—Requirement for Discharge and Bill data.	A. *Description:* This regulation would require all HHAs to report discharge and billing data in a uniform manner. B. *Why Significant:* The regulations would enable the Department to obtain uniform discharge and bill data on all HHA patients in order to conduct retrospective profile analysis, and to support cost containment legislation and future cost control efforts. C. *Regulatory Analysis:* Decision pending on completion of preliminary study. D. *Need:* To implement the 1977 amendments to the Social Security Act. E. *Legal Basis:* Secs. 1121, 1861(v)(1)(F), and 1902(a) (40) of the Social Security Act (42 U.S.C. 1302a); and sec. 19 of Pub. L. 95-142. F. *Chronology:* The proposal is currently under development. When it is completed, it will be submitted to the Department for approval.	Bill Cresswell, ORDS, Rm. 1-E-6, Oak Meadows Bldg., 6340 Security Blvd., Balto., MD 21207, 301-597-2367
HCFA-55—Medicare/Medicaid Program: Prohibition Against Payment for Less Than Effective Drugs.	A. *Description:* The regulations will prohibit use of Federal funds under Medicare and Medicaid for certain drugs that have been classified as less than effective by the Food and Drug Administration and drugs that are illegal in interstate commerce. B. *Why Significant:* This regulation will respond to concerns of public interest groups by ensuring that services provided under the Medicare and Medicaid programs are of high quality and that Federal funds are expended in an effective and responsible manner. C. *Regulatory Analysis:* Not required. D. *Need:* To prohibit Medicare and Medicaid payments for drugs which are illegal in interstate commerce or ineffective. E. *Legal Basis:* Secs. 1102 and 1862(a) of the Social Security Act (42 U.S.C. 1302). F. *Chronology:* NPRM was published on June 5, 1980 (45 FR 37858). The comment period closed on August 4, 1980. Comments are currently under review. When the review is completed, a final rule will be submitted to the Department for approval.	Mendell J. Kaufman, Chief, SCIB, BPP, Rm. 463 EHR, 6401 Security Blvd., Balto., MD 21235, 301-594-8569.
HCFA-56—Medicare Program: Common Audit Requirements.	A. *Description:* This regulation will prohibit Federal Matching of State Medicaid costs for hospital audits if they duplicate Medicare audits, and will define audit activities for purposes of determining duplication. It will also provide that, if a State requests Medicare to include additional items in the audit at the appropriate cost, or if a State performs these additional activities, Federal financial participation will be available in these costs. B. *Why Significant:* This regulation would eliminate unnecessary or duplicative audits completed for the same provider by Medicare or Medicaid and encourage sharing of audit information. C. *Regulatory Analysis:* Not required. D. *Need:* To simplify the administrative process by making Medicare and Medicaid more consistent and reducing duplicative audits. E. *Legal Basis:* Secs. 1102 and 1903(a)(7) of the Social Security Act (42 U.S.C. 1302 and 1396b). F. *Chronology:* NRPM was published on June 3, 1980 (45 FR 37466). The comment period closed on August 4, 1980.	Don Novitski, Chief, PAB, OSPE, BPO, Rm. 255 EHR, 6401 Security Blvd., Baltimore, MD 21235, 301-594-9063.
HCFA-57—Medicaid Program: Medicaid Overpayment Reporting Requirements.	A. *Description:* This regulation would require States to establish procedures to identify provider overpayments and report them to HCFA on a timely basis. B. *Why Significant:* This regulation would assure that Medicaid overpayments are properly and promptly identified and allow comparison of provider overpayments in the Medicare and Medicaid programs. C. *Regulatory Analysis:* Not required. D. *Need:* To recover inappropriate payments made to providers under the Medicaid program E. *Legal Basis:* Secs. 1102 and 1903(d) of the Social Security Act (42 U.S.C. 1396b(d)). F. *Chronology:* The proposal is currently under review. When the review is completed, it will be submitted to the Department for approval.	Guy L. Harriman, Jr., Chief, REB, DRRE, BPO, Rm. 1-B-2 ME Bldg., 6325 Security Blvd., Baltimore, MD 21235, 301-594-8193.
HCFA-59—Medicare Program: Limits on Costs and Charges for New Technology.	A. *Description:* This regulation would set forth HCFA's authority to establish reasonable charge limitations for certain items and services under the Medicare program if the standard reasonable charges approach (i.e., the use of customary and prevailing charge screens) is ineffective. B. *Why Significant:* This regulation would reduce excess program payment by setting limits on certain items and services which exceed standard reasonable charges. C. *Regulatory Analysis:* Not required. D. *Need:* To establish a clear basis for setting reimbursement limits on certain items and services under Medicare. E. *Legal Basis:* Sec. 1102, 1942(b)(3), and 1871 of the Social Security Act (42 U.S.C. 1302, 1395u(b)(3) and 1395hh). F. *Chronology:* The proposal is currently under review in the Department.	Paul Riesel, Chief, PPRB, DMSR, ORP, BPP, Rm. 1-A-3 ELR, 6401 Security Blvd., Baltimore, MD 21235, 301-597-1843.
HCFA-60—Medicare Program: Limitations on Reasonable Charges for Computerized Tomography Scan Services.	A. *Description:* This notice would establish limits on the amounts on which Medicare reasonable charge reimbursement for computerized tomography scans is based. B. *Why Significant:* This regulation would reduce inappropriate program payment by setting limits on reimbursement of computerized tomography scan services. C. *Regulatory Analysis:* Not required. D. *Need:* To ensure that payments for computerized tomography scans are made at an appropriate level. E. *Legal Basis:* Sec. 1102, 1942(b)(3), and 1871 of the Social Security Act (42 U.S.C. 1302, 1395u(b)(3) and 1395hh). F. *Chronology:* The proposal is currently being developed. When the review is completed, it will be submitted to the Department for approval.	Paul Riesel, Chief, PPRB, DMSR, ORP, BPP, Rm. 1-A-3 ELR, 6401 Security Blvd., Baltimore, MD 21235, 301-597-1843.

Health Care Financing Administration—Significant Regulations—Continued

Title	Summary	Contact
HCFA-61—Medicare Program: Reconsiderations and Hearings for Providers and Suppliers.	A. *Description:* This regulation would clarify and redesignate the procedures for making and reviewing determinations that affect the status of entities that participate in the Medicare program. It will also incorporate substantive changes relating to informal reconsideration procedures. B. *Why Significant:* This regulation would be easier to understand and eliminate inconsistencies between Medicare and Medicaid in provider appeals processes. C. *Regulatory Analysis:* Not required. D. *Need:* To simplify administration and assure due process by providing uniform appeal rights within Medicare. E. *Legal Basis:* Secs. 1124, 1126, 1102, 1814(d), 1835(b), 1861(e), 1861(j), 1861(o), 1861(p), 1861(r), 1861(aa), 1862(d) and (e), 1866, 1869, 1871, 1872, 1876, and 1881 of the Social Security Act (42 U.S.C. 1302, 1320(a)-3, 1320(a)-5, 1345x(j), 1395ii, 1395mm, 1395y(d) and (e), 1395cc, 1395ff, 1395(h), 1395x(e), 1395x(o), 1395x(p), 1395x(r), 1395x(aa), 1395hh, and 1395rr). F. The proposal is currently under review. When it is completed, it will be submitted to the Department for approval. Clinical Lab. Improvement Act of 1957 (42 USC 263a).	Luisa Iglesias, Regulation Analyst, BPP, Rm. 357G, Hubert H. Humphrey Bldg., 200 Independence Ave., SW., Washington, D.C. 20201, 202-755-1290.
HCFA-62—Medicare Program: Recodification: Medicare Entitlement and Benefits, Limitations, and Exclusions: Supplementary Medical Insurance.	A. *Description:* This recodification would revise certain regulations dealing with supplementary medical insurance. It will clarify, reorganize, and renumber the eligibility requirements, enrollment procedures and the coverage period, the types of benefits provided and the limitations on these benefits. B. *Why Significant:* Periodic review of existing regulations is being conducted to make sure they are up to date, easy to locate, and clear. C. *Regulatory Analysis:* Not required. D. *Need:* To make regulations more understandable to the public. E. *Legal Basis:* Sec. 1102, 1831-1840, 1843, 1861, and 1862 of the Social Security Act (42 U.S.C. 1302; 1395j-1395p, 1395v, 1395x and 1395y). F. *Chronology:* The proposal is currently under review. When review is completed, it will be submitted to the Department for approval.	Mary E. Robinson, Program Analyst, BPP, Rm. 357G, Hubert H. Humphrey Bldg., 200 Independence Ave., SW., Washington, D.C. 20201, 202-755-1290
HCFA-63—Medicare Program: Recodification: Medicare Limitations on Exclusions of Benefits.	A. *Description:* This recodification would rewrite and renumber the provisions that identify the types and items of services that are not paid for by Medicare; and that specify the circumstances under which expenses for items and services usually paid for by Medicare may not be reimbursed. B. Why Significant: Periodic review of existing regulations is being conducted to make sure they are up to date, easy to locate, and clear. C. *Regulatory Analysis:* Not required. D. *Need:* To make regulations more understandable to the public E. *Legal Basis:* Sec. 1102 of the Social Security Act (42 U.S.C. 1302). F. *Chronology:* The proposal is currently under review. When the review is completed, it will be submitted to the Department for approval.	Luisa Iglesias, Regulation Analyst, BPP, Rm. 357G, Hubert H. Humphrey Bldg., 200 Independence Ave., SW., Washington, D.C. 20201, 202-755-1290.
HCFA-64—Medicare Program; Recodification: Medicare Overpayments, Recoveries, and Withholding.	A. *Description:* This recodification would rewrite and renumber procedures for determining and adjusting incorrect payments and the circumstances under which adjustment will be waived and if not recovery of overpayments. B. *Why Significant:* Periodic review of existing regulations is being conducted to make sure they are up to date, easy to locate, and clear. C. *Regulatory Analysis:* Not required. D. *Need:* To make the regulation more understandable to the public and streamline procedures. E. *Legal Basis:* Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh). F. *Chronology:* The proposal is currently under review. When the review is completed, it will be submitted to the Department for approval.	Luisa Iglesias, Regulation Analyst, BPP, Rm. 357G, Hubert H. Humphrey Bldg., 200 Independence Ave., SW., Washington, D.C. 20201, 202-755-1290.
HCFA-65—Medicare Program; Recodification: Medicare Provider Reimbursement Determinations and Appeals:	A. *Description:* This recodification will renumber and clarify the procedures for providers or their legal representatives to appeal reimbursement determinations or decisions under Medicare. It covers time constraints for filing appeals, parties authorized to participate at each hearing level, composition of each review body and legal aspects of hearing and appeals system, and procedures for reopening determinations and decisions. B. *Why Significant:* This recodification will revise, simplify, clarify, and reorganize existing regulations. C. *Regulatory Analysis:* Not required. D. *Need:* To make the regulation more understandable to the public and streamline procedures. E. *Legal Basis:* Secs. 1102, 1861(v)(1)(A)(ii), and 1878(f)(1) of the Social Security Act (42 U.S.C. 1302 and 1395oo). F. *Chronology:* NPRM is being waived. NPRM with proposed policy changes (HCFA-21) affecting these regulations was published on February 14, 1980 (45 FR 9953). The comment period closed on April 14, 1980.	Luisa Iglesias, Regulation Analyst, BPP, Rm. 357G, Hubert H. Humphrey Bldg., 200 Independence Ave., SW., Washington, D.C. 20201, 202-755-1290.
HCFA-66—Medicare Program; Recodification: Medicare Conditions for Payment.	A. *Description:* This recodification will renumber and clarify the provisions relating to the conditions under which hospital insurance and supplementary medical insurance payments will be made. B. *Why Significant:* This recodification would revise, simplify, clarify and reorganize existing regulations. C. *Regulatory Analysis:* Not required. D. *Need:* To make the regulation understandable to the public and streamline procedures. E. *Legal Basis:* Secs. 1102, 1114(c), 1835, 1842(b), and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh). F. *Chronology:* The final with comment period is currently under review. When the review is completed, it will be submitted to the Department for approval. The NPRM has been waived.	Luisa Iglesias, Regulation Analyst, BPP, Rm. 357G, Hubert H. Humphrey Bldg., 200 Independence Ave., SW., Washington, D.C. 20201, 202-755-1290.
HCFA-67—Medicaid Program: Requirements Applicable to Sterilizations (Hysterectomies).	A. *Description:* This regulation will waive the requirement that in order to obtain a Federally funded hysterectomy, a woman must acknowledge receipt of information about the effects of a sterilization even if she is already sterile or requires emergency treatment. B. *Why Significant:* Existing regulations have resulted in unnecessary administrative burden on States. C. *Regulatory Analysis:* Not required D. *Need:* To eliminate administratively burdensome procedures not needed to protect patients. E. *Legal Basis:* Secs. 1102, 1902(a)(13), 1905(a)(4)(C) of the Social Security Act (42 U.S.C. 1302, 1396(a)(13) and 1396(d)(4)(C)). F. *Chronology:* NPRM is being waived. The final is currently under review in the Department. When the review is completed, it will be submitted to the Department for approval.	Raymond T. Johnson, Chief, OCP, Rm. 455 EHR, 6401 Security Blvd., Baltimore, MD 21235, 301-594-9370.

Health Care Financing Administration—Significant Regulations—Continued

Title	Summary	Contact
HCFA-68—Medicare/Medicaid Program: Permissible Charges to Patient Funds in Nursing Homes.	A. *Description:* This regulation would define those costs that may be charged to the personal funds of Medicare and Medicaid patients in skilled nursing or intermediate care facilities. B. *Why Significant:* This regulation would safeguard personal funds of Medicare/Medicaid patients in nursing homes. C. Regulatory Analysis: Not required. D. *Need:* To implement Sec. 21(b) of P.L. 95-142 (Medicare and Medicaid Amendments of 1977) and 8(c) of Pub. L. 95-292. E. *Legal Basis:* Sec. 1102 of the Social Security Act (42 U.S.C. 1302); Secs. 21(b) of P.L. 95-142 and 8(c) of P.L. 95-292. F. *Chronology:* The proposal is currently under review. When the review is completed, it will be submitted to the Department for approval.	David Chambers, Program Analyst, HSQB, 2nd Floor, Dogwood East Bldg., 1849 Gwynn Oak Ave., Baltimore, MD 21207, 301-594-7651.
HCFA-69—Medicare/Medicaid Program: Professional Standards Review Organization (PSRO) Designations.	A. *Description:* The proposed change in the PSRO area designation regulations will permit area redesignation for the purpose of increased administrative efficiency and remove the State and County specific PSRO area descriptions from the regulations and publish these in the future by notice. B. *Why Significant:* This regulation will reduce program costs for PSRO management and promote consolidation of PSRO areas where appropriate. C. *Regulatory Analysis:* Not required. D. *Need:* To reduce overall cost of PSRO review. E. *Legal Basis:* Secs. 1102 and 1152 of the Social Security Act (42 U.S.C. 1302 and 1320c(1). F. *Chronology:* NPRM was published on 8-11-80 (45 FR 53189). The comment period closed on 10-10-80.	Christine Donahue, Public Health Analyst, HSQB, First Floor, Dogwood East Bldg., 1849 Gwynn Oak Ave., Baltimore, MD 21207, 301-594-5033.
HCFA-71—Medicare/Medicaid Program: Survey and Certification.	A. *Description:* This regulation would streamline, simplify, and integrate, to the extent possible, survey and certification procedures for providers and suppliers under Medicare and Medicaid. B. *Why Significant:* This regulation would eliminate inconsistencies between Medicare and Medicaid requirements; eliminate unnecessary burden by focusing survey resources on problem providers. C. *Regulatory Analysis:* Under consideration. D. *Need:* To revise and consolidate existing survey and certification regulations. E. *Legal Basis:* 42 CFR, Part 405, Subpart S; 42 CFR, Part 402, Subpart A-E. F. *Chronology:* Notice of public hearing was published on March 7, 1980 (45 FR 14550). The proposal is currently under review. When the review is completed, it will be submitted to the Department for approval.	Terrence Skelly, Standards and Certification Analyst, DFO, HSQB, Room 2-E-2, Dogwood East Bldg., 1849 Gwynn Oak Ave., Baltimore, MD 21207, 301-594-7942.
HCFA-72—Medicare/Medicaid Program: Financial Assistance Agreement for End Stage Renal Disease (ESRD) Networks.	A. *Description:* This regulation would establish a formal mechanism (cooperative agreements) for funding ESRD Network Coordinating Councils. B. *Why Significant:* This regulation would streamline and standardize the funding process to make it more accountable. C. Regulatory Analysis: Not required. D. *Need:* To improve the financial management, efficiency, and accountability of ESRD Networks. E. *Legal Basis:* 45 CFR, Part 74. F. *Chronology:* The proposal is currently under review in the Department.	Spencer Schron, Acting Deputy Director, OSP, Rm. 2-B-2, Dogwood West Bldg., 1849 Gwynn Oak Ave., Baltimore, MD 21207, 301-594-0918.

New Initiatives

Title	Summary	Contact
HCFA-73—Medicare Program: Notice of Performance Standards for Fiscal Intermediaries.	A. *Description:* This notice establishes statistical standards for FY 81 to measure the efficiency of Part A intermediary operations. B. *Why Significant:* Current Medicare regulations require publication of statistical standards as part of a two-phase evaluation system of fiscal intermediary performance. C. *Regulatory Analysis:* Not required. D. *Need:* Establish clear standards for evaluating intermediary performance to improve Medicare contracting. E. *Legal Basis:* P.L. 95-142, Sec. 1816(f) of the Social Security Act. F. *Chronology:* The notice is currently under review. When the review is completed, it will be submitted to the Department for approval.	Lester Belsky, Chief, OSB, DS, OSPE, BPO, Rm. 1445, Meadows East Bldg., 6300 Security Blvd., Baltimore, MD 21235, 301-594-8503.
HCFA-74—Medicare Program: Medigap—Certification of Medicare Supplemental Health Insurance Policies.	A. *Description:* These regulations would establish a program of certification by the Secretary of Medicare supplemental health insurance policies (so-called Medigap policies) voluntarily submitted by insurers for review. B. *Why Significant:* These regulations would: (1) set standards for policies voluntarily submitted to HCFA for certification, (2) establish procedures for certification program, and (3) promulgate the statutory requirements that the Supplemental Health Insurance Panel, consisting of the Secretary or a designee and four State Commissioners or Superintendents of Insurance appointed by the President, would use to approve State regulatory programs for Medigap policies. C. *Regulatory Analysis:* Not required. D. *Need:* To implement, in part, section 507 of the Social Security Disability Amendments of 1980. E. *Legal Basis:* Sec. 1882 of the Social Security Act, Sec. 507 of P.L. 96-265. F. *Chronology:* The proposal is currently under review in the Department.	Thomas Hoyer, Staff Asst., OCP, BPP, Rm. 401, EHR, 6401 Security Blvd., Baltimore, MD 21235, 301-594-9690.
HCFA-75—Medicaid Program: Proposed Medicaid Management Information System (MMIS) Performance Standards and Systems Requirements.	A. *Description:* This notice would set forth performance standards and add three new systems requirements for approved State MMIS. B. *Why Significant:* The application of these performance standards is intended to improve the overall efficiency and effectiveness of the Medicaid program. C. *Regulatory Analysis:* Not required. D. *Need:* To ensure that MMIS are being used effectively to manage the Medicaid program. E. *Legal Basis:* Secs. 1102, 1902(a)(4), 1903(a)(3) and 1903(r) of the Social Security Act (42 U.S.C. 1302, 1396(a)(4) and 1936(b)(3). F. *Chronology:* The notice is currently under review. When the review is completed, it will be submitted to the Department for approval.	Robert Oukoosian, Chief, PSB, DS, OSPE, BPO, Rm. 1445, Meadows East Bldg., 6300 Security Blvd., Baltimore, MD 21235, 301-594-8040.
HCFA-76—Medicaid Program: Conditions of Approval and Reapproval for Mechanized Claims Processing and Information Retrieval Systems with Procedures for Reduction of Federal Financial Participation (FFP).	A. *Description:* This regulation would establish procedures for the reduction of FFP in State expenditures for operating MMIS if those systems fail to meet the conditions of approval that are established. B. *Why Significant:* Federal dollars would be saved by reducing the amount paid to operate MMIS which does not meet Federal requirements.	Robert Oukoosian, Chief, PSB, DS, OSPE, BPO, RM. 1445, Meadows East Bldg., 6300 Security Blvd., Baltimore, MD 21235, 301-594-8040.

New Initiatives—Continued

Title	Summary	Contact
	C. *Regulatory Analysis:* Not required. D. *Need:* To ensure that MMIS are being used effectively to manage the Medicaid program. E. *Legal Basis:* Secs. 1102, 1903(a)(3) and 1903(r) of the Social Security Act, (42 U.S.C. 1302, 1396(a)(3) and 1396b(r). F *Chronology:* The proposal is currently under review. When the review is completed, it will be submitted to the Department for approval.	
HCFA-77—Medicaid Program: Deeming of Income Between Spouses—Financial Eligibility Requirements.	A. *Description:* This regulation will revise current rules determining Medicaid financial eligibility for the aged, blind or disabled in States and Territories using more restrictive eligibility requirements than Supplemental Security Income (SSI) requirements B. *Why Significant:* The regulation will require these States and Territories to alter their methods of deeming of income and resources between aged, blind, or disabled applicants or recipients and their spouses, when either the applicant or recipient or his or her spouse is institutionalized. C. *Regulatory Analysis:* Not required. D. *Need:* To implement a court order by the Court of Appeals of the District of Columbia Circuit. E. *Legal Basis:* Gray Panthers vs. Administrator No. 79-1334, Sec. 1102 of the Social Security Act (42 U.S.C. 1203). F *Chronology:* NPRM was published October 30, 1980 (45 FR 71821). The comment period closed December 1, 1980.	Michael Fiore, Program Analyst, DMEP, BPP, Rm 416 EHR, 6401 Security Blvd., Baltimore, MD 21235, 301-594-9127
HCFA-78—Medicare/Medicaid Program: Reimbursement on the Basis of the Prudent Buyer Concept.	A. *Description:* This regulation would clarify the rules governing Medicare reimbursement of reasonable cost by explicitly stating that providers are expected to apply sound management principles to their day-to-day business transactions. B. *Why Significant:* The regulation would assure that providers actual operating costs do not exceed what a prudent and cost-conscious business manager would have incurred for similar transactions. C. *Regulatory Analysis.* Not required. D *Need:* To restate and clarify HCFA's authority to disallow for reimbursement those costs that are excessive and unreasonable. E. *Legal Basis.* Secs. 1102, 1801, 1814(b), 1861(v)(1)(A) and 1871 of the Social Security Act. F. *Chronology:* The notice to develop regulations was published on August 18, 1980 (42 FR 54774).	William Goeller, Chief, Provider Reimbursement Branch, BPP Rm 1-D-1 ELR, 6401 Security Blvd., Baltimore, MD 21235, 301-597-1802
HCFA-79—Medicare Program: Collection of Unpaid Medicare Premiums.	A. *Description:* The regulation specifies the conditions under which HCFA will cease collection efforts on unpaid Medicare premiums. B. *Why significant:* The regulation allows HCFA to cease collection efforts in circumstances in which it is not cost effective to continue collection efforts C *Regulatory Analysis:* Not required. D. *Need:* The regulation provides HCFA with the administrative authority, required by the Federal Claims Collection Act of 1966 (31 U.S.C. 951-953) E. *Legal Basis:* Secs. 1102, 1818, 1832, 1838, 1840, 1870 of the Social Security Act (42 U.S.C. 1302, 1395i-2, 1395k, 1395q, 1395s, 1395gg and 1395hh), and 31 U S C 951-953. F *Chronology:* The notice of decision to develop regulations was published on July 31, 1980. The final rule with comment period is currently under review in the Department	David Higbee, Reg Analyst, RS, BPP, 150 EHR, 6401 Security Blvd., Baltimore, MD 21235, 301-594-9638

Food and Drug Administration—Significant Regulations

Title	Summary	Contact
FDA 1—Antigen E Assay—Potency Standards	A. *Description:* This document establishes potency standards for short ragweed pollen extracts. Each final container of a lot of extract will be required to contain a minimum quantity of Antigen E relative to a reference preparation with a known quantity of Antigen E. B *Why Significant:* The regulation establishes potency requirements for allergenic extracts. This will require manufacturers to conform to specific standards and assure the public of a uniform product. C *Regulatory Analysis:* Not required. D *Need:* To improve potency testing. E. *Legal Basis:* Section 351, 58 Stat. 702 42 U.S.C 262 F *Chronology:* Notice of proposed rulemaking was published August 3, 1979 (44 FR 45642). Comment period extended from October 2, 1979 to November 10, 1979 The final rule is currently under review by the Agency	Michael Hooten, Regulations Branch (HFB-620), Bureau of Biologics, Food and Drug Administration, 8800 Rockville Pike, Bethesda, MD 20205 301-443-1306
FDA 3—Allergenic Source Material—Standards	A. *Description:* This document prescribes additional criteria for source materials used in the manufacture of a final allergenic product. Specific requirements will be required for the propagation and maintenance of molds and certain animals. Inspection and record-keeping requirements will apply to all manufacturers of allergenic products B. *Why Significant:* The regulation establishes specific standards for certain source materials used to prepare allergenic extracts. This will assure product uniformity C. *Regulatory Analysis:* Not required D. *Need:* To assure safety and identity of source material E. *Legal Basis:* Section 351, 58 Stat. 702, 42 U.S.C 262 F *Chronology:* Notice of proposed rulemaking was published September 26, 1978 (43 FR 43472). The comment period closed on November 26, 1978 A revised proposal is currently under review by the Agency.	Michael Hooten Regulations Branch (HFB-620), Bureau of Biologics, Food and Drug Administration 8800 Rockville Pike Bethesda MD 20205 301-443-1306
FDA 4—Radioallergosobent Test (RAST) Potency Test.	A. *Description:* This document proposes to amend the regulations to require that the RAST be used as a potency test for certain allergenic extracts Presently, no reliable test is available for most extracts. Manufacturers were invited to attend a workshop at the Bureau on September 10, 1979. A collaborative study will be initiated. The results of the study will be used to develop the proposed rule. B. *Why Significant:* This regulation establishes a specific test to measure potency in a broad variety of allergenic extracts. The use of this test will result in a better measurement of potency. C. *Regulatory Analysis:* Not required. D. *Need:* To improve potency test. E. *Legal Basis:* Section 351, 58 Stat. 702, 42 U.S.C. 262. F *Chronology:* The proposal is currently being drafted for review by the agency	Michael Hooten, Regulations Branch (HFB-620), Bureau of Biologics, Food and Drug Administration, 8800 Rockville Pike, Bethesda, MD 20205 301-443-1306
FDA 5—Error and Accident Reports—Amend Blood GMPs.	A. *Description:* This document proposes that licensed and unlicensed blood establishments submit reports to Bureau of Biologics of errors and accidents that are imminent health hazards. The document also proposes that records of all errors and accidents, including those that are not imminent health hazards, be maintained.	Albert Rothschild, Regulations Branch (HFB-620), Bureau of Biologics, Food and Drug Administration, 8800 Rockville Pike, Bethesda, MD 20205, 301-443-1306

Food and Drug Administration—Significant Regulations—Continued

Title	Summary	Contact
	B. *Why Significant:* This regulation specifies certain reports required to be submitted by licensed and unlicensed blood establishments. It will provide information to determine the need for revising existing regulations, or developing new regulations. C. *Regulatory Analysis:* Not required. D. *Need:* The data will be used to judge adequacy of existing regulations. E. *Legal Basis:* Section 351, 58 Stat. 702 (42 U.S.C. 262). F. *Chronology:* The Notice of Proposed Rulemaking was published August 8, 1980 (45 FR 52821). The comment period closed November 6, 1980	
FDA 6—Reorganize Whole Blood Regulations.	A. *Description:* This document proposes to revise and reorganize Subpart A in Part 640 which prescribes additional standards for Whole Blood (Human). The regulations are being reorganized to reflect, insofar as possible, a logical sequence beginning with the collection of blood and progressing through storage, testing, labeling and issue. This document will also propose substantive amendments of the present requirements. B. *Why Significant:* This regulation will present an orderly arrangement of requirements for blood establishments to follow. It will assure the production of a safe and effective product and protect the health and safety of donors. C. *Regulatory Analysis:* Not required. D. *Need:* To increase donor and product safety and clarity of the regulations. E. *Legal Basis:* Section 351, 58 Stat. 702, 42 U.S.C. 262. F. *Chronology:* The Notice of Proposed Rulemaking was published October 31, 1980 (45 FR 92422). The comment period closes December 6, 1980	Richard Fisher, Regulations Branch (HFB-620), Bureau of Biologics, Food and Drug Administration, 8800 Rockville Pike, Bethesda, MD 20205, 301-443-1306.
FDA 7—Uniform Blood Labeling	A. *Description:* This document proposes to amend the blood regulations as recommended by the American Blood Commission, Committee for Commonality in Blood Banking Automation. B. *Why Significant:* This regulation proposes uniform labeling requirements for blood and blood products. It will promote uniformity throughout the industry and provide increased safety to the public in blood transfusion. C. *Regulatory Analysis:* Not required. D. *Need:* To facilitate uniformity in blood labeling. E. *Legal Basis:* Section 351, 58 Stat. 702, 42 U.S.C. 262. F. *Chronology:* The Notice of Proposed Rulemaking was published October 31, 1980 (45 FR 72416). The comment period closed December 30, 1980	Steve Falter, Regulations Branch (HFB-620), Bureau of Biologics, Food and Drug Administration, 8800 Rockville Pike, Bethesda, MD 20205, 301-443-1306.
FDA 8—Notification of FDA Regarding Adverse Reactions—Recordkeeping and Reporting Requirements.	A. *Description:* This document proposes to require that manufacturers notify FDA of adverse reactions from use of their products. B. *Why Significant:* This regulation will require industry to keep records and make reports on specific adverse reactions within specified time limits to the Agency. This information will assist the Agency in evaluating the continued safety, purity, potency and effectiveness of marketed products. C. *Regulatory Analysis:* Not required. D. *Need:* To increase FDA's effectiveness in regulating biological products. E. *Legal Basis:* Section 351, 58 Stat. 702, 42 U.S.C. 262. F. *Chronology:* Notice of Availability of draft proposal was published April 24, 1979. The proposal is currently under review by the Agency.	Richard Fisher, Regulations Branch (HFB-620), Bureau of Biologics, Food and Drug Administration, 8800 Rockville Pike, Bethesda, MD 20205, 301-443-1306
FDA 9—Panel on Review of Allergenic Extracts-Product Effectiveness.	A. *Description:* This document proposes to place the subject material in categories designated as (1) safe and effective and not misbranded, (2) unsafe or ineffective and misbranded, and (3) not within category (1) or (2) above, on the basis that available data are insufficient to classify such products. B. *Why Significant:* This regulation will establish the safety and effectiveness of currently marketed products. It will assure the public of receiving only those products found to be truly safe and effective. C. *Regulatory Analysis:* Not required. D. *Need:* To bring products into conformance with current standards of safety and effectiveness. E. *Legal Authority:* Section 351, 58 Stat. 702, 42 U.S.C. 262. F. *Chronology:* The proposal is currently being drafted for review by the Agency.	Michael Hooton, Regulations Branch (HFB-620), Bureau of Biologics, Food and Drug Administration, 8800 Rockville Pike, Bethesda, MD 20205, 301-443-1306
FDA 10—Panel on Review of Viral Vaccines and Rickettsial Vaccines Product Effectiveness.	A. *Description:* This document proposes to place the subject products in categories designated as (1) safe and effective and not misbranded, (2) unsafe or ineffective and misbranded, and (3) not within category (1) or (2) above, on the basis that available data are insufficient to classify such products. B. *Why Significant:* This regulation will establish the safety and effectiveness of currently marketed products. It will assure the public of receiving only those products found to be truly safe and effective. C. *Regulatory Analysis:* Not required. D. *Need:* To bring products into conformance with current standards of safety and effectiveness. E. *Legal Basis:* Section 351, 58 Stat. 702, 42 U.S.C. 262. F. *Chronology:* The notice of proposed rulemaking was published April 15, 1980 (45 FR 25652). The comment period closes on July 14, 1980.	Steve Falter, Regulations Branch (HFB-620), Bureau of Biologics, Food and Drug Administration, 8800 Rockville Pike, Bethesda, MD 20205, 301-443-1306
FDA 11—Panel on Review of Blood and Blood Products—Product Effectiveness.	A. *Description:* This document proposes to place the subject products in categories designated as (1) safe and effective and not misbranded, and (2) unsafe or ineffective and misbranded, and (3) not within category (1) or (2) above, on the basis that available data are insufficient to classify such products. B. *Why Significant:* This regulation will establish the safety and effectiveness of currently marketed products. It will assure the public of receiving only those products found to be truly safe and effective. C. *Regulatory Analysis:* Not required. D. *Need:* To bring products into conformance with current standards of safety and effectiveness. E. *Legal Basis:* Section 351, 58 Stat. 702, 42 U.S.C. 262. F. *Chronology:* The proposal is currently being drafted for review by the Agency.	Steve Falter, Regulations Branch (HFB-620), Bureau of Biologics, Food and Drug Administration, 8800 Rockville Pike, Bethesda, MD 20205, 301-443-1306
FDA 12—Panel on Review of Bacterial Toxoids and Bacterial Vaccines With U.S. Standards of Potency—Product effectiveness.	A. *Description:* This document proposes to place the subject products in categories designated as (1) safe and effective and not misbranded, and (2) unsafe or ineffective and misbranded, and (3) not within category (1) or (2) above, on the basis that available data are insufficient to classify such products. B. *Why Significant:* This regulation will establish the safety and effectiveness of currently marketed products. It will assure the public of receiving only those products found to be truly safe and effective.	Steve Falter, Regulations Branch (HFB-620), Bureau of Biologics, Food and Drug Administration, 8800 Rockville Pike, Bethesda, MD 20205, 301-443-1306

Food and Drug Administration—Significant Regulations—Continued

Title	Summary	Contact
	C. *Regulatory Analysis:* Not required. D. *Need:* To bring products into conformance with current standards of safety and effectiveness. E. *Legal Basis:* Section 351, 58 Stat. 702, 42 U.S.C. 262. F. *Chronology:* The proposal is currently being drafted for review by the Agency.	
FDA 13—Bioresearch Monitoring; Standards for Institutional Review Boards for Clinical Investigations.	A. *Description:* This regulation will establish standards for the composition, operation, and responsibility of any institutional review board that reviews clinical investigations involving the use of products regulated by the Food and Drug Administration. B. *Why Significant:* The regulations will provide greater protection of the rights and safety of subjects in clinical investigations and help assure the quality and integrity of the research data used to support the marketing of products regulated by FDA by specifically defining the responsibilities of institutional review boards in clinical investigations. C. *Regulatory Analysis:* Not required. D. *Need:* To clarify existing regulations concerning institutional review boards that review clinical investigations involving new drug products and to extend those regulations to include boards that review investigations on other FDA-regulated products. The regulation will establish specific standards for the composition, operation, and responsibilities of a board in assuring protection of the rights and safety of subjects involved in clinical investigations and assuring the quality and integrity of the research data used to support the marketing of products regulated by FDA. E. *Legal Basis:* 21 U.S.C. 346, 346a, 348, 352, 353, 355, 356, 357, 360, 360c, 360f, 360h-360j, 361, 371(a), 376, 381; 42 U.S.C. 216, 262, 263b-263n. F. *Chronology:* A proposed rule was published on August 8, 1978 (43 FR 35186). On August 14, 1979, the proposal was withdrawn and reproposed (44 FR 47699). Public hearings were held in Bethesda, Maryland, on September 18, 1979, in San Francisco on October 3, 1979, and in Houston on October 16, 1979. The comment period closed on November 12, 1979.	John C. Petricciani, Associate Director for Clinical Research (HFB-4), Bureau of Biologics, Food and Drug Administration, 8800 Rockville Pike, Rockville, MD 20205, 301-496-9320
FDA 14—Bioresearch Monitoring; Informed Consent.	A. *Description:* This regulation would establish a single set of informed consent requirements applicable to all investigators involved in investigational studies that either require prior FDA review or are later submitted to FDA in support of an application for a research or marketing permit. B. *Why Significant:* This regulation would clarify existing agency regulations governing informed consent and provide greater protection of the rights of human subjects involved in research activities that fall within the jurisdiction of FDA. C. *Regulatory Analysis:* Not required. D. *Need:* There has been an identifiable need to strengthen and clarify informed consent requirements as they apply to research that involves human subjects and is intended for submission to FDA. This regulation is designed to provide greater protection of the rights and safety of human subjects involved in research activities that fall within the jurisdiction of FDA. E. *Legal Basis:* 21 U.S.C. 346, 346a, 348, 352, 353, 355, 356, 357, 360, 360c, 360f, 360h-360j, 361, 371(a), 376, 381; 42 U.S.C. 216, 262, 263b-263n. F. *Chronology:* The proposed rule was published on August 14, 1979 (44 FR 47713). Public hearings were held in Bethesda, Maryland, on September 18, 1979, in San Francisco on October 3, 1979, and in Houston on October 16, 1979. The comment period closed on November 12, 1979.	John C. Petricciani, Associate Director for Clinical Research (HFB-4), Bureau of Biologics, Food and Drug Administration, 8800 Rockville Pike, Rockville, MD 20205, 301-496-9320
FDA 17—Bioresearch Monitoring; Obligations of Sponsors and Monitors of Clinical Investigations.	A. *Description:* These regulations would establish procedures to be followed by a sponsor and a monitor before initiating, and during the course of, a clinical investigation involving the use of a drug, medical device, food or color additive, or electronic product. B. *Why Significant:* The regulations will provide greater protection of the rights and safety of subjects in clinical investigations and help assure the quality and integrity of the research data used to support the marketing of products regulated by FDA by specifically defining the responsibilities of sponsors and monitors in clinical investigations. C. *Regulatory Analysis:* Not required. D. *Need:* There has been an identifiable need to set forth procedures that would raise the level of the quality of clinical research by more thorough and supervisional contact between the sponsor and investigators. These regulations will define specifically the responsibilities of sponsors and monitors in assuring protection of the rights and safety of subjects involved in clinical investigations and assuring the quality and integrity of the research data used to support the marketing of products regulated by FDA. E. *Legal Basis:* 21 U.S.C. 346, 348, 352, 353, 355, 356, 357, 360, 360b-360f, 360h-360j, 361, 371(a), 376, 381, 42 U.S.C. 216, 262, 263b-263n. F. *Chronology:* The proposed rule was published on September 27, 1977 (42 FR 29412). The comment period closed on December 27, 1977.	Marilyn L. Watson, (HFD-30), Bureau of Drugs, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3640.
FDA 18—Bioresearch Monitoring; Obligations of Clinical Investigators.	A. *Description:* These regulations would clarify existing regulations governing the conduct of persons who conduct clinical investigations on new drug products, and extend the regulations to include persons who conduct clinical investigations on medical devices, food or color additives, and electronic products. B. *Why Significant:* The regulations will provide greater protection of the rights and safety of subjects in clinical investigations and help assure the quality and integrity of the research data used to support the marketing of products regulated by FDA by specifically defining the responsibilities of clinical investigators. C. *Regulatory Analysis:* Not required. D. *Need:* There has been an identifiable need to clarify existing regulations concerning persons who conduct clinical investigations on new drugs and to extend those regulations to include persons who conduct clinical investigations on other FDA-regulated products. These regulations are designed to assure the validity and reliability of clinical data submitted to FDA, provide greater protection of the rights and safety of subjects involved in the investigations, and provide agency-wide regulatory standards for conducting clinical investigations more efficiently and effectively. E. *Legal Basis:* 21 U.S.C. 346, 348, 352, 353, 355, 356, 357, 360, 360b-360f, 360h-360j, 361, 371(a), 376, 381, 42 U.S.C. 216, 263b-263n. F. *Chronology:* The proposed rule was published on August 8, 1978 (43 FR 35223). The comment period closed on November 6, 1978, and on November 14, 1978 was extended to December 6, 1978.	Marilyn L. Watson, (HFD-30), Bureau of Drugs, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3640.
FDA 19—Drug Efficacy Study Implementation; Abbreviated New Drug Applications for Post-1962 Drugs.	A. *Description:* This proposal would permit applicants to file abbreviated new drug applications (ANDA's) for products identical to approved post-1962 drugs and to omit certain reports that are required in a full NDA to show safety and effectiveness of the product. It would apply only to certain drug products specified by FDA. At present, ANDA's are permitted only for pre-1962 drugs that FDA has found are suitable for that kind of submission.	Jean Mansur, Deputy Assistant Director for Regulatory Affairs, (HFD-30), Bureau of Drugs, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3640.

Food and Drug Administration—Significant Regulations—Continued

Title	Summary	Contact
	B. *Why Significant:* This will reduce duplicative human testing of drugs and also reduce the cost to the manufacturer of getting the affected drugs on the market. By increasing competition among drug manufacturers, it may reduce drug costs to the consumer. C. *Regulatory Analysis:* Yes, being conducted. D. *Need:* This action has the potential to increase competition among drug sources when patents have expired and lower costs of drug products. E. *Legal Basis:* 21 U.S.C. 355, 371(a). F. *Chronology:* The proposed rule is being prepared.	
FDA 22—New Drug Evaluation; Disclosure of Specifications.	A. *Description:* This regulation would provide for the disclosure of specifications submitted to the agency by the manufacturer of a drug product, unless the specifications serve no regulatory or compliance purpose, are exempt as trade secrets, and have not previously been publicly disclosed. B. *Why Significant:* The public availability of drug specifications will help to assure that all manufacturers of the same drug product meet the same standards of identity, strength, quality, and purity. Consumers and physicians will be able to select a brand of drug product knowing that the standards it is required to meet are comparable to those of other versions of the same drug product. Disclosure will permit the official compendia to maintain current standards applicable to the products of all manufacturers. Consistent compendial specifications and methods will contribute to improving the enforcement programs of Federal, State, and local regulatory agencies who must assure full compliance with legal requirements for drug products. C. *Regulatory Analysis:* Not required. D. *Need:* There are drugs for which specifications are not publicly available. The regulation would resolve this problem. E. *Legal Basis:* 21 U.S.C. 321 et seq., 42 U.S.C. 201 et seq., 5 U.S.C. 552. F. *Chronology:* The proposed rule was published on July 15, 1977 (42 FR 36485). The comment period closed on September 13, 1977.	Edwin V. Dutra, Jr., Precedent Regulations and Legislative Activities Branch, (HFD-30), Bureau of Drugs, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-6490.
FDA 23—New Drug Evaluation; Revision of IND/NDA Regulations.	A. *Description:* This proposal would revise the regulations on investigational new drugs (IND's) and new drug applications (NDA's) to improve the efficiency of FDA's operation and to update and refine its internal policies in reviewing, processing, and communicating with sponsors and applicants on IND's and NDA's. The revision would more formally structure the IND phase so that if a drug reaches the NDA stage it would be essentially approvable. B. *Why Significant:* These revisions can be expected to aid IND sponsors and NDA applicants by expediting the review process, reducing paperwork, and redefining the IND and NDA requirements in line with FDA's experiences in current practices. They should also result in simpler and more useful reporting requirements. C. *Regulatory Analysis:* Not required. D. *Need:* Experience with these regulations after a number of years has identified areas where the IND/NDA procedure and requirements need updating and improving. E. *Legal Basis:* 21 U.S.C. 355, 357, 371(a). F. *Chronology:* A Notice of Public meeting was published on October 12, 1979 (44 FR 58919).	Michael C. McGrane, General Regulations Development Branch (HFD-30), Bureau of Drugs, Food and Drugs Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-6062.
FDA 28—Cholesterol-Free Egg Substitute	A. *Description:* This proposed rule will address the issue of the use of the term cholesterol-free in the name of food products. B. *Why Significant:* This issue concerns a matter on which there is substantial public interest. C. *Regulatory Analysis:* Not required. D. *Need:* To establish consistency in labeling of cholesterol content of foods. E. *Legal Basis:* Sections 201(n), 403(a), 701(a), 52 Stat. 1041, as amended; 1047-1048, as amended; 1055 (21 U.S.C. 321(n), 343(a), and 371(a)) of the Federal Food, Drug, and Cosmetic Act. F. *Chronology:* This proposed rule is currently under review.	Elizabeth Campbell, Guidelines and Compliance Research Branch (HFF-312), Bureau of Foods, Food and Drug Administration, 200 C Street, S.W., Washington, D.C. 20204, (202) 245-3092.
FDA 29—Plant Protein—Common or Usual Names for Foods, Vegetable Protein Products Which Resemble and Substitute for Meats, Seafood, Poultry, Eggs, or Cheese.	A. *Description:* This regulation will establish common or usual names for vegetable protein products and names and definitions of nutritional equivalence for substitutes for the five major protein foods. B. *Why Significant:* There is substantial public interest in having consistent labeling requirements regarding the nutrient content of vegetable protein substitutes. C. *Regulatory Analysis:* Not required. D. *Need:* To provide consistency in the labeling and in the nutrient content of vegetable protein substitutes for the five major protein foods. E. *Legal Basis:* Sections 201(n), 403, 701, 52 Stat. 1041, as amended; 1047-1048, as amended; 1055-1056, as amended (21 U.S.C. 321(n) 343, 371) of the Federal Food, Drug, and Cosmetic Act. F. *Chronology:* Tentative final rule was published on July 14, 1978 (43 FR 30472). The comment period closed on November 13, 1978.	Elizabeth Campbell, Guidelines and Compliance Research Branch (HFF-312), Bureau of Foods, Food and Drug Administration, 200 C Street, S.W., Washington, D.C. 20204, (202) 245-3092.
FDA 30—Sugar Labeling of Foods	A. *Description:* This proposed rule would amend the nutritional labeling format so that the carbohydrate declaration will have subsets for simple sugars, as well as complex sugar. B. *Why Significant:* There is substantial public interest in having a declaration of sugar content. C. *Regulatory Analysis:* Not required. D. *Need:* To notify the public of the type and amount of carbohydrate being taken in. E. *Legal Basis:* Sections 201(n), 403, 701, 52 Stat. 1041, as amended; 1047-1048, as amended; 1055-1056, as amended (21 U.S.C. 321(n), 343, 371) of the Federal Food, Drug, and Cosmetic Act. F. *Chronology:* This proposed rule is currently being drafted in the Bureau of Foods.	Elizabeth Campbell, Guidelines and Compliance Research Branch (HFF-312), Bureau of Foods, Food and Drug Administration, 200 C Street, S.W., Washington, D.C. 20204, (202) 245-3092.
FDA 33—Aflatoxin in Peanuts	A. *Description:* This final rule will set tolerances for aflatoxin in peanuts. B. *Why Significant:* There is a public health concern regarding the amount of aflatoxin found in peanuts. C. *Regulatory Analysis:* Not required. D. *Need:* To prevent avoidable residues of aflatoxins in peanuts and peanut products. E. *Legal Basis:* Sections 306, 402, 406, 701, 52 Stat. 1045-1046, 1049, 1055-1056, as amended; and 72 Stat. 948 (21 U.S.C. 336, 342, 346, 371) of the Federal Food, Drug, and Cosmetic Act. F. *Chronology:* The proposed rule published on December 6, 1974 (39 FR 42748). Notice of availability of the assessment of estimated risk resulting from aflatoxins in consumer peanut products and notice of reopening of the comment period published on March 3, 1978 (43 FR 8808). Extension of comment period was published on April 18, 1978 (43 FR 16349). The comment period closed May 17, 1978. This final rule is currently under review.	Elizabeth Campbell, Guidelines and Compliance Research Branch (HFF-312), Bureau of Foods, Food and Drug Administration, 200 C Street, S.W., Washington, D.C. 20204, (202) 245-3092.

Food and Drug Administration—Significant Regulations—Continued

Title	Summary	Contact
FDA 34—Color Certification—Procedures for Non-Conforming Batches.	A. *Description:* This notice would establish guidelines for the certification of color additives to prescribe procedures for the rejection of samples submitted for certification on the basis of analytical response, when the substance causing the response is unidentified. B. *Why Significant:* Procedures for the certification of colors should be uniform and industry should be fully advised of them. C. *Regulatory Analysis:* Not required. D. *Need:* To establish guidelines which formalize the procedures used in certification of colors. E. *Legal Basis:* Section 706 (21 U.S.C. 376) of the Federal Food, Drug, and Cosmetic Act. F. *Chronology:* This notice is currently being drafted in the Bureau of Foods.	Gerald McCowin, Director, Division of Food and Color Additions (HFF-300) Bureau of Foods, Food and Drug Administration, 330 Independence Avenue, S.W., Washington, D.C. 20201, (202) 472-5676.
FDA 35—Use of Food Preservatives BHT	A. *Description:* This final rule will establish an interim food additive for BHT. B. *Why Significant:* BHT is a widely used preservative heretofore considered GRAS and about which substantial safety questions have been raised, rendering it subject to the food additive law. Recent re-evaluation of available data indicates that additional information is required to substantiate that its use in food can continue to be deemed safe. C. *Regulatory Analysis:* Not required. D. *Need:* To determine if food preservative BHT can continue to be deemed safe for use in foods. E. *Legal Basis:* Sections 201(s), 409, 701(a), 52 Stat. 1055, 72 Stat. 1784–1788, as amended (21 U.S.C. 321(s), 348, 371(a)) of the Federal Food, Drug and Cosmetic Act. F. *Chronology:* The proposed rule published on May 31, 1977 (42 FR 27603). The comment period closed July 26, 1977.	Dr. Corbin Miles, GRAS Review Branch (HFF-335), Bureau of Foods, Food and Drug Administration, 330 Independence Avenue, S.W., Washington, D.C. 20201, (202) 472-4750.
FDA 36—Procedural Regulations for the Cyclic Review and Priority Listing of Food and Color Additives.	A. *Description:* This proposed rule would establish the procedure for the cyclic review and priority listing of food additives. B. *Why Significant:* The FDA believes that industry should be put on notice as to the procedures to be followed and priorities to be set regarding the cyclic review of food and color additives. C. *Regulatory Analysis:* Decision pending on completion of preliminary study. D. *Need:* To give notice as to the order in which food additives will be reviewed under the cyclic review process. E. *Legal Basis:* Sections 201(s), 409, 701(a), and 706, 52 Stat. 1055; 72 Stat. 1784–1788, as amended (21 U.S.C. 321(s), 348, 371(a), 376) of the Federal Food, Drug, and Cosmetic Act. F. *Chronology:* The proposed rule is currently under review.	Gerald McCowin, Director, Division of Food and Color Additives (HFF-300), Bureau of Foods, Food and Drug Administration, 330 Independence Avenue, S.W., Washington, D.C. 20201, (202) 472-5676.
FDA 37—Net Weight	A. *Description:* This final rule will quantify reasonable variations for foods subject to moisture loss. B. *Why Significant:* There is substantial public interest because of possible economic deception. C. *Regulatory Analysis:* Decision pending on completion of preliminary study. D. Need: To protect the consumer from economic deception. E. *Legal Basis:* Sections 201(n), 403, 701, 52 Stat. 1041, as amended; 1046–1048, as amended; 1055–1056, as amended by 70 Stat. 919; and 72 Stat. 948 (21 U.S.C. 231(n), 343, and 371) of the Federal Food, Drug, and Cosmetic Act. F. *Chronology:* The proposed rule published on August 8, 1980 (45 FR 53023). The comment period closed November 6, 1980.	Elizabeth Campbell, Guidelines and Compliance Research Branch (HFF-312), Bureau of Foods, Food and Drug Administration, 200 C Street, S.W., Washington, D.C. 20204, (202) 245-3092.
FDA 38—Caffeine	A. *Description:* FDA intends to issue a final rule concerning the status of caffeine in soft drinks. B. *Why Significant:* This issue concerns a matter on which there is substantial public interest. C. *Regulatory Analysis:* Decision pending on completion of preliminary study. D. *Need:* The Select Committee on GRAS Substances of the Federation of American Societies for Experimental Biology (FASEB) has recommended that the FDA interim list direct food uses. E. *Legal Basis:* Sections 201(s), 409, 701(a), 52 Stat. 1055; 72 Stat. 1784–1788, as amended; 52 Stat. 1055 (21 U.S.C. 321(s), 348, 371(a)) of the Federal Food, Drug, and Cosmetic Act. F. *Chronology:* The proposed rule published on October 1, 1980 (45 FR 69816). The comment period closes December 22, 1980.	Dr. Corbin Miles, GRAS Review Branch (HFF-335), Bureau of Foods, Food and Drug Administration, 330 Independence Avenue, S.W., Washington, D.C. 20201, (202) 472-4750.
FDA 39—GRAS Whey—Whey Products and Hydrogen Peroxide Used in Whey Treatments.	A. *Description:* This final rule will establish common or usual names and affirm the GRAS status for whey and whey products. This is a result of ten GRAS petitions. These dried whey products have numerous potential uses in food including sources of milk protein and use as milk solids where not exempted by food standards. B. *Why Significant:* There is substantial public interest in establishing uniform nomenclature and safe uses for these milk protein products. C. *Regulatory Analysis:* Not required. D. *Need:* To establish safe uses of certain milk proteins. E. *Legal Basis:* Sections 201(s), 409, 701(a), 52 Stat. 1055; 72 Stat. 1784–1788, as amended (21 U.S.C. 321(s), 348, 371(a)) of the Federal Food, Drug, and Cosmetic Act. F. *Chronology:* The proposed rule published on June 22, 1979 (44 FR 36416). The comment period closed on October 29, 1979.	Dr. Corbin Miles, GRAS Review Branch (HFF-335), Bureau of Foods, Food and Drug Administration, 330 Independence Avenue, S.W., Washington, D.C. 20201, (202) 472-4750.
FDA 40—Retortable Pouch	A. *Description:* This final rule will provide for safe use of components of laminated pouch intended to contact food under retort conditions. B. *Why Significant:* The retortable pouch could be used in place of the "tin can" in the marketing of many foods. C. *Regulatory Analysis:* Not required. D. *Need:* To protect the public health. E. *Legal Basis:* Section 409, 72 Stat. 1786 (21 U.S.C. 348) of the Federal Food, Drug, and Cosmetic Act. F. *Chronology:* The notice of filing for several petitions published on November 7, 1975 (40 FR 52076), February 10, 1976 (41 FR 5861), September 13, 1976 (41 FR 38802), February 10, 1978 (43 FR 5891), April 7, 1978 (43 FR 14737), and June 23, 1978 (43 FR 27236). The final rule was published on January 15, 1980 (45 FR 2842). The objection period closed on February 14, 1980. The objections are under review.	Gerald McCowin, Director, Division of Food and Color Additives (HFF-300), Bureau of Foods, Food and Drug Administration, 330 Independence Avenue, S.W., Washington, D.C. 20201, (202) 472-5676.
FDA 41—Xylitol	A. *Description:* This proposed rule would determine the status of the use of Xylitol in specific dietary products. B. *Why Significant:* Xylitol is a sweetener. There is much industry and consumer interest in sucrose substitutes.	Gerald McCowin, Director, Division of Food and Color Additives (HFF-300), Bureau of Foods, Food and Drug Administration, 330 Independence Avenue, S.W., Washington, D.C. 20201, (202) 472-5676.

Food and Drug Administration—Significant Regulations—Continued

Title	Summary	Contact
	C. *Regulatory Analysis:* Not required. D. *Need:* Data has been submitted to the FDA suggesting that Xylitol may not be safe. E. *Legal Basis:* Sections 409, 701(a), 52 Stat. 1055; 72 Stat. 1785–1788 (21 U.S.C. 348, 371(a)) of the Federal Food, Drug, and Cosmetic Act. F. *Chronology:* This proposed rule is currently under review.	
FDA 43—Trichloroethylene	A. *Description:* This final rule will prohibit trichloroethylene in human food because it may pose a risk of cancer. B. *Why Significant:* There is substantial FDA interest due to public health concerns indicated above. C. *Regulatory Analysis:* Not required. D. *Need:* To protect the public health. E. *Legal Basis:* Sections 201(s), 402, 409, 701, 52 Stat. 1046–1047, as amended; 72 Stat. 1784–1788, as amended (21 U.S.C. 321(s), 342, 348, 371) of the Federal Food, Drug, and Cosmetic Act. F. *Chronology:* The proposed rule published on September 27, 1977 (42 FR 43405). The comment period closed on November 28, 1977.	Gerald McCowin, Director, Division of Food and Color Additives (HFF-330), Bureau of Foods, Food and Drug Administration, 330 Independence Avenue, S.W., Washington, D.C. 20201, (202) 472-5676.
FDA 44—Use of Chlorine Gas in an Aqueous Solution.	A. *Description:* This proposed rule would establish GRAS conditions of use for chlorine food sanitizers. This is the result of twelve GRAS petitions for uses of chlorine, hypochlorous acid, and chlorine dioxide as food sanitizing solutions. B. *Why Significant:* There is a substantial public health issued involved. C. *Regulatory Analysis:* Not required. D. *Need:* To establish safe uses of chlorine in a sanitizing agent. E. *Legal Basis:* Sections 201(s), 409, 701(a), 52 Stat. 1055; 72 Stat. 1784–1788, as amended (21 U.S.C. 321(s), 348, 371(a)) of the Federal Food, Drug, and Cosmetic Act. F. *Chronology:* The proposed rule is currently under review.	Dr. Corbin Miles, GRAS Review Branch (HFF-335), Bureau of Foods, Food and Drug Administration, 330 Independence Avenue, S.W., Washington, D.C. 20201, (202) 472-4750.
FDA 45—Nitrite as a Color Additive in Bacon.	A. *Description:* This final rule will resolve the issue regarding nitrite as a color additive in bacon. B. *Why Significant:* There is substantial public interest and controversy regarding the use of nitrite in bacon. C. *Regulatory Analysis:* Decision pending on completion of preliminary study. D. *Need:* To clarify the status of nitrite as a color additive in bacon. E. *Legal Basis:* Sections 201(s), 201(t)(1), 402(a), 701(a), 706, 72 Stat. 1784; 74 Stat. 397, 52 Stat. 1046, 1055–1056, as amended (21 U.S.C. 321(s), 321(t)(1), 342(a), 371(a), 376) of the Federal Food, Drug, and Cosmetic Act. F. *Chronology:* The proposed rule was published December 21, 1979. (44 FR 75659). The comment period closed on May 19, 1980.	Gerald McCowin, Director, Division of Food and Color Additives (HFF-330), Bureau of Foods, Food and Drug Administration, 330 Independence Avenue, S.W., Washington, D.C. 20201, (202) 472-5676.
FDA 46—Prior Sanction Status of Nitrites in Poultry Products.	A. *Description:* this proposed rule would resolve the issue regarding whether there is a prior sanction for nitrites in poultry products. B. *Why Significant:* There is substantial interest and controversy in the legal status of nitrites. C. *Regulatory Analysis:* Not required. D. *Need:* To protect the public health. E. *Legal Basis:* Sections 201(s), 201(t)(1), 402(a), 701(a), 706, 72 Stat. 1784; 74 Stat. 397; 52 Stat. 1046, 1055–1056, as amended (21 U.S.C. 321(s), 321(t)(1), 342(a), 376) of the Federal Food, Drug, and Cosmetic Act. F. *Chronology:* The proposed rule was published on December 21, 1979. (44 FR 75662). The comment period closes on June 18, 1980.	Gerald McCowin, Director, Division of Food and Color Additives (HFF-330), Bureau of Foods, Food and Drug Administration, 330 Independence Avenue, S.W., Washington, D.C. 20201, (202) 472-5676.
FDA 47—Safety of Food Ingredients Sucrose and Corn Sugar.	A. *Description:* The proposed rule would rule on the GRAS status of sucrose and corn sugar. B. *Why Significant:* There is much consumer concern about the health implications of consumption of sucrose and corn syrup. C. *Regulatory Analysis:* Not required. D. *Need:* To re-evaluate the safety of all GRAS ingredients. E. *Legal Basis:* Sections 201(s), 409, 701(a), 52 Stat. 1055 (21 U.S.C. 321(s), 348, 371(a)) of the Federal Food, Drug, and Cosmetic Act. F. *Chronology:* This proposed rule is currently under review.	Dr. Corbin Miles, GRAS Review Branch (HFF-335), Bureau of Foods, Food and Drug Administration, 330 Independence Avenue, S.W., Washington, D.C. 20201, (202) 472-4750.
FDA 48—Optional Ingredient Labeling Regarding Certain Food Standards.	A. *Description:* This proposed rule would revise certain food standards to require that all optional ingredients be labeled in accord with 21 CFR 101. B. *Why Significant:* There is substantial public interest in having all optional ingredients properly labeled. C. *Regulatory Analysis:* Decision pending on completion of preliminary study. D. *Need:* To promote honesty and fair dealing in the interest of consumer. E. *Legal Basis:* Sections 401, 701(e), 52 Stat. 1046, as amended; 70 Stat. 919, as amended (21 U.S.C. 341, 371(e)) of the Federal Food, Drug, and Cosmetic Act. F. *Chronology:* The proposed rule is currently under review.	Dr. Prince Hamil, Deputy Director, Division of Food Technology, (HFF-211), Bureau of Foods, Food and Drug Administration, 200 C Street, S.W., Washington, D.C. 20204, (202) 245-1164.
FDA 49—National Shellfish Safety Program	A. Description: A notice to withdraw the proposed National Shellfish Safety Program regulation and a proposal to continue the voluntary National Shellfish Program. B. *Why Significant:* An improved voluntary National Shellfish Program would help ensure the safety and wholesomeness of shellfish harvested in waters of participating states. C. *Regulatory Analysis:* Not required. D. *Need:* To improve the voluntary National Shellfish Program. E. *Legal Basis:* Sections 402, 403, 701(a), Pub. L. 717; 52 Stat. 1046–1049, 1055, as amended (21 U.S.C. 342, 343, 371(a)) of the Federal Food, Drug, and Cosmetic Act; Sections 301, 308, 311, 361, Pub. L. 410; 58 Stat. 691, 693, 703; 74 Stat. 304, as amended (42 U.S.C. 241, 242, 243, 246) of the Public Health Service Act. F. *Chronology:* The proposed rule published on June 19, 1975 (40 FR 25910). The comment period closed November 13, 1975.	David Clem, Shellfish Sanitation Branch, (HFF-417), Bureau of Foods, Food and Drug Administration, 200 C Street, S.W., Washington, D.C. 20204, (202) 245-1557.
FDA 50—Dietary Supplement of Vitamins and Minerals.	A. *Description:* This proposed rule would establish a regulation for vitamin/mineral nutritional supplements and the labeling requirements. B. *Why Significant:* There is substantial public concern over the possibility that the availability of vitamin and mineral supplements may be in some way restricted by this regulation. C. *Regulatory Analysis:* Not required. D. *Need:* To make available products and labeling information adequate for consumers to regulate their own intake of vitamins and minerals. E. *Legal Basis:* Section 201(n), 403 (a) and (j), 701 (a) and (e), 52 Stat. 1041, as amended; 1047–1048, as amended (21 U.S.C. 321(n), 343 (a) and (j), 371(n) and (e) of the Federal Food, Drug, and Cosmetic Act.	Dr. Allen Forbes, Associate Director, Nutrition and Food Sciences, (HFF-200), Bureau of Foods, Food and Drug Administration, 200 C Street, S.W., Washington, D.C. 20204, (202) 245-1561.

Food and Drug Administration—Significant Regulations—Continued

Title	Summary	Contact
	F. *Chronology:* The proposed rule is currently under review.	
FDA 51—Labeling of Sodium and Potassium Content of Foods.	A. *Description:* This proposed rule would amend § 105.69 ("foods used to regulate sodium- and potassium-intake") to change the present mode of declaring sodium content and to add a description of how potassium content is also to be declared. There shall also be a new paragraph in § 101.17 ("Food Labeling Warning statements") to provide for warnings regarding potassium content on labels of some salt substitutes. B. *Why Significant:* There is substantial public interest in and a health need for consumers being able to regulate their own intake of salts. C. *Regulatory Analysis:* Not required. D. *Need:* To give consumers an opportunity to regulate their intake of sodium acid potassium. E. *Legal Basis:* Sections 201 (n) and (s), 402(a)(2)(c), 403(a), 409(c)(1)(a), and 701(a) (U.S.C. 321 (n) and (s), 342(a)(2)(c), 343(a), 348(c)(1)(a), and 371(a)) of the Federal Food, Drug, and Cosmetic Act. F. *Chronology:* The proposed rule is currently being drafted in the Bureau of Foods.	Dr. Allen Forbes, Associate Director, Nutrition and Food Sciences, (HFF-200), Bureau of Foods, Food and Drug Administration, 200 C Street, S.W., Washington, D.C. 20204, (202) 245-1561.
FDA 55—Procedural Regulations for Cyclic Review of Animal Drugs.	A. *Description:* This proposed rule would establish procedures and priorities for cyclic review. B. *Why Significant:* The FDA believes it is important that industry be put on notice, as to the procedures to be followed and priorities to be set regarding the cyclic review of animal drugs. C. *Regulatory Analysis:* Decision pending on completion of preliminary study. D. *Need:* To set procedures and priorities for cyclic review. E. *Legal Basis:* Sections 512, 701(a), 52 Stat. 343-351 (21 U.S.C. 360, 371(a)) of the Federal Food, Drug, and Cosmetic Act. F. *Chronology:* The proposed rule is currently being reviewed.	Dr. Bob Scheuplein, Chief, Food Animal Additive Staff (HFF-154), Bureau of Foods, Food and Drug Administration, 200 C Street, S.W., Washington, D.C. 20204, (202) 472-5760.
FDA 56—Sensitivity of Method	A. *Description:* This final rule would establish criteria and procedures for evaluating assays for carcinogenic residues in animal-derived food. B. *Why Significant:* Industry needs guidelines as to what human safety data is required by FDA for new animal drug approval. C. *Regulatory Analysis:* Yes, being conducted. D. *Need:* To facilitate a determination of the safety of drugs intended for food producing animals. E. *Legal Basis:* Sections 402, 403, 409, 512, 701(a), 706, 52 Stat. 1046-1048, as amended; 1055, 72 Stat. 1785-1788, as amended; 74 Stat. 399-403, as amended, 82 Stat. 343-351 (21 U.S.C. 342, 343, 348, 360(b), 371(a), 376) of the Federal Food, Drug, and Cosmetic Act. F. *Chronology:* The proposed rule was published on March 20, 1979 (44 FR 17070). The comment period closed on July 18, 1979. Notice of hearing published on April 20, 1979 (44 FR 23538). Hearing was held on June 4, 1979.	Bob Scheuplein, Chief, Food Animal Additive Staff (HFF-154), Bureau of Foods, Food and Drug Administration, 200 C Street, S.W., Washington, D.C. 20204, (202) 472-5760.
FDA 58—Classification of Preenactment Devices.	A. *Description:* These regulations classify all medical devices marketed prior to May 28, 1976 into three regulatory control categories. The classifications are based on the recommendations of eight expert advisory panels. B. *Why Significant:* The classification regulations will determine the extent to which a device must be regulated to assure its safety and effectiveness. The classification regulations advise manufactuers whether their devices are subject to general controls, performance standards, or premarket approval. C. *Regulatory Analysis:* Not required. D. *Need:* To implement sections 513 (c) and (d) of the Medical Device Amendments of 1976. E. *Legal Basis:* 21 U.S.C 360c (c) and (d). F. *Chronology:* Final Regulations published: Neurological Devices, September 4, 1979 (44 FR 51726); Cardiovascular, February 5, 1980 (45 FR 7904); OB/GYN, February 26, 1980 (45 FR 12682). Hematology/Pathology, September 12, 1980 (45 FR 60576); General Hospital, October 21, 1980 (45 FR 69678). Proposed rules published: Physical medicine, August 28, 1979 (44 FR 50458), comment period closed October 29, 1979; Anesthesiology, November 2, 1979 (44 FR 63292), comment period closed January 2, 1980; Microbiology/Immunology, April 22, 1980 (45 FR 27204), comment period closes June 23, 1980.	Robert S. Kennedy, Associate Director for Device Evaluation (HFK-400), Bureau of Medical Devices, Food and Drug Administration, 8757 Georgia Avenue, Silver Spring, MD 20910, (301) 427-7230.
FDA 60—Premarket Approval Procedural Regulation.	A. *Description:* This regulation will provide procedural requirements for submission of premarket approval applications, including safety and effectiveness requirements for all Class III medical devices. B. *Why Significant:* The regulation is essential to ensure that FDA receives adequate information on the safety and effectiveness of all Class III devices. C. *Regulatory Analysis:* Decision pending on completion of preliminary study. D. *Need:* To implement section 515 of the Medical Device Amendments of 1976. E. *Legal Basis:* 21 U.S.C. 1360e. F. *Chronology:* The proposal is currently under review.	Keith Lusted, Premarket Approval Coordinator (HFK-402), Bureau of Medical Devices, Food and Drug Administration, 8757 Georgia Avenue, Silver Spring, MD 20910, (301) 427-8162.
FDA 64—Restricted Device Regulation	A. *Description:* This regulation will establish a criteria for manufacturers to determine whether a device is a restricted device and thus subject to certain labeling requirements as set forth in the regulation. B. *Why Significant:* The regulation will ensure that all restricted devices are subject to uniform labeling requirements. Once the regulation becomes a final rule, FDA inspectors will have access to manufacturing files concerning restricted devices. C. *Regulatory Analysis:* Not required. D. *Need:* To implement section 520(e) of the Medical Device Amendments of 1976 and adhere to the decision of the Courts in: *Becton, Dickinson and Company v. FDA,* 589 F.2d 1175 (2d Cir. 1978); and *In the Matter of Establishment Inspection of Portex, Inc., FDA, Appellant,* 595 F.2d 84 (1st Cir. 1979). E. *Legal Basis:* 21 U.S.C. 360j(e). F. *Chronology:* Proposed rule was published October 3, 1980 (45 FR 65619). The comment period closes January 16, 1981.	Michael Lidsky, Office of ADRP (HFK-70), Bureau of Medical Devices, Food and Drug Administration, 8757 Georgia Avenue, Silver Spring, MD 20910, (301) 427-7114.
FDA 65—Mandatory Experience Reporting	A. *Description:* The regulation will set forth mandatory reporting requirements for manufacturers and distributors concerning devices which cause or could cause deaths or injuries, or are the subject of a corrective action. B. *Why Significant:* The regulation will provide greater patient protection by ensuring that FDA receives information on devices that are unsafe or ineffective. C. *Regulatory Analysis:* Not required. E. *Legal Basis:* 21 U.S.C. 360i. F. *Chronology:* Proposed rule was published November 18; 1980 (45 FR 76183). The comment period closes February 17, 1981. D. *Need:* To implement section 519 of the Medical Device Amendments of 1976 and enable FDA to monitor the safety of devices.	Chester Reynolds, Chief, Device Experience Branch (HFK-125); Bureau of Medical Devices; Food and Drug Administration, 8757 Georgia Avenue; Silver Spring, MD 20910, (301) 427-8100.

Food and Drug Administration—Significant Regulations—Continued

Title	Summary	Contact
FDA 68—Maximum Residue Limits for Ethylene Oxide, Ethylene Chlorhydrin, and Ethylene Glycol.	A. *Description:* This regulation will impose residue limits on the use of ethylene oxide as a sterilant for certain drugs and devices by: (1) Establishing maximum residue limits for ethylene oxide and its two major reaction products; and (2) Maximum daily levels of exposure for drug products for ethylene oxide and its two major reaction products. B. *Why Significant:* The regulation addresses an issue of substantial public interest and controversy—the continued use of ETO at the levels of use proposed by FDA. C. *Regulatory Analysis:* Decision pending on completion of preliminary study. D. *Need:* To develop safe levels of use for ethylene oxide, ethylene chlorhydrin, and ethylene glycol. E. *Legal Basis:* 21 U.S.C. 351, 355, 356, 357, 360b, 360c, 360k, 371(a). F. *Chronology:* Proposed rule was published June 23, 1978 (43 FR 27474). The comment period closed August 22, 1978.	Carl Bruch, Deputy Associate Director for Device Evaluation (HFK-400), Bureau of Medical Devices, Food and Drug Administration, 8757 Georgia Avenue, Silver Spring, MD 20910, (301) 427-7230.
FDA 70—Recommendations for State and Local Agencies Concerning Accidental Radioactive Contamination of Human Food and Animal Feeds.	A. *Description:* The recommendations would consist of Protective Action Guides (PAGs), defined as the projected radiological dose equivalent or dose commitment to individuals in the general population that warrants protective action following a release of radioactive material. The Department of Health, Education, and Welfare was assigned agency responsibility for this task in the FEDERAL REGISTER of December 24, 1975 (40 FR 59494) by the Federal Preparedness Agency, General Services Administration. Within HEW, this function has been delegated to the Commissioner of Food and Drugs. B. *Why Significant:* Provides guidance following radiological incidents, including nuclear power plant accidents. C. *Regulatory Analysis:* Not required. D. *Need:* To develop necessary guidance under responsibility assigned by Federal Preparedness Agency. E. *Legal Basis:* Federal Preparedness Agency Notice in 40 FR 59494 and Public Health Service Act, 42 U.S.C. 241, 242o 243. F. *Chronology:* Proposed rule published on December 15, 1978 (43 FR 58790). Comment period closed on February 13, 1979.	Gail D. Schmidt, Standards and Regulations Branch (HFX-460), Bureau of Radiological Health, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, (301) 443-3426.
FDA 71—Recommendations for National Standards for Medical Radiation Technologists.	A. *Description:* The Notice of Intent announced that the Bureau of Radiological Health will be establishing recommended qualifications for medical radiation technologists. The Notice solicited professional and public input about existing practices of credentialing, the need for uniform national standards, and possible approaches for ensuring that all medical radiation technologists demonstrate a certain level of competence in conducting medical radiation examinations. B. *Why Significant:* The issue concerns a matter on which there is substantial public interest as evidenced by the more than 500 comment letters received on the Notice of Intent. C. *Regulatory Analysis:* Not required. D. *Need:* Medical radiation technologists exercise considerable influence over patient exposure during radiological procedures and so criteria for their credentialing are essential. E. *Legal Basis:* Public Health Service Act, 42 U.S.C. 241, 243, 263d. F. *Chronology:* Notice of Intent published on March 13, 1979 (44 FR 14637). Comment period closed on July 11, 1979.	Charles P. Froom, Standards and Regulations Branch (HFX-460), Bureau of Radiological Health, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, (301) 443-3426.
FDA 72—Recommendations on Exposures from Diagnostic X-Ray Examinations.	A. *Description:* There exists a considerable range in the entrance skin exposure and the resulting organ doses for the same X-ray procedure conducted at different medical facilities and often within the same facility. Radiation exposure recommendations are being investigated that will permit radiologists, radiation protection personnel, and others to evaluate exposure values used in a given facility. Following the analysis of the comments generated by the Notice of Inquiry, a program decision will be made as to the course of action the Bureau will pursue. B. *Why Significant:* The recommendations could have a great impact on reducing human exposure from medical X-ray examinations which accounts for ninety percent of public exposure to man-made ionizing radiation. C. *Regulatory Analysis:* Not required. D. *Need:* This recommendation will encourage facilities which are delivering excessive exposures compared to the usual exposures for specific examinations to reevaluate their procedures and lower their exposures. E. *Legal Basis:* Public Health Service Act, 42 U.S.C. 263d. F. *Chronology:* Notice of Inquiry published on August 17, 1979 (44 FR 48354). Comment period closes on December 17, 1979.	Raymond F. Coakley, Jr., Standards and Regulations Branch (HFX-460), Bureau of Radiological Health, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, (301) 443-3426.
FDA 73—Recommendations for Referral Criteria for Diagnostic Radiological Examinations.	A. *Description:* An often cited reason for the overuse of diagnostic radiological examinations is the lack of referral criteria for specific examinations. The National Conference on Referral Criteria for X-Ray Examinations addressed this problem. One of the most important recommendations resulting from the Conference, publicly ratified by the Commissioner, was that which established the Government as a facilitator in the cooperative medical professional organizations. The purpose of this announcement is: (1) To state FDA's intent to facilitate the development of referral criteria through expert panels of physicians, grants, and contracts, (2) To provide a listing of candidate radiological (including nuclear medicine) examinations; and (3) To announce means through which public participation in the process can be assured. B. *Why Significant:* These recommendations should sharply reduce the use of diagnostic X-ray procedures in those circumstances where experience has shown that such examinations do not significantly improve the patient's recovery from disease or injury. C. *Regulatory Analysis:* Not required. D. *Need:* To reduce human exposure to medical X-ray in those instances where no significant medical benefit would result. E. *Legal Basis:* Public Health Service Act, 42 U.S.C. 241, 242, 243. F. *Chronology:* The notice is currently under development.	Robert A. Phillips, Standards and Regulations Branch (HFX-460), Bureau of Radiological Health, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.
FDA 75—Sulfonamide Containing Animal Drugs.	A. *Description:* To amend 21 CFR 510.450 setting out prescribed requirements for studies to establish safe and effective conditions of use for sulfonamide containing drugs in food producing animals. B. *Why Significant:* All sponsors of sulfonamide containing drugs for use in food producing animals will be required to submit adequate information to establish safe and effective conditions of use including tolerances for safe residues in the edible products. C. *Regulatory Analysis:* Decisions pending on completion of preliminary study.	

Food and Drug Administration—Significant Regulations—Continued

Title	Summary	Contact
	D. *Need:* Data currently available is not adequate to establish safe tolerances for residues of sulfonamide drugs in edible products of food producing animals. E. *Legal Basis:* Sections 512, 701(a), 52 Stat. 1055, 82 Stat. 343-351 (21 U.S.C. 360b, 371(a)). F. *Chronology:* 21 CFR 510.450 was initially promulgated October 23, 1970 (35 FR 16538). It was amended to require interim studies on July 22, 1974 (39 FR 26633).	Dr. Emilio E. Viera, Division of Drugs for Swine and Minor Species (HFV-138), Bureau of Veterinary Medicine, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3410.
FDA 76—Medicated Feed Task Force Implementation.	A. *Description:* Amends the regulations to provide revised criteria for the need of an approved medicated feed application for the manufacture of medicated feeds. B. *Why Significant:* This proposal would materially change the current requirements for approval for the use of drugs in the manufacture of medicated feeds. C. *Regulatory Analysis:* Not required. D. *Need:* The proposal would establish sound and consistent criteria for approval of medicated feed applications. E. *Legal Basis:* Secs 512, 701(a), 52 Stat. 1055, 82 Stat. 343-351 (21 U.S.C. 360b, 371(a)). F. *Chronology:* Revised feed definitions proposed January 17, 1978 (43 FR 2526). Task Force Report made available by FR Notice December 15, 1978 (43 FR 58634). FEDERAL REGISTER of March 6, 1979 (44 FR 12208) deferred action on definitions proposal to become a part of the Medicated Feed Task Force implementation.	Dr. George Graber, Division of Animal Feeds (HFV-220), Bureau of Veterinary Medicine, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4438.
FDA 77—Teat Dips	A. *Description:* To establish a regulation prescribing data requirements to establish safe and effective use of teat dips in the dairy industry. B. *Why Significant:* The regulation will require that all articles offered for use as teat dips are new animal drugs and will require that they be the subject of an approved new animal drug application. C. *Regulatory Analysis:* Not required. D. *Need:* Such products have been shown not to be safe and effective for this use. E. *Legal Basis:* Sections 512, 701(a), 52 Stat. 1055, 82 Stat. 343-351 (21 U.S.C. 360b, 371(a)). F. *Chronology:* A notice of proposed rulemaking issued in the FEDERAL REGISTER of August 9, 1977 (42 FR 40217). Comment period closed on March 10, 1978.	Dr. Howard Meyers, Division of Surveillance (HFV-216), Bureau of Veterinary Medicine, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1846.
FDA 78—Animal Drugs for Minor Species	A. *Description:* To modify the safety and effectiveness requirements for approval of new animal drug applications for use of a drug in a minor species or the minor use of a drug in a major species. B. *Why Significant:* To assure the availability of new animal drugs for use in minor species or for a minor use in a major species. C. *Regulatory Analysis:* Not required. D. *Need:* Because of little economic incentive to drug manufacturers. Under current criteria few drugs have been approved for use in minor species. E. *Legal Basis:* Sections 512, 701(a), 52 Stat. 1055, 82 Stat. 343-351 (21 U.S.C. 360b, 371(a)). F. *Chronology:* A notice of proposed rulemaking issued in the FEDERAL REGISTER of July 20, 1979 (44 FR 42714). Comment period closed on October 19, 1979.	Dr. Thomas V. Raines, Division of Drugs for Avian Species (HFV-149), Bureau of Veterinary Medicine, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4913.
FDA 79—Sterility and Pyrogenicity of Animal Drugs.	A. *Description:* To amend the current good manufacturing practice regulations for injectable animal drugs to require that they be sterile and free of extrinsic pyrogenic material. B. *Why Significant:* May require firms currently manufacturing such drugs to revise and update manufacturing facilities. C. *Regulatory Analysis:* Decision pending on completion of preliminary study. D. *Need:* Parenteral drugs that are not sterile and free of extrinsic pyrogenic material are potentially unsafe for such use. E. *Legal Basis:* Sections 501, 502, 512, 701(a) 52 Stat. 1049-1053 as amended, 1055 82 Stat. 343-351 (21 U.S.C. 351, 352, 360b, 371(a)). F. Chronology: A notice of intent was published in the FEDERAL REGISTER of December 15, 1978 (43 FR 58591). Comment period closed on June 13, 1979.	Ms. Pat Cushing, Division of Compliance (HFV-234), Bureau of Veterinary Medicine, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3460.
FDA 80—Approval of Supplemental New Animal Drug Applications.	A. *Description:* Conditions are set forth under which a supplemental new animal drug application may be approved with or without a complete reevaluation of all safety and effectiveness data in the parent application. B. *Why Significant:* The regulation constitutes a change in agency policy regarding such approvals. C. *Regulatory Analysis:* Not required. D. *Need:* The regulation will facilitate approval of minor changes in approved applications including improving safety and effectiveness of the drug on an expeditious basis. E. *Legal Basis:* Sections 512, 701(a), 52 Stat. 1055, 82 Stat. 343-351 (21 U.S.C. 360b, 371(a)). F. *Chronology:* Notice of intent published November 12, 1976 (41 FR 50003) and notice of proposed rulemaking on December 23, 1977 (42 FR 64367). Comment period closed on March 23, 1978.	John R. Markus, Chief Chemist, Scientific Evaluation, (HFV-104), Bureau of Veterinary Medicine, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4313.
FDA 81—Prohibited Substances; Deodorizer Distillates.	A. *Description:* The regulation would prohibit the use of deodorizer distillate substances in animal feed. B. *Why Significant:* Such substances have been implicated in the contamination of animal feed resulting in the destruction of contaminated food producing animals. C. *Regulatory Analysis:* Not required. D. *Need:* Deodorizer distillate substances contain concentrated pesticide and other chemical residues from their application to growing crops. E. *Legal Basis:* Sections 201(g), 402, 409, 701(a), 52 Stat. 1046-1047 as amended 1055, 72 Stat. 1784-1788 as amended (21 U.S.C. 321(s), 342, 348, 371(a)). F. *Chronology:* Notice of Proposed Rulemaking published September 9, 1975 (40 FR 41797). Comment period closed on December 10, 1975. Tentative final rule was published April 29, 1980 (45 FR 28349).	John R. McDowell, Division of Animal Feeds (HFV-222), Bureau of Veterinary Medicine, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-5362.
FDA 82—Descending Order of Predominance Ingredient Statement.	A. *Description:* This is a proposal to establish a requirement that the labels of food bear a statement that ingredients are listed in descending order of predominance by weight so that consumers can better evaluate the ingredients and nutritional value of foods and select products that meet their individual needs and preferences. B. *Why Significant:* This issue concerns a matter on which there is substantial public interest. C. *Regulatory Analysis:* Not required. D. *Need:* To increase consumer awareness of the fact that ingredients are listed in their order of predominance. E. *Legal Basis:* Sections 201(n), 403(a), 701(a), 52 Stat. 1041, as amended; 1047 as amended, 1055 (21 U.S.C. 321(n), 343(a), and 371(a)) of the Federal Food, Drug and Cosmetic Act. F. *Chronology:* This proposed rule is currently under review.	Taylor M. Quinn, Associate Director of Compliance (HFF-300), Bureau of Foods, Food and Drug Administration, 200 C Street, S.W., Washington, D.C. 20204 (202) 245-1243.

Food and Drug Administration—Significant Regulations—Continued

Title	Summary	Contact
FDA 83—Restrictions on Alpha-fetoprotein Test Kits.	A. This regulation establishes restriction on the sale distribution and use of alpha-fetoprotein (AFP) test kits for neural tube defects (NTDs). B. *Why Significant:* This regulation will provide for the safe and effective use of AFT test kits in prenatal detection of NTD's. C. *Regulatory analysis:* Not required. D. *Need:* The restrictions in this regulation are necessary for the safe and effective use of AFP test kits. E. *Legal Basis:* 21 U.S.C. 360j(e). F. Chronology: Notice of Proposed Rulemaking published November 7, 1980 (45 FR 74159). Comment period closes January 6, 1981.	Joseph M. Sheehan, Office of the Assistant Director for Regulations Policy, (HFK-70), Bureau of Medical Devices, Food and Drug Administration, 8757 Georgia Avenue, Silver Spring, MD 20910, (301) 427-8162.
FDA 84—Patient Information	A. This notice will set forth FDA's statement of policy on the development of patient information for medical devices. This notice identifies the criteria for selecting devices for development of patient information and describes the processes that will be used to determine when patient information should be provided for medical devices and the procedures associated with their use. B. *Why significant:* This policy will help to ensure that patients have an opportunity to be well informed participants in their health care. C. *Regulatory Analysis:* Not required. D. *Need:* Publication of this notice will enable FDA to obtain comments on this policy from consumers, industry and health professionals. E. *Legal Basis:* 21 U.S.C. 352. F. *Chronology:* The notice is currently under review.	Carol A. Vetter, Consumer Affairs Officer (HFK-131), Bureau of Medical Devices, Food and Drug Administration, 8757 Georgia Avenue, Silver Spring, MD 20910, (301) 427-8120.
FDA 86—Infant Formulas Quality Control Labeling Regulation.	A. *Description:* This is a proposal to require a warning statement on the label where specified quality control requirements are not met. B. *Why Significant:* The nutritional adequacy of infant formulas is a public health issue on which there is substantial public interest. C. *Regulatory Analysis:* Not Required. D. *Need:* To assure that the required levels of nutrients are present. E. *Legal Basis:* Sections 201(n), 403(a), 701(a), 52 Stat. 1041 as amended, 1047-1048 as amended, 1055 (21 U.S.C. 321(n), 343(a)), 371(a) of the Federal Food, Drug and Cosmetic Act. F. *Chronology:* The proposed rule is currently under review.	Melvin R. Johnston, Plant and Protein Technology Branch (HFF-214), Bureau of Foods, Food and Drug Administration, 200 C St., S.W., Washington, DC. 20204, (202) 245-1504.
FDA 87—Current Good Manufacturing Practice Relating to Poisonous and Deleterious Substances in Food, Feed, and Food-Packaging Materials Plants.	A. *Description:* This is a proposal to amend several of FDA regulations to prohibit or limit the amount of poly-chlorinated biphenyls (PCB's) in sealed electrical transformers and capacitors used or stored in or around food, feed, and food- and feed-packaging materials plants or storage facilities. B. *Why Significant:* This is a public health issue on which there is substantial public interest. C. *Regulatory Analysis:* Required. D. *Need:* To protect the public health. E. *Legal Basis:* Sections 402(a), 406, 409, 701(a), 52 Stat. 1046 as amended, 1049 as amended, 1055, 72 Stat. 1785-1788 as amended, (21 U.S.C. 342(a), 346, 348, 371(a)) of the Federal Food, Drug and Cosmetic Act and Section 361, 58 Stat. 703 (42 U.S.C. 264) of the Public Health Service Act. F. *Chronology:* The proposed rule published on May 9, 1980 (45 FR 30934). Comment period ends July 7, 1980.	F. Leo Kauffman, Plant and Protein Technology Branch (HFF-214), Bureau of Foods, Food and Drug Administration, 200 C Street, SW., Washington, D.C. 20204, (202) 245-1164.
FDA 88—Infant Formula; Recall Procedures	A. Description: This proposed rule would establish recall procedures for removing adulterated infant formula from the marketplace. B. Why Significant: There is considerable public interest in infant formulas due to medical problems in infants resulting from inadequate amounts of essential nutrients. C. Regulatory Analysis: Not required. D. Need: To protect the public health. E. Legal Basis: Sec. 1 et seq., Pub. L. 717, 52 Stat. 1040-1059, as amended (21 U.S.C. 301 et seq.) of the Federal Food, Drug, and Cosmetic Act. F. Chronology: The proposed rule is currently under review.	Howard Pippin, Guidelines and Compliance Research Branch (HFF-312), Bureau of Foods, Food and Drug Administration, 200 C St., S.W., Washington, D.C. 20204, (202) 245-3092.
FDA 89—Device Risk Notification	A. Description: This regulation sets forth procedures to be followed whenever FDA requires manufacturers, distributors, or other responsible parties to notify health professionals or other persons of an unreasonable risk to health presently by a medical device. B. Why Significant: Will enable health professionals and other users to reduce or eliminate unreasonable risks presented by devices. C. Regulatory Analysis: Not required. D. Need: To implement § 518(a) of the Medical Device Amendments of 1976 and to enable FDA to assure the safety and effectiveness of medical devices. E. Legal Basis: 21 U.S.C. 360h(a). F. Chronology: The proposal is currently under review.	Robert A. Forst, Office of the Assistant Director for Regulations Policy (HFK-70), Bureau of Medical Devices, Food and Drug Administration, 8757 Georgia Avenue, Silver Spring, MD 20910, (301) 427-7114.
FDA 90—Prosthetic Fiber for Implantation into the Human Scalp; Banning.	A. Description: The regulation will ban all prosthetic fibers intended for implantation into the human scalp to conceal baldness. B. Why Significant: There is public health danger resulting from the side effects associated with the prosthetic fibers. C. Regulatory Analysis: Not required. D. Need: To protect the public from dangerous side effects associated with prosthetic hair fibers. E. Legal Basis: 21 U.S.C. 360f. F. Chronology: The proposed rule is currently under review.	Pamela F. Wojtowicz, Division of Compliance (HFK-114), Bureau of Medical Devices, Food and Drug Administration, 8757 Georgia Avenue, Silver Spring, MD 20910, (301) 427-7218.

Office of Human Development Services

Title	Summary	Contact
HDS-4—Developmental Disabilities Program: General Rules.	A. *Description:* This regulation would revise existing regulations to clarify current policies and implement changes in the following areas: Definition of developmental disability; rights of the developmentally disabled; protection and advocacy systems; state planning councils; the state plan; allotments; and special project grants. B. *Why Significant:* This regulation would change the state plan requirements and concentrate funds on a limited number of priority service areas for the developmentally disabled. C. *Regulatory Analysis:* Not required. D. *Need:* To implement the 1978 Amendments to the Developmental Disabilities Assistance and Bill of Rights Act. E. *Legal Basis:* 42 U.S.C. 6008. F. *Chronology:* None.	Ann Queen, Administration on Developmental Disabilities, Rm. 3550, HHS North Bldg., 330 Independence Ave., S.W., Washington, D.C. 20201, (202) 472-7213.

Office of Human Development Services—Continued

Title	Summary	Contact
HDS-5—Social Service Programs: Consolidated Grants to Insular Areas.	A. *Description:* This regulation would specify the procedures for application and use of a single grant award consolidating the formula grant funds available for social services to the Insular Areas under Titles I, IV-A, IV-B, X, XIV, XVI and XX of the Social Security Act. B. *Why Significant:* This regulation will allow the Insular Areas greater flexibility for setting social services priorities and in responding to the needs of their populations. C. *Regulatory Analysis:* Not required. D. *Need:* To implement a 1977 Amendment to the Omnibus Territories Act. E. *Legal Basis:* 48 U.S.C. 1469(a). F. *Chronology:* None.	Warren Master, Rm. 736-E, H. H. Humphrey Bldg., 200 Independence Ave., S.W., Washington, D.C. 20201, (202) 245-6275.
HDS-6—Native American Program: General Rules.	A. *Description:* This regulation would simplify and clarify existing regulations and implement significant changes in policies and operation to reflect experience in operating the program. B. *Why Significant:* The Native American Grants provide valuable resources to Native Americans in their efforts to achieve economic and social self-sufficiency. C. *Regulatory Analysis:* Not required. D. *Need:* Regulations are needed to provide detailed requirements for the receipt and use of grants under the Native Americans Program Act of 1974. E. *Legal Basis:* 42 U.S.C. 2991. F. *Chronology:* None.	Casimer Wichlacz, Director, Policy Planning and Budget Division, Administration for Native American, Rm. 5300, HHS North Bldg., 330 Independence Ave., S.W., Washington, D.C. 20201, (202) 245-7776.
HDS-7—Child Abuse and Neglect Prevention and Treatment Program: General Rules.	A. *Description:* This regulation will implement statutory amendments to the Child Abuse Prevention and Treatment Act, which provides discretionary grants for demonstration and service projects and research projects to private, nonprofit organizations. In addition, it provides special grants to States who meet the eligibility criteria for child abuse prevention and treatment projects. B. *Why Significant:* This regulation will revise the definition of child abuse and neglect to include sexual abuse and sexual exploitation as required by the statute. This will broaden the scope of services provided by the Act. C. *Regulatory Analysis:* Not required. D. *Need:* To implement the Child Abuse Prevention and Treatment and Adoption Reform Act of 1978. E. *Legal Basis:* 42 U.S.C. 5101 et seq. F. *Chronology:* Notice of Decision to Regulate was published on September 6, 1978 (43 FR 39593).	Frank Ferro, Associate Chief, Children's Bureau, Administration for Children, Youth, and Families, Donohoe Bldg., Room 2030, 400 6th St., S.W., Washington, D.C. 20013, (202) 755-7418.
HDS-15—Eligibility Requirements and Limitations for Enrollment in Head Start.	A. *Description:* Will implement a new legislative requirement of P.L. 95-568 which allows a Head Start program to establish more liberal eligibility criteria if the community in which it is operating meets certain statutory requirements. B. *Why Significant:* This amendment will allow more than 15% over income children to enroll in Head Start programs located in communities which meet criteria established in the statute. C. *Regulatory Analysis:* Not required. D. *Need:* To implement a 1978 amendment to the Headstart-Follow Through Act. E. *Legal Basis:* 42 U.S.C. § 2928g(a)(2). F. *Chronology:* None.	Henlay Foster, Associate Director, Head Start Bureau, Administration for Children, Youth, and Families, Room 5163, Donohoe Bldg., 400 6th St., S.W., Washington, D.C. 20013, (202) 755-7782.
HDS-16—Adoption Assistance and Child Welfare Act of 1980.	A. *Description:* To implement the provisions of Pub. L. 96-272 to establish a program of adoption assistance, to strengthen the program of foster care assistance for needy and dependent children, to improve the child welfare social services, and aid to families with dependent children programs, and for other purposes. B. *Why Significant:* This regulation will help to shorten the term of children in foster care and to give them permanency. C. *Regulatory Analysis:* Threshold study completed. D. *Need:* To implement Sections 101-103 of Pub. L. 96-272. E. *Legal Basis:* Pub. L. 96-272; 94 Stat. 500 et seq. F. *Chronology:* None.	Ms. Beatrice Moore, Director, Child Welfare Services State Grant Division, Children's Bureau, Administration for Children, Youth, and Families, Room 2749, Donohoe Building, 400 Sixth St., S.W., Washington, D.C. 20201, (202) 755-8888.
HDS-17—Medical and Social Services for Certain Handicapped Persons, Section 201(c) of Pub. L. 96-265.	A. *Description:* This regulation establishes the policies and procedures for the implementation of a three year pilot program for the provision of medical and social services to severely handicapped individuals under certain circumstances. Under this pilot program States will receive a share of $6 million (to be matched at the 75%-25% rate) yearly, beginning Sept. 1, 1981, based on their SSI disabled and blind population. To participate in the program, States must designate an agency to administer or supervise the administration of the pilot program, and either submit a State plan or amend their title XX administrative plan. B. *Why Significant:* This pilot program will give States flexibility in the provision of services to handicapped persons who are ineligible for SSI and Medicaid, and who without the benefits under this program might not be able to continue employment. C. *Regulatory Analysis:* A threshold study is being developed. D. *Need:* To implement Section 1620 of the Social Security Act, as established by Section 201(c) of Pub. L. 96-265, the Social Security Disability Amendments of 1980. E. *Legal Basis:* Pub. L. 96-265; 94 Stat. 446-449. F. *Chronology:* None.	Warren Master, Director, Office of Policy Development, Room 736-E, Humphrey Bldg., 200 Independence Ave., S.W., Washington, D.C. 20201, (202) 245-6275.
HDS-18—Social Services Programs under Titles IV-A and XX of the Social Security Act—Safeguarding of Information.	A. *Description:* This regulation amends the Safeguarding of Information provisions under title IV-A in the Territories and title XX in the States, to allow for disclosure of information (including clients' names and addresses), to legislative bodies legally authorized to conduct audits. B. *Why Significant:* The regulation provides access to client information which will assist in the conducting of an audit. C. *Regulatory Analysis:* Not required. D. *Need:* To implement Section 403 of Pub. L. 96-265, The Social Security Disability Amendments of 1980. E. *Legal Basis:* Pub. L. 96-265; 94 Stat. 462. F. *Chronology:* None.	Warren Master, Director, Office of Policy Development, Room 736-E, Humphrey Bldg., 200 Independence Ave., S.W., Washington, D.C. 20201, (202) 245-6275.

OFFICE OF HUMAN DEVELOPMENT SERVICES, HHS SEMI ANNUAL AGENDA

HDS-19—Social Service Program Under Title XX of the Social Security Act. Joint Regulation to Implement Sections 201(a) and (b) of Pub. L. 96-265.	A. *Description:* These regulations implement the provisions in law that require States to "deem" certain employed disabled individuals eligible for social services under title XX and medical care under title XIX as if they were SSI recipents. These individuals no longer receive cash payments under the regular SSI program. These regulations are being developed jointly with HCFA and SSA. B. *Why Significant:* As an incentive to encourage disabled individuals to remain employed after their earnings make them ineligible for a regular SSI payment, this regulation provides continuation of Medicaid and title XX eligibility.	

OFFICE OF HUMAN DEVELOPMENT SERVICES, HHS SEMI ANNUAL AGENDA—Continued

Title	Summary	Contact
	C. *Regulatory Analysis:* A threshold study is being prepared. D. *Need:* To implement the provisions in Sections 201(a) and (b) of Pub. L. 96-265, the Social Security Disability Amendments of 1980. E. *Legal Basis:* Pub. L. 96-265; 94 Stat. 445-446. F. *Chronology:* None.	Warren Master, Director, Office of Policy Development, Room 736-E, Humphrey Bldg., 200 Independence Ave., S.W., Washington, D.C. 20201, (202) 245-6275.
HDS-20—Social Service Programs under Titles I, IV-A, X, XIV, XVI, and XX of the Social Security Act—Implementation of provisions in Title II of Pub. L. 96-272 and Revision of the Title XX Training Regulations.	A. *Description:* This regulation would implement provisions of Title II of Pub. L. 96-272 which amend title XX of the Social Security Act in several areas as follows: raises the statutory ceiling; provides a separate allocation for the Territories; allows 100% FFP for child day care; allows, at State option, the provision of emergency shelter to adults, grants to day care providers to hire welfare recipients and a multi-year service program plan; allows restricted donations for training; for FY 1980 and 81; establishes a 2-year ceiling on training funds and a requirement for a training plan as of FY 1982; eliminates certain restrictions in the provision of specified services to alcoholics and drug addits. The regulation also would revise the training rules and clarify existing requirements. B. *Why Significant:* These regulations would make permanent certain former temporary programmatic provisions, and also implement the other amendments to title XX. In addition they would provide the States with more options in operating their training programs, and establish requirements related to the requirement for an HHS approved training plan. C. *Regulatory Analysis:* A threshold study is in progress. D. *Need:* To implement the amendments to title XX as contained in Pub. L. 96-272, the Adoption Assistance and Child Welfare Act of 1980. E. *Legal Basis:* 42 USC 1397(a)-(f); 94 Stat. 521-527. F. *Chronology:* None.	Warren Master, Director, Office of Policy Development, Room 736-E, Humphrey Bldg., 200 Independence Ave., S.W., Washington, D.C. 20201, (202) 245-6275.
HDS-21—Joint Recodification Project—Fair Hearings.	A. *Description:* These regulations would revise the requirements for a fair hearing system for applicants and recipients to appeal certain State and provider agency actions in delivering services. They are being developed jointly with regulations in this area for the AFDC and Medicaid programs. B. *Why Significant:* These regulations cover important issues such as the individual's right to a fair hearing; time limits and procedures for holding a hearing and implementing a hearing decision. The rules will apply to service programs under titles I, IV-A and B, X, XIV, XVI(AABD) and XX of the Social Security Act. C. *Regulatory Analysis:* A threshold analysis is being conducted. D. *Need:* This will represent the first time that regulations for fair hearings have policies and procedures that specifically pertain to the social services programs. E. *Legal Basis:* 42 USC 1302, 302-303, 1202-1203, 1352-1353, 1382-1383, 1337. F. *Chronology:* Disclosure Draft Notice—June 13, 1979 (44 *FR* 33913).	Warren Master, Director, Office of Policy Development, Room 736-E, Humphrey Bldg., 200 Independence Ave., S.W., Washington, D.C. 20201, (202) 245-6275.
HDS-22—Joint Recodification Project-Application Determination.	A. *Description:* These regulations would revise the procedural requirements that States must follow in taking applications, and making eligibility determinations. These regulations are being revised jointly with those for the AFDC and Medicaid programs. B. *Why significant:* These regulations cover important issues including the eligibility and application process; the rights of applicants and recipients; and time limits for providing services. C. *Regulatory Analysis:* A threshold study is in preparation. D. *Need:* To clarify application and eligibility requirements for the social services program under title XX in the States and under titles I, IV-A, X, XIV, and XVI(AABD) in the Territories. These proposed rules would establish common policies for the AFDC, Medicaid and Social Services programs which are administered by the same agency in most States. E. *Legal Basis:* 42 U.S.C. 1302, 302-303, 1202, 1203, 1352-1353, 1382-1383, 1337. F. *Chronology:* Notice of decision to develop regulations—March 19, 1979 (44 *FR* 16449). Disclosure Draft Notice—April 9, 1979 (44 *FR* 21044).	Warren Master, Director, Office of Policy Development, Room 736-E, Humphrey Bldg., 200 Independence Ave., S.W., Washington, D.C. 20201, (202) 245-6275.
HDS-23—Work Incentive Program: Technical Amendments and Relocation to Chapter XIII of 45 CFR.	A. *Description:* These regulations amend the regulations relating to the Work Incentive Programs for AFDC recipients in order to make them conform with legislative amendments. They also would relocate the WIN regulations from Part 224 of Chapter II to Chapter XIII of 45 CFR. The revised regulations would contain current agency designations. B. *Why significant:* These regulations would implement legislative changes affecting some aspects of Work Incentive Program operations. C. *Regulatory Analysis:* Not required. D. *Need:* These regulations are needed to implement legislative changes mandated by Pub. L. 96-265 and to consolidate in Chapter XIII of 45 CFR all regulations administered by the Office of Human Development Services. E. *Legal Basis:* 42 U.S.C. 630 et seq. F. *Chronology:* None.	Merwin S. Hans, Executive Director, National Coordination Committee Work Incentive Program, Room 5102, Patrick Henry Bldg., 601 D. St., N.W., Washington, D.C. 20201, (202) 387-6634.
HDS-24—Work Incentive Program: Period within which State Claims must be filed.	A. *Description:* This regulation would establish a 2-year time limit for the payment of claims by the State guarantee under the Work Incentive Program in accordance with new legislation. B. *Why significant:* These regulations are intended to improve the financial management programs under the Social Security Act. C. *Regulatory Analysis:* Not required. D. *Need:* The regulation is required by new legislation. E. *Legal Basis:* Section 1132 of the Social Security Act as amended by Pub. L. 96-272. F. *Chronology:* None.	Merwin S. Hans, Executive Director, National Coordination Committee Work Incentive Program, Room 5102, Patrick Henry Bldg., 601 D. St., N.W., Washington, D.C. 20201, (202) 387-6634.

Social Security Administration

Title	Summary	Contact
SSA-4—Aid to Families With Dependent Children Program—Quality Control Reviews—General Administration, 45 CFR Part 205.	A. *Description:* The proposed regulations will require States to submit findings from their monthly AFDC review sample to SSA within 75 days after the sample month. Also, States will be required to submit findings on not less than 98 percent of the cases selected for the monthly review sample unless an alternative completion plan for that State is approved by the Secretary. The anticipated result is that the monthly review findings will be promptly submitted and not delayed until the end of the 6-month sample period.	Sean Hurley, (202) 245-8999, Program Specialist, Office of Family Assistance, Room 1416, Switzer Bldg., 330 C Street, S.W., Washington, D.C. 20201.

Social Security Administration—Continued

Title	Summary	Contact
	B. *Why Significant:* This change would assure more rapid availability of quality control data. This would enable SSA to complete our reports on a more timely and updated basis. Timely data on payment error rates will assist administrators in determining where funds are being lost and in taking action to correct problems. C. *Regulatory Analysis:* Not required. D. *Need:* These proposed regulations implement an administrative decision that was made. E. *Legal Basis:* 42 U.S.C. 302, 602, 1202, 1352 and 1382. F. *Chronology:* A Notice of Decision to Regulate was published on June 15, 1979 (44 FR 34606). An NPRM was published on Oct. 24, 1980 (45 FR 70521).	
SSA-7—Aid to Families With Dependent Children Program—Redetermining Eligibility and Computing Supplementary Payment, 45 CFR Parts 232, 233, and 302.	A. *Description:* These regulations will require that eligibility be based on the current month's reported support payments, and each month's supplemental payment be based on the largest part of the amount collected in the current month that would not cause ineligibility. They will provide uniform and equitable redeterminations of eligibility and payment amounts. B. *Why Significant:* These regulations would affect AFDC and Child Support Enforcement programs in 14 States and in Puerto Rico, Guam, Virgin Islands, and the District of Columbia. C. *Regulatory Analysis:* Not required. D. *Need:* These regulations will assure that no family receiving child support payments will suffer a loss in disposable income as a result of the initiation of the Child Support Enforcement Program. E. *Legal Basis:* 402(a) (7), (8), (10), and (28) and 1102 of the Social Security Act as amended; 42 U.S.C. 607 (a)(7), (8), (10) and (28) and 1302 as amended, Section 202 of Pub. L. 94-88. F. *Chronology:* A Notice of Decision to Regulate was published on May 18, 1979 (44 FR 29122). Notice of proposed rulemaking was published on February 15, 1980 (45 FR 8322)	Alice Stewart, (202) 245-2010, Program Specialist, Office of Family Assistance, Room B411, Trans Point Bldg., 2100 Second St., S.W., Washington, D.C. 20024.
SSA-9—Aid to Families With Dependent Children Program—Inclusion of Child Receiving Old-Age, Survivors' and Disability Insurance Benefits into an AFDC Assistance Unit, 45 CFR Part 233.	A. *Description:* The proposed regulations will reaffirm an AFDC caretaker's option to include in the AFDC assistance unit a child who receives OASDI benefits under Title II of the Social Security Act, even when such benefits are sufficient to meet the child's needs under the State's AFDC payment standard. B. *Why Significant:* The proposed regulations will codify internal policy memoranda in effect between the Federal Government and the States. C. *Regulatory Analysis:* Not required. D. *Need:* Policy clarification is required between State Letter 1088 and subsequent policy issuance in order to resolve two conflicting interpretations. E. *Legal Basis:* 42 U.S.C. 602 and 1302. F. *Chronology:* A Notice of Decision to Regulate was published on March 6, 1979 (44 FR 12214). An NPRM was published on June 26, 1980 (45 FR 43235).	Connie Katz, (202) 245-2015, Program Specialist, Office of Family Assistance, Room B416, Trans Point Bldg., 2100 Second Street, S.W., Washington, D.C. 20024.
SSA-15—Social Security Administration—Availability of Information and Records to the Public, 20 CFR Parts 401 and 422.	A. *Description:* These proposed regulations will revise SSA's rules on the Freedom of Information Act to make them consistent with HEW's regulations in 45 CFR part 5, transfer material concerning HCFA's Medicare program and relocate certain rules to bring SSA's rules on disclosure and the availability of information together in one part. B. *Why Significant:* These are basically technical revisions to make SSA's rules consistent with those in 45 CFR part 5. C. *Regulatory Analysis:* Not required. D. *Need:* There is a need to review SSA's rules on the availability of information for consistency with HEW's, revise our rules to reflect creation of Health Care Financing Administration, and to transfer certain Medicare information which no longer applies to SSA activities to 42 CFR part 405. E. *Legal Basis:* 42 U.S.C. 405 and 1302. F. *Chronology:* A Notice of Decision to Regulate was published on May 18, 1979 (44 FR 29102).	Armand Esposito, (301) 594-7455, Legal Assistant, Office of Regulations, 6401 Security Blvd., Baltimore, Md. 21235.
SSA-18—Old-Age, Survivors, Disability Insurance Program—Basic Computation of Benefits and Lump Sums, 20 CFR Part 404, Subpart C.	A. *Description:* These proposed regulations will contain the rules on computations of primary insurance amounts (PIA) under the old-age, survivors, and disability insurance programs. (An individual's PIA is the basic tool we use to find the amount of the individual's monthly benefit as well as the monthly benefits of his or her family.) B. *Why Significant:* These proposed regulations will simplify the complex provisions for computing benefits. C. *Regulatory Analysis:* Not required. D. *Need:* These regulations are being rewritten to meet the Department's "Operation Common Sense" standards. E. *Legal Basis:* Sec. 215 of the Social Security Act; 42 U.S.C. 415. F. *Chronology:* A Notice of Decision to Regulate was published on March 6, 1979 (44 FR 12205). An NPRM was published on June 25, 1980 (45 FR 42647).	Jack Schanberger, (301) 594-6785, Legal Assistant, Office of Regulations, 6401 Security Blvd., Baltimore, Md. 21235.
SSA-21—Old-Age, Survivors, Disability Insurance Program—Deductions, Reduction; and Nonpayment of Benefits, 20 CFR Part 404, Subpart E.	A. *Description:* This proposal is a recodification of the rules for making deductions from benefits, reducing benefits, and for nonpayment of benefits in the old-age, survivors, and disability insurance programs. B. *Why Significant:* The recodified regulations will be easier for the public to use and will update amendment material not contained in current regulations. C. *Regulatory Analysis:* Not required. D. *Need:* We propose to remove seldom used provisions, obsolete examples, and long, rambling paragraphs. The rules are rewritten in simpler terms under HEW's "Operation Common Sense." E. *Legal Basis:* 42 U.S.C. 405 and 1302; Sections 203, 205, and 224 of the Social Security Act. F. *Chronology:* A Notice of Decision to Regulate was published on July 11, 1979 (44 FR 40531).	Marval Cazer, (301) 594-7453, Legal Assistant, Office of Regulations, 6401 Security Blvd., Baltimore, Md. 21235.
SSA-22—Old-Age, Survivors, Disability Insurance and Supplemental Security Income Programs—Limitation for Holding Hearings, Issuing Hearing Decisions and Issuing Appeals Decisions, 20 CFR Part 404 Subpart J and Part 416 Subpart N.	A. *Description:* These regulations will provide time frames for the holding of hearings, issuance of hearing decisions and Appeals Council reviews for all Title II and Title XVI disability cases. Good cause exceptions which generally benefit claimants are also described. B. *Why Significant:* This regulation provides regulatory assurance to claimants that appeals will be heard promptly and decisions issued promptly. C. *Regulatory Analysis:* Not required. D. *Need:* These regulations are needed because, over the last several years, Congress, the Courts, representatives of individuals in social security matters, and the general public have expressed concern over delays in holding hearings, issuing hearing decisions and the reviews of these decisions. In addition, the Court of Appeals in *Blankenship v. Califano* ordered the Secretary to prepare and submit regulations for the	Phil Berge, (301) 594-7452, Legal Assistant, Office of Regulations, 6401 Security Blvd., Baltimore, Md. 21235.

Social Security Administration—Continued

Title	Summary	Contact
	Court's approval to remedy the problem of unreasonable delays in conducting hearings for the OASDI and SSI programs. E. *Legal Basis:* 42 U.S.C. 405, 1302, 1320(c)(6), 1383, 1395ll, and 1395(l). F. *Chronology:* A notice of proposed rulemaking was published on March 12, 1980 (45 FR 12837).	
SSA-25—Old-Age, Survivors, Disability Insurance Program—Coverage of Employees of State and Local Governments, 20 CFR Part 404, Subpart M.	A. *Description:* These proposed regulations will expand the current rules on including employees of State and local governments and interstate instrumentalities in the social security program. B. *Why Significant:* These proposed regulations will reflect the policies States must follow in applying for coverage of its employees and those of its local subdivisions, how to terminate its agreements, when it must pay its social security contributions, file wage reports, etc. C. *Regulatory Analysis:* Not required. D. *Need:* The current regulations need to be organized into a logical sequence and to be updated to reflect many policies which all parties have been following for many years. We will be reviewing all policies in this area to reduce recordkeeping burdens and to assess their import in the trust funds. E. *Legal Basis:* 42 U.S.C. 418. F. *Chronology:* A Notice of Decision to Regulate was published on September 28, 1979 (44 FR 55899).	Armand Esposito, (301) 594-7455, Legal Assistant, Office of Regulations, 6401 Security Blvd., Baltimore, Md. 21235.
SSA-28—Old-Age, Survivors, Disability Insurance and Supplemental Security Income Programs—Determining SGA: Earnings Guidelines for Years Beginning 1980, 20 CFR Part 404 Subpart P and Part 416 Subpart I.	A. *Description:* Under the law, a person who is able to do substantial gainful activity is not disabled for payment purposes. These interim regulations will specify the monthly earnings amounts that are used as guidelines to determine whether a person has done Substantial Gainful Activity. B. *Why Significant:* The increased guideline amounts reflect the general rise in earnings level of workers in the national economy. C. *Regulatory Analysis:* Not required. D. *Need:* Revised guidelines are needed for 1980 and the regulations should be in place by calendar year 1980. E. *Legal Basis:* 42 U.S.C. 405, 423, 1302, 1382c and 1383. F. *Chronology:* None. An interim regulation was published on March 18, 1980 (45 FR 17131).	David Smith, (301) 594-7336, Legal Assistant, Office of Regulations, 6401 Security Blvd., Baltimore, Maryland 21235.
SSA-29—Old-Age, Survivors, Disability Insurance and Supplemental Security Income Programs—Representative Payee, 20 CFR Part 404 Subpart Q and Part 416 Subpart F.	A. *Description:* The proposed regulations will state the rules used in determining when a beneficiary needs a representative payee, how a representative payee is selected, and how we assure that the representative payee uses payments in the best interest of the beneficiary. B. *Why Significant:* The proposed regulations will be simpler and easier for the public to understand. The guidelines for the use of representative payees are important for members of the public to know. C. *Regulatory Analysis:* Not required. D. *Need:* These regulations are being rewritten to meet the Department's "Operation Common Sense" standards. E. *Legal Basis:* 42 U.S.C. 405, 1302, 1383. F. *Chronology:* A Notice of Decision to Regulate was published on June 19, 1979 (44 FR 35241). An NPRM was published in November, 1980.	Ken Dyer, (301) 594-7454, Legal Assistant, Office of Regulations, 6401 Security Blvd., Baltimore, Maryland 21235.
SSA-30—Supplemental Security Income Program—Eligibility, 20 CFR Part 416, Subpart B.	A. *Description:* These proposed regulations will state requirements for individuals to be eligible for SSI benefits. B. *Why Significant:* The proposed regulations simplify the language of existing regulations. Also, they expand the definition of a resident of an institution to agree with that in operating procedures. C. *Regulatory Analysis:* None. D. *Need:* These regulations are being rewritten to meet the Department's "Operation Common Sense" standards. E. *Legal Basis:* 42 U.S.C. 1302, 1381a, 1382, 1382c, 1383 and 1383b. F. *Chronology:* A Notice of Decision to Regulate was published March 27, 1979 (44 FR 18237). An NPRM was published on Sept. 4, 1980 (45 FR 58503).	Rita Hauth, (301) 594-7112, Legal Assistant, Office of Regulations, 6401 Security Blvd., Baltimore, Maryland 21235.
SSA-33—Supplemental Security Income Program—Amount of Benefits, 20 CFR Part 416, Subpart D.	A. *Description:* This proposed recodification under Operation Common Sense revises and reorganizes rules on how the Social Security Administration figures amounts of monthly benefits payable to eligible individuals and eligible couples under the Supplemental Security Income (SSI) program. B. *Why Significant:* This recodification will clarify the rules and make them easier to understand. No policy change is involved. C. *Regulatory Analysis:* Not required. D. *Need:* Social Security Administration wants to provide the public with clearer regulations. E. *Legal Basis:* Secs. 1611 and 1612, secs. 210 and 211, Pub. L. 93-66, as amended, 86 Stat. 1466-1469, 87 Stat. 154, 42 U.S.C. 1382 and 1382a. F. *Chronology:* A Notice of Decision to Regulate was published on July 11, 1979 (44 FR 40531).	Jack Schanberger, (301) 594-6785, Legal Assistant, Office of Regulations, 6401 Security Blvd., Baltimore, Maryland 21235.
SSA-35—Supplemental Security Income Program—Reports Required 20 CFR Part 416, Subpart G.	A. *Description:* This proposed recodification under Operation Common Sense revises and reorganizes rules on reports required from each applicant, eligible individual, eligible spouse, and eligible child under the Supplemental Security Income program. The rules cover provisions regarding reports required and explain the penalties for failures to report on time. B. *Why Significant:* This recodification will clarify the rules and make them easier to understand. No policy change is involved. C. *Regulatory Analysis:* Not required. D. *Need:* Social Security Administration wants to provide the public with clearer regulations. E. *Legal Basis:* Secs. 1102, 1611, 1612, 1613, 1614, and 1631 of the Social Security Act, as amended; Sec. 211 of Pub. L. 93-66; 49 Stat. 647, as amended; 86 Stat. 1466, 1468, 1470, 1471, and 1475; 87 Stat. 154; 42 U.S.C. 1302, 1332, 1382a, 1382b, 1382c, and 1383. F. *Chronology:* Notice of Decision to Regulate was published on July 11, 1979 (44 FR 40531). An NPRM was published on June 19, 1980 (45 FR 41453).	Marval Cazer, (301) 594-7483, Legal Assistant, Office of Regulations, 6401 Security Blvd., Baltimore, Maryland 21235.
SSA-38—Supplemental Security Income Program—Resources, 20 CFR Part 416, Subpart L.	A. *Description:* These proposed regulations will describe what we count as resources in determining eligibility for supplemental security income. B. *Why Significant:* The purpose of these recodified regulations is to make the rules clearer and easier for the public to understand. C. *Regulatory Analysis:* Not required. D. *Need:* These regulations are being rewritten to meet the Department's "Operation Common Sense" standards.	Henry Lerner, (301) 594-7414, Legal Assistant, Office of Regulations, 6401 Security Blvd., Baltimore, Maryland 21235.

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Title	Summary	Contact
	E. *Legal Basis:* 42 U.S.C. 1302, 1382, 1382b, 1382c, and 1383. F. *Chronology:* A Notice of Decision to Regulate was published on March 27, 1979 (44 FR 12837).	
SSA-39—Supplemental Security Income Program—Reductions, Suspensions, and Terminations, 20 CFR Part 416, Subpart M.	A. *Description:* These proposed regulations will contain the rules for reducing, suspending and terminating an SSI recipient's benefits. They are being rewritten to provide greater clarity to the reader and to consider policy additions, revisions, and clarification. B. *Why Significant:* The rules will be clearer and easier for the public to read. C. *Regulatory Analysis:* Not required. D. *Need:* These regulations are being rewritten to meet the Department's "Operation Common Sense" standards. E. *Legal Basis:* 42 U.S.C. 1302, 1382, 1382c, 1382d, and 1383. F. *Chronology:* A Notice of Decision to Regulate was published on June 19, 1979 (44 FR 35241).	Charles Campbell, (301) 594-7453, Legal Assistant, Office of Regulations, 6401 Security Blvd., Baltimore, Maryland 21235.
SSA-41—Supplemental Security Income Program—Interim Assistance Provisions, 20 CFR Part 416, Subpart S.	A. *Description:* This recodification under Operation Common Sense revises and reorganizes rules on interim assistance provisions under the Supplemental Security Income program. The rules permit the Social Security Administration to enter into an agreement with a State to repay the State for interim assistance it gives an individual while an application for SSI is pending. B. *Why Significant:* This recodification will clarify the rules and make them easier to understand. The rules permit SSA to withhold an individual's SSI benefit payment and send it to the State as repayment for interim assistance, upon the individual's written authorization. A policy change will allow the authorization to go into effect upon notice to SSA of receipt by the State. C. *Regulatory Analysis:* Not required. D. *Need:* Social Security Administration wants to provide the public with clearer regulations and to update policy to take advantage of modern electronic communications facilities. E. *Legal Basis:* Secs. 1102 and 1631 of the Social Security Act as amended; 49 Stat. 647 as amended; 86 Stat. 1475 as amended; 42 U.S.C. 1302 and 1383. F. *Chronology:* A Notice of Decision to Regulate was published on July 11, 1979 (44 FR 40531). A notice of proposed rulemaking was published on April 21, 1980 (45 FR 26719).	Clara Powell, (301) 594-7459, Legal Assistant, Office of Regulations, 6401 Security Blvd., Baltimore, Maryland 21235.
SSA-43—Supplemental Security Income Program—Medicaid Eligibility Determinations, 20 CFR Part 416, Subpart U.	A. *Description:* The proposed regulations will give the rules under which Social Security Administration agrees to make determinations of Medicaid eligibility for SSI beneficiaries on behalf of States and to give States other assistance in Medcaid program administration. B. *Why Significant:* The agreements avoid duplication of effort between State and Federal governments and simplify the Medicaid application process for applicants. This revision makes the rules clearer and easier to read. C. *Regulatory Analysis:* Not required. D. *Need:* The regulations are being rewritten under "Operation Common Sense" to make the rules clearer and easier to use. E. *Legal Basis:* 42 U.S.C. 1302, 1383, 1383c and 4222. F. *Chronology:* A Notice of Decision to Regulate was published on June 19, 1979 (44 FR 35241).	Cliff Terry, (301) 594-7519, Legal Assistant, Office of Regulations, 6401 Security Blvd., Baltimore, Maryland 21235.
SSA-44—AFDC Program Determination of Assistance Payment When One or More Family Members are SSI Beneficiaries, 45 CFR Parts 233.20 and 233.90.	A. *Description:* The proposed regulations require a State to pay AFDC to the parent of a child SSI recipient where the parent would otherwise be ineligible because the child is eligible for SSI. B. *Why Significant:* These regulations will implement a new provision of law which is intended to see that a potential AFDC family is not adversely affected by a child's SSI eligibility. C. *Regulatory Analysis:* Not required. D. *Need:* These regulations are needed to implement a new provision of the Social Security Act, i.e., Section 402(a)(24) as added by Section 414 of Public Law 92-603. E. *Legal Basis:* 42 U.S.C. 602 of the Social Security Act, as amended; Pub. L. 92-603.	Chapin Wilson, (202) 245-2015, Program Specialist, Office of Family Assistance, Room B-416 Trans Point Building, 2100 Second Street, S.W., Washington, D.C. 20024.
SSA-45—AFDC Program Fair Hearings, 45 CFR Part 205.10.	A. *Description:* The proposed regulations recodify the rules on fair hearing procedures for financial assistance programs. B. *Why Significant:* The proposed regulations set forth what notices are required to applicants and recipients and prescribe the hearings procedures to allow those individuals to contest an action or delay by the administering agency. C. *Regulatory Analysis:* Not required. D. *Need:* These regulations are being rewritten to meet the Department's "Operation Common Sense" standards. E. *Legal Basis:* 42 U.S.C. 302(a)(4), 602(a)(4), 1202(a)(4), 1352(a)(4), 1382. F. *Chronology:* A Notice of Decision to Regulate was published on March 19, 1979 (44 FR 16449). There will be companion HDS and HCFA regulations.	Fred Kelly, (202) 245-2025, Deputy Director, Office of Policy, Office of Family Assistance, Room B-420 Trans Point Building, 2100 Second Street, S.W., Washington, D.C. 20024.
SSA-46—AFDC Program Application Eligibility Determinations, and Furnishing Assistance, 45 CFR Part 206.	A. *Description:* These proposed regulations recodify the rules under which State and local agencies process applications and determine eligibility in the Aid to Families with Dependent Children and adult financial assistance programs. B. *Why Significant:* The proposed regulations clarify and amend existing rules. They set out the rights and responsibilities of applicants, recipients and administering agencies. C. *Regulatory Analysis:* Not required. D. *Need:* These regulations are being rewritten to meet the Department's "Operation Common Sense" standards. E. *Legal Basis:* 42 U.S.C. 602(a)(10), 1202(a)(11), 1352(a)(10), 1382. F. *Chronology:* A Notice of Decision to Regulate was published March 19, 1979 (44 FR 16449). There will be companion HDS and HCFA regulations.	Marianne S. Pindell, (202) 245-2068, Program Specialist, Office of Family Assistance, Room B 407 Trans Point, Building, 2100 Second Street, S.W., Washington, D.C. 20024.
SSA-48—Old Age, Survivors & Disability Insurance and Black Lung Programs Prerecovery Hearing Before Overpayment Recovery, *Califano* v. *Yamasaki*, 20 CFR Part 404, Subpart J, 20 CFR Part 410, Subpart F.	A. *Description:* These proposed regulations require SSA to provide its overpaid beneficiaries with the opportunity for an oral evidentiary hearing concerning waiver before recovering an overpayment. B. *Why Significant:* These regulations incorporate a Supreme Court decision into the regulations. C. *Regulatory Analysis:* Not required. D. *Need:* The Social Security regulations must incorporate interpretations of the Social Security Act's provisions provided by the Supreme Court. E. *Legal Basis:* The Supreme Court decision in *"Califano* v. *Yamasaki"*. F. *Chronology:* A Notice of Decision to Regulate was published on March 13, 1980 (45 FR 16201).	Charles Campbell, (301) 594-5551, Legal Assistant, Office of Regulations, 6401 Security Boulevard, Baltimore, Maryland 21235.

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Title	Summary	Contact
SSA-49—Black Lung and SSI Programs Recovery of Black Lung, Overpayments from Benefits Due Survivors, 20 CFR Part 410, Subpart E, 20 CFR Part 416, Subpart E.	A. *Description:* The proposed regulation will provide for recovery of an overpayment of black lung benefits from subsequent black lung benefits payable to the deceased beneficiary's survivors. B. *Why Significant:* The decision provides consistent recovery of overpayment policies between the Old-Age, Retirement, and Survivors Insurance programs and the Black Lung program. Recovery may be made against the decedent's survivors when not completed during the beneficiary's lifetime. C. *Regulatory Analysis:* Not required. D. *Need:* Present regulations do not adequately define liability for repayment of a black lung overpayment. Problems have arisen in determining the liability for repayment after the beneficiary's death. E. *Legal Basis:* Secs. 413(b) of Federal Coal Mine Health and Safety Act of 1969, as amended (Federal Safety and Health Act of 1977, title II); Secs. 204 and 1102 of the Social Security Act, as amended; 30 U.S.C. 921 and 42 U.S.C. 404 and 1302. F. *Chronology:* A Notice of Decision to Regulate was published on February 19, 1980 (45 FR 10809). An NPRM was published on August 22, 1980 (45 FR 56074)	Marval Cazer, (301) 594-7463, Legal Assistant, Office of Regulations, 6401 Security Boulevard, Baltimore, Maryland 21235.
SSA 50—Old-Age, Survivors and Disability Insurance Programs; Additional Dropout Years for Child Care, 20 CFR Part 404, Subpart C.	A. *Description:* When computing disability insurance benefits, we will be able to exclude (i.e., dropout) up to 3 years of low or no earnings during which the worker was living with his or her young child for a substantial period. We will define "living with" and "substantially throughout the period". B. *Why Significant:* The regulation will soften the effect of a recent cost reduction provision in the disability insurance program. That provision generally reduces the number of years of low earnings that can be dropped in computing disability benefits, whereas this regulation will permit the dropping of some child care years of low earnings. C. *Regulatory Analysis:* Not required. D. *Need:* This regulation is needed to carry out Section 102 of the Social Security Disability Amendments of 1980. E. *Legal Basis:* 94 Stat. 443, Pub. L. 96-265.	Jack Schanberger, (301) 594-6785, Legal Assistant, Office of Regulations, 6401 Security Boulevard, Baltimore, Md. 21235.
SSA 51—Aid to Families With Dependent Children Program; Proration of Shelter Utilities and Similar Expenses for AFDC Children Living With Ineligible Relatives, 45 CFR Part 233.	A. *Description:* The regulations will provide that a State may prorate the shelter, utilities, and similar needs of specified assistance units living with closely related family members who are ineligible for AFDC. States may prorate if the total income of assistance unit members and closely related family members equals or exceeds the State's AFDC need standard for an FDC assistance unit of comparable size. B. *Why Significant:* The regulation will provide that if a State chooses to prorate, it must follow a formula specified in the regulation. Under prior law, States had complete flexibility in determining need and payment standards. C. *Regulatory Analysis:* Not required. D. *Need:* The statute is extremely complex and regulations are needed to insure that all States interpret the statute in the same way. E. *Legal Basis:* 94 Stat. 528 and 529, Pub. L. 96-272.	Connie Katz, (202) 245-2021, Policy Specialist, Office of Family Assistance, Room B-416, Transpoint Building, 2100 Second St., S.W., Washington, D.C. 20024.
SSA 52—Supplemental Security Income Program; Age 18 Deeming and Alien Deeming, 20 CFR Part 416, Subpart K.	A. *Description:* (1) Deeming of parental income and resources to an eligible child ends when a child reaches age 18 unless a savings clause applies to children between 18 and 21 (effective October 1, 1980); (2) A sponsor's income and resources are deemed to an alien for a period of three years after admission for aliens who first apply after September 30, 1980. B. *Why Significant:* (1) Eliminates different treatment of children aged 18 to 21 depending on status as students; (2) Assumes that sponsors will support aliens and sets more rigid rules than apply to other deeming categories. C. *Regulatory Analysis:* None Required. D. *Need:* (1) and (2) implement sections 203 and 504 of the Social Security Disability Amendments of 1980. E. *Legal Basis:* (1) 42 U.S.C. 1382a; (2) 42 U.S.C. 1382c and 1382j. F. *Chronology:* A Notice of Decision to Regulate was published on November 14, 1980 (45 FR 75225).	Rita Hauth, (301) 594-7112, Legal Assistant, Office of Regulations, 6401 Security Boulevard, Baltimore, Maryland 21235.
SSA-53—Supplemental Security Income Program; Benefits for Severely Disabled Performing Substantial Gainful Activity, 20 CFR Part 416, Subpart B.	A. *Description:* These regulations will clarify how SSA will interpret and apply the unique eligibility factors which are necessary for status as a supplemental income recipient for purposes of Titles XIX and XX. They will also explain the eligibility factors which must be met to acquire and retain eligibility for special SSI payments while an individual is engaged in substantial gainful activity. B. *Why Significant:* This is a 3-year demonstration program which affects individuals who work despite disabling impairments. The demonstration which begins on January 1, 1981 provides Special SSI cash benefits to these people where certain requirements are met. Even when SSI cash benefits are no longer payable these people, if they meet certain eligibility factors, are considered as SSI recipients for purposes of Titles XIX and XX of the Social Security Act. C. *Regulatory Analysis.* Not required. D. *Need:* Required by the Social Security Disability Amendments of 1980. E. *Legal Basis:* Section 201(a) and (b) of Pub. L. 96-265. F. *Chronology:*	Fred Miranda, (301) 594-7341, Legal Assistant, Office of Regulations, 6401 Security Boulevard, Baltimore, Maryland 21235.
SSA-54—Old-Age, Survivors and Disability Insurance and Supplemental Security Income Program; Continued Payment of Benefits to Persons in Approved Vocational Rehabilitation Plans, 20 CFR Parts 404, Subpart P and 416, Subpart I.	A. *Description:* These proposed regulations will provide for continued payment of cash benefits to persons whose disabilities have ended if they are participating in vocational rehabilitation programs. Participation in the program must have begun before the person's disability ends and the disability must not have been expected to end prior to the expected completion date of the program. B. *Why Significant:* These proposed regulatios will affect those people who medically recover from their disabilities during the course of their vocational rehabilitation programs and who, because of the loss of their benefits, are forced to discontinue their participation in the program and seek substantial gainful work activity. C. *Regulatory Analysis:* Not required. D. *Need:* These regulations are required to implement Section 301 of the Social Security Disability Amendments of 1980. E. *Legal Basis:* 42 U.S.C. 425, 1382c, and 1383. F. *Chronology:*	Harry Short, (301) 594-7337, Legal Assistant, Office of Regulations, 6401 Security Boulevard, Baltimore, Maryland 21235.
SSA-55—Old-Age, Survivors and Disability Insurance and Supplemental Security Income Program; Deduction of Work Related Expenses, 20 CFR Parts 404, Subparts P and 416, Subpart I.	A. *Description:* The proposed regulations will provide for the deduction from earnings of certain impairment related work expenses in determining: (1) Whether a disabled person has done substantial gainful activity; and (2) the amount of a disabled person's earned income for SSI purposes. B. *Why Significant:* The regulation will encourage disabled persons to work by enabling them to deduct certain work expenses. C. *Regulatory Analysis:* Not required. D. *Need:* The proposed regulation provides the criteria for determining the deductibility of impairment related work expenses. E. *Legal Basis:* 42 U.S.C. 405, 423, 1302, 1382c and 1383.	David Smith, (301) 594-7336, Legal Assistant, Office of Regulations, 6401 Security Boulevard, Baltimore, Maryland 21235.

Social Security Administration—Continued

Title	Summary	Contact
	F. *Chronology:*	
SSA 56—Old-Age, Survivors and Disability Insurance and Supplemental Security Income Program; Extension of Trial Work Period and Reinstatement of Benefits, 20 CFR Parts 404, Subpart P and 416, Subpart I.	A. *Description:* These proposed regulations will provide persons who remain disabled and who have completed a trial work period with an additional period of 15 months in which to continue to test their ability to work. During this period a pereon may be paid benefits for all months in which he or she does not do substantial gainful activity. The regulations also extend the trial work period provisions (and the additional period) to widows, widowers, and surviving divorced wives. B. *Why Significant:* Persons who remain disabled and who have exhausted their trial work periods will be encouraged to continue their efforts to return to work. For the first time, the trial work period provisions are extended to widows, widowers, and surviving divorced wives. C. *Regulatory Analysis:* Not required. D. *Need:* These regulations are needed to implement Section 303 of the Social Security Disability Amendments of 1980. E. *Legal Basis:* 42 U.S.C. 402, 416, 422, 423, 1382, 1382c, and 1383. F. *Chronology:* A Notice of Decision to Regulate was published on November 14, 1980. (45 FR 75225).	Harry Short, (301) 594-7337, Legal Assistant, Office of Regulations, 6401 Security Boulevard, Baltimore, Maryland 21235.
SSA 57—Aid to Families With Dependent Children Program; Incentive for AFDC Recipients to Report Earned Income, 45 CFR 206 and 233.	A. *Description:* The regulations will provide that the earned income disregard will not be applied to any earned income which the recipient failed without good cause to report timely to the State agency. B. *Why Significant:* The regulations will require agencies in States that do not have monthly reporting systems to confirm reported changes to assure that recipients are not penalized due to agency failure to take action on the reported changes. C. *Regulatory Analysis:* Not required. D. *Need:* New rulemaking is necessary to assure uniform interpretation by States and to revise existing regulations to reflect requirement of the statute. E. *Legal Basis:* 94 Stat. 528, Pub. L. 96-272. F. *Chronology:*	Connie Katz, (202) 245-2021, Program Specialist, Office of Family Assistance, Room B-416, Transpoint Building, 2100 Second St., S.W., Washington D.C. 20024.
SSA 58—Old Age, Survivors and Disability Insurance and Supplemental Security Income Program; Limitation on Prospective Life of Applications and Closing of Record After Hearing Decision, 20 CFR Parts 404, Subparts G and J and 416, Subparts C and N.	A. *Description:* Under these proposed regulations, if a person files an application for benefits before the first month he or she meets all requirements for entitlement, we will allow the claim only if he or she meets all requirements before a hearing decision or dismissal (if there is one) is issued. Also, if the person asks the Appeals Council to review the hearing decision or dismissal, the Council will not consider new evidence unless it relates to the time before the hearing decision or dismissal and there was good cause for not submitting it earlier. B. *Why Significant:* These rules should promote final resolution of cases at the hearing stage and help to reserve Appeals Council review more nearly for cases of a genuinely appellate nature. C. *Regulatory Analysis:* Not required. D. *Need:* To conform our regulations to sec. 306 of the Social Security Disability Amendments of 1980 and to carry out the express intent of Congress in enacting it. E. *Legal Basis:* 42 U.S.C. 402(j)(2), 416(i)(2)(G), and 423(b) as amended by sec. 306 of Pub. L. 96-265. F. *Chronology:* A Notice of Decision to Regulate was published on September 16, 1980 (45 FR 61315).	Cliff Terry, (301) 594-7519, Legal Assistant, Office of Regulations, 6401 Security Boulevard, Baltimore, Maryland 21235.
SSA59—Old Age, Survivors and Disability Insurance Programs; Limitation on Total Family Benefits in Disability Cases, 20 CFR Part 404, Subpart E.	A. *Description:* There is now a lower ceiling on the total amount of benefits payable to a disabled worker and his family. B. *Why Significant:* The lower benefits now payable are intended to provide an incentive for disabled individuals to continue working or return to work, and at the same time will provide an equitable level of benefits to the family of a worker who is unable to work. C. *Regulatory Analysis:* Not required. D. *Need:* This regulation is needed to carry out section 101 of the Social Security Disability Amendments of 1980. E. *Legal Basis:* 94-Stat. 442, Pub. L. 96-265. F. *Chronology:* A Notice of Decision to Regulate was published on September 15, 1980 (45 FR 60922).	Jack Schanberger, (301) 594-6785, Legal Assistant, Office of Regulations, 6401 Security Boulevard, Baltimore, Maryland 21235.
SSA60—Old-Age, Survivors and Disability Insurance and Supplemental Security Income Programs; Deductions, Reductions and Nonpayment of Benefits, 20 CFR Parts 404, Subpart E and 416, Subpart K.	A. *Description:* These regulations will provide that an individual's retroactive monthly social security will be reduced if the individual received SSI payments for the same period. B. *Why Significant:* These regulations will preclude the windfall payment of SSI benefits that would not have been made if the monthly social security benefits had been paid when regularly due rather than retroactively. C. *Regulatory Analysis:* Not required. D. *Need:* Implements section 501 of the Social Security Disability Amendments of 1980. E. *Legal Basis:* 94 Stat. 469, 470, Pub. L. 96-265. F. *Chronology:* A Notice of Decision to Regulate was published on October 20, 1980 (45 FR 69248).	Larry Dudar, (301) 594-6629, Legal Assistant, Office of Regulations, 6401 Security Boulevard, Baltimore, Maryland 21235.
SSA61—Old Age, Survivors and Disability Insurance Programs; Payment for Medical Evidence of Record, 20 CFR Part 404, Subpart P.	A. *Description:* These regulations provide that any non-Federal hospital, clinic, laboratory, or other provider of medical services, or physician who is not employed by the Federal government, and who supplies medical evidence that we ask for and need for making determinations of disability shall be entitled to payment for the reasonable cost of providing the evidence. These regulations become effective on December 1, 1980. B. *Why Significant:* Until December 1, 1980, the claimant was primarily responsible for paying for existing medical evidence submitted to us for making a title II disability determination. We will now pay the reasonable cost for existing medical evidence which we ask for and need. The information needed for disability determinations will be obtained more expeditiously and the need for further medical consultative examinations at our expense will be reduced. C. *Regulatory Analysis:* Not required. D. *Need:* These regulations are needed to update existing regulations to reflect the Social Security Disability Amendments of 1980. E. *Legal Basis:* 42 U.S.C. 405, 423 and 1302. F. *Chronology:* Interim regulations were published October 30, 1980 (45 FR 71791).	William Ziegler, (301) 594-7415, Legal Assistant, Office of Regulations, 6401 Security Boulevard, Baltimore, Maryland 21235.
SSA 62—Survivors and Disability Insurance Programs; Reduction in Dropout Years for Disabled Workers, 20 CFR Part 404, Subpart C.	A. *Description:* When computing disability insurance benefits, we will not be able to exclude (i.e., dropout) as many years of low or no earnings as we could before this recent amendment to the Social Security Act. B. *Why Significant:* The regulation will reduce the number of years of low earnings that can be dropped in computing disability benefits. Since more years of low earnings will be used, benefit levels will be generally lower, thereby reducing benefit cost to the disability program. C. *Regulatory Analysis:* Not required.	Jack Schanberger, (301) 594-6785, Legal Assistant, Office of Regulations, 6401 Security Boulevard, Baltimore, Md. 21235.

Social Security Administration—Continued

Title	Summary	Contact
	D. *Need:* This regulation is needed to carry out section 102 of the Social Security Disability Amendments of 1980. E. *Legal Basis:* 94 Stat. 443, Pub. L. 96-265. F. *Chronology:* A Notice of Decision to regulation was published on September 15, 1980 (45 FR 60922).	
SSA 63—Supplemental Security Income Program; Sheltered Workshops (1) and Earned Income Tax Credits (2), 20 CFR Part 416, Subpart K.	A. *Description:* (1) Sheltered workshop remuneration is earned income as of October 1, 1980. (2) Earned income tax credits are earned income as of January 1, 1980. B. *Why Significant:* (1) Eliminates need to determine whether sheltered workshops services are employment or therapy—thus earned or unearned income. Earned income is advantageous to beneficiary as it provides greater exclusions and higher benefits. (2) Earned income tax credits did not affect benefits prior to 1980. These credits would have been unearned income as of 1980 and would have resulted in lower benefits, if this law would not have been enacted. C. *Regulatory Analysis:* Not required. D. *Need:* The regulations will provide the criteria to carry out appropriate provisions of Social Security Disability Amendments of 1980 and the Technical Corrections Act of 1979. E. *Legal Basis:* (1) 42 U.S.C. 1382a; (2) 42 U.S.C. 1382a.	Rita Hauth, (301) 594-7112, Legal Assistant, Office of Regulations, 6401 Security Boulevard, Baltimore, Md. 21235.
SSA 64—Old Age, Survivors and Disability Insurance and Supplemental Security Income Programs; Payment of Certain Travel Expense, 20 CFR Parts 404, Subparts I and P and 416, Subpart N.	A. *Description:* These proposed regulations will provide for the payment of certain travel expenses to claimants who attend medical exams, and to claimants, their representatives, and witnesses who attend reconsideration interviews and proceedings before administrative law judges. B. *Why Significant:* The proposed regulations are significant because they will explain when SSA will pay certain travel expenses. C. *Regulatory Analysis:* None required. D. *Need:* Previous instructions were issued in guides and manuals. Regulations are needed so that the public will be made aware of its entitlement to certain travel expenses. E. *Legal Basis: 94 Stat. 459 and 460 Pub. L. 96-265.*	Clara Barrett Powell, (301) 594-7459, Legal Assistant, Office of Regulations, 6401 Security Boulevard, Baltimore, Md. 21235.
SSA 65—Old Age, Survivors, and Disability Insurance Programs Claims in Trust Territories, 20 CFR Parts 404, Subparts G and H.	A. *Description:* The proposed regulations will provide that personnel of the U.S. Department of the Interior will accept applications and evidence in connection with claims filed under title II of the Social Security Act in the Trust Territories of the Pacific. B. *Why Significant:* The regulations will affect the Social Security program in the Trust Territories of the Pacific. C. *Regulatory Analysis:* Not Required. D. *Need:* Current regulations do not provide a contact for social security claimants and beneficiaries in the Trust Territories of the Pacific. E. *Legal Basis:* 42 U.S.C. 402 and 405. F. *Chronology:*	David Smith, (301) 594-7336, Legal Assistant, Office of Regulations, 6401 Security Boulevard, Baltimore, Maryland 21235.
SSA 66—Old Age, Survivors, and Disability Insurance and Supplemental Security Income Programs; Personalized Notices to Be Provided Certain SSA Claimants, 20 CFR Parts 04, Subpart J and 416, Subpart N.	A. *Description:* Any decision made by the Secretary which involves a determination of disability under title II or title XVI, unfavorable in whole or part to the disabled individual, shall contain a statement of the cause in understandable language setting forth a discussion of the evidence and stating the Secretary's determination and the reason or reasons upon which it is based. Where a written personalized notice has been provided, we will not repeat this information. B. *Why Significant:* The proposed regulations require that we furnish additional information to DI and SSI claimants for disability whose claims are being denied that we previously furnished. C. *Regulatory Analysis:* Not required. D. *Need:* The proposed regulations implement section 305 of the Social Security Disability Amendments of 1980. E. *Legal Basis:* F. *Chronology:* A Notice of Decision to Regulate was published on September 10, 1980 (45 FR 59589).	Phil Berge, (301) 594-7452, Legal Assistant, Office of Regulations, 6401 Security Boulevard, Baltimore, Maryland 21235.
SSA 67—Supplemental Security Income Program; Determination of Overpayment/Underpayment Period, 20 CFR Part 416, Subpart E.	A. *Description:* The amended regulations will permit the making of a determination of overpayment for a period which includes excess payment of SSI payments for the calendar quarter in which the determination of overpayment will be made. Present regulations require that we wait until after the last month of the calendar quarter in which excess payments have been made before recovery may be attempted. B. *Why Significant:* Permits an immediate determination and notification of the recipient without waiting until the end of the calendar quarter. It contributes to better understanding and ability to repay by the recipient. C. *Regulatory Analysis:* None required. D. *Need:* The regulation will speed initiation of the determination process of overpayment and reduce excess overpayments. E. *Legal Basis:* 42 U.S.C. 1302 and 1383. F. *Chronology:* A Notice of Decision to Regulate was published on November 14, 1980 (45 FR 75226).	Marvel Cazer, (301) 594-7463, Legal Assistant, Office of Regulations, 6401 Security Boulevard, Baltimore, Maryland 21235.
SSA 68—Aid to Families With Dependent Children Program; Adjustment for Federal Share for Uncashed Checks, 45 CFR Part 205.	A. Description: The regulations will reinforce present policy which requires States to return to the Federal government its share of uncashed or canceled assistance checks. The regulations will establish a uniform refund policy in contrast to the present discretionary procedures allowed to the States. B. Why Significant: A GAO audit in 1979 found many instances where Federal Matching funds for assistance payments had not been refunded to the Federal government after checks were uncashed or canceled. Retaining unused Federal funds is contrary to Treasury regulations. C. Regulatory Analysis: Not required. D. Need: The regulations are needed to assure prompt refund of Federal funds. E. Legal Basis: 42 U.S.C. 403(a). F. Chronology: A Notice of Decision to Regulate was published on November 14, 1980 (45 FR 75243).	Jack Schanberger, (301) 594-6785, Legal Assistant, Office of Regulations, 6401 Security Boulevard, Baltimore, Md. 21235.
SSA 69—Old-Age, Survivors and Disability Insurance and Supplemental Security Income Program; Determinations of Disability, 20 CFR Part 404, Subpart Q and Part 416, Subpart J.	A. Description: The proposed regulations specify the responsibilities of the Secretary and the State agencies in administering the disability program. They prescribe standards for accuracy of performance and processing time that State agencies are expected to meet in making disability determinations, and provide the administrative requirements and procedures SSA and the State agencies will follow in carrying out the disability determination function. B. Why Significant: These regulations are intended to improve the quality of State agencies performance and improve the timeliness of disability determinations. These regulations will give the State agencies maximum practicable management flexibility in meeting objectives.	William Ziegler, Harry Short, (301) 594-7415, (301) 594-7337, Legal Assistant, Office of Regulations, 6401 Security Boulevard, Baltimore, Maryland 21235.

Social Security Administration—Continued

Title	Summary	Contact
	C. Regulatory Analysis: Not required. D. Need: The Social Security Disability amendments of 1980 require the Secretary to issue regulations to establish performance standards and other requirements for State agencies to insure effective and uniform administration of the SSA disability programs. E. Legal Basis: These regulations are issued under the authority contained in 42 U.S.C. 405, 421, 1302, 1382c and 1383. F. Chronology: A Notice of Decision to Regulate was published on September 26, 1980. (45 FR 63869).	
SSA 70—Old-Age, Survivors and Disability Insurance and Supplemental Security Income Programs; Experiments and Demonstration Projects Under Disability Insurance and SSI Programs, 20 CFR Parts 404, Subparts D and P and 416, Subparts B and I.	A. Description: Amendments of 1980 authorize the Secretary to conduct experiments and demonstration projects under the OASDI and SSI Programs. The proposed regulations will alter the requirements for disability benefits and the requirements for SSI benefits when a person has been selected to participate in an experiment or demonstration project under these amendments. B. Why Significant: Current regulations provide that in order to be eligible for title II and title XVI benefits, certain requirements must be met. The Social Security Disability Amendments of 1980 authorize the Secretary to waive compliance with benefit requirements for title II and title SVIII and waive any of the conditions, requirements, or limitations of title XVI. C. Regulatory Analysis: Not required. D. Need: While the statute does not mandate regulations, the provisions of the APA and the need to advise the public of potential impact of the demonstration projects and experiments seems to require regulations. E. Legal Basis: 42 U.S.C. 1310. F. Chronology:	Henry Lerner, (301) 594-7414, Legal Assistant, Office of Regulations, 6401 Security Boulevard, Baltimore, Md. 21235.
SSA 71—Aid to Families With Dependent Children; Federal Financial Participation in the Cost of a Statewide Mechanized Claims Processing and Information Retrieval System, 45 CFR 205.	A. *Description:* These proposed regulations provide that 90 percent Federal matching funds will be available for the design, development, installation and implementation of computerized AFDC Statewide mechanized claims processing and information retrieval systems. This increased matching will also include the cost of purchasing or renting computer equipment and software used for the operation of the system. B. *Why Significant:* The regulation will reduce cost to both the State and Federal government in the operation of the AFDC program because of the systems implemented. C. *Regulatory Analysis:* Not required. D. *Need:* These regulations implement section 406 of the Social Security Disability Amendment of 1980. E. *Legal Basis:* 94 Stat. 465, 466, 467 Pub. L. 96-265.	Pat O'Hare, (202) 245-0043, Policy Specialist, Office of Family Assistance, 2110 Switzer Building, 330 C Street, S.W., Washington, D.C. 20201.
SSA 72—Old Age, Survivors and Disability Insurance Programs; Time for Making of Social Security Contributions for Covered State and Local Employees, 20 CFR Part 404, Subpart M.	A. *Description:* These regulations change the rules governing the frequency with which States and interstate instrumentalities must deposit social security contributions on wages and salaries paid to covered employees. This new rule requires States and interstate instrumentalities to deposit contributions within 30 days after the end of each calendar month in which wages are paid. B. *Why Significant:* Regulations were scheduled to go into effect which would have required the States and interstate instrumentalities to deposit the social security contributions sooner than 30 days. Section 503 of the Social Security Disability Amendments of 1980 provided that 30 days would be the period within which these contributions must be deposited. These regulations reflect that amendment. C. *Regulatory Analysis:* Not required. D. *Need:* These regulations are required by the Social Security Disability Amendments of 1980. E. *Legal Basis:* Sections 205, 218, and 1102 of the Social Security Act. F. *Chronology:* Interim regulations were published on October 31, 1980 (45 FR 72110).	Armand Esposito, (301) 594-7455, Legal Assistant, Office of Regulations, 6401 Security Boulevard, Baltimore, MD 21235.

Office of Child Support Enforcement

OCSE-1—Office of Child Support Enforcement—Availability and Rate of Federal Financial Participation, 45 CFR Part 304.	A. *Description:* This final regulation will provide for Federal Financial Participation in the costs of child support enforcement services provided by State IV-D agencies to individuals who are not eligible for cash assistance under the Aid to Families with Dependent Children (AFDC) program between October 1, 1978 and March 31, 1980. B. *Why Significant:* This regulation will extend from September 30, 1978 to March 31, 1980. The Federal government's financial participation for State child support enforcement agencies expenses for services provided to non-AFDC families during the period October 1, 1978 through March 31, 1980. C. *Regulatory Analysis:* Not required. D. *Need:* P.L. 96-178, January 2, 1980 authorized a continuation of FFP for the non-AFDC program through March 31, 1980. E. *Legal Basis:* PL 96-178, 42 U.S.C. 652(a)	Mike Fitzgerald, (301) 443-5301, Program Analyst, Policy Branch, Office of Child Support Enforcement, 6110 Executive Blvd., Room 924, Rockville, MD 20852.
OCSE-2—Office of Child Support Enforcement—Strengthening of CSE, Audit and Penalty Regulations, 45 CFR Parts 301, 302, 304, and 305.	A. *Description:* These proposed regulations will revise, clarify, and strengthen the existing regulations which provide for an annual audit of the effectiveness of State Child Support Enforcement programs under Title IV-D of the Social Security Act. B. *Why Significant:* These regulations specify the Secretary's criteria for an effective program and are the basis for Federal audit and for reducing Federal funds for the Aid to Families with Dependent Children (AFDC) programs in States that fail to have an effective child support program. C. *Regulatory Analysis:* Not required. D. *Need:* These proposed regulations are the first step in OCSE's commitment to strengthen the Child Support Enforcement program audit and penalty regulations after obtaining additional program and audit experience. E. *Legal Basis:* 42 U.S.C. 1302 and 42 US.C 652(a). F. *Chronology:* A Notice of Decision to Develop Regulations was published on February 27, 1980 (45 FR 12857).	Maurice Huguley, (301) 443-5301, Legislation and Regulations Analyst, Policy Branch, Office of Child Support Enforcement, 6110 Executive Blvd., Room 924, Rockville, MD 20852.
OCSE-3—Office of Child Support Enforcement—Optional Procedures for Distribution of Child Support Collections (Immediate Distribution), 45 CFR Parts 302 and 304.	A. *Description:* These final regulations will permit State Child Support Enforcement agencies to distribute AFDC child support collections immediately upon receipt. In addition, they will provide these same agencies the option of using the current rate of FFP in their respective State's AFDC program to calculate the amount of each child support collection to be applied as reimbursement of the Federal government's share of AFDC payments. B. *Why Significant:* The revision of these regulations will provide significant administration benefits for the States that choose to use them. C. *Regulatory Analysis:* Not required. D. *Need:* These regulations will permit more efficient State distribution procedures, will reduce an unwarranted administrative burden, and will make State IV-D programs more effective. E. *Legal Basis:* 42 U.S.C. 1302, 42 U.S.C. 652(a).	Frank Lindh, (301) 443-4276, Program Analyst, Policy Branch, Office of Child Support Enforcement, 6110 Executive Blvd., Room 924, Rockville, MD 20852.
OCSE-4—Office of Child Support Enforcement—OCSE Recodification, Phase I, 45 CFR Parts 302 and 304.	A. *Description:* These proposed regulations will reorganize and clarify several existing OCSE regulations including those on Distribution of Child Support Collections and the availability of Federal financial participation.	Steve Henigson (301) 443-4276, Chief, Policy Branch, Office of Child Support Enforcement, 6110 Executive Blvd., Room 924, Rockville, MD 20852.

Office of Child Support Enforcement—Continued

Title	Summary	Contact
	B. *Why Significant:* These proposed regulations will be written in simpler, clearer language as part of the Department's "Operation Common Sense" initiative. In addition, substantive policy changes will be proposed in the regulations regarding availability and restrictions on Federal Financial Participation and Internal Revenue Service collection. C. *Regulatory Analysis:* Not required. D. *Need:* These regulations are being rewritten to meet the Department's "Operation Common Sense" standards and to make substantive policy needed to improve the operation of the Child Support Enforcement program. E. *Legal Basis:* 42 U.S.C. 652(a). F. *Chronology:* A Notice of Intent to develop the proposed regulations was published on August 3, 1978 (43 FR 34164).	
OCSE-5—Office of Child Support Enforcement—OCSE Recodification, Phase II, 45 CFR Parts 302 and 303.	A. *Description:* These proposed regulations clarify and revise all existing OCSE regulations in Part 302 not included in the Phase I OCSE recodification. B. *Why Significant:* These proposed regulations will clarify existing regulations so as to make them more readily understandable. In addition, several substantive policy changes will be proposed in the regulations. C. *Regulatory Analysis:* Not required. D. *Need:* These regulations are being rewritten to meet the Department's "Operation Common Sense" standards and to make substantive policy needed to improve the operation of the Child Support Enforcement program. E. *Legal Basis:* 42 U.S.C. 652(a). F. *Chronology:* A Notice of Intent to develop the proposed regulations was published on August 3, 1978 (43 FR 34164).	Steve Hengton (301) 443-4276, Chief, Policy Branch, Office of Child Support Enforcement, 6110 Executive Blvd., Room 924, Rockville, MD 20852.

Office of the Secretary

OS-1—HEW's Age Discrimination Regulations.	A. *Description:* These regulations prohibit age discrimination in programs and activities receiving financial assistance from HEW. B. *Why Significant:* Protects individuals from age discrimination in HEW-assisted programs and activities. C. *Regulatory Analysis:* Not required. D. *Need:* To implement requirements of the Age Discrimination Act and government-wide age discrimination regulations (45 CFR Part 90) which require agency specific age discrimination regulations. E. *Legal Basis:* Pub. L. 94-135; 42 U.S.C. 6101 *et seq* 45 CFR Part 90. F. *Chronology:* Government-wide age discrimination regulations published by HEW on June 12, 1979 (45 CFR 33768); HEW's agency specific NPRM published September 24, 1979 (44 FR 55107). Comment period ended November 23, 1979. G. *Citation:* 45 CFR Part 91.	Bayla White, Director, Age Discrimination Task Force, (202) 245-6284, Room 716E, 200 Independence Ave. SW., Washington, D.C. 20201.
OS-3—Privacy Act Regulation	A. *Description:* These regulations implement the Privacy Act of 1974 in HEW by establishing agency policies and procedures for the maintenance of systems of individually identifiable personal records. B. *Why Significant:* The revised regulation will improve HEW's service to the public by making it easier for citizens to understand the procedures for exercising their rights under the Privacy Act. C. *Need:* The proposed revision is necessary to comply with the Department's Operation Common Sense and the President's Executive Order No. 12044. Both of these initiatives require the Department to revise its regulations to be easier for the public to read and understand. E. *Legal Basis:* 5 U.S.C. 552a; 5 U.S.C. 301. F. *Chronology:* The Department published its original regulation in the FEDERAL REGISTER on October 8, 1975. G. *Citation:* 45 CFR Part 5b.	Hugh V. O'Neill, (202) 245-7583, HEW Privacy Act Coordinator, Department of Health, Education, and Welfare, Room 526F, 200 Independence Ave. SW., Washington, D.C. 20201
OS-4—Department Staff Manual—Information Security Program; General Requirements: Handling, marking, transmitting, storing, and safeguarding of national security information.	A. *Description:* This manual would implement Executive Order 12065, National Security Information, by requiring each agency of the Department to comply with the provisions of the Order relating to the classification, downgrading, declassification and safeguarding of national security information. B. *Why Significant:* The manual would outline general responsibilities for Department officials and employees who would be concerned with national security information, and it further outlines procedures whereby a member of the public, a government employee or agency can request the declassification and release of information originally classified by the Department. C. *Regulatory Analysis:* "Yes, being conducted." D. *Need:* To implement the provisions of Executive Order 12065 by providing general policies and procedures for the protection of national security information that is under the control of the Department. E. *Legal Basis:* Executive Order 12065, published on July 3, 1978 (43 FR 28949). F. *Chronology:* Notice was published June 4, 1979, (44 FR 31991) Deletion of obsolete regulation; notice on availability of interim Department Security Manual. "Final Rule" currently under review.	Kenneth E. Lopez, Director, Division of Security and Protection, Office of Investigations, Office of the Inspector General, Department of Health, Education, and Welfare, Room 5455, North Building, 330 Independence Avenue SW., Washington, D.C. 20201, telephone: 202-245-6566.
OS-5—Availability of Information to the Public.	A. *Description:* This proposal would revise our rules for handling requests for information under the Freedom of Information Act. It tells how to make a Freedom of Information request; who can release information and who can decide not to release it; how much time it should take; how much we charge, and what can be done if we do not release information. B. *Why Significant:* Substantial interest is anticipated because the proposal amplifies and clarifies procedures for responding to public requests for information. C. *Regulatory Analysis:* Not required. D. *Need:* Recent court decisions and our experience since the last revision in 1974 require modifying our rules to implement the Freedom of Information Act. E. *Legal Basis:* 5 U.S.C. 552, U.S.C. 301, 42 U.S.C. 1306, and 31 U.S.C. 483a. F. *Chronology:* Notice of intent to revise this regulation was published on November 18, 1976 (41 FR 50846). The comment period closed on January 17, 1977. The NPRM will have a comment period.	Russell M. Roberts, Freedom of Information Officer, Office of Public Affairs, HEW, Room 118F, Humphrey Building, 200 Independence Avenue SW., Washington, D.C. 20201 472-7453.
OS-6—Nondiscrimination on the Basis of Race, Color or National Origin Under Programs Receiving Federal Assistance Through the Department of Health and Human Services 45 CFR Part 80.	A. *Description:* These revised regulations carry out the provisions of Title VI of the Civil Rights Act of 1964 which prohibits discrimination on the basis of race, color or national origin in programs receiving federal financial assistance from the Department of Health and Human Services. B. *Why Significant:* The proposed regulations revise the Department's existing Title VI regulations to (1) delete references to programs now funded by the Department of Education, (2) add examples and provisions specific to programs funded by the Department of Health and Human Services, (3) incorporate suggestions from the Department of Justice under their Title VI coordination responsibilities, and (4) improve readability. C. *Regulatory Analysis:* Decision pending on completion of preliminary study	Brenda Kahn, Staff Attorney Office of the General Counsel, Civil Rights, Washington, D.C. 20201, 202-245-7420

Office of the Secretary—Continued

Title	Summary	Contact
	D. *Need:* The Department is no longer responsible for programs transferred to the Department of Education. Examples and references to those programs are deleted in the revision, and more emphasis is put on health and human services issues and programs. In addition, the Department of Justice in a letter on March 3, 1980 proposed that specific changes be made in the regulations pursuant to 28 CFR 42.401-.415. Some of these proposals are included in the proposed revision. E. *Legal Basis:* Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d *et seq.* F. *Chronology:* None	
OS-7—Publicizing "Adverse" Information.....	A. *Description:* This regulation has been rewritten and simplified to make it easier for people to understand how they can obtain a retraction or correction when HEW has issued an incorrect statement about them that adversely affects them. B. *Why Significant:* This regulation would clarify and simplify our policy and implement a recommendation of the Administrative Conference of the United States. C. *Regulatory Analysis:* Not required. D. *Need:* The regulation would implement a recommendation of the Administrative Conference of the United States and set out the rights of persons asking HHS to correct erroneous information and the limits on HHS employees in releasing "adverse" information. E. *Legal Basis:* 5 U.S.C. 301. F. *Chronology:* A proposed rule was published on February 19, 1980 (45 F.R. 10820). The comment period closed on April 21, 1980.	Russell M. Roberts, Office of Public Affairs, Room 118F, Humphrey Building, 200 Independence Avenue S.W., Washington, D.C. 20201, (202) 472-7453.
OS-8—Joint Recodification Project—AFDC, Adult Financial Assistance, Medicaid, Social Service Programs (SSA, HCFA, OHDS).	A. *Description:* These regulations will revise the requirements for State administration of the applications, eligibility determinations and fair hearings procedures in the concerned programs. B. *Why Significant:* These regulations govern critical aspects of State procedures that directly affect individuals and families seeking and receiving assistance in all the States and territories. C. *Regulatory Analysis:* A threshold study is being prepared. D. *Need:* To clarify requirements, and to establish coordinated procedures in order to simplify administration in the States and territories. E. *Legal Basis:* Sections 2(a)(8), 402(a)(10), 1002(a)(11), 1102, 1402(a)(10), 1602(a)(8), (AABD) and 1902(a)(8) of the Social Security Act. F. *Chronology:* A Notice of Decision to Develop Regulations was published March 19, 1979 at 44 F.R. 16449.	Terry Bancroft Dowd, Deputy General Counsel for Regulatory Review, Coordinator-Joint Recodification Task Force, (202) 245-6733, Office of the General Counsel, HHS, Room 706.E, 200 Independence Avenue, S.W., Washington, D.C. 20201
OS-9—Department of Health and Human Services Standards of Conduct.	A. *Description:* These regulations are a revision of the Department of Health and Human Services (HHS) standards of conduct. They are issued to tell HHS employees and special Government employees what standards of conduct are expected of them in performing their duties and what activities are permitted or prohibited both while they are employed and after their employment with HHS ends. B. *Why Significant:* This is the first major revision of the Standards since 1966. C. *Regulatory Analysis:* Not required. D. *Need:* Revisions ae needed to include new requirements of law and/or policy, to clarify existing provisions and to give exampls to help officials who must apply the regulations. E. *Legal Basis:* 5 CFR Part 735. F. *Chronolgy:* None:	Ms. Florence Perman, Director, Division of Personnel Policy, Office of the Assistant Secetary for Personnel Administration, Department of Health and Human Services, Room 2314, Switzer Building, 330 Independence Avenue, S.W., Washington, D.C. 20201.
OS-10—Cost Principles for Nonprofit Organizations.	A. *Description:* Amendment to HHS general grants administration regulation to implement OMB Circular A-122, Cost Principles for Non-profit organizations. B. *Why significant:* Amendment would implement Government-wide cost principles and further the objective of having consistent rules for Federal grantees. C. *Regulatory Analysis.* Not required. D. *Need:* Required to comply with OMB directive. E. *Legal Basis:* 5 USC 301. F. *Chronology:* None	Gary Talesnik, Office of Grant and Contract Financial Management, Room 533-H, Humphrey Bldg., 200 Independance Avenue, S.W., Washington, D.C. 20201, 202-245-8771.
OS-11—Cost Alloction Plans for Public Assistance Programs.	A. *Description:* Revision and consolidation of current program regulations on submission and approval of cost allocation plans used by State agencies to claim aministrative costs on public assistance programs (e.g., Medicaid, AFDC, etc.). B. *Why significant:* Regulation would provide comprehensive guidance on the submission and approval of cost allocation plans required to claim administrative costs on all HHS financed public assistance programs. C. *Regulatory Analysis.* Not required. D. *Need:* To clarify requirements, eliminate duplicative coverage in individual program regulations, provide more definitive guidance, and simplify appeals procedures related to "cross-cutting" cost disallowances. E. *Legal Basis:* Sec. 1102, 49 Stat. 647, 42 U.S.C. 1302. F. *Chronology:* None.	Edward Tracy, Office of Grant and Contract Financial Management, Room 533-H, Humphrey Bldg., 200 Independance Avenue, S.W., Washington, D.C. 20201, 202-755-7633.
OS-12—Equipment Acquired Under Public Assistance Programs.	A. *Description:* Revision and consolidation of current program regulations on the allowability of equipment costs under public assistance programs (e.g., Medicaid, AFDC, etc.) and on the management and disposition of equipment under the programs. B. *Why significant:* Regulation would substantially liberalize and simplify current regulations on this subject. C. *Regulatory Analysis.* Not required. D. *Need:* To establish a more realistic threshold for determining whether equipment costs can be claimed at the time of purchase or must be depreciated. Also needed to eliminate duplicative coverage in individual program regulations, and to simplify and clarify regulations. E. *Legal Basis:* Sec. 1102, 49 Stat. 647, 42 U.S.C. 1302. F. *Chronology:* None.	Edward Tracy, Office of Grant and Contract Financial Management, Room 533-H, Humphrey Bldg., 200 Independance Avenue, S.W., Washington, D.C. 20201, 202-755-7633.
OS-13—Administration of Grants, 45 CFR Part 74.	A. *Description:* These amendments will transfer certain policies contained in the Department's Grants Administration Manual to the HHS grants administration regulation. Miscellaneous clarifications and refinements of current provisions of the regulation will also be made. B. *Why Significant:* This action will secure public participation in the making of grant administration rules which have previously been adopted without public comment. The change will also simplify administrative burdens on grantees who deal with more than one HHS granting agency. C. *Regulation Analysis:* Not required. D. *Need:* The regulation will reduce burdens on grantees, and eliminate the need for HHS granting agencies to publish implementation of many policies in the Grants Administration Manual. E. *Legal Basis:* Sec. U.S.C. 301. F. *Chronology:* None.	Matthias Lasker, Director, Division of Grants Policy and Regulations Development, OGP, Room 513D, Humphrey Bldg. 200 Independence Avenue, S.W., Washington, D.C. 20201, 202-245-7565.

Office of the Secretary—Continued

Title	Summary	Contact
OS-14—Personnel Administration Requirements of Grants to State and Local Governments.	A. *Description:* This regulation would require that all State and local government recipients of HHS mandatory (formula) grants adopt a merit system of personnel administration for the employees who administer or carry out the grant program. B. *Why Significant:* Similar requirements now exist in a number of HHS mandatory (formula) grant program. This regulation would extend the requirement to all such programs. C. *Regulatory Analysis:* Not required. D. *Need:* Carries out the intent of Congress as set forth in the Intergovernmental Personnel Act of 1970 and the Civil Service Reform Act of 1978. E. *Legal Basis:* Above-cited legislation. F. *Chronology:* None.	Matthias Lasker, Director, Division of Grants Policy and Regulations Development, OGP, Room 513D, Humphrey Bldg. 200 Independence Avenue, S.W., Washington, D.C. 20201, 202-245-7565.

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Federal Register

Friday
December 19, 1980

Part VI

Department of the Interior

Geological Survey

Proposed Outer Continental Shelf Orders Governing Oil and Gas Lease Operations in the Arctic; Environmental Assessment

DEPARTMENT OF THE INTERIOR

Geological Survey

Proposed Outer Continental Shelf Orders Governing Oil and Gas Lease Operations in the Arctic; Environmental Assessment

AGENCY: U.S. Geological Survey, Department of the Interior.

ACTION: Environmental Assessment for the proposed Arctic Outer Continental Shelf Orders.

SUMMARY: the U.S. Geological Survey (USGS) prepared this Environmental Assessment (EA) to document the potential environmental effects of issuing the proposed Arctic Outer Continental Shelf (OCS) Orders. The EA was prepared in accordance with the regulations implementing the National Environmental Policy Act (40 CFR Parts 1500.1508). Comments on the EA will be considered by the USGS before a decision is made to issue final Arctic OCS Orders.

DATE: Comments must be received by 4:30 p.m., e.s.t., January 19, 1981.

ADDRESS: Responses should identify the subject matter and be directed to the Deputy Division Chief—Offshore Minerals Regulation, Conservation Division—Attention: Lloyd Tracey, Branch of Offshore Rules and Procedures, U.S. Geological Survey, National Center, Mail Stop 640, Reston, Virginia 22092.

FOR FURTHER INFORMATION CONTACT: Rishi Tyagi, U.S. Geological Survey, Alaska OCS Region, P.O. Box 259, Anchorage, Alaska 99510, (907) 271–4348; or Ray Beittel, U.S. Geological Survey, National Center, Mail Stop 640, Reston, Virginia 22092, (703) 860–7567.

AUTHORS: Rishi Tyagi, Nabil Masri, Paul Lowry, and Ray Beittel U.S. Geological Survey, Department of the Interior; Poe Leggette, Office of the Solicitor, Department of the Interior

Dated: December 15, 1980.

Robert L. Rioux,

Deputy Division Chief, Offshore Minerals Regulation, Conservation Division.

Environmental Assessment for the Proposed Arctic OCS Orders

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  3. Alternative OCS Order No. 3
  4. Alternative OCS Order No. 4
  5. Alternative OCS Order No. 5
  6. Alternative OCS Order No. 7
  7. Alternative OCS Order No. 8
  8. Alternative OCS Order No. 12
- C. OCS Orders More Stringent Than the Proposed Arctic OCS Orders
  1. First Part of the Alternative
  2. Second Part of the Alternative
  3. Third Part of the Alternative
  4. Fourth Part of the Alternative
  5. Fifth Part of the Alternative

Appendix. The Proposed Arctic OCS Orders

I. Introduction

A. The Proposed Action: To Adopt Operating Orders for the Arctic Outer Continental Shelf (OCS) Area

The U.S. Geological Survey's (USGS) proposed Arctic OCS Orders for offshore oil and gas exploration, development and production operations are a special type of agency regulation applying to a special area of America's OCS. They would govern many oil and gas exploration, development, and production activities conducted offshore from Alaska, at locations on the OCS that are north of the Arctic Circle. The Arctic OCS is bordered on the east by the Canadian section of the Beaufort Sea, on the west by the Soviet section of the Chukchi Sea, and on the south by the Seward Peninsula. The Arctic, the coldest area offshore of the United States, poses unusual hazards to OCS oil and gas exploration, development, and production activities. However, when conducted properly, these activities will not cause significant harm to the Arctic marine, coastal, or human environments.

The proposed Arctic OCS Orders are designed to assure that no unacceptable environmental risks are taken by those persons who explore for and produce oil and gas on the Arctic OCS. The need for OCS Orders to govern activities on the Arctic OCS is clear. The success of OCS operating Orders in other OCS areas was one of the factors which persuaded Interior Department Secretary Cecil Andrus that the Beaufort Sea OCS could be explored and developed safely.

The proposed Arctic OCS Orders are created under the authority given to the Secretary by the Outer Continental Shelf Lands Act, as amended. OCS Orders supplement the Department's general regulations that govern OCS oil and gas operations, found in Part 250 of Title 30, Code of Federal Regulations (CFR), by imposing special requirements on operations in the Arctic OCS area. In this respect they are similar to some of the special stipulations found in the Federal OCS leases issued as a result of the Beaufort Sea lease sale. A lessee must comply with the special lease stipulations, the OCS Orders, the regulations, and the Act as a apart of his obligations under the OCS oil and gas lease. The lessee who violates any of these types of law is subject to civil and/or criminal penalties. He may also lose his lease.

OCS Orders are in effect in all other Federal OCS areas where OCS oil and gas leases have been issued. In most respects the proposed Arcitc OCS Orders resemble these other OCS Orders. Indeed, the OCS Orders for all areas are virtually identical in format.

- Order No. 1–Identification of Wells, Platforms, Structures, Mobile Drilling Units, and Subsea Objects
- Order No. 2–Drilling Operations
- Order No. 3–Plugging and Abandonment of Wells
- Order No. 4–Determination of Well Producibility
- Order No. 5–Production Safety Systems
- Order No. 6–Well Completions and Workover Operations [called "Procedure for Completion of Oil and Gas Well" in some areas.]
- Order No. 7–Pollution Prevention and Control
- Order No. 8–Platforms and Structures
- Order No. 9–Oil and Gas Pipelines [Gulf of Mexico and Pacific]
- Order No. 10–(Reserved) ["Sulphur Drilling Procedures" in the Gulf of Mexico; "Drilling of Twin Core Holes" in Pacific]
- Order No. 11–Oil and Gas Production Rates, Prevention of Waste, and Protection of Correlative Rights [Gulf of Mexico and Pacific]
- Order No. 12–Public Inspection of Records
- Order No. 13–Production Measurement and Commingling [Gulf of Mexico]

The proposed Arctic OCS Orders would, however, impose requirements not found in the Orders for other areas. The differences fall into five categories. The first is planning. Beaufort Sea lessees will have to present their plans for

responding to certain types of emergencies to the USGS. lessees will also have to submit "Critical Operations and Curtailment Plans" that are more detailed than those required for the highly developed ("mature") areas of the Gulf of Mexico. The second category includes those measures lessees must take to ensure that their operations are carried out in a way that keeps the permafrost from melting. The third category includes those measures lessees must take to insure that platforms, equipment, and materials which the lessee proposes to use are designed to work under Arctic conditions. The fourth and fifth categories are single measures. One requires the lessee to keep closer track of where the bottom of the well bore is. The other requires the lessee who drills from an artificial island to build an impervious berm to contain all liquid hydrocarbons that are expected to be present on the artificial island. Each of these differences will be explained in detail in Part II. A complete text of the proposed Arctic OCS Orders is included in the Appendix.

B. Scope of the Environmental Assessment

During the course of the litigation brought against the Department of the Interior by the North Slope Borough regarding the Beaufort Sea Lease Sale, the Chief, Conservation Division, USGS, presented an affidavit to the U.S. District Court regarding the proposed Arctic OCS Orders. One of the statements in that affidavit committed the GS to conducting an environmental analysis of the proposed Arctic OCS Orders before they are published in final form. This EA documents that environmental analysis. It includes consideration of the differences between the proposed Arctic OCS Orders and OCS Orders in effect for other OCS areas. It also includes consideration of appropriate alternatives as specified in the affidavit. Comments received as a result of the publication of this analysis will be considered before final Arctic OCS Orders are published and made effective. This assessment also discusses how oil and gas operations are to be conducted in the Beaufort Sea lease sale area and how the Arctic OCS Orders will provide guidance on the manner in which lessees are to conduct some of these activities.

The Federal/State Joint Beaufort Sea Oil and Gas Lease Sale, Sale BF, which was held in December 1979, represents the first part of the Arctic OCS area to be leased. Additional sales currently proposed in the Secretary's 5-year leasing schedule are: Beaufort Sea, Sale No. 71, in February 1983; Chukchi Sea, Sale No. 85 in February 1985; and Hope Basin, Sale No. 86, in May 1985. Because the effectiveness of the proposed Orders will be tested first in the Beaufort Sea, and since the most complete environmental data has been gathered in the area of Sale BF, our discussion is limited to the effects of oil and gas operations in the Beaufort Sea area.

C. Summary of Oil and Gas Activities in the Beaufort Sea

OCS Orders are only part of the regulatory scheme that will govern oil and gas operations on the Beaufort Sea OCS. Some activities are unaffected by the OCS Orders themselves. This is an important point to remember, because this assessment is limited to the provisions of proposed Arctic OCS Orders and selected alternatives and their effects on the environment. Perhaps the easiest way to explain this point is to summarize those activities that have occurred and those activities that the Department expects to occur in the Sale BF lease area.

Before offering OCS oil and gas leases in the Beaufort Sea area, the Bureau of Land Management (BLM) prepared an Environmental Impact Statement (EIS). That EIS was recently supplemented. The EIS and its supplement document the extensive review of the potential environmental effects of oil and gas activities on the area. Based on the information and analysis contained in the EIS, the Secretary of the Interior imposes several special restrictions on the lessess in the form of lease stipulations included in oil and gas leases issued for the Beaufort Sea OCS. A few of the 12 special Federal lease stipulations were imposed to protect the Government's proprietary interests, but most were designed to assure adequate protection of the Arctic environment.[1] These stipulations are discussed later on this summary.

With the lifting of the U.S. District Court's injunction in July 1980, the Department began to issue 10-year leases to the successful bidders. Then the lessees began to carry out preliminary geophysical surveys and, on certain tracts, the environmental surveys required by Federal Lease Stipulation Number 7 (See 44 FR 64762). If these surveys reveal sites of historic or archaeological significance, lessees must notify the USGS Deputy Conservation Manager. The Manager will instruct the lessee as to the steps that must be taken to protect such sites, as required by Federal Lease Stipulation Number 1.

As this document is being written, a number of lessees are conducting these preliminary surveys.

After completing and evaluating these preliminary surveys, the lessees will prepare Exploration Plans. These plans, required by 43 U.S.C. 1340, must be submitted to the USGS for approval. The Exploration Plan must be accompanied by an Environmental Report that addresses the potential site specific environmental effects of activities described in the plan.

A lessee cannot conduct any other activities related to exploration for oil and gas until the Exploration Plan is approved. Departmental regulations prescribe what information lessees must include in their Exploration Plans. These plans must include descriptions of where and when the lessee will drill and conduct surveys, descriptions of the equipment to be used, safety and pollution-prevention features of the equipment, and geologic maps of the sites to be drilled. It is in the preparation of an Exploration Plan that the proposed Arctic OCS Orderswill first affect oil and gas activities in the Beaufort Sea. As explained in Part II, the proposed Arctic OCS Orders require lessees to submit information not required in other OCS areas. This information includes a description of how the lessee will deal with four types of emergencies, and evidence that the lessee's drilling unit can withstand Arctic conditions.

Federal Lease Stipulation No. 2 requires lessees to include still further information in their Exploration Plans. Lessees must submit environmental training and briefing programs for their personnel and their contractor's personnel (See 44 FR 64761). Lessees have 4 years before they must file the initial Exploration Plan or a statement of exploration intentions for a lease. The GS will prepare an EA for each Exploration Plan before approving or disapproving it.

Exploration Plan approval is one of four such approvals a lessee must receive before drilling operations may begin. Drilling in the Beaufort Sea will probably be done from artifical islands made of gravel, silt, or possibly ice. Before constructing one of these islands, a lessee must obtain a permit from the Corps of Engineers, as required by Section 10 of the Rivers and Harbors Act of 1899 and Section 4(e) of the OCS Lands Act. Based on its actions relating to permits issued for activities on State oil and gas leases in the sale area, it is expected the Corps will prepare an EA

[1] The United States and the State of Alaska dispute ownership over part of the area leased. Because of this dispute, the area was leased jointly by the two Governments. The Federal and State environmental stipulations are nearly identical. See 44 FR 64748-770 (Nov. 7, 1979).

for artificial island permit applications submitted for OCS oil and gas leases.

Lessees must also have the design, construction, and installation of each artificial island approved by the USGS in accordance with the OCS Platform Verification Program. This 3-part program, required by proposed Arctic OCS Order No. 8, provides for verification of what engineers call the "structural integrity" of the islands.[2] Additionally, in the November Notice of Sale, the Department announced a supplementary restriction on drilling from manmade islands located seaward of the barrier islands. Any artificial island that is built seaward of the barrier islands in water deeper than 13 (43 ft.) meters must be built as a test platform and left in place for two winter seasons before drilling operations are conducted from the island. After this period has passed, the USGS will determine whether the platform will be accepted for its durability. Finally, lessees must obtain USGS approval of a permit to drill for each well. Certain parts of the proposed Arctic OCS Orders apply to this application, as explained in Part II. The Department will not prepare EA's for these drilling permits or for the approval of OCS drilling platforms under proposed Arctic OCS Order No. 8 since these activities will have been addressed in the EA for an Exploration Plan or a Development and Production Plan.

During the first 2 years after the Beaufort Sea OCS leases are issued (i.e., August 1980 through July 1982), lessees may drill only during the months of November through March (See Federal Lease Stipulation No. 8.). This restriction also applies to other activities in the wellbore, such as pressure testing and sampling of fluids in a potential reservoir of oil and gas. The purpose of this restriction is to prevent any disturbance to the endangered bowhead and gray whales, which swim through the lease area during the summer months. By the end of the 2-year period, the Department expects that the National Marine Fisheries Service will have issued its biological opinion on whether oil and gas operations in the Beaufort Sea will jeopardize the continued existence of these endangered species. By the summer of 1982, the Department is expected to decide if continued seasonal drilling restrictions are necessary to protect the whales.

Once drilling is begun, several other provisions of the proposed Arctic OCS Orders would take effect. Most of these are found in proposed Arctic OCS Order No. 2. This long, detailed Order regulates the "casing" (a number of "strings" of special pipe lowered into the well during the drilling process to support the sides of the well, to prevent communication between wellbore formation fluids, and to facilitate well control), the "cementing" (the process of bonding the casing to the surrounding rock or another larger diameter string of casing), "blowout preventers" (a device placed on the surface end of casing which is designed to prevent an uncontrolled flow of oil or gas out of the casing), and the "mud program" (the characteristics, testing, and proper use of the special fluid (i.e., mud) which is mixed at the surface, pumped down the well through the drillpipe and out ports in the drillbit, and up to the surface in the annulus between the drillpipe and the casing). These activities, and others addressed by proposed arctic OCS Order No. 2, are discussed in detail in Part II. Other provisions that normally come into play at this time are found in proposed Arctic OCS Order No. 7, which governs pollution prevention and control activities. These, too, are discussed later.[3]

The Beaufort Sea OCS leases were issued for a primary term of 10 years. This means that these leases will expire in 1990, 10 years after their effective date, unless one or a combination of the following happens:

1. The lessee is actually producing oil or gas;
2. The lessee is still drilling (with lapses in drilling operations of no greater than 90 days);
3. The lessee is performing maintenance on a well (called "reworking" or "workover"); or
4. The lease term has been extended by a USGS or Departmental order suspending operations on the lease.

Within these 10 years, the Department expects the lessees to drill several wells on their leases. By using special "directional drilling" tools, lesses will be able to drill a number of exploratory wells from a single artificial island. Some of these wells may not find oil or gas, and some may find oil or gas in amounts in sufficient to justify development and production, at some point, the lessee will obtain USGS approval to "plug and abandon" these wells, that is, to place cement "plugs" at strategic locations in the wellbore and remove the blowout preventers and recoverable portions of the casing. The requirements of proposed Arctic Order No. 3 will come into play at that point. Proposed OCS Order No. 3 (explained more fully in Part II) requires lessees to obtain abandonment plan approval from the USGS before abandoning the well. This proposed Order sets minimum standards for lessees to follow when setting cement plugs in the well to prevent oil, gas, or other fluids from flowing up or down the wellbore or into the marine environment.

When a lessee ultimnately abandons operations on an artificial island, nothing in the operating regulations or proposed Arctic OCS Orders requires him to disassemble his rig or remove the artificial island. However, the provisions of Federal leases and Federal lease Stipulations numbers 1 and 3 require both of these on certain tracts: Those between the mainland and the barrier islands, and those containing sites of archaeological or historic significance (See 44 FR 64761, November 7, 1979).

The chances are good, however, that some lessees will find valuable reservoirs of oil and/or gas. After the discovery of one or more such reservoirs, the lessee may drill "delineation wells"—wells that allow him to delineate the extent of the oil and gas in the reservoir. Each delineation well must be described in an approved Exploration Plan and also requires a permit to drill from the USGS.

One exploratory drilling is completed, and before lessees can drill development wells, the lessee must submit a Development and Production Plan for USGS approval. Development and Production Plans must include the information required by 30 CFR 250.34–2(a), including a description of safeguards to prevent harm to persons, property, and the environment. The Development and Production Plan must also be accompanied by an Environmental Report that describes site specific environment impacts of the activities proposed in the plan. The USGS will prepare an EA for each Development and Production Plan before approving, requiring modification, or disapproving it. At least once, in each OCS area or region other than the western Gulf of Mexico, the USGA will prepare an EIS for a proposed Development and Production Plan. As with the Exploration Plan, the lessee cannot drill any development wells or produce oil or gas until he obtains USGS approval of a Development and Production Plan. And

[2] See 44 FR 64767 (November 7, 1979). See also the USGS document, "Requirements for Verifying the Structural Integrity of OCS Platforms."

[3] Federal Lease Stipulations Nos. 4 and 6 also restrict discharges and partly supersede proposed Arctic OCS Order No. 7 in the area of Sale BF. Lessees must also obtain NPDES permits from the Environmental Protection Agency before discharging drilling fluids, drill cuttings, brine from the well, produced sands, drainage from the deck of the drilling rig, human and domestic wastes, and other kinds of wastewater.

as with the Exploration Plan, certain parts of the proposed Arctic OCS Orders provide guidance regarding the content of a Development and Production Plan. These are explained in Part II.

A lessee may have to modify an artificial island used for exploration before initiating development and production activities, such as installing production equipment. If the proposed modification is major, it must be approved by the GS in accordance with proposed OCS Order No.'s Platform Verification Program. The lessee must also obtain USGS approval before installing production equipment or drilling any production well described in the approved Development and Production Plan. When production activities begin, proposed Arctic OCS Order No. 5 will come into play.[4] OCS Order No. 5 regulates the safety systems used in the production of oil and gas. This proposed Order sets standards for the types of equipment to be used, requires the lessee to provide evidence that the equipment can operate normally in Arctic conditions, and requires the lessee to inspect the equipment regularly. In certain situations, the lessee must also get; USGS approval before installing equipment. Proposed Arctic OCS Order No. 5 will be explained in greater detail in Part II.

At the time of this writing, actual production of oil or gas is still a few years away. Therefore, the summary of production activities cannot be exact. A significant production activitiy will be transporting the oil and gas to shore. Federal Lease Stipulation No. 5 favors the use of pipelines over barges, but these methods of transportation will be studied further before the State and Federal Governments agree to a lessee's a specific proposal to transport oil and/or gas from a lease area. Proposed Arctic OCS Order No. 9, which will provide guidance with respect to design and contruction of oil and gas pipelines, is still under development.

Perhaps 10 to 20 years after production begins, when the natural pressure in the oil and gas reservoirs has dropped significantly, a lessee will consider artifical methods of bringing the oil and gas out of the ground. These are the so-called "enhanced recovery" methods. Ultimately, the cost of recovering oil or gas will reach a point where it is greater than the market value. At that time the lessee will plug and abandon the wells, in accordance with the requirements of Arctic OCS Order No. 3 then in effect.

[4]Actually, several proposed Orders will begin to apply. But some of these have not yet been drafted for the Arctic. These are OCS Orders Nos. 6, 9, 11, 13, and 14.

D. Summary of Potential Environmental Effects of Exploration activities in the Beaufort Sea

There are several types of potential environmental effects associated with conducting oil and gas exploration activities on federal OCS leases issued in the Beaufort Sea. These potential effects are described in detail in the *Beaufort Sea Final EIS* prepared by the BLM in 1979. A brief summary of the potential effects related to exploration activities is provided below. The summary will serve to orient the reader as to the general scope of potential environmental impacts related to hydrocarbon exploration, and identify for the reader the potential effects that the proposed Arctic OCS Orders were developed to address. It should be understood that the following discussion provides a general outline of the potential effects of Beaufort Sea OCS exploration activities and *not* the effects of the proposal to issue operating Orders for the Arctic OCS. An analysis of the potential environmental impacts of the proposed Arctic OCS Orders is presented in Part II of this assessment.

The potential environmental effects related to oil and gas exploration activities in the Beaufort Sea are generally associated with (1) construction of structures (e.g., gravel islands) from which exploration activities will be conducted, (2) discharges resulting from drilling operations, including possible oil spills, and (3) transportation of persons and supplies to and from the drilling site.

1. *Structures.* The most commonly used exploratory platform on the Beaufort OCS is expected to be an artificial island grounded to the sea floor. Several designs have been used successfully in comparable areas of the Canadian Beaufort Sea. It is likely that islands on the Alaskan Beaufort OCS will be constructed of gravel. The BLM estimates that a typical gravel island will be approximately 1 hectare (2 acres) in surface area and will require between 27,000 m^3 (950,000 $ft.^3$) and 1,000,000 m^3 (35,000,000 $ft.^3$) of gravel to construct, depending on water depth at the drill site and design characteristics of the island.

The potential environmental effects of gravel island construction are associated primarily with dredge and fill activities. The largest and most widely distributed gravel resource located within the sale area is found 3 to 10 meters (11 to 33 ft.) beneath the sea floor in the form of a pleistocene (deposited between 10 thousand and 2 million years ago) gravel sheet. Assuming that the gravel needed for construction is mined by dredging during the open water season, the following impacts are likely to result:

(a) Temporary (on the order of decades) depressions will be created in the sea floor;

(b) The existing benthic (sea bottom) environment in the area of dredging will be temporarily disrupted or destroyed; and

(c) Water column turbidity will increase as a result of temporary resuspension of bottom sediments causing a disturbance to some plant and animal species that encounter the turbidity plume.

Deposition of dredged material at the construction site during the open water season will probably generate the following effects at or near the site:

(a) Portions of the existing benthic community will be buried and destroyed; and

(b) Water column turbidity will increase resulting in a disturbance of some plant and animal species that encounter the turbidity plume. The intensity of the plume may vary greatly depending on the method of gravel deposition (clamshelling or barge dumping).

The nature and extent of the biological disturbance related to open water dredge and fill activities will depend on the type of species affected, the season, and probably the life stage of individual species. The impacts of these dredge and fill activities would be minimized, however, if they are conducted during winter through fast ice.

Other potential effects associated with gravel islands include: (a) Low frequency, underwater noise generated during construction activities. This may interfere with communication among and echolocation (determination of an animal's position by detecting the reflection of sounds made by the animal) of the whales that migrate through the area. In addition, there is some evidence that certain seal species are particularly sensitive to human disturbance. Noises associated with construction may alter the living habits of some seals to the extent that a population decline could result; and

(b) Artificial islands may act as physical impediments to fish and mammals, particularly the endangered bowhead whale, that migrate through the area.

2. *Drilling Activities.* It is anticipated that exploratory drilling activities will be conducted from gravel island platforms using land-type drilling rigs

and essentially the same technology and techniques used in the Arctic to drill an onshore well. Assuming that the typical exploratory well will be drilled to a depth of 15,000 feet, the BLM lease sale EIS estimates that approximately 4,500 barrels of drilling muds will be used. For wells drilled in water depths of 10 meters (33 ft.) or greater, these muds will probably be discharged directly into the marine environment. In water depths of less than 10 meters (33 ft.), the USGS District Supervisor will approve, on a case-by-case basis, the method for disposal of the drill muds. Approximately 700 cubic yards of drill cuttings will be generated as each well is drilled.

The potential, primary environmental effects associated with routine discharges of drill muds and cuttings into the marine environment are:

(a) Burial and smothering of benthic communities by drill cuttings and mud within at least a 17-meter (56 ft.) radius of the discharge point;

(b) Temporary increases in water turbidity levels resulting in a disturbance to some plants and animals that encounter the plume, and decreases in the penetration of light into the water column. The areal extent of the turbidity plume will depend primarily on water depth and water circulation patterns near the drill site; and

(c) Minor changes in the chemical composition of sediments surrounding the drill site.

It is conceivable that at some time during drilling operations control over the fluid pressures in the well may be lost. In the event that this occurs and emergency procedures fail to maintain control of the well, a blowout may result. This may release a quantity of oil and/or gas into the environment. A recent study completed by the USGS (USGS Open-File Report 80–101) indicates that during the 8-year period, 1971–1978, one blowout occurred for every 250 wells drilled on the Gulf of Mexico OCS. The BLM estimates that approximately 25 exploration wells will be drilled on Beaufort Sea OCS leases. Based on these statistics, the number of exploratory wells expected to be drilled in the Beaufort Sea is only one tenth of the total needed to predict one blowout. However, it would be misleading to forecast the probability of a blowout on the Beaufort Sea OCS based on the extrapolation of observations made in other OCS areas. This is particularly true in view of the hostile operating environment of the Beaufort Sea. As of this writing, 14 wells have been drilled on submerged State lands in the Beaufort Sea. No blowouts occurred during the drilling of these wells.

The adverse effects that would result from a blowout that caused a major oil spill in the Beaufort Sea are largely unknown. Studies of past spills in other areas have shown that the degree of adverse environmental effects ranges from insignificant to severe. The magnitude of effects in the spill area is governed by several factors including the type and quantity of oil spilled, oceanographic conditions, meteorological conditions, season, the biota of the area, previous exposure of the area to oil, and previous exposure of the area to other pollutants. In view of the fact that the dynamic interrelationship among these factors is extremely complex and that our knowledge of the Beaufort Sea ecosystem is incomplete, predicting possible adverse effects at this time would be speculative. Adverse effects that may be observed in an area affected by an oil spill are:

(a) Destruction of phytoplanktonic (microscopic plants that inhabit the water column) primary producers located in the water immediately under the slick, and/or destruction of epontic algae on the underside of sea ice that comes into contact with an underice spill;

(b) Buildup of oil in subtidal bottom sediments;

(c) Damage to benthic and intertidal communities resulting from the toxic and coating properties of crude oil;

(d) Accumulation of hydrocarbons in tissues of detritus, filter, and ciliary-mucous feeders that injest and assimilate hydrocarbons contained in oil-contaminated food;

(e) Destruction of the planktonic (in the water column) and epibenthic (on the sea floor) invertebrates immediately around the slick;

(f) Destruction of birds that are oiled by coming into direct contact with the slick, and destruction of bird habitat;

(g) Irritation of the skin and eyes of pinnipeds by direct contact with oil, contamination of rookeries, and ingestion of oil; and

(h) Interference with skin respiration in some whales, and fouling of baleen plates (food gathering filters) and blow holes by direct contact with spilled oil.

3. *Transportation Activities.* Personnel and supplies will probably be moved to and from the drilling site either by boat, helicopter, or surface vehicle. The BLM estimates that from two to six support and supply vessels and two to six helicopters will be employed for this purpose during exploration activities. Boat traffic will be restricted to a two to three month period during the summer after the sea ice breaks up. It is anticipated that passengers and freight will be flown in fixed wing aircraft from Fairbanks or Prudhoe Bay to base camps nearby the drill site and from base camps to the drill site by helicopter. During the winter season (November through March) ice growth may also allow over-ice, ground vehicle support of operations.

The adverse effects of these activities on the Beaufort environment are associated primarily with noise and visual disturbance created by boat and helicopter traffic. Adverse effects that may result include:

(a) Disturbance of certain bird species resulting in changes in nesting and feeding habits;

(b) Disturbance of certain seal species resulting in abandonment of traditional hauling out areas, breeding rookeries, and foraging areas; and

(c) Disruption of migration patterns of the endangered bowhead whale.

Lessees were advised in the Beaufort Sea Notice of Sale document that, during certain times of the year, fixed wing aircraft and helicopters involved in the development of Federal OSC leases must not fly over certain sensitive areas at altitudes of less than 1500 feet.

The proposed Arctic OCS Orders were designed primarily to provide governing guidance with respect to the technical aspects of drilling activities. Prior to producing and transporting oil and gas that may be discovered during exploration, additional Arctic OCS Orders will be developed to address well completions and workover operations, oil and gas pipeline design and construction activities, and production measurement and commingling. All anticipated liquid and solid discharges (e.g., drill muds and cuttings) are regulated by the Environmental Protection Agency (EPA) through its National Pollution Discharge Elimination System (NPDES) permitting process. Prior to discharging any substances into the marine environment, the lessee must obtain an NPDES permit from the EPA. In some cases, the method of disposal will have to be approved by the USGS District Supervisor. Construction of the drilling platform (e.g., gravel island) requires a "fixed structure" permit from the U.S. Army Corps of Engineers as mentioned in Part I.C.

Most other exploration activities that could result in adverse environmental effects are controlled by Federal lease stipulations. The ramifications of this special stipulation mechanism are also discussed in part I.C.

II. Environmental Effects of the Proposed Arctic OCS Orders

The analysis of the potential environmental effects of the proposed Arctic OCS Orders is presented below in an Order-by-Order fashion. The analysis of each proposed Order includes a detailed summary of the proposed Order provisions, identifies those provisions that are Arctic-specific, and discusses the potential environmental impacts. A complete text of each proposed Order is contained in the Appendix

A. Proposed Arctic OCS Order No. 1

Identification of Wells, Platforms, Structures, Mobile Drilling Units, and Subsea Objects.

Proposed Arctic OCS Order No. 1 would require lessees to mark platforms, drilling rigs, drilling ships, artificial islands, and wells with signs of standard specifications that identify the operator (representative of the lessee), the specific OCS lease block, and well number. On artificial islands, only one sign must be installed in a prominent location on the island.

The proposed Order also provides that all oil and gas operations-related subsea objects left on a lease which could present a hazard to other users of the OCS be identified by navigational markings as directed by the U.S. Coast Guard District Commander. Implementing this provision will minimize the potential for accidents and oil spills associated with subsea production systems, "stubs," fishing gear, and ship anchors.

Propoosed OCS Order No. 1 would further require that, whenever practicable, all materials, equipment, tools, containers, and other oil and gas related items used on the OCS be properly color coded, stamped, or labeled with the owner's identification prior to use. This means that the owner of objects freed and lost overboard from rigs, platforms, or supply vessels, that may interfere with commercial fishing gear, can be identified. Such markings would have no significant environmental impact. However, implementation of the provisions of proposed Arctic OCS Order No. 1 would mitigate possible adverse impacts of oil and gas related drilling and production operations on fishing, anchoring, shipping, and navigational activities.

B. Proposed Arctic OCS Order No. 2. Drilling Operations

Proposed Arctic OCS Order No. 2 addresses specific procedures for drilling wells. It requires lessees to submit, as part of their Exploration Plans, Development and Production Plans, and Applications for Permit to Drill, detailed information about the drilling platform, drilling rig, well casing program, drilling mud program, blowout-prevention equipment, and other well-control equipment. The proposed Order also requires lessees to submit plans to deal with certain types of emergency situations, including the drilling of a relief well in the event of a blowout that could cause significant adverse effects to human health and safety and the Arctic environment. Finally, proposed Arctic OCS Order No. 2 provides that Exploration Plans and Development and Production Plans include a list of circumstances in which critical drilling operations will be curtailed and requires that personnel involved in drilling and production activities receive training in operational safety and well control. Most of the Arctic-specific provisions of proposed Arctic OCS Order No. 2 were developed to address potential hazards caused by the extremely low temperatures of the Arctic operating environment, ice conditions, permafrost (permanently frozen soil with ice in the pore space), and hydrates (frozen gas and water).

1. Plans and Applications. Proposed Arctic OCS Order No. 2 identifies four emergency situations that the lessee must address in an Exploration Plan or Development and Production Plan. Requirements contained in sections 1.1.a, 1.1.b., 1.1.c., and 1.1.d of the proposed Order are included for operations on the Arctic OCS because of the remoteness of the area and the hostile Arctic environment. They are also included to assure that lessees are prepared to drill one or more relief wells should a blowout occur that requires the drilling of relief wells to restore well control. The specific details of a lessee's plan for drilling relief wells will be based on the season during which drilling operations are to be conducted, the distance of the drill site from shore and offshore islands, the water depth at the drill site, the proposed total drilling depth, the depth of prospective hydrocarbon bearing zones, the type of activities proposed (i.e., exploration or development), the type of drilling facilities that may be available in the area (e.g., gravel islands, ice islands, drillships, barges), and current technologies and techniques for drilling relief wells. A lessee who is not able to show conclusively that he can drill a relief well(s) without undue delay can expect the USGS to find his Exploration Plan or Development and Production Plan to be incomplete. The drilling of one or more relief wells is usually necessary only when all other well-control efforts fail to regain well control.

Lessees must also identify in their Exploration Plans and Development and Production Plans measures that would be taken in the event that a drilling unit or a drilling rig is lost or disabled.

Support craft (sea-going vessels, vehicles, aircraft, air cushion vehicles or other craft which provide personnel and material transport or assistance to a drilling program) are a vital link between the drill site and onshore support facilities. Therefore, lessees will be required to describe the steps to be taken to assure timely replacement of lost or damaged support craft.

Ice is a predominant feature of the Arctic environment. Its formation during freeze-up, presence as solid ice cover over much of the year, and its deterioration during break-up, and associated ice forces, represent features of the environment that must be considered in the design and execution of normal and emergency activities. Exploration Plans submitted by lessees for the Beaufort Sea OCS leases must anticipates ice conditions that are expected to exist at the drill site during planned drilling activities and during the execution of contingency plan activities, such as drilling a relief well to regain control of a blowout well.

The types of information that may be included in the discussion of these emergency situations are:

(a) The availability of relief drilling rigs, platforms, and support craft;

(b) The logistics and equipment for transporting relief equipment to the drilling site;

(c) Alternative methods for handling conditions resulting from the loss of equipment while waiting for replacement of equipment;

(d) A discussion of safety programs, equipment design considerations, and monitoring programs for anticipated hazards;

(e) A listing of safety equipment which will be available and installed at the drill site;

(f) A discussion of oceanographic and meteorological conditions expected to be encountered, and programs for monitoring oceanographic, meteorological, and ice conditions; and

(g) A discussion of geologic hazards including shallow gas, gas hydrates, bottom instability, and ice scour zones.

In evaluating the lessee's plans for responding to emergency situations, the USGS will consider the equipment available at Prudhoe Bay, pre-planned equipment storage at strategic points on the North Slope, and strategies for moving equipment from southern Alaska to the drilling site. The lessee's

consideration of the effects of unfavorable weather conditions on equipment and material transporation schemes will also be evaluated by the USGS.

2. Drilling From Fixed Platforms and Mobile Drilling Units. Proposed Arctic OCS Order No. 2 requires that all fixed platforms and mobile drilling units proposed for use on the Arctic OCS be designed, constructed, and equipped to operate safely under Arctic conditions. Drilling platforms constructed on Beaufort Sea OCS leases must be specifically designed to withstand the hostile Arctic environment, including tremendous forces that ice can exert on these structures. Prior to commencing oil and gas operations, the proposed Order provides that all fixed drilling platforms and mobile drilling units be made available for a complete inspection by the USGS District Supervisor.

The proposed Order requires lessees to conduct shallow geologic hazards surveys or other surveys as required by the USGS District Supervisor and submit a shallow geologic hazards report for each proposed drilling location. The USGS will use this information to verify that lessees do not propose to place drilling structures on sites where hazards such as surface faults, shallow gas deposits, obstructions, or unstable bottoms are present. These requirements ensure that the drilling unit will be located at a site that is free from detectable hazards that threaten human safety or the environment.

Proposed Arctic OCS Order No. 2 requires lessees to include in Exploration Plans and Development and Production Plans for Arctic OCS leases a specific system to monitor, record, and report environmental data relating to ice, oceanographic, meteorological, and performance data. The recording and reporting of site specific data on environmental conditions are necessary to ensure the continued safe day-to-day conduct of the Arctic drilling operations. The information developed is also necessary to assure the use of Best Available and Safest Technologies (BAST) in the design, fabrication, and placement of exploration and subsequent development and production facilities. When an adequate information base has been established for the lease sale area, some of these environmental data reporting requirements may be modified or discontinued if they become unnecessary.

The proposed Order also requires the lessee to provide evidence in the Exploration Plan and Development and Production Plan that the drilling unit proposed for use can safely perform the planned drilling activities and that the drilling equipment, drilling safety systems, and other associated safety, fire-fighting, and pollution-prevention equipment and materials are suitable for use under subfreezing operating conditions. This evidence must include plans, design drawings, and diagrams showing how drilling equipment and drilling safety systems will be protected from subfreezing conditions or include manufacturer's certifications that equipment and safety systems will operate under subfreezing conditions. In addition to furnishing evidence of the operational capability of the drilling units and associated equipment, each drilling unit will undergo a detailed preoperational inspection by the USGS to verify the drilling unit's capability to operate under Arctic conditions.

Proposed Arctic OCS Order No. 2 requires lessees to submit a discussion of the anticipated normal and extreme environmental and operational conditions that may be encountered during the execution of the activities proposed in the Exploration Plan and Development and Production Plan. Plans must indicate how these conditions impact the selection of equipment and materials which the lessee proposes to use.

The proposed Order also specifies that, in the Arctic OCS, a lessee's Application for Permit to Drill from a mobile offshore drilling unit must include a current American Bureau of Shipping Classification, U.S. Coast Guard Certificate of Inspection, or other appropriate classification, and a description of the mobile drilling unit's operational limitations.

Proposed Arctic OCS Order No. 2 provides that applications for installation of fixed drilling platforms or structures, including artificial islands, be submitted to the USGS in accordance with proposed Arctic OCS Order No. 8. Jackup type mobile drilling units which have their jacking equipment removed or have been otherwise immobilized will be considered fixed drilling platforms, and applications to install such platforms must also be submitted in accordance with proposed Arctic OCS Order No. 8.

3. Well Casing and Cementing. Proposed Arctic OCS Order No. 2 requires that wells be cased and cemented to support unconsolidated sediments and to prevent communication of fluids between the formations penetrated. The proposed Order further provides that, if there are indications of inadequate cementing, the lessee must take remedial actions to correct the apparent inadequacies. Proper well casing design and casing setting depths are determined by considering various engineering and geologic factors, including the presence or absence of hydrocarbons, other potential hazards, and water depths. Each casing string must be placed and cemented prior to drilling below each specified casing setting depth. The USGS District Supervisor may approve alternate casing setting depths for those wells which may encounter abnormal formation pressure conditions.

For wells drilled in the Arctic OCS, proposed Order No. 2 requires that all annuli within permafrost zones not protected by cement be filled with a liquid having a freezing point below the minimum permafrost temperature to prevent internal freezeback. Freezeback is a process in which thawed permafrost or water-based solid inside or outside the casing refreezes and generates excessive pressures on the casing that may either burst (internal freezeback) or collapse (external freezeback) the casing. Cement used to bond casing through permafrost zones must be formulated so that it sets before freezing and has a low heat of hydration. In addition to permafrost, the casing design criteria for all wells must include consideration of formation fracture gradients, formation pressure, anticipated surface pressure, and casing setting depths.

Specifically, proposed Arctic OCS Order No. 2 requires that, in areas containing permafrost, the conductor or surface casing be set and cemented after drilling a maximum of 150 meters (492 ft.) below the base of the permafrost. In addition, lessees will be required to cement the conductor casing with a quantity of cement sufficient to fill the calculated annular space between the casing and the wellbore to the top of the casing.

Implementation of the casing and cementing programs prescribed in proposed Arctic OCS Order No. 2 will mitigate the possibility of freshwater zone contamination, lost production, or lost well control which may result in the release of oil and/or gas into the environment and threaten human health and safety.

4. Directional Surveys. Proposed Arctic OCS Order No. 2 requires lessees to obtain directional surveys on all wells. These surveys must be filed with the USGS District Supervisor. They indicate whether the well is drilled in accordance with the planned course of the wellbore. These surveys also provide the information required to locate the "target" of a relief well in the event one or more such wells is needed to control a blowout.

In the Arctic OCS, lessees will be required to obtain directional surveys on vertical wells at intervals that do not exceed 150 meters (492 ft.) during the normal course of drilling operations. This survey interval also applies to directional wells except that directional surveys must be obtained at intervals not exceeding 30 meters (100 ft.) in all planned angle-change portions of the wellbore.

In order to conduct drilling operations that encounter the fewest drilling problems and that are the most economical, lessees normally try to keep the wellbore of exploratory wells close to vertical. The likelihood that the wellbore will deviate from vertical is governed by several factors, such as type and angle of dip of the formations penetrated, pressure on the drilling bit, and rate of drilling.

The proposed requirement to obtain directional surveys is especially important from the environmental point of view. Directional surveys are necessary to keep track of the location of the wellbore. It is also necessary to know the course of a wellbore to ensure that the bottom of the hole stays within the confines of the lease being drilled. Finally, in areas where several wells will be drilled in close proximity, it is important to know the location of the wellbore for each well drilled to avoid accidental intersection of a well being drilled with a previously drilled well.

5. Blowout-Preventer Equipment Requirements. When primary control of the well has been lost due to insufficient drilling mud hydrostatic pressure, it becomes necessary to seal the well by some means in order to prevent an uncontrolled flow or blowout of formation gases or fluids. The equipment which stops the flow and seals the well is called the blowout preventer. It consists of various ram and annular preventer mechanisms attached to the surface casing.

Proposed Arctic OCS Order No. 2 provides that blowout preventers and related pressure control equipment be installed, used, and tested in a manner that ensures positive well control. A specific number of these preventers must be used in drilling every well, and they must be equipped with dual control systems. Further, the proposed Order requires that blowout preventers and related control equipment be adequately protected to ensure reliable operations under Arctic conditions. Special requirements are included for operations conducted from floating drilling platforms which necessitates the placement of the blowout-preventer stack on the sea floor.

Some areas of the Beaufort Sea may be subject to the phenomenon of ice scouring. This phenomenon occurs when moving ice masses come into contact with bottom sediments creating linear depressions in the sea floor. This may necessitate the excavation of depressions in the sea floor (i.e., "glory holes") deep enough to accommodate the placement of blowout-preventer equipment to protect the equipment from possible damage caused by moving ice.

6. Mud Program. The proposed Arctic OCS Order No. 2 outlines specific requirements relating to the use and testing of drilling muds. Drilling muds have a number of critical functions. One of the most important of these functions is to act as the first line of defense against a blowout. During drilling, the mud density is adjusted by adding weighting materials so that the pressure of the column of drilling fluid in the wellbore exceeds the pressure of fluids in penetrated formations. This prevents fluids contained in high pressure formations encountered by the wellbore from escaping into the wellbore. The proposed Order requires that drilling mud programs be approved by the USGS District Supervisor prior to commencement of drilling activities.

Proposed Arctic OCS Order No. 2 further provides that mud temperatures be controlled when drilling through permafrost or associated gas hydrates. Control of mud temperatures has proven to be an effective tool to minimize the thawing of permafrost and decomposition of gas hydrates. The effects of the thawing and refreezing of permafrost were discussed in part II.B.3. A rapid decomposition of gas hydrates casued by a drilling fluid that is too warm would cause a blowout by effectively reducing the drilling mud weight as a result of the influx of gas from the decomposing gas hydrates into the wellbore.

The proposed Order requires the lessee to include, with his Application for Permit to Drill, a tabulation of well depth versus minimum quantities of mud material, including weighting material, that is to be maintained at the drill site to assure well control. When the mud quantity required exceeds the storage capacity of the drilling facility, the lessee must maintain the maximum inventories of mud materials at the site and must obtain USGS approval of the lessee's plans to resupply mud inventories in the event of an emergency. The plan must include an estimate of the time required for delivery of the mud supplies. Daily inventories of mud materials, including weighting materials, must be recorded and maintained at the well site. Drilling operations must be suspended in the absence of minimum quantities of mud material specified in the depth vs. mud quantity table or as modified in the plan approved by the USGS District Supervisor.

Proposed Arctic OCS Order No. 2 directs all enclosed mud-handling areas where dangerous concentrations of combustible gases may accumulate be equipped with gas monitors and an adequate forced ventilation system. Enclosed areas must be:

(a) Ventilated with high-capacity, mechanical ventilation systems capable of changing the air once every 2 minutes. These systems must be automatically activated on signal from a gas detector indicating the presence of gas.

(b) Maintained at a negative pressure relative to the surrounding areas where discharge from an adjacent enclosed area may be hazardous. The negative pressure areas must be protected with a pressure sensitive alarm.

(c) Equipped with gas detectors and alarms that are operative at all times.

(d) Equipped with electrical equipment of the "explosive proof" type. Alternatively, the equipment may be pressurized to prevent the ingress of explosive gases, and where air is used for pressurizing, the air intake must be located outside of, and as far as practicable from, hazardous areas.

The requirements of this section of proposed Arctic OCS Order No. 2 were specifically included for Arctic operations because mud handling areas are enclosed for protection against the cold Arctic environment. Such areas are subject to the accumulation of dangerous concentrations of combustible gases that may be carried from the wellbore to the surface in the drilling fluid. These special Arctic requirements ensure: (1) Proper ventilation, monitoring and detection of combustible gases such as natural gas or hydrogen sulfide, (2) the prevention of the escape of hazardous gases into the other areas of the drilling facility, and (3) the use of explosion proof electrical equipment.

7. Supervision, Surveillance, and Training. Proposed Arctic OCS Order No. 2 requires representatives of the lessee (operators) to provide onsite supervision of drilling operations on a 24-hour basis. A member of the drilling crew or the toolpusher (supervisor of drilling operations) must maintain surveillance of the rig floor continuously from the time drilling operations commence until the well is secured with blowout preventers, bridge plugs, storm packers, or cement plugs. The proposed Order further directs that lessee's

personnel and the drilling contractor's personnel be trained and qualified in state-of-the-art methods of well control and that records of the training be kept at the well site. Specific well-control training requirements are outlined in U.S. Geological Survey OCS Standard, "Training and Qualifications of Personnel in Well-Control Equipment and Techniques for Drilling on Offshore Locations," No. T 1 (GSS–OCS–T 1). The training requirements are intended to minimized the potential for well blowouts caused by human error. Formal training is supplemented with weekly blowout-prevention drills for all rig personnel as provided in the proposed Order. Drills are to be frequently witnessed by USGS representatives and must be recorded in the driller's log.

8. Hydrogen Sulfide. Proposed Arctic OCS Order No. 2 provides that lessees must follow certain procedures when drilling operations penetrate reservoirs known or expected to contain hydrogen sulfide (H_2S) or in areas where the presence of H_2S is unknown. These procedures are included in U.S. Geological Survey OCS Standard, "Safety Requirements for Drilling Operations in Hydrogen Sulfide Environments," No. 1 (GSS–OCS–T 1). Implementation of this set of standard operating procedures would assure proper safety precautions and crew training should highly toxic H_2S be encountered.

9. Critical Operations and Curtailment Plans. Some operations performed during drilling are considered more critical than others with respect to well control, the prevention of fires, explosions, oil spills, and other unanticipated discharges and emissions. Therefore, lessees must file, as a part of their Exploration Plans and Development and Production Plans, a Critical Operations and Curtailment Plan. The Critical Operations and Curtailment Plan will be reviewed and approved by the USGS as part of the Exploration Plan and Development and Production Plan review and approval process prior to commencing drilling activities.

Proposed Arctic OCS Order No. 2 requires the lessee to list and describe the critical operations that are likely to be conducted on the lease, Before exceeding the operational limits of an approved plan, the lessee's representative must curtail operations and notify the USGS District Supervisor. Under this scheme, the USGS District Supervisor will provide specific approval for proposed actions in advance of the conduct of the critical operation, or he will dispatch personnel to the drilling site to witness and provide approval for actions taken during the critical operation. This part of proposed Order No. 2 provides for additional review of drilling operations that may endanger human safety, the drilling operations, or the environment.

Proposed Order No. 2 requires that the following information be included in the Critical Operations and Curtailment Plan:

(a) A list or description of the critical drilling operations that will be, or are likely to be, conducted on the lease, This list, or description, must specify the operations that are to be commenced, ceased, limited, or that are not to be commenced, ceased, or limited, under given circumstances or conditions. This list must include operations such as:

(1) Drilling in close proximity to another well.

(2) Drill-stem testing (i.e., testing the formation).

(3) Running and cementing casing.

(4) Cutting and recovering casing.

(5) Logging or wireline (i.e., a line used to run survey instruments or other tools into a well) operations.

(6) Well-completion operations.

(7) Moving the drilling vessel off location in an emergency, repositioning the vessel on location, and reestablishing entry into the well.

(b) A list or description of circumstances or conditions under which critical operations must be curtailed. This list or description must be developed from all the factors and conditions relating to the conduct of operations on the lease and must consider, but not necessarily be limited to:

(1) Whether the drilling operations are to be conducted from mobile or fixed platforms.

(2) The availability and capability of containment and cleanup equipment and spill-control system response time.

(3) Abnormal or unusual conditions expected to be encountered during drilling operations.

(4) Known or anticipated meteorological, oceanographic, and ice conditions.

(5) Availability or personnel and equipment for particular operations to be conducted.

(6) Other factors peculiar to the particular lease under consideration.

(c) The name of the person who is in charge of overall drilling operations.

Many critical operations are conducted in the daylight to provide for safer surveillance of monitoring equipment and operations. To compensate for the extended hours of darkness during the Arctic winter, lessees are expected to ensure that adequate lighting is available at the time critical operations are carried out.

Ice loading and ice override are environmental conditions which affect critical operations and may threaten the structural integrity of the drilling platform. The platform design anticipates ice build up and override. Ice forces, or override, become a threat to drilling operations when the exceed the design criteria of the platform. Continuous monitoring of these potential hazards as provided by proposed Article OCS Order No. 2 will alert operators when ice loads or ice override may exceed design criteria and necessitate the curtailment of critical operations.

10. Field Drilling Rules. Finally, proposed Arctic OCS Order No. 2 provides that when sufficient geological and engineering information has been developed as a result of experience gained during a number of drilling operations, the lessee may request, or the USGS Deputy Conservation Manager may require, the establishment of field drilling rules. After field drilling rules have been established by the USGS Deputy Conservation Manager, development wells must be drilled in accordance with these rules and the requirements of proposed Arctic OCS Order No. 2 that are not affected by such rules.

Summary of the environmental effects of proposed Artic OCS Order No. 2.— Issusing proposed Arctic OCS Order No. 2 would have no direct environmental effects except the potential economic impacts experienced by the lessee to comply with the requirements. It is expected, however, that many of the requirements contained in proposed Arctic OCS Order No. 2 would be implemented voluntarily in one fashion or another because of the costly consequences of accidents and loss of well control. It is conceivable that a lessee may willfully ignore requirements established for safety and environmental protection. However, the USGS expects that willfull violations would be rare. Therefore, the actual additional economic burden of the industry is expected to be minimal. Implementation of the provisions of proposed Arctic OCS Order No. 2 by all lessees in the Artic will provide mitigation against the potential for accidents and unnecessary damage to the physical environment.

C. Proposed Arctic OCS Order No. 3. Plugging and Abandonment of Wells

Proposed Arctic OCS Order No. 3 establishes control of the plugging and abandonment of wells which have been drilled for oil and gas. For permanent abandonment of cased portions of wells,

cement plugs must be spaced to isolate fresh water, oil, or gas zones. Plugs are required at the bottom of the deepest casing where an uncased hole exists. Plugs or cement retainers must be placed 30 meters (100 ft.) above and 30 meter (100 ft.) below any perforated interval of the wellbore used for production of oil and gas. A "surface" plug 45 meters (150 ft.) long must be placed with the top of the plug 45 meters (150 ft.) or less below the ocean floor. A pressure or weight test must be made on top of the first plug below the surface plug. The space between plugs must be filled with muds or other fluids of sufficient density to exceed the greatest formation pressure encountered in drilling the interval.

When a well is temporarily abandoned, that is, when the lessee intends to reenter the well at a later time, proposed Arctic OCS Order No. 3 provides that a bridge plug or a cement plug be set at the base of the deepest casing string. If a cement plug is set, it is not necessary for the cement plug to extend below the casing shoe into the open hole. Also, the lessee must set a retrievable or permanent bridge plug, or a cement plug at least 30 meters (98 ft.) in length into the casing between 5 and 60 meters (16 and 197 ft.) below the ocean floor. For temporary abandonments, placement of a surface plug is not required.

Proposed Arctic OCS Order No. 3 specifies that the space between the plugs must be filled with a fluid of sufficient density to exceed the greatest formation pressure encountered while drilling the interval. Further, the proposed Order provides that fluid left in the well opposite permafrost zones at abandonment must have a freezing point below the temperature of the permafrost zone and must be treated to minimize corrosion of the casing. The proposed Order also provides that the lessee obtain approval of the USGS District Supervisor prior to leaving oil base fluids in the hole. Implementation of these requirements will minimize the possibility of casing damage from internal freezeback or casing corrosion that may occur subsequent to abandonment.

Proposed Arctic OCS Order No. 3 requires that cement used as plugs through permafrost be formulated to set before freezing and to have a low heat of hydration. The use of cements with these properties has proven successful when cementing through permafrost zones in the Arctic. Permitting the use of conventional cement, which has a high heat of hydration, may cause an unduly large amount of thawing of permafrost. The refreezing of the surrounding formation has been known to cause damage to the casing string (e.g., freezeback). Conventional cement may also freeze before setting, thus rendering plugs ineffective. Either situation could lead to leakage of formation fluids into the marine environment.

Finally, Proposed Arctic OCS Order No. 3 provides that the casing and piling on the sea floor must be removed to a depth below the ocean floor as approved by the USGS District Supervisor. Implementation of the requirements that the sea floor above each final abandonment must be cleared will minimize hazards to navigation and fishery interests.

Proposed Arctic OCS Order No.4 Determination of Well Producibility

The main purpose of proposed Arctic OCS Order No. 4 is to protect the United State' interest in its royalty share of OCS oil and gas. It also serves other administrative purposes. (See Solicitor's Opinion M-36925 for details.)

This proposed Order establishes a procedure for determining whether the lessee has one well on his lease which is "producible," that is, the well is capable of producing oil or gas in paying quantities. The principal form of evidence of producibility will be a "production test" for oil or a "deliverability test" for gas. During these tests, which usually last 2 to 4 hours, a lessee will burn off the produced oil or gas in a hot flame. This practice may produce some air pollution. The USGS has the responsibility for controlling air pollution related to oil and gas exploration and production on the OCS with its regulation 30 CFR 250.57 (1980).

Implementation of the procedures proposed in Arctic OCS Order No. 4 will not significantly affect the environment.

E. Proposed Arctic OCS Order No. 5. Production Safety Systems

Proposed Arctic OCS Order No. 5 sets forth requirements for the design, testing, installation, and operation of production safety systems in accordance with Section 21 of the OCS Lands Act Amendments. This proposed Order requires the use of BAST. Under BAST, the lessee is encouraged to continue the development of improved safety-system technology. As research and product improvement result in increased effectiveness of existing safety equipment or the development of new equipment systems, such equipment may be used. If such technologies provide a significant, cost-effective, incremental benefit to safety, health, or the environment, they will be required to be used if determined to be BAST. Conformance to the standards, codes, and practices referenced in the proposed Arctic OCS Order No. 5 will be considered by the USGS to be the application of BAST. Specific equipment, procedures, or systems not covered by standards, codes, or practices will be analyzed by the USGS to determine if the failure of such equipment, procedures, or systems not covered by standards, codes, and practices would have a significant effect on safety, human health, or the environment. If such equipment, procedures, or systems are identified, and until specific performance standards are developed or endorsed by the USGS, the lessee must submit such information necessary to indicate that the proposed activity represents the use of BAST. Lessees must also describe and compare the alternatives considered to the specific equipment or procedures proposed for use and provide rationale why one alternative technology was selected in place of another. This analysis must include a discussion of the cost involved in the use of such technology and the incremental benefits gained.

Proposed Arctic OCS Order No. 5 requires that safety and pollution-prevention equipment conform to the following quality assurance standards or subsequent revisions that the Chief, Conservation Division, USGS, approves for use:

a. American National Standards Institute/American Society of Mechanical Engineers Standard "Quality Assurance and Certification of Safety and Pollution-Prevention Equipment Used in Offshore Oil and Gas Operations," (ANSI/ASME-SPPE-1) with all addenda.

b. American National Standards Institute/American Society of Mechanical Engineers Standard "Accreditation of Testing Laboratories for Safety and Pollution-Prevention Equipment Used in Offshore Oil and Gas Operations," (ANSI/ASME-SPPE-2) with all addenda.

The proposed Order provides that all well tubing installations open to hydrocarbon bearing zones be equipped with a subsurface-safety device such as surface-controlled subsurface-safety valve, injection valve, and a tubing plug or a tubular/annular subsurface-safety device unless, after application and justification, the well is determine to be incapable of flowing. In the Arctic, the lessee must furnish evidence that the surface-controlled subsurface-safety devices and related equipment are capable of normal operation under subfreezing conditions. The surface

controls may be located at a remote location.

Proposed Arctic OCS Order No. 5 also provides that in permafrost areas the setting depth of the subsurface-safety device must be approved by the USGS District Supervisor on a case-by-case basis. Until a subsurface-safety device is installed in a well that is open to flow from a hydrocarbon-bearing zone, the well must be attended in the immediate vicinity of the well so that immediate emergency actions may be taken, if necessary.

In permafrost free areas, the subsurface-safety device must be installed at a depth of 30 meters (100 ft.) or more below the ocean floor. In permafrost areas, the setting depth of the subsurface-safety valve must be approved by the USGS on a case-by-case basis. This requirement recognizes that permafrost may be present as deep as 550 to 610 meters (1,800 to 2,000 ft.). Upon drilling the well, the operator may find discontinuous lenses of permafrost at a depth that can only be determined after the well is completed. In this case, he must obtain approval of a setting depth of the device so that it can be set below permafrost. This will preclude the permafrost from adversely affecting the operational capability of the device.

Proposed Arctic OCS Order No. 5 prescribes that surface and subsurface-safety valves conform to standards and specifications approved for use by the USGS at the time of installation. The proposed Order further provides for the testing or checking of these devices at specified time intervals. If a device does not operate correctly, it must be promptly removed and a properly operating device must be put in place and tested. Additionally, all tubing installations open to hydrocarbon-bearing zones and capable of flowing in which the subsurface-safety device has been removed must be identified with a sign placed on the wellhead stating that the subsurface-safety device has been removed. A subsurface-safety device must be available for each well on the platform. In the event of an emergency that delays timely installation of a subsurface-safety device, such as an impending storm, this device must be properly installed as soon as possible with due consideration to personnel safety.

The subsurface-safety valves described in the proposed Arctic OCS Order No. 5 serve as a mechanism for automatically stopping the flow from a well below the ocean floor in the event of an accident or natural event which destroys or threatens to destroy surface well-control equipment. The reliability of such devices is maximized through regular testing. Implementing these requirements will minimize the probability of a blowout from a producing well.

The proposed Order also requires that all production facilities, including separators, treaters, compressors, headers, and flowlines, be designed, installed, and maintained in a manner which will facilitate an efficient, safe, and pollution-free operation.

Proposed Arctic OCS Order No. 5 further provides that the lessee furnish, in the Development and Production Plan, evidence that the surface-safety systems and related equipment are capable of normal operation under subfreezing conditions and that all equipment and operating procedures take into account floating ice, icing, and other hazardous environmental conditions that may occur in the Arctic.

Proposed Arctic OCS Order No. 5 would establish requirements for the design, installation, operation, and testing of surface-safety systems for new platform production facilities and specifications for wellhead surface safety valves. Prior to the installation of platform equipment, the proposed Order requires that lessees submit to the USGS for design approval information related to equipment, piping, fire-fighting, electrical-system, gas-detection, and safety-shutdown systems. A Safety Analysis Function Evaluation Chart must also be submitted. This chart identifies functions related to sensing devices, shutdown devices, and emergency-support systems. The chart also provides a means of verifying the design logic of the basic safety system.

Proposed Arctic OCS Order No. 5 would establish safety and pollution-control requirements for the operation of pressure vessels, flowlines, pressure sensors, emergency shutdown systems, engine exhaust systems, glycol dehydration units, gas compressors, fire-fighting systems, fire and gas detection systems, electrical equipment, and erosion detection and measurement equipment. Adherence to these requirements would minimize the probability of failures of this equipment and, thus, help to insure safe operations. The proposed Order also prohibits bypassing or blocking out of safety devices unless they are temporarily out of service for startup, maintenance, or testing purposes. Bypassed or blocked out functions must be monitored continuously.

Whenever certain activities which could increase the probability of the occurrence of an undesirable event are conducted simultaneously with production operations, a "General Plan for Conducting Simultaneous Operations" must be filed with the USGS District Supervisor for approval. These activities include drilling, workover, wireline, pumpdown, and major construction operations. The intent of this requirement is to permit USGS review of the conduct, control, and coordination of the proposed operations to determine whether the operations can be conducted simultaneously without significantly increasing the risk of accidents or spills.

Prior to conducting welding or burning activities, proposed Arctic OCS Order No. 5 requires lessees to submit a plan describing personnel requirements and designating safe welding areas. Procedures for establishing safe welding areas and for conducting operations outside such safe areas are specified in the proposed Order. Implementation of these requirements would reduce the potential for explosions that may result in injuries and/or unanticipated pollution.

The proposed Order provides that all safety-system devices be tested by the lessee at specified intervals or more frequently if operating conditions warrant. Proposed Arctic OCS Order No. 5 requires lessees to maintain records for a minimum period of 5 years for each subsurface-safety device installed. These records must be available for review by any authorized representative of the USGS. The records must show the present status and history of each device, including dates and details of installation, inspection, testing, repairing, adjustments, and reinstallation. To mitigate the potential for accidents resulting from human error, all personnel engaged in installing, inspecting, testing, and maintaining safety devices must receive the specific training outlined in proposed Arctic OCS Order No. 5.

In order to enhance the safety of operations on the OCS, the USGS has established the Failure and Inventory Reporting System. This program applies to all offshore structures, including satellites and jackets, which produce or process hydrocarbons and includes the attendant portions of hydrocarbon pipelines when they are physically located on the structure. When the devices specified are used as a part of the production safety and pollution-prevention system, proposed Arctic OCS Order No. 5 requires the lessee to submit an initial inventory of the safety and pollution-prevention devices, update the inventory periodically, and report all device failures that occur.

Finally, proposed Arctic OCS Order No. 5 sets forth requirements for employee orientation and motivation programs concerned with safety and

pollution prevention in offshore oil and gas operations.

Summary of the environmental effects of proposed Arctic OCS Order No. 5. Issuing proposed Arctic OCS Order No. 5 would have no direct adverse environmental effects except for the economic impacts experienced by the lessee who implements the provisions of the proposed Order. As explained in the summary discussion of proposed Arctic OCS Order No. 2, it is expected that the experienced lessee is likely to adopt procedures and practices similar to those proposed in Arctic OCS Order No. 5 because of the costly consequences of accidents. Therefore, the added economic burden lessees would be subjected to in implementing the proposed Order provisions is likely to be small. Implementing all of the provisions of the proposed Arctic OCS Order No. 5 would mitigate against the potential for production-related hazards to human health and safety and unnecessary damage to the physical environment.

F. Proposed Arctic OCS Order No. 7 Pollution Prevention and Control

Proposed Arctic OCS Order No. 7 addresses prevention of pollution of the marine environment and provides rules for disposing of waste materials generated as a result of offshore operations in a manner that will not "adversely affect the public health, life, property, aquatic life, wildlife, recreation, navigation, commercial fishing, or other uses of the ocean."

1. Pollution Prevention. (a) *Drilling Mud Components.* The lessee or his representative must submit a list of drilling mud constituents, additives, and concentrations expected to be used. This provides the USGS a means to evaluate or require alteration of the use and/or disposal of specific drilling mud components which might be harmful to the environment. The disposal of drilling mud and drill cuttings, sand, and other well solids including those containing oil is subject to the Environmental Protection Agency's permitting procedures, pursuant to the Federal Water Pollution Control Act, as amended. The lessee must obtain approval of the method of disposing drilling mud and cuttings into the ocean from the USGS District Supervisor. Each request will be reviewed on a case-by-case basis.

(b) *Curbs, Gutters, and Drains for Fixed Platforms or Structures and Mobile Drilling Units.* Proposed Arctic OCS Order No. 7 requires that curbs, gutters, drip pans, and drains be installed in deck areas in a manner necessary to collect all contaminants that are to be piped to a properly designed, operated, and maintained sump system. This sump system must automatically maintain a level sufficient to prevent discharge of oil into OCS waters. Compliance with these requirements virtually eliminates the potential for adverse impacts of drainage from fixed platforms, fixed structures, or mobile drilling units on biological communities, water quality, and commercial fisheries. Implementation of these provisions will also mitigate impacts to the coastline adjacent to the oil and gas activities that could be affected by oil, fuel, chemical residues, or other toxic substances that reach the shore.

On artificial islands constructed in the Arctic, all vessels containing hydrocarbons must be placed inside an impervious berm. The volume enclosed by the berm must be in the excess of the volume of vessels containing hydrocarbons. In addition, the rig mat must be made impervious and all drainage ditches must be directed away from the drilling rig into an impervious sump. Proposed Arctic OCS Orders Nos. 2 and 5, which require that materials suitable for subfreezing conditions and conforming to BAST be used, will ensure that proper lining materials are used to make berms impervious. Implementation of these requirements will ensure that hydrocarbons intended to be used or stored on artificial islands will not be inadvertently discharged into the Arctic environment.

(c) *Solid Material Disposed (Equipment).* The disposal of equipment into the sea is prohibited except under emergency conditions. The location and description of any equipment so disposed of must be reported to the USGS District Supervisor. This requirement is intended to mitigate the potential for interference with navigation and commercial fishing operations.

2. Pollution-Control Equipment and Materials, and Oil Spill Contingency Plans. (a) *Equipment and Materials.* Proposed Arctic OCS Order No. 7 provides that the lessee must submit a description of procedures, personnel, and equipment that will be used in reporting, cleanup, and prevention of the spread of any pollution resulting from an oil spill which might occur during the conduct of exploration or development activities. Pollution-control equipment and materials must be maintained by, or must be available to, each lessee at an offshore location and at an approved onshore location. The equipment and materials must be inspected periodically and maintained in a state of readiness for use. Use of chemical agents or additives for treating of oil spills requires the approval of the USGS Deputy Conservation Manager. The use of equipment and materials not suitable for the types of conditions expected to be experienced in the area of proposed activities will not be permitted when the use of such equipment or materials could result in unnecessary hazards to the safety of personnel or risks to marine, coastal, or human environment. Proposed Arctic OCS Order No. 7 also sets forth requirements for rigorous pollution inspection of manned and unmanned facilities on a daily basis or at intervals prescribed by the USGS Deputy Conservation Manager. The proposed Order would also establish requirements for pollution reports for all oil spills and procedures for notification of proper authorities.

(b) *Requirement for Submission of an Oil Spill Contingency Plan.* Proposed Arctic OCS Order No. 7 requires lessees to submit an Oil Spill Contingency Plan containing descriptions of procedures, personnel, and equipment that will be used to conduct oil spill containment and clean-up activities.

The proposed Order provides that the plan must include: 1. Provisions to assure that full resource capability is known and can be committed during an oil spill. This includes the identification and inventory of applicable equipment, materials, and supplies that are available locally and regionally, both committed and uncommitted, and the time required for deployment of the equipment.

2. Provisions for varying degrees of response effort depending on the severity of the oil spill.

3. Provisions for identifying and protecting areas of special biological sensitivity.

4. Procedures for ensuring the early detection and timely notification of an oil spill, including a current list of names, telephone numbers, and addresses of responsible persons and alternates on call to receive notification of an oil spill, and the names, telephone numbers, and addresses of regulatory organizations and agencies to be notified when an oil spill is discovered.

5. Provisions for well-defined and specific actions to be taken after discovery and notification of an oil spill, including:

(a) Identification of an oil spill response operating team consisting of trained, prepared, and available personnel.

(b) Predesignation of an individual as an oil spill response coordinator who is charged with the responsibility and is delegated commensurate authority for

directing and coordinating oil spill response operations.

(c) A preplanned location for an oil spill response operations center and a reliable communications system for directing the overall response operations.

(d) Provisions for disposal of recovered spill materials.

Thirteen oil companies have formed a cooperative oil spill contingency organization (the Alaska Beaufort Sea Oilspill Response Body (ABSORB)) to coordinate oil spill contingency operations for the Beaufort Sea. ABSORB has developed a master Oil Spill Contingency Plan for the Beaufort Sea lease sale area. This plan addresses the equipment availability, both at Prudhoe Bay and at ABSORB facilities on the North Slope, and logistics for carrying out contingency support operations from other locations within the State. The master plan detains state-of-the-art oil spill contingency techniques for Arctic regions, as well as potential untested techniques and equipment. The plan predicts the fates of oil spilled in the Arctic environment. (e.g., absorbed in snow, suspended in water column, mixed with bottom sediments and bioaccumulations) to improve the understanding of the types of oil spill contingency equipment needed to respond to an oil spill. The specific details contained in an Oil Spill Contingency Plan will depend on the location of the well, the type of drilling. structure proposed for use, and the time of year the well will be drilled. The site specific contingency plan submitted by the lessee for a particular Exploration Plan or Development and Production Plan will incorporate the comprehensive master plan developed by ABSORB.

3. Drills and Training. Proposed Arctic OCS Order No. 7 provides that drills and training classes for familiarization of personnel with pollution-control equipment and operational procedures be conducted on a schedule approved by the USGS Deputy Conservation Manager. The drills must be realistic and include the deployment of equipment. When drill performance and results are deemed inadequate by the USGS, the lessees may be required to increase the frequency and/or change the location of the drills until satisfactory results are achieved. The lessees must ensure that training for familiarization of personnel with pollution-control equipment and operational procedures is provided to the members of the oil spill response operating team. The supervisory personnel responsible for directing the oil spill response operations must receive oil spill control instruction suitable for all seasons during which the operations will be carried out.

Immediate corrective action must be taken in all cases when pollution has occurred. Corrective action taken under the lessee's Oil Spill Contingency Plan is subject to modification by the USGS Deputy Conservation Manager. The USGS has the primary authority to require corrective measures to abate pollution at the source. Implementation of these provisions would minimize the potential for pollution from offshore mobile drilling units and structures through personnel instruction.

4. Spill Control and Removal. Although the emphasis of the other proposed Arctic OCS Orders is on the prevention of oil spills, proposed Arctic OCS Order No. 7 recognizes that accidental spills may occur. It also recognizes that it is not technically feasible to completely control and remove oil that may be accidentally discharged. Implementing the provisions of this proposed Order will ensure that the lessees have ready access to the best practical pollution-control equipment for the area and for the prevailing Arctic conditions, and that personnel are trained to use the equipment effectively. The lessee's Oil Spill Contingency Plan must provide sufficient flexibility to permit the use of different spill control strategies for different environmental conditions. This will provide for the use of mechanical and/or chemical pollution-control and cleanup measuress that are best suited to the prevailing environmental condtions and will maximize protection of biological communities, shoreline resources, and commercial fishing interests.

G. Proposed Arctic OCS Order No. 8. Platforms and Structures

The provisions of proposed Arctic OCS order No. 8 apply to all new platforms and structures proposed for use in the Arctic and all major modifications and major repairs to platforms and structures. The proposed Order provides that all new platforms or other structures, or major modification to platforms or other structures, be subject to review under the requirements of the Platform Verification Program. This program was designed to verify the structural integrity of platforms and structures proposed for use on the OCS. The specific requirements for verifying structural integrity are contained in the document entitled "Requirements for Verifying the Structural Integrity of OCS Platforms" published by the USGS.

Proposed Arctic OCS Order No. 8 provides for third party verification of all plans for the design, fabrication, and installation of offshore structures. All structural plans must be certified by a registered professional structural engineer or a civil engineer specializing in structural design. Under this program, the lessee retains a qualified approved and certified third party verification agent (CVA) to examine structural integrity of platforms or artificial islands. Plans for design, fabrication, and installation of an offshore structure and the CVA's reports of his examination of these plans are submitted by the CVA to the USGS Deputy Conservation Manager, who forwards them to the USGS Platform Verification Section for analysis. This section reports their recommendations back to the USGS Deputy Conservation Manager who has the final authority to approve or disapprove use of the platform. In the event of unsatisfactory findings, the lessee is responsible for making necessary corrections and providing subsequent reevaluations until prescribed verifications objectives are obtained.

Only those CVA's who have submitted their qualifications to the USGS for approval and who have been placed on the USGS listing of approved CVA's may verify structural integrity of platforms or structures proposed by lessees for use on the OCS

Proposed Arctic OCS Order No. 8 requires the lessee to submit a Design Plan and a CVA's Final Design Report that includes design documentation, general platform information, environmental and loading information, foundation and structural information, and the design verification. Also, under the proposed Order provisions, proposals to use new platforms or other structures or to modify platforms or structures which are subject to review under the requirements of the Platform Verification Program, must be accompanied by a Fabrication Verification Plan. Subsequent to the submittal of the CVA's Fabrication Verification Report, the lessee must also submit an Installation Verification Plan and a CVA's Final Installation Report.

Finally, proposed Arctic OCS Order No. 8 requires that, for the functional life of the platform or other structure that is subject to the provisions of the proposed Order, the lessee compile, retain, and make available to the USGS for review the as-built structural drawings, the design assumptions and analysis, and a summary of the Non-Destructive Examinations (NDE) records.

In summary, proposed Arctic OCS Order No. 8 provides technical review of platform and structure design, fabrication, and installation.

Implementation of the provisions of the proposed Order will impose some minor economic impacts on the lessee. However, implementation will also minimize the probability of platform or structure failures including those failures that may result in loss of human life or other serious environmental damage.

H. Proposed Arctic OCS Order No. 12: Public Inspection of Records

Proposed Arctic OCS Order No. 12 sets forth requirements relating to the public availability of data and records concerning offshore petroleum operations. Under the proposed Order, specific types of data and records pertaining to drilling and production operations, well test, sale of lease production, accidents, inspections, and pollution incidents must be available for public inspection. Privileged information, such as certain geological and geophysical data, would be made available for public inspection with the lessee's consent or after a fixed period of time has elasped. By making operations data available, this proposed Order permits increased public awareness of OCS activities and involvement in OCS oil and gas programs. Increased public interest and understanding should result in continuing improvements in the safety and pollution-prevention programs of both the industry and the Government.

Implementation of the provisions of proposed Arctic OCS Order No. 12 would have no significant environmental effects.

III. Alternatives to the Proposal

Three alternatives to the proposed Arctic OCS Orders have been considered. They are:

(A) No Arctic OCS Orders—do not attempt to use the OCS Order scheme to provide guidance for the activities that are addressed by the proposed Arctic OCS Orders beyond the statement of requirements contained in the Department's OCS Oil and Gas Operating Regulations;

(B) Less stringent OCS Orders—use the OCS Order scheme but do not develop special provisions to address activities carried out in the unique Arctic OCS operating environment; and

(C) More stringent OCS Orders—use the OCS Order scheme and include additional, more constraining operating requirements and restrictions than are contained in the proposed Arctic OCS Orders.

Each alternative will be discussed in a comparative manner. This comparison will be accomplished by identifying the differences between an alternative and the proposed Orders and discussing the differences in potential environmental effects.

A. No Arctic OCS Orders

The alternative of not issuing special OCS Orders for operations in the Arctic environment would result in the USGS relying on the Department's existing offshore oil and gas operating regulations to provide control over those activities addressed by the proposed Arctic OCS Orders. The operating regulations are applicable to all OCS areas including the Beaufort Sea. A complete text of these regulations is contained in Part 250 of Title 30, Code of Federal Regulations (30 CFR Part 250).

In general, the operating regulations address the conduct of offshore oil and gas activities in less specific detail than that found in the proposed Arctic OCS Orders. The regulations are designed in this manner so they can be generally applied to all OCS areas. The operating regulations contain provisions which allow the USGS to obtain "other data and information as the Director may require." They also require the lessee to conduct certain prescribed activities "in a manner approved or required by the Director." The type and detail of information that the USGS requires and the specific manner in which certain activities must be conducted are dictated in large part by the particular OCS area in which the activities are to be conducted. Specific requirements imposed by the USGS on a lessee in one area may not be appropriate in another OCS area. For example, the proposed Arctic OCS Orders require that a lessee conduct certain activities in a manner that will prevent excess thawing of permafrost that is encountered during drilling operations. These requirements would be unnecessary in areas like the Gulf of Mexico where permafrost is nonexistent.

Unlike the proposed Arctic OCS Orders, the OCS oil and gas operating regulations do not contain requirements exclusive to Arctic activities. The proposed Arctic OCS Orders provide a mechanism for identifying to the OCS lessees Arctic-specific requirements needed for planning and conducting offshore oil and gas activities. For example, the regulations require that the lessee submit, as part of the Exploration Plan, a description of the safety features and pollution-prevention control features for the equipment to be used, including oil spill containment and cleanup plans (30 CFR 250.34–1). Proposed Arctic OCS Order No. 2 clarifies part of this general requirement. Plans submitted for OCS leases in the Arctic must include provisions for dealing with certain emergency situations involving the drilling of a relief well in the event of a blowout, loss or disablement of a drilling unit or a drilling rig, loss or damage to support craft, and hazards unique to the site of the drilling operations, including conditions such as solid ice cover, freeze-up, or breakup. Unless this information is included in the plan, the USGS would have insufficient information on which to base responsible decisions with respect to the approval of plans describing activities to be conducted in the Arctic.

If lessees are not given early notice of these specific information requirements, either through Arctic OCS Orders or some other mechanism, it is likely that many of them will fail to include one or more bits of needed information in the development of their Exploration Plans. Because the USGS needs this information to evaluate a plan and make a plan approval decision, many plans would be returned to lessee for completion or modification in accordance with the regulations (30 CFR 250.34–1). This action would increase the work load for industry and Government, create an atmosphere of confusion and frustration for the USGS and the lessee, and ultimately result in unnecessary delays in the approval process.

If OCS Orders are not issued for the Arctic, there will be no specific environmental effects to evaluate. However, as discussed in Part II, implementation of the provisions of the proposed Arctic OCS Orders would help to assure that the possibility of the occurrence of certain environmentally unacceptable events is minimized. In the absence of the proposed Arctic OCS Orders, there would be an increase in the occurrence of misunderstandings on the part of the lessee about the precise manner in which certain exploration activities must be conducted to minimize the potential for adverse environmental effects. Such misunderstandings by lessees could result in a lessee inadvertently taking operational risks that the USGS considers unacceptable for safety and environmental reasons.

B. OCS Orders Less Stringent Than the Proposed Arctic OCS Orders

The OCS Orders that are in effect for the Gulf of Mexico will be considered to represent this alternative. OCS Orders have been in effect for some oil and gas related activities on the Gulf of Mexico OCS since 1957, when the first Order was issued (OCS Order No. 1). During the 23 years that have elapsed, the Gulf of Mexico OCS Orders have been periodically revised to reflect the

knowledge gained through more than 30 years of experience in conducting oil and gas activities on the Gulf of Mexico OCS. This experience includes the drilling of over 18,000 wells by industry.

A comparison of the proposed Arctic OCS Orders and the Gulf of Mexico OCS Orders reveals basic similarities between them. However, in the Gulf of Mexico several OCS Orders have been developed to address many of the oil and gas development and production activities currently taking place. Some of the OCS Orders that will address future development and production activities in the Arctic have not yet been developed. Because production activities are not anticipated in the Beaufort Sea for several years, development of Arctic OCS Orders addressing well completion and workover operations, oil and gas pipeline design and construction activities, and production measurement and commingling can be timed so that Arctic OCS Orders, when issued, will reflect current state-of-art technology and knowledge accumulated through experience. These development and production oriented Arctic OCS Orders will, however, be put into place before any such activities are commenced on Arctic OCS leases.

For the purposes of this analysis, only Gulf of Mexico Orders Nos. 1, 2, 3, 4, 5, 7, 8, and 12 will be considered. These Orders represent the Gulf of Mexico counterparts to proposed Arctic OCS Orders Nos. 1, 2, 3, 4, 5, 7, 8, and 12. A complete text of the Gulf of Mexico OCS Orders was published by the USGS in the Federal Register on December 21, 1979 (44 *FR* 76212–76262), and revisions to Orders Nos. 1, 2, 5 and 7 were published on August 18, 1980 (45 *FR* 55126–55132).

Because the Gulf of Mexico OCS Orders were developed for the relatively warm operating environment of the Gulf, they contain no provisions for considering extended periods of subfreezing temperatures, permafrost, or ice conditions. Further, the USGS does not need as much detailed information for certain activities proposed in the Gulf of Mexico because the manner in which these activities will be conducted is well established and the results to be obtained are generally predictable. This is not case in the Arctic OCS areas such as the Beaufort Sea. The principal differences between the Gulf of Mexico OCS Orders and the proposed Arctic OCS Orders are summarized below.

1. *Alternative OCS Order No. 1.* Identification of Wells, Platforms, Structures, Mobile Drilling Units, and Subsea Objects.

This Order generally provides that all large platforms and structures which have helicopter landing facilities be marked with appropriate identification on diagonal corners. Because artificial islands are not used as drilling or production platforms in the Gulf, Gulf of Mexico OCS Order No. 1 does not address them specifically. In the Arctic, artificial islands need only be marked with appropriate identification in one prominent location.

The marking of platforms, by one or more signs, would have no environmental effects. Therefore, there would be no difference in environmental impacts if the Gulf of Mexico OCS Order No. 1 were adopted rather than the proposed Arctic OCS Order No. 1.

2. *Alternative OCS Order No. 2. Drilling Operations.* a. Plans and Applications. Unlike proposed Arctic OCS Order No. 2, Gulf of Mexico OCS Order No. 2 does not require lessee to submit, as part of their Exploration Plan and Development and Production Plan, specific plans to deal with emergency situations involving:

(1) A means of drilling a relief well should a blowout occur;

(2) Loss or disablement of a drilling unit or a drilling rig;

(3) Loss or damage to support craft; and

(4) Hazards unique to the site of the drilling operations including conditions such as solid ice cover, freeze-up, and breakup.

As a result, Gulf of Mexico OCS Order No. 2 does not recognize the special problems created by the remoteness of the Arctic OCS or consider the unique environmental constraints under which activities in the Beaufort Sea will be carried out. In the Gulf of Mexico many drilling operations are being carried out simultaneously in close proximity to each other. Further, operations are close to a highly developed oil and gas infrastructure, with support companies immediately available to provide needed services and assistance in all sorts of possible emergency situations. Finally, ice and subfreezing temperatures over a substained portion of the year are not among the environmental hazards found in the Gulf of Mexico. Submission of plans that address these concerns is, therefore, not necessary for that OCS area.

b. Drilling From Fixed Platforms and Mobile Drilling Units. (1) *Fitness of Drilling Unit.* Gulf of Mexico OCS Order No. 2 does not specifically require that drilling units be designed, constructed, and equipped to operate safely under Arctic conditions.

(2) *Oceanographic, Meteorological, and Performance Data.* Gulf of Mexico OCS Order No. 2 does not require that each Exploration Plan include a discussion of the specific system that the lessee will use to monitor, record, and report environmental data relating to sea ice, oceanographic and meteorologic conditions, and performance data.

The requirement to measure, record, and report oceanographic, meteorological, and performance data is generally not applicable to the Gulf of Mexico OCS area because there exists in the Gulf of Mexico a substantial data base which is readily available to the lessee and the USGS. Once an adequate information base of this type is established in the Arctic OCS area, this requirement may be reduced or eliminated.

(3) *Subfreezing Operations.* There are no specific provisions in Gulf of Mexico OCS Order No. 2 that require the lessee to furnish evidence that all tools, equipment, and materials used during exploration, development, and production activities are suitable for use in Arctic operations. The proposed Arctic OCS Order No. 2 would require the lessee to provide evidence that the tools, drilling safety systems, equipment, and materials used can withstand prolonged periods of Arctic temperatures.

The Gulf of Mexico does not experience extended periods of subfreezing temperatures which adversely affect the function of tools, drilling safety systems, and equipment used in oil and gas activities. Therefore, in the Gulf of Mexico, a requirement that such tools and equipment be able to withstand these conditions is unnecessary.

(4) *Mobile Drilling Units.* Gulf of Mexico OCS Order No. 2 does not require that, for all mobile drilling units, the lessee provide a listing of maximum environmental and operational design characteristics and regional maximum environmental conditions. Neither does it require the lessee to provide current American Bureau of Shipping Classification, U.S. Coast Guard Certificate of Inspection, nor other appropriate classifications for mobile drilling rigs proposed for use.

In the Gulf of Mexico, much of the data and information related to maximum environmental conditions is readily available in the GS files. The certification requirement has not been included in OCS Order No. 2 for the Gulf of Mexico because the Coast Guard has determined that the large number of mobile drilling units operating in the Gulf makes it impractical for the Coast

Guard to enforce a certification requirement at this time.

c. *Well Casing and Cementing.* (1) *General requirements.* Arctic OCS Order No. 2 proposes that the lessee be required to include in the Application for Permit to Drill a proposal to fill all annuli within permafrost zones with cement or a liquid with a freezing point below the minimum permafrost temperature to prevent casing damage caused by freezeback. This Order also proposes that all cement used in permafrost areas have a low heat of hydration to prevent thawing of the permafrost. Gulf of Mexico OCS Order No. 2 contains no such provisions. Gulf of Mexico OCS Order No. 2 does not address design criteria for wells proposed to be drilled through permafrost zones. Permafrost does not occur in the Gulf of Mexico area and, hence, these requirements are not included in the OCS Order No. 2 for that area.

(2) *Conductor and Surface Casing Setting and Cementing Requirements.* Gulf of Mexico OCS Order No. 2 contains no requirement for the use of conductor casing in subsequent wells if drilling of one or more exploration wells at a site has shown that shallow hazards are not present. However, there has been insufficient drilling experience gained on the Arctic OCS to justify the inclusion of this practice in the proposed Arctic OCS Orders. Also, specific depths for setting conductor casing and data to substantiate the proposed setting depths are required to be included in plans for permafrost areas. An alternate method of setting wellheads and well-control equipment below the surface of the seafloor may be required in the Arctic due to the phenomenon of ice scouring (the disturbance of the seabed due to drag of large moving ice masses). This is not a concern when wellheads and other equipment are placed on the surface of a gravel island. These requirements are not addressed in the Gulf of Mexico OCS Order No. 2 because permafrost sea ice is not present in that area.

This section of proposed Arctic OCS Order No. 2 makes additional allowances and sets up criteria for setting casing and cementing through permafrost zones. Such requirements are not applicable to Gulf of Mexico operations.

(d) *Directional Surveys.* Gulf of Mexico OCS Order No. 2 requires that the lessee conduct directional surveys every 300 meters (984 ft.) on "vertical wells" to determine the deviation of the wellbore from vertical. The proposed Arctic OCS Order No. 2 would require that directional surveys be conducted at a minimum interval of 150 meters (492 ft.).

In the Gulf of Mexico, experience gained over many years and thousands of wells has shown that a survey interval of 300 meters (984 ft.) is sufficient to determine whether a well is directional or vertical. In less developed frontier areas, such as the Arctic, drilling experience gained in Prudhoe Bay and the National Petroleum Reserve-Alaska (NPR-A), indicates that a smaller survey interval is necessary to accurately determine departure from vertical. Adopting the alternative of allowing 300 meters (984 ft.) between directional surveys rather than the 150 meters (492 ft.) proposed for the Arctic OCS could result in a reduction in the degree of accuracy in determining the precise location of a wellbore. This reduced accuracy could increase the possibility that a relief well being drilled toward a target blowout well might not be drilled as close to the wild wellbore as desired.

e. Mud Program. Gulf of Mexico OCS Order No. 2 does not specifically address requirements for controlling mud temperatures. Proposed Arctic OCS Order No. 2 specifies that the temperature of drilling muds be controlled to minimize heat loss in permafrost areas. Unlike proposed Arctic OCS Order No. 2, Gulf of Mexico OCS Order No. 2 does not specify the safety precautions to be observed in enclosed mudhandling areas.

f. Critical Operations and Curtailment Plans. Gulf of Mexico OCS Order No. 2 provides few specific details regarding the content of Critical Operations and Curtailment Plans. On the other hand, proposed Arctic OCS Order No. 2 lists a number of specific critical operations that must be addressed in the plan. Further, unlike Gulf of Mexico OCS Order No. 2, proposed Arctic OCS Order No. 2 would require that certain specific circumstances be considered when developing the list of circumstances during which critical operations would be curtailed.

In the Gulf of Mexico, experience gained through conducting numerous drilling operations over the years has allowed lessees to formulate comprehensive plans that anticipate commonly occurring situations that necessitate curtailment of operations. Because this experience has not been gained in the Arctic, it will be necessary to plan for the many different types of circumstances that may arise and which would necessitate the curtailment of critical operations.

Summary of the environmental effects of Gulf of Mexico OCS Order No. 2.— Issuing Gulf of Mexico OCS Order No. 2 in the Arctic would have no direct environmental effects except the potential economic impacts experienced by the lessee to comply with the requirements. It is expected, however, that many of the requirements contained in Gulf of Mexico OCS Order No. 2 would be implemented voluntarily in one fashion or another because of the costly consequences of accidents or loss of well control. It is conceivable that a lessee may willfully ignore requirements established for safety and environmental protection. However, the USGS expects that willful violations would be rare. Therefore, the actual additional economic burden on the industry is expected to be small.

Implementation of Gulf of Mexico OCS Order No. 2 by all lessens in the Arctic could provide some mitigation against the potential for unnecessary human safety risks and damage to the physical environment. However, without consideration of the Arctic-specific aspects of drilling that are included in proposed Arctic OCS Order No. 2, the USGS could not be assured that drilling activities would be conducted in a manner that minimizes the potential for unacceptable adverse environmental effects.

3. *Alternative OCS Order No. 3. Plugging and Abandonment of Wells.* a. *Drilling Mud.* Both Gulf of Mexico OCS Order No. 3 and the proposed Arctic OCS Order No. 3 require that intervals between plugs be filled with a fluid of sufficient density to exert a hydrostatic pressure exceeding the greatest formation pressure encountered while drilling the intervals between the plugs. But unlike proposed Arctic OCS Order No. 3, Gulf of Mexico OCS Order No. 3 does not require the lessee to ensure that fluids left in the well adjacent to permafrost zones have a freezing point below the lowest temperature in the permafrost zone or that these fluids be treated to minimize corrosion of the casing. Leaving oil base fluids in the hole will require prior approval of the USGS District Supervisor. Since permafrost conditions are not experienced in the Gulf of Mexico area, these considerations are not addressed in Gulf of Mexico OCS Order No. 3.

b. *Cement.* Gulf of Mexico OCS Order No. 3 allows the use of conventional cement in the placement of plugs. In the Arctic environment, it has been shown that the use of such cements may be ineffective. Consequently, the proposed Arctic OCS Order No. 3 requirement that cement plugs placed through permafrost zones must be formulated to set before freezing and have a low heat of hydration is necessary for Arctic

operations. The effects of permafrost on cement is not addressed in Gulf of Mexico OCS Order No. 3.

4. *Alternative OCS Order No. 4. Determination of Well Producibility.* The provisions of Gulf of Mexico OCS Order No. 4 and proposed Arctic OCS Order No. 4 are identical. Therefore, there would be no difference in environmental effects if either the proposed Arctic OCS Order or the Gulf of Mexico OCS Order was adopted for Arctic operations.

5. *Alternative OCS Order No. 5. Production Safety Systems.* a. *Use of Best Available and Safest Technologies (BAST).* Both Gulf of Mexico OCS Order No. 5 and proposed Arctic OCS Order No. 5 conform to the standards, codes, and practices related to BAST. The submittal of information in conformance to BAST is required of the lessee on a case-by-case basis as directed by the USGS Deputy Conservaion Manager in the Gulf of Mexico area. Under the proposed Arctic OCS Order No. 5 the lessee will be required to submit information to demonstrate that the activities proposed for the Arctic OCS represent BAST. This is necessary for Arctic operations because exploration of the Arctic OCS is a relatively new activity.

b. *Subsurface-Safety Devices.* Requirements for equipping all tubing installations open to hydrocarbon bearing zones with safety devices such as a surface-controlled subsurface-safety valve, a subsurface-controlled subsurface-safety valve, injection valve, a tubing plug or a tubular/annular subsurface-safety device are the same in Gulf of Mexico OCS Order No. 5 and proposed Arctic OCS Order No. 5. The only special provision developed for permafrost areas and included in proposed Arctic OCS Order No. 5 is that the setting depth of a subsurface device must be approved by the USGS District Supervisor on a case-by-case basis. This special provision is included to recognize that the permafrost may be present as deep as 610 meters (2,000 ft.). The recommended practice in Arctic completions is to place the devive below the base of the premafrost to insure that permafrost does not affect its operational capability. These concerns are not appropriate in the Gulf of Mexico.

With respect to surface-controlled subsurface-safety valves, the only requirement contained in proposed Arctic OCS Order No. 5 not included in Gulf of Mexico OCS Order No. 5 is that the lessee be required to ensure that subsurface-controlled subsurface-safety devices and related equipment are capable of normal operation under extended periods of subfreezing conditions.

c. *Design, Installation, and Operation of Surface Production Safety Systems.* Lessees in Arctic OCS areas would be required, under proposed Arctic OCS Order No. 5, to furnish evidence that the surface production safety systems are capable of normal operation under subfreezing conditions. The lessees would also be required to ensure that these valves conform to the requirement to use BAST.

The alternative of using surface production safety systems and related equipment not conditioned for operating under subfreezing conditions cannot be practically considered because such devices, if used, could become inoperative under Arctic conditions. Therefore, they would fail to meet the requirements to use BAST and could cause the uncontrolled release of hydrocarbons into the environment. Because subfreezing operating conditions are not experienced in the Gulf of Mexico, Gulf of Mexico OCS Order No. 5 does not address this concern.

6. *Alternative OCS Order No. 7. Pollution Prevention and Control.* Under the "Curbs, Gutters, and Drains for Fixed Platforms or Structures and Mobile Drilling Rigs," subsection of proposed Arctic OCS Order No. 7, the fixed platforms and structures section was expanded to include artificial islands. This requirement is not included in the Gulf of Mexico OCS Order because artificial islands are not used for exploration, development, or production activities in that OCS area. Arctic OCS Order No. 7 proposes that, on artificial islands, all vessels containing hydrocarbons be placed inside an impervious berm. The volume enclosed by the berm must be in excess of the volume of the vessels containing hydrocarbons. In addition, the rig mat must be made impervious, and all drainage ditches must be directed away from the drilling rig into an impervious sump. The alternative of not requiring impervious berms could lead to discharge of hydrocarbon fluids onto the island which could later end up in the marine environment, should an accidental leak occur from the hydrocarbon storage vessels.

7. *Altervnative OCS Order No. 8. Platforms and Structures.* The provisions of Gulf of Mexico OCS Order No. 8 and proposed Arctic OCS Order No. 8 are essentially the same. The proposed Arctic Order does acknowledge that artificial islands are likely to be used in the Arctic and identifies them specifically as a type of platform that is subject to the provisions of the Order. Because the provisions of the two Orders are substantively identical, there would be no difference in environmental effects.

8. *Alternative OCS Order No. 12. Public Inspection of Records.* The provisions of Gulf of Mexico OCS Order No. 12 and proposed Arctic OCS Order No. 12 are identical. Therefore, there would be no difference in environmental effects if either the proposed Arctic OCS Order or the Gulf of Mexico OCS Order was adopted for the Arctic.

C. OCS Orders More Stringent Than the Proposed Arctic OCS Orders

A third alternative to the proposed Arctic OCS Orders is to adopt OCS Orders that offer even greater protection to the environment. Five elements have been evaluated that could be a part of a stricter set of Arctic OCS Orders. Although each element is discussed separately, the USGS could select any combination of them and have more stringent Arctic OCS Orders as the result. The fourth and fifth parts of this alternative are based on the recommendations of counsel for the North Slope Borough. The first three parts are other matters of concern to the USGS.

1. *First Part of the Alternative.* Require that cement used in permafrost zones have a heat of hydration no greater than 25 British thermal units per pound of cement slurry (25 BTU/lb.)

Conducting oil and gas operations through permafrost may pose special problems for operators (representatives of the lessee), as discussed in Part II. Improper drilling procedures in permafrost can result in washouts, fill on bottom, and stuck pipe.

The common practice among operators that drill wells through permafrost is to use dense drilling fluids with controlled temperature and to drill through permafrost as quickly as possible. This practice minimizes thawing of the permafrost and the possible decomposition of the associated gas hydrates, which otherwise could result in wellbore instability. After permafrost is penetrated, casing is set, and then deeper drilling can proceed under normal drilling conditions. Setting casing below the base of the permafrost zone will minimize the permafrost thawing, which, if unchecked, could result in damage to the well casing from thaw-subsidence or freezeback strain.

In order to provide support for the casing and protection for the permafrost, the casing is cemented. The cement is pumped into the well and around the casing as a liquid slurry. As the cement sets it hydrates, that is, it combines with

the water in the slurry. As a product of this chemical reaction, heat is released. This heat is called the heat of hydration and is measured in British thermal units per pound of cement slurry (BTU/lb.).

In the 1940's and early 50's conventional oil cements were used in wells drilled in the Naval Petroleum Reserve No. 4 in Northern Alaska (now called NPR–A). These cements performed poorly in permafrost zones.[5 6] Other specialized cements, such as mixture of calcium aluminate and fly ash, have not been completely reliable when used in Arctic wells.[7]

Many Arctic operators have turned to gypsum-based cements. These cements display several favorable characteristics, including the ability to set and gain compressive strength at subfreezing temperatures, and exhibit a low heat of hydration, which in turn may prevent additional melting of the permafrost zone in which they are used. The proposed Arctic OCS Order No. 2 requires the operator to use cement with a low heat of hydration. This proposed Order does not specify how low it must be.

The USGS wil review the cementing program included in the lessee's "Application for Permit to Drill." The USGS will approve those cements or cement blends that have been proven successful in permafrost. The gypsum-based cements, for example, have proven to be successful. Operators wishing to use other types of cements in permafrost will have to submit evidence of their suitability. Such evidence may consist of laboratory or field test results.

As an alternative to proposed requirement, the USGS might require that cement used in permafrost zones have a heat of hydration no greater than 25 BTU/lb. The benefit of this requirement, if implemented, is that it would tend to reduce the thaw of the permafrost and the possible decomposition of the associated gas hydrates next to the wellbore in wells drilled in permafrost areas. This requirement would prohibit the use of cements if they had a heat of hydration higher than 25 BTU/lb. Table 1 illustrates the implications of this alternative.

Table 1. *Heats and hydration of cements that have been used in oil and gas wells*

Type of cement	Heat of hydration (Btu/lb.)	Use in permafrost allowed[1 2 3]
API Class G	118	No.
API Class H	120	No.
50% Class H with 50% Fly Ash + 2% Gel.	91.4	No.
Calcium Aluminate Cements and 50% Fly Ash (10% Salt by Weight of Water).	57-92	No.
Gypsum-Based Cements	15-18	Yes.

[1] L. F. Maier, M. A. Carter et al., Cementing Materials for Cold Environments *JPT* October 1971.
[2] D. K. Smith, Cementing, *Society of Petroleum Engineers Monograph*, vol. #4 1976.
[3] Goodman, Malcolm A., "Here is what to consider when cementing permafrost" *World Oil*, December 1977.

The disadvantage of this alternative is that the heat of hydration criterion may be arbitrarily low. We do not have evidence that a 25 Btu/lb. maximum heat of hydration is appropriate. We are not yet able to measure the effects of heat transfer into the permafrost resulting solely from hydration because, during cementing operations, several other heat sources in the wellbore can contribute to thawing of the permafrost.

Furthermore, although a low heat of hydration is a desirable cement characteristic, it is not the only criterion used for determining whether a cement will perform well in permafrost. Other desirable characteristics include the ability to set before freezing, the ability to develop enough compressive strength for well operations, a relatively brief placement or thickening time, and a relatively brief waiting-on-cement time.

Consequently, adoption of this alternative would prohibit operators from using a certain type of cement that is otherwise suitable for permafrost application solely on the basis that it does not meet what may be an unnecessary low maximum value for the heat of hydration.

2. *Second Part of the Alternative.* Require operators to set conductor and surface casing no deeper han 50 meters (164 ft.) below the base of the deepest permafrost zone.

As explained in the first part of this alternative, improper drilling procedures in permafrost zones may result in wellbore instability caused by excessive thawing of the permafrost. They may also lead to decomposition of some associated gas hydrates at lower depths in the permafrost zone, which may result in further stability problems.[8 9]

A permafrost zone should be drilled quickly and then should be cased. A problem arises in deciding how soon to set the casing after drilling through the pemafrost zone. Proposed Arctic OCS Order No. 2, subsection 3.3.1, generally requires that conductor or surface casing "be set and cemented after drilling a maximum of 150 meters (492 ft.) below the base of the permafrost." This alternative would reduce the maximum to 50 meters (164 ft.).

The advantage of adopting this alternative is that it would minimize the time of interaction between the permafrost and the possible associated gas hydrates and the drilling fluids in the wellbore. This interaction may cause thawing and decomposition problems because of the heat transfer from the circulating muds to the permafrost. Depending on whether the operator runs into trouble while drilling the well, it could take several hours to several days to drill the additional 100 meters (328 ft.) below the permafrost. An early experience in the Canadian Arctic illustrates the problem. One operator, through improper drilling practices, frequently caused excessive thawing of the permafrost which resulted in the enlargement of the wellbore. This, in turn, released large amounts of sand into the drilling fluids. The operator had to stop drilling to recondition the mud. In the meantime the permafrost continued to thaw.[*7] Industry has learned from these early experiences, and currently acceptable drilling practices have greatly reduced thawing of the permafrost and the decomposition of any associated gas hydrates. However, certain risks to wellbore integrity remain.

The disadvantage of this alternative is that it might not allow for proper anchoring of the casing. If permafrost thaws, the cement bond between it and the casing weakens. Repeated thawing and refreezing can increase the pressures on the casing and may cause it to burst or collapse. It also may increase the strain on the wellhead, which must support the added weight of poorly bonded casing. To avoid these problems, the lessee plans to anchor the bottom of the conductor or surface casing in consolidated rock below the permafrost. However, the base permafrost may not be well-defined and may, in some cases, extend over a transition zone of several hundred feet. Recognizing this, Alaska's Department of Natural Resources generally requires drillers in Prudhoe Bay to do deeper than 150 meters (492 ft.) below the permafrost. According to the State of Alaska's Conservation Order No. 145, Prudhoe Oil Pool, Rule 3 (June 1, 1977):

(c) For proper anchorage, to prevent uncontrolled flow, and to protect the well from the effects of permafrost thaw,

[5] White, Col., F. L., "Setting cements in below freezing conditions," Petroleum Engineer, August 1952, p. 87.

[6] White, Col., F. L., "Casing can be cemented in permafrost area," *World Oil*, December 1973, p. 119.

[7] W. C. Cunningham, D. K. Smith, "Cementing through permafrost environment" *A.S.M.E. publication*, June 1977, 77-pet-37.

a string of surface casing shall be set *at least 500 feet* below the base of the permafrost section, but not below 2,700 feet * * * (Emphasis added.)

Consequently, if the USGS makes lessees set casing no lower than 50 meters (164 ft.) below the permafrost, it may cause the casing in some wells to be anchored insecurely. This, in turn, may threaten human safety and the marine environment. The USGS, then, is faced with a trade-off. It must balance the need to shield the permafrost and possible associated gas hydrates quickly with the need to anchor the casing securely.

e. *Third Part of the Alternative.* Require lessees to make directional surveys evey 60 meters (197 ft.) in wells during normal drilling operation.

No well is ever drilled perfectly vertical from top to bottom. Intentional or unintentional hole deviation from true vertical is governed by many factors, such as rock type, formation dip, weight placed on the bit, flexibility of the drill string, use of stabilizers, reamers, or special bits and hole deflection tools. Whatever the reason for the deviation, lessees run directional surveys that indicate the amount of deflection from vertical, as well as direction or azimuth of this deflection, in order to calculate the location of the wellbore.

Several types of directional survey instruments exist. One is a single-shot survey instrument which contains a compass on the bottom, a glass marked with concentric rings, a plumb bob dangling above the glass, and a camera. The camera photographs the position of he bob on the glass and the compass, thus showing the angle and direction of the well at that point. The instrument is called "single-shot" because it takes only one photograph. Another type of instrument is the multiple-shot survey. It operates like the single-shot, but can take several photographs at various depths in the well. A third type is a continuous-recording directional survey. This permits the operator to make measurements from the top to the bottom of the well at close intervals. A fourth type differs significantly from the first three. A lessee using the first three instruments must stop drilling to run the survey. But the fourth instrument, a directional orientation tool, allows the operator to run a continuous survey while drilling. The tool consists of a data-gathering probe behind the drillbit, a wireline to the surface, and a readout on the rig displaying the data.[10]

[10] Enenbach, Joseph H., "Directional Drilling Technology Strives for Speed and Accuracy." *Petroleum Engineer International*, Sept. 1980.

Proposed Arctic OCS Order No. 2, Section 4, would impose slightly different requirements on the lessee, depending on whether the well is "vertical" or "directional." A well is vertical if its average angle of deviation is no more than 3 degrees from true vertical. A well with a greater average angle of deviation is directional. In a vertical well, the lessee must measure the angle from the vertical (called the "inclination") at intervals not exceeding 150 meters (492 feet) during normal drilling. He does not have to measure the angle of the hole from magnetic north (called the "azimuth") during normal drilling. In a directional well, the lessee must measure both the inclination and azimuth at intervals not exceeding 150 meters (492 ft.) during normal drilling. Additionally, in parts of a directional well where the lessee has planned to change the angle of the hole, he must measure both angles every 30 meters. Finally, at certain times in both types of wells, the operator must run directional surveys giving both inclination and azimuth. These surveys must be run when the lessee sets either the surface or intermediate casing, when he sets liner pipe, and when he reaches the intended bottom of the well.

The alternative differs from the proposed Order by requiring a survey of inclination and azimuth every 60 meters (197 ft.) during normal drilling in all wells. The advantage of this alternative is that, at certain times during drilling, an operator will know more precisely the course of the well and can determine where its bottom is. This knowledge is important when trying to locate the "target" of a relief well, if one is needed to control the blowout.

Generally, a relief well has greater chance of killing the blowout if it intersects the blown-out well. This way the lessee can pump fluids directly into the wellbore of the blown-out well. But it is also possible to pump the fluids into the wellbore indirectly. This is done by drilling the relief well into the stratum feeding the blowout well, fracturing the rock between the two wells, and pumping fluids from the relief well into the blown-out well through openings in the rock. Thus, the relief well does not always have to intersect the blown-out well precisely,[11] but it generally must come within a maximum predetermined radius, depending on the permeability and fracture strength of the stratum.

More frequent directional surveys, then, would improve the operator's ability to drill a successful relief well. Thus, in those rare situations in which a relief well is needed, this alternative may permit quicker control of a blowout, and may reduce the quantity of oil spilled into the environment.

The disadvantage of this alternative is its cost. Directional surveys cost operators in money and lost drilling time. Additionally, survey measurements taken at a maximum of every 150 meters (492 ft.) permit estimates that usually are within a reasonable range of error. The State of Alaska requires these surveys at least every 500 feet in "unintentionally deviated wells." (20 Alaska Admin. Code 25.050). Like proposed Arctic OCS Order No. 2, the Alaska rule sets a maximum limit; operators are free to run more frequent surveys. Some operators do.

4. *Fourth Part of the Alternative.* Require operators to be able to complete relief wells within 60 days of a blowout, and require each lessee to build one spare island, for the purpose of drilling a relief well, for each island intended to be used for exploratory drilling.

The advantage of this alternative is that it would provide a platform from which a relief well could be drilled on a year-round basis. It would also require an operator to drill a relief well quickly.

This alternative, however, has several disadvantages. Generally, it would increase the disruption of the marine environment from construction of the extra islands, and would increase the volume of gravel taken from sources onshore and offshore. Futhermore, in some cases, the 60-day deadline would force operators to drill relief wells in dangerous haste. We will turn to these points in greater detail.

Although an oil blowout could occur during exploration drilling, the probability of such an event is very low. The USGS Conservation Division estimates the probability, based on historical offshore records in other areas, at 1 in 10,000. Most offshore exploratory drilling blowouts result from drilling into shallow, high pressure gas pockets. An influx of gas from such a pocket may be difficult to control if the unprotected formations penetrated by the well have low fracture gradients. However, hydrocarbons in the form of oil are normally encountered at greater depths, after several strings of casing have been set, and the integrity of the well has been improved. Should an oil blowout occur, there is a good chance that the well would be sealed off naturally (called "bridging"). Even if an oil blowout does occur during exploration and the well does not bridge, there is a good possibility (depending on the drive mechanism of the reservoir and the structural locations

[11] Adams Neal, "How to Drill a Relief Well", *Oil and Gas Journal*, September 1980.

of the well) that the flow of oil would diminish significantly before the relief well was finished.

Of the 81 blowouts recorded in the Gulf of Mexico OCS between 1956 and 1978, only four were oil blowouts. None of the four oil blowouts occurred during exploratory drilling operations. Thirty-eight of the 81 blowouts ceased flowing naturally. Another 38 were "killed" by pumping down mud, capping, or performing other mechanical operations. Only five of the blowouts were killed with relief wells.

Proposed Arctic OCS Order No. 2 requires operators to identify in their plan of exploration a means of drilling a relief well. The plan will be based on the season for which the operation is proposed, the distance from shore and the offshore islands, water depth, the depth of the proposed wells and prospective wells and hydrocarbon zones, the type of operation and type of other drilling operations in the area (gravel island, ice island, drillship, barge, etc.), and the status of new technical developments. Requirements specifying the type of drilling unit that must be used and the maximum permissible time for site preparation are omitted because of the large number of variables affecting relief well decisions. The relief well options proposed by the operator will have to be acceptable to the USGS Deputy Conservation Manager both from a timing and a technical standpoint.

Although preparation time should be minimized to the extent practicable, initial haste in preparing the location for drilling a relief well could result in serious problems and delays later. Preparation time must be considered in the context of the overall time requirements for the entire relief well operation. Drilling the relief well would probably require between 30 and 120 days. An additional 5 to 15 days might be required to pump down mud and kill the well. This drilling killing operation could take much longer if the relief well is not successful (i.e., if the well does not intersect the reservoir at a point with sufficient pressure drawdown). In this case, the well might have to be sidetracked, or additional wells might have to be drilled. In some cases, more than one relief well might be started at the outset of the emergency drilling program.

Table 2 illustrates the effect that a 15-day difference in relief well site preparation time (from 30 days to 15 days) would have on the total time required to control a blowout well by drilling relief wells in three hypothetical blowout scenarios.

Table 2.—*Total time required to kill three hypothetical blowout wells*

Scenario number	1	2	3
Relief well site preparation (days)	30	30	30
Relief well drilling operations (days)	30	105	120
Blowout well kill operations (days)	*15*	*15*	*30*
Total time (days)	75	150	180
Total time with 50% reduction in well site preparation time (days)	60	135	165
Percent difference in total time required to kill blowout well	20	10	8.3

The type of reductions in relief well site preparation time indicated in Table 2 do not result in large reductions in the overall time required for the entire well control operation. The objective should, therefore, be to minimize preparation time without creating unnecessary environmental risk. For drilling proposed in the open water season, the operator will have to demonstrate that there is a barge or drillship in the area which is suitable for drilling a relief well or that there is a fixed structure, island, or onshore site close enough to support a relief well operation. For drilling operations conducted during the remainder of the year, the operator will have to propose a plan for constructing an artificial island or demonstrate the feasibility of another drilling technique. The plan will also have to indicate the drilling rig and associated equipment which would be used and the manner in which it would be transported and installed. In some cases (i.e., certain types of ice islands), a relief well pad can be easily incorporated into the design of an artificial island. In such cases, a relief well pad would be required. However, providing for such a pad on most gravel islands would be very costly both from an economic and an environmental standpoint. Either a large island or a second detached island would be required to assure relief well capability. Either option would greatly increase gravel use and environmental disturbance. Considering the low oil blowout risk and the amount of time which would be saved relative to the total time required for the relief well operation, such costs are significant. In summary, the relief well options are numerous and dependent on a wide variety of technical and environmental factors.

5. *Fifth Part of the Alternative.* Require that personnel responsible for containing and cleaning up an oil spill have experience in working in ice-infested waters, and require that the operator be able to contain and clean-up a spill of 20,000 barrels per day for 120 days.

a. Require that personnel responsible for containing and cleaning up a spill have experience in working in ice-infested waters. This alternative differs from the proposed Arctic Orders in that it specifies part of the training requirements for oil spill response personnel.

The effectiveness of contingency operations is dependent on both the training of personnel and the adequacy of contingency techniques and equipment. The effectiveness of personnel operating in ice-infested water depends not so much on previous experience as on adequate knowledge of the equipment and techniques to be used. Familiarity with equipment and techniques can be gained through formal classroom training excercises, and periodic field exercises. Both of these requirements already exist in the proposed Arctic OSC Orders.

The Alaskan Beaufort Sea Oilspill Response Body (ABSORB) has been contracted by industry to provide oil spill contingency support for the Beaufort Sea. Part of ABSORB's obligation is the training of industry personnel in Arctic contingency techniques. To fulfill this obligation, ABSORB intends to hold four training schools a year for industry personnel. These training schools will include classroom and field experience.[12]

In addition, the proposed Arctic OCS Orders require an actual field drill for the purpose of showing industry's contingency capability and effectiveness. At this time, the adequacy of personnel when operating under Arctic conditions can be determined. If it is determined that personnel are not prepared, additional training and drills may be required. Industry personnel who will be involved in contingency operations are designated based on their primary responsibilities. These persons work on shifts, so that one team is always available. Few can claim to have actual experience in contingency operations in ice-infested waters, because few spills have occurred in the Arctic, none of which occurred on the OCS. However, contract personnel, such as ABSORB, although beyond the direct regulatory control of lease stipulations and the proposed Arctic OCS Orders, have experience in controlling oil spills in the Arctic.

Addition of this alternative in the Arctic Orders will not increase the environment protection potential of the proposed Orders. The intent of the alternative has already been met in the proposed Arctic OSC Orders, and may be controlled by the USGS through the requirements for additional training and drills, when necessary.

[12] ABSORB, *Oil Spill Contingency Plan*, Appendix C, July 1980.

b. Require that the lessee be able to contain and clean up a spill of 20,000 barrels per day for 120 days. This alternative differs from the proposed Arctic Orders in that it expands the scope of an Oil Spill Contingency Plan to address a specific spill situation.

Recognizing their responsibility to control any size spill, industry traditionally contracts oil spill contingency responsibilities to private organizations. These organizations provide manpower and equipment capabilities for handling large spills. For the Beaufort Sea, industry has formed a cooperative organization, the Alaskan Beaufort Sea Oilspill Response Body (ABSORB), to coordinate oil spill response activities. The ABSORB plan addresses a scenario in which a blowout occurs for 4 months (120 days), but that the flowing oil is ignited after 4 days. The rate of flow is considered at 20,000 barrels per day. The concept of igniting free flowing oil is both realistic, and consistent with the contingency technique of igniting free floating oil.[13] Unique to Arctic contingency operations is the availability of natural contingency materials. Snow, a natural absorbant, and ice, a natural solid barrier, are readily available to contain oil. Open slots in the ice, which provide direct access for oil under the ice to the surface, can be at any width, length, and at any location necessary. These are practical contingency techniques which can be adjusted for any size spill.

In recognition of the need to identify criteria by which to judge the adequacy of an Oil Spill Contingency Plan, the USGS and the U.S. Coast Guard have developed a Memorandum of Understanding which calls for an ongoing agency review of Oil Spill Contingency Plans. This joint responsibility involves the establishment of guidelines by which contingency plans will be approved. It is anticipated that scenarios for large spills will be a major part of these guidelines.

Is it not anticipated that this alternative would increase the environmental protection potential of the proposed Arctic OCS Order. Contingency capabilities for large spills have already been addressed by ABSORB for the Beaufort Sea.

Appendix—The Proposed Arctic OCS Orders

These proposed Arctic OCS Orders incorporate appropriate suggestions which were received in response to the following Federal Register Notices:

1. Part V, Vol. 44, No. 115, June 13, 1979, requested comments on the proposed version of Arctic OCS Orders Nos. 1, 2, 3, 4, 5, 7, and 12.

2. Vol. 44, No. 127, June 29, 1979, requested comments on the final versions of Arctic OCS Orders Nos. 1, 2, 3, 4, 5, 7, and 12 for the Gulf of Mexico, Pacific, Gulf of Alaska, and Atlantic OCS Areas as published in the Federal Register, Part IV, Vol. No. 44, No. 98, May 18, 1979. This Notice postponed the effective date of the Orders to October 1, 1979.

3. Vol. 44, No. 128, July 2, 1979, requested comments on proposed OCS Order No. 8 and proposed "Operating Procedures for the OCS Platform Verification Program" for the Gulf of Mexico, Pacific, Gulf of Alaska, Atlantic, and Arctic OCS Areas.

4. Vol. 44, No. 189, September 27, 1979, postponed the effective date of the Orders to December 1, 1979, and announced that the final Orders would include the final version of Arctic OCS Orders Nos. 1, 2, 3, 4, 5, 7, and 12.

5. Part XII, Vol. 44, No. 247, December 21, 1979, published area OCS Orders Nos. 1, 2, 3, 4, 5, 7, and 12, effective January 1, 1980, for the Gulf of Mexico, Pacific, Gulf of Alaska, and Atlantic OCS Orders.

6. Vol. 45, No. 71, April 10, 1980, requested comments on proposed revisions of portions of final OCS Orders Nos. 1, 2, 5, and 7 for the Gulf of Mexico, Pacific, Gulf of Alaska, and Atlantic OCS Areas. Prospective lessees and operators for the Arctic Areas were also invited to comment, since these proposed revisions are also applicable to the Arctic OCS Orders.

7. Part VIII, Vol. 45, No. 161, August 18, 1980, published final revisions of certain requirements of OCS Orders Nos. 1, 2, 5, and 7, effective September 15, 1980, for the Gulf of Mexico, Pacific, Gulf of Alaska, and Atlantic OCS Orders.

These proposed Arctic OCS Orders reflect the revision of the oil and gas operating regulations contained in 30 CFR 250, which implements the Outer Continental Shelf Lands Act Amendments (OCSLAA) of 1978. These regulation revisions were published in the Federal Register, Vol. 44, No. 209, Part VII, on October 26, 1979, with an effective date of December 13, 1979. Accordingly, it should be noted that the Preamble of each proposed Order cites the new and revised regulations.

In accordance with the GS Director's Delegation of Authority, which was published in the Federal Register, Volume 45, No. 52, on March 14, 1980, the change of the title of the position of the "Oil and Gas Supervisor" to "Deputy Conservation Manager" has been incorporated as well as the redelegation of the authority of the "Chief, Conservation Division," to the "Deputy Chief, Conservation Division—Offshore Minerals Regulation," for the approval of the Orders. The new titles of these positions and approval authorty are effective throughout all of the OCS Orders.

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5.7 Testing of BOP Systems

[13] Pallister, Jeff, *Oil Spill Measures for the Arctic Offshore: Research and Practices*, APOA Review, Volume I, No. 4, p. 8, November 1978.

5.7.1 BOP Testing Frequency
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United States Department of the Interior, Geological Survey, Conservation Division

Alaska Region, Arctic—OCS Order No. 1

Identification of Wells, Platforms, Structures, Mobile Drilling Units, and Subsea Objects

This Order is issued pursuant to the authority prescribed in 30 CFR 250.10, 250.11, and in accordance with 30 CFR 250.37 and 250.54.

1. *Identification of Fixed Platforms or Structures.*

1.1 *Large Platforms and Structures.* Platforms and structures which have helicopter landing facilities shall be identified at two diagonal corners by a sign with letters and figures not less than 30 centimeters (12 inches) in height with the following information:

a. The name of the lease operator.

b. The area designation based on OCS Official Protraction Diagrams.

c. The block number in which the platform or structure is located.

d. The platform or structure designation. The information shall be abbreviated as in the following example:

The Blank Oil Company operates "C" platform on Block 999 of the Salisbury Area. The identifying sign on the platform would indicate:

BOC-SAL-999-C.

1.2 *Small Structures.* Small structures, including single well structures which do not have helicopter landing facilities, shall be identified with one sign only, with letters and figures not less than 7.6 centimeters (3 inches) in height.

The information shall be abbreviated as in the following example:

The Blank Oil Company operates well No. 1 which is equipped with a protective structure in Block 68 in the East Cameron Area. The identifying sign on the protective structure would show:

BOC-E.C.-68-No. 1

1.3 *Artificial Islands.* Artificial islands, such as gravel islands and ice islands, shall be identified as required by subparagraph 1.1 of this Order, except that only one sign is required to be installed in a prominent location on the island.

2. *Identification of Mobile Drilling Units.* Floating platforms, bottom-setting mobile rigs, and drilling ships shall be identified by one sign with letters and figures not less than 30 centimeters (12 inches) in height affixed to the derrick or the heliport so as to be visible to approaching traffic and shall contain the following information:

a. The name of the lease operator.

b. The area designation based on OCS Official Protraction Diagrams.

c. The block number in which the drilling unit is located.

d. The OCS lease number.

e. The well number.

3. *Identification of Wells.* The OCS lease and well numbers shall be painted on the wellhead or on a sign affixed to the wellhead of each singly completed well. In multiply completed wells, each completion shall be individually identified at the wellhead. All identifying signs shall be maintained in a legible condition.

4. *Identification of Subsea Objects.* Prior to the installation of subsea equipment required for lease operations, or in the event of the accidental sinking of an object, the owner shall report the submerged equipment or object to the appropriate U.S. Coast Guard District Commander subject to the following limitations. Reports are not required for equipment or objects that:

a. Are submerged in water depths greater than 305 meters (1,000 feet); or

b. Weigh 18 kilograms (40 pounds) or less and are of such shape or configuration that they are unlikely to snag or damage fishing devices; or

c. Are determined to be located on the seafloor within 46 meters (150 feet) of fixed structures on which approved aids to navigation are maintained.

The report shall contain the object's description, weight, dimensions, location, and the depth of water in which it is located. The U.S. Coast Guard will determine if it is a hazard to navigation and will determine whether it requires marking in accordance with 33 CFR Part 64.

5. *Marking of Equipment.* Whenever practicable, all materials, equipment, tools, containers, and items used on the OCS are to be properly color/coded, stamped, or labeled with the owner's identification prior to actual use. For oil and gas operations, this means the owner's identification, as approved or prescribed by the Director, is to be placed upon all materials, cable, equipment, tools, containers, and other objects which could be freed and lost overboard from rigs, platforms, or supply vessels, and are of sufficient size or are of such a nature that they could be expected to interfere with commercial fishing gear if dropped overboard.

6. *Departures.* All departures from the requirements specified in this Order shall be subject to approval, pursuant to 30 CFR 250.11(b).

Approved:

Rodney A. Smith,

Deputy Conservation Manager, Offshore Field Operations.

Robert L. Rioux,

Deputy Chief, Conservation Division—Offshore Minerals Regulation.

United States Department of the Interior, Geological Survey, Conservation Division

Alaska Region Arctic—OCS Order No. 2

Drilling Operations

This Order is issued pursuant to the authority prescribed in 30 CFR 250.10 and 250.11. All exploratory and development wells drilled for oil and gas shall be drilled in accordance with 30 CFR 250.30, 250.34, 250.36, 250.38, 250.40, 240,41, and the Provisions of this Order except for those provisions superseded by ths issuance of field drilling rules.

This Order requires the lessee to submit plans, applications, data, and other information. In all cases where the lessee(s) has (have) identified another party as designated lease operator in accordance with 30 CFR 250.31 and where the term "operator" is defined in accordance with 30 CFR 250.2(g), the required information may be submitted by the designated lease operator.

In addition to the requirements of this Order, the lessee shall comply with the requirements of paragraph 9, *Requirements for Drilling Rigs,* of OCS Order No. 5.

1. *Plans and Applications.*

1.1 *Exploration Plan and Development and Production Plan.*

In accordance with 30 CFR 250.34, the lessee shall submit Exploration Plans

and Development and Production Plans to the Deputy Conservation Manager (DCM), Offshore Field Operations, for approval. All wells drilled under the provisions of this Order shall be included in the appropriate plan. In addition, the Exploration Plans and Development and Production Plans shall include provisions to deal with emergency situations involving:

a. A means of drilling a relief well should a blowout occur.

b. Loss or disablement of drilling unit or a drilling rig.

c. Loss of or damage to support craft.

d. Hazards unique to the site of the drilling operations including conditions such as solid ice cover, freezeup and breakup.

1.2 *Application for Permit to Drill.* Prior to commencing drilling under an approved Exploration Plan or a Development and Production Plan, the lessee shall file, in triplicate, an Application for Permit to Drill (Form 9–331 C) with the District Supervisor for approval. Additionally, DCM, Offshore Field Operations, will prescribe the number of public information copies to be submitted.

2. *Drilling from Fixed Platforms and Mobile Drilling Units.*

2.1 *General Requirements.*

2.1.1 *Fitness of Drilling Unit.* All fixed and mobile drilling units shall be capable of withstanding the oceanographic, meteorological, and ice conditions for the proposed area of operations. The lessee shall submit with the Exploration Plan or Development and Production Plan evidence to the DCM, Offshore Field Operations, of the fitness of the drilling unit to perform the planned drilling operation.

After a drilling unit has been approved for use in an area, the information listed below need not be resubmitted unless required by the DCM, Offshore Field Operations, or there are changes in equipment which affect the rated capability of the unit. This evidence shall include the following specifications or other information as requested by the District Supervisor:

a. The rated capacity of all major drilling equipment.

b. Drilling safety systems.

c. Firefighting equipment.

d. Pollution-prevention equipment associated with the drilling operation.

e. A schematic diagram of the drilling unit.

f. A "Critical Operations and Curtailment Plan" as described in paragaraph 9 of this Order.

2.1.2 *Pre-Drilling Inspection.* Prior to commencing operations in an OCS area, all fixed drilling platforms and mobile drilling units shall be made available for a complete inspection by the District Supervisor.

2.1.3 *Well-Site Surveys.* Lessees shall submit a shallow geologic hazards report, and conduct such shallow geologic hazard surveys or other surveys as required by the DCM, Offshore Field Operations. The results of these surveys and an analysis of the geologic hazards shall be furnished to the District Supervisor. All data obtained from the surveys and all geophysical data relating to shallow hazards shall be furnished upon request to the District Supervisor. When requested, this data shall include sediment and seabed data, e.g., seabed profiles, sediment consistency, allowable bearing and sliding loads, and nearby potential seabed hazards, i.e., sand waves, slumps, mud slides, permafrost, and deposits of frozen gas hydrates.

2.1.4 *Oceanographic, Meteorological, and Performance Data.* Lessees shall collect and report oceanographic, meteorological, performance data, and monitor ice conditions during the period of operations. The type of information collected, method of collection, and report requirements will be as specified by the DCM, Offshore Field Operations.

2.1.5 *Subfreezing Operations.* Lessees shall furnish evidence that the drilling equipment, drilling safety systems, and other associated equipment and materials are suitable for operations in those areas which are subject to subfreezing conditions.

2.2 *Mobile Drilling Units.* Applications for drilling from mobile drilling units shall include the following:

a. A listing of the maximum environmental and operational conditions used for the design.

b. A listing of the regional maximum environmental conditions, including wave, wind, current, ice loading, icing, storm surges, and seismic motion, and of the unusual site-specific environmental conditions anticipated to be encountered at the drill site during the drilling operations.

c. Current American Bureau of Shipping Classification, U.S. Coast Guard Certificate of Inspection, or other appropriate classifications, with operational limitations.

2.3 *Fixed Drilling Platforms.* Applications for installations of fixed drilling platforms or structures, including artificial islands, shall be submitted in accordance with OCS Order No. 8. Mobile Drilling Units which have their jacking equipment removed or have been otherwise immobilized will be considered fixed drilling platforms, and applications shall also be submitted in accordance with OCS Order No. 8.

3. *Well Casing and Cementing.*

3.1 *General Requirements.* All wells shall be cased and cemented in accordance with the requirements of 30 CFR 250.41[a][1]. The Application for Permit to Drill shall include the casing design safety factors for collapse, tension, and burst. In addition, the Application for Permit to Drill must include a proposal to fill all annuli within permafrost zones with cement or a liquid with a freezing point below the minimum permafrost temperature to prevent internal freezeback. The cement used to cement through permafrost zones shall be designed to set before freezing and shall have a low heat of hydration so as not to thaw frozen formations. Wells drilled in areas which are underlain by freshwater aquifers shall have casing programs which are designed to protect the freshwater zones. In cases where cement has filled the annular space back to the ocean floor, upon approval by the District Supervisor, the cement may be washed out or displaced to a depth not exceeding the depth of the structural casing shoe to facilitate casing removal upon well abandonment. For the purpose of this Order, the several casing strings in order of normal installation are drive or structural, conductor, surface, intermediate, and production casing. If there are indications of inadequate cementing (such as lost returns, cement channeling, or mechanical failure of equipment on the surface, intermediate, and production casing strings), the lessee shall evaluate the adequacy of the cementing operations by pressure testing the casing shoe, running a cement bond log, running a temperature survey, or a combination thereof before continuing operations. If the evaluation indicates inadequate cementing, the lessee shall recement or take other actions as approved by the District Supervisor. The lessee shall verify the adequacy of the remedial cementing operations as required by the District Supervisor.

The design criteria considered for all wells shall be submitted with the Application for Permit to Drill. The criteria to be considered shall include all pertinent factors for well control, such as:

a. Formation fracture gradients.

b. Formation pressure.

c. Anticipated surface pressure.[1]

[1] Anticipated surface pressure is defined as the surface well pressure which can reasonably be expected to be exerted upon a casing string and its related wellhead equipment. In the calculation of anticipated surface pressure, the lessee shall take into account the drilling, completion, and producing conditions. He shall consider mud densities to be

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d. Casing setting depths.
e. Permafrost zones.

The lessee shall utilize appropriate drilling technology and state-of-the-art methods, such as drilling-rate evaluation, shale-density analysis, or other appropriate methods in order to enhance the evaluation of conditions of abnormal pressure and to minimize the potential for the well to flow or kick.

All casing, except drive pipe or structural casing, shall be new pipe which meets or exceeds American Petroleum Institute (API) standards, or reconditioned used pipe that has been tested to assure that it will meet or exceed API standards for new pipe. If casing to be used is not fabricated to API standards, the yield strengths of the casing shall be included on the Application for Permit to Drill (Form 9–331 C), provided these specifications are not on file with the USGS.

3.2 *Drive or Structural Casing.* This casing shall be set by driving, jetting, or drilling to a minimum depth of 30 meters (98 feet) below the ocean floor or to other depths, as may be required or approved by the District Supervisor, in order to support unconsolidated deposits and to provide hole stability for initial drilling operations. If this portion of the hole is drilled, the drilling fluid shall be of a type that is in compliance with the liquid disposal requirements of OCS Order No. 7, and a quantity of cement sufficient to fill the annular space of the drilled hole shall be used.

3.3 *Conductor and Surface Casing Setting and Cementing Requirements.*

3.3.1 *Conductor and Surface Casing Setting Depths.* Casing design and setting depths shall be based upon all engineering and geologic factors, including the presence or absence of hydrocarbons, other potential hazards, and water depths. These strings of casing shall be set at the depths specified, subject to approved variation to permit the casing to be set in a competent bed, or through formations determined desirable to be isolated from the well by pipe for safer drilling operations; however, the conductor casing shall be set immediately prior to drilling into formations known to contain oil or gas, or, if unknown, upon encountering such formations. These casing strings shall be run and cemented prior to drilling below the specified setting depths. The District Supervisor may prescribe the setting depths for those wells which may encounter abnormal pressure conditions.

In permafrost-free areas, conductor casing setting depths shall be between 91 meters (298 feet) and 305 meters (1,000 feet) True Vertical Depth (TVD) below the ocean floor, and surface casing setting depths shall be between 305 meters (1,000 feet) and 1,400 meters (4,593 feet) TVD below the ocean floor.

In areas containing permafrost, the conductor or surface casing shall be set and cemented after drilling a maximum of 150 meters (492 feet) below the base of the permafrost. Where conditions warrant, the District Supervisor may approve a program where surface casing may be set at a greater depth below the base of permafrost, but not to exceed 1,400 meters (4,593 feet) TVD below the ocean floor.

Engineering, geophysical, and geologic data used to substantiate the proposed setting depths of the conductor and surface casings (such as estimated fracture gradients, pore pressures, shallow hazards, etc.) shall be furnished with the Application for Permit to Drill.

3.3.2 *Conductor Casing Cementing Requirements.* Conductor casing shall be cemented with a quantity of cement sufficient to fill the calculated annular space up to the top of the casing. Cement fill to the top of the casing shall be verified by the observation of cement returns. In the event that observation of cement returns is not feasible or possible, the method of verifying the cement fill shall be approved by the District Supervisor. Upon approval by the District Supervisor, the cement may be washed out or displaced to a depth not exceeding the depth of the structural casing shoe to facilitate casing removal upon well abandonment.

3.3.3 *Surface Casing Cementing Requirements.* Surface casing shall be cemented with a quantity of cement sufficient to protect all freshwater zones, to provide well control until the next string of casing is set, and with sufficient cement to fill the calculated annular space up to the top of the permafrost zone, and with the cement fill at least 60 meters (197 feet) inside the conductor casing, or as approved by the District Supervisor. Any portion of the annulus opposite a permafrost zone which is not protected by cement shall be filled with a liquid with a freezing point below the minimum permafrost temperature to prevent internal freezeback.

For floating drilling operations that use a one-stack blowout-preventer (BOP) system, a lesser volume of cement is permissible to prevent sealing the annular space between the conductor casing and surface casing, when approved by the District Supervisor. Any annular space open to the drilled hole shall be sealed in accordance with the requirements in Order No. 3 upon abandonment.

After drilling a maximum of 15 meters (49 feet) of new hole, a pressure test shall be conducted to obtain data to be used in estimating the formation fracture gradient. Pressure data shall be obtained either by testing to formation leak-off or by testing to a predetermined equivalent mud weight as approved by the District Supervisor. The results of this test and any subsequent tests of the formation shall be recorded on the driller's report and used to determine the depth and maximum mud weight to be used in the intermediate hole.

3.4 *Intermediate Casing Setting and Cementing Requirements.* One or more strings of intermediate casing shall be set when required by anticipated abnormal pressure, mud weight, sediment, and other well conditions. The setting depth for intermediate casing shall be based on the pressure tests of the exposed formation below the surface casing shoe or on subsequent pressure tests. After drilling a maximum of 15 meters (49 feet) of new hole, a pressure test shall be conducted to obtain data to be used in estimating the formation fracture gradient. Pressure data shall be obtained either by testing to formation leak-off or by testing to a predetermined equivalent mud weight as approved by the District Supervisor. The results of this test and any subsequent tests of the formation shall be recorded on the driller's report and used to determine the depth and maximum mud weight to be used in the hole below the intermediate-casing string.

A quantity of cement sufficient to cover and isolate all hydrocarbon zones and to isolate abnormal pressure intervals from normal pressure intervals shall be used. This requirement for isolation may be satisfied by squeeze cementing prior to completion, suspension of operations, or abandonment, whichever occurs first. Sufficient cement shall be used to provide annular fill-up to a minimum of 150 meters (492 feet) above the zones to be isolated or 150 meters (492 feet) above the casing shoe in cases where zonal coverage is not required. Any portion of the annulus opposite a permafrost zone not protected by cement must be filled with a liquid which has a freezing point below the

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used below various casing strings, fracture gradients of the exposed formations, casing setting depths, total well depth, formation fluid type, and other pertinent conditions. Considerations for calculating anticipated surface pressure may vary for each segment of the well. The lessee shall include as a part of the statement of anticipated surface pressure the calculations used to determine this pressure during the drilling phase and the completion phase, including the anticipated surface pressure used for production string design.

minimum permafrost temperature to prevent internal freezeback.

If a liner is used as an intermediate string, it shall be lapped a minimum of 30 meters (98 feet) into the previous casing string and cemented as required for intermediate casing. The liner shall be tested by a fluid entry or pressure test to determine whether a seal between the liner top and the next larger string has been achieved. The test shall be recorded on the driller's report. If the test indicates an improper seal, the top of the liner shall be squeeze cemented. When such liner is used as production casing, it shall be extended to the surface and cemented to avoid surface casing being used as production casing.

3.5 *Production Casing.* Production casing shall be set before completing the well for production. It shall be cemented in a manner necessary to cover or isolate all zones above the shoe which contain hydrocarbons; but in any case, a calculated volume sufficient to fill the annular space at least 150 meters (492 feet) above the uppermost hydrocarbon zone must be used. Open-hole and slotted-liner completions are permitted when approved by the District Supervisor. Any portion of the annulus opposite a permafrost zone not protected by cement must be filled with a liquid which has a freezing point below the permafrost temperature to prevent internal freezeback.

When a liner is used as production casing below intermediate casing, it shall be lapped a minimum of 30 meters (98 feet) into the previous casing string and cemented as required for the production casing. Testing of the seal between the liner top and the next larger string shall be conducted as in the case of intermediate liners and recorded on the driller's report. If the test indicates an improper seal, the top of the liner shall be squeeze cemented.

3.6 *Pressure-Testing of Casing.* Prior to drilling the plug after cementing, all casing strings, except the drive or structural casing, shall be pressure-tested as shown in the table below. The test pressure shall not exceed 70 percent of the internal yield pressure of the casing. If the pressure declines more than 10 percent in 30 minutes or if there is another indication of a leak, the casing shall be recemented, repaired, or an additional casing string run, and the casing tested again. The above procedures shall be repeated until a satisfactory test is obtained.

Casing and Minimum Surface Pressure

Conductor—1,400 kilopascals (kPa)(203 psi)

Surface—*6,900 kPa (1,000 psi)

Intermediate, Liner, and Production—*10,400 kPa (1,508 psi) or 5 kPa/m (0.22 psi/ft.) whichever is greater

In the event of prolonged drill pipe operations which could cause damage to the casing, the casing shall be pressure-tested, calipered, or otherwise evaluated, as approved by the District Supervisor.

After cementing any of the above strings, drilling shall not be resumed until there has been a time lapse of 8 hours under pressure for the conductor casing string or 12 hours under pressure for all other strings. Cement is considered under pressure if one or more float valves are employed and are shown to be holding the cement in place or when other means of holding pressure is used. All casing pressure tests shall be recorded on the driller's report.

In addition to the time lapse stated above, sufficient time must elapse to allow the bottom 153 meters (502 feet) of annular cement fill, or total length of annular cement fill, if less, to attain a compressive strength of at least 3,448 kPa (500 psi), or, as approved by the District Supervisor, before drilling resumes.

The typical performance data for the particular cement mix used in the well shall be used to determine the time lapse required.

4. *Directional Surveys.* Wells are considered vertical if inclination does not exceed an average of 3 degrees from the vertical. Inclinational surveys shall be obtained on all vertical wells at intervals not exceeding 150 meters (492 feet) during the normal course of drilling.

Wells are considered directional if inclination exceeds an average of 3 degrees from the vertical. Directional surveys giving both inclination and azimuth shall be obtained on all directional wells at intervals not exceeding 150 meters (492 feet) during the normal course of drilling and at intervals not exceeding 30 meters (98 feet) in all planned angle-change portions of the hole.

On both vertical and directional wells, directional surveys giving both inclination and azimuth shall be obtained at intervals not exceeding 150 meters (492 feet) prior to, or upon, setting surface or intermediate casing, liners, and at total depth. Composite directional surveys shall be filed with the District Supervisor. The interval shown will be from the bottom of conductor casing or, in the absence of conductor casing, from the bottom of drive or structural casing to total depth. In calculating all surveys, a correction from true north to Universal Transverse Mercator Grid north or Lambert Grid north shall be made after making the magnetic-to-true-north correction. A composite dipmeter directional survey including a listing of the directional computed inclinations and azimuths on a well classified as vertical will be acceptable as fulfilling the applicable requirements of this paragraph.

5. *Blowout-Preventer (BOP) Equipment requirements.*

5.1 *General Requirements.* Blowout preventers and related well-control equipment shall be installed, used, maintained, and tested in a manner necessary to assure well control.

5.1.1 *BOP Equipment.* Blowout-preventer equipment shall consist of an annular preventer and the specified number of ram-type preventers. The pipe rams shall be of proper size to fit the drill pipe in use. The working pressure of any blowout preventer shall exceed the anticipated surface pressure to which it may be subjected, except that the working pressure of the annular preventer need not exceed 34,475 kPa (5,000 psi), unless a higher working pressure is required by the District Supervisor. When the anticipated surface pressure exceeds the rated working pressure of the annular preventer, the lessee shall submit with the Application for Permit to Drill a well-control procedure which indicates how the annular preventer will be utilized and the pressure limitations which will be applied during each mode of pressure control.

All blowout-preventer systems shall be equipped with: a. A hydraulic actuating system that provides sufficient accumulator capacity to supply 1.5 times the volume necessary to close all BOP equipment units with a minimum pressure of 1,400 kPa (203 psi) above the precharge pressure. An accumulator backup system, supplied by a secondary power source independent from the primary power source, shall be provided with sufficient capacity to close all blowout preventers and hold them closed. Locking devices shall be provided on the ram-type preventers. The method of BOP actuation control, such as hydraulic, acoustic, or other methods, shall be described and included in the Application for Permit to Drill.

b. At least one operable remote blowout-preventer-control station, in addition to the one on the drilling floor. This control station shall be in a readily accessible location away from the drilling floor.

*Must not exceed 70 percent of the minimum internal yield pressure.

c. A drilling spool with side outlets, if side outlets are not provided in the BOP body, to provide for separate kill and choke lines.

d. A kill line equipped with 2 kill-line valves is required. The master valve shall be located adjacent to the BOP. This valve shall not normally be used for opening or closing on flowing fluid. The second valve shall be located adjacent to the master valve. This valve shall be used as the control valve.

e. A fill-up line above the uppermost preventer.

f. A choke manifold equipped in accordance with "API Recommended Practice for Blowout-Prevention Equipment Systems," API RP 53, first Edition, February 1976, reissued February 1978, Sections 3A and 3B, or subsequent revisions which the Deputy Chief, Conservation Division—Offshore Minerals Regulation, has approved for use.

g. Valves, pipes, flexible steel hoses, and other fittings upstream of, and including, the choke manifold shall have a pressure rating at least equal to the anticipated surface pressure.

h. A wellhead assembly with a working pressure at least equal to the anticipated surface pressure.

5.1.2 *Auxiliary Equipment.* The following auxiliary equipment shall be provided and maintained in operable condition at all times:

a. A kelly cock shall be installed below the swivel, and an essentially full-opening valve of such design that it can be run through blowout preventers shall be installed at the bottom of the kelly. A wrench to fit each valve shall be stored in a conspicuous location readily accessible to the drilling crew.

b. An inside blowout preventer and an essentially full-opening drill string safety valve in the open position shall be maintained on the rig flow at all times while drilling operations are being conducted. These valves shall be maintained on the rig floor to fit all connections that are in the drill string.

c. A safety valve shall be available on the rig floor assembled with the proper connection to fit the casing string that is being run in the hole at the time.

5.1.3. *Subfreezing Operations.* The blowout preventers and related control equipment shall be suitable for operations in those areas which are subject to subfreezing conditions.

5.2 *Subsea BOP Requirements.* The minimum requirements for drilling below the casing strings for subsea blowout-preventer stacks are tabulated below:

Drive or Structural, See Notes[1] and [2]
Conductor 1—Annular, 1—Diverter System [3] and [4]
Surface 1—Annular, 2—Pipe Rams, 1—Blind Shear Ram
Intermediate—1—Annular, 2—Pipe Rams[5] 1—Blind Shear Ram

Subsea blowout-preventer stacks shall be equipped with blind shear rams. A subsea accumulator or a suitable alternate approved by the District Supervisor is required to provide fast closure of the preventers and to operate all critical functions in case of loss of power fluid connection to the surface. The blowout-preventer system shall include dual pod control systems in accordance with API RP 53, First Edition, February 1976, reissued February 1978, Subsection 5.B.13, or subsequent revisions which the Deputy Chief, Conservation Division—Offshore Minerals Regulation, has approved for use. Prior to the removal of the marine riser for installing casing, the riser shall be displaced with seawater. Sufficient hydrostatic head shall be maintained within the well bore to compensate for the reduction in head and to maintain a safe well condition. If repair or replacement of the blowout-preventer stack is necessary after installation, this work shall be accomplished after casing has been cemented prior to drilling out the casing shoe or by setting a cement or bridge plug or storm packer to assure safe well conditions.

5.3 *Surface BOP Requirements.* The minimum requirements for drilling below the casing strings for conventional surface blowout-preventer stacks are tabulated below:

Drive or Structural, 1—Annular, 1—Diverter System [1]
Conductor, 1—Annular, 1—Diverter System [1]
Surface, 1—Annular, 2—Pipe Rams, 1—Blind Ram
Intermediate, 1—Annular, 2—Pipe Rams,[2] 1—Blind Ram

5.4 *Drive Pipe or Structural Casing BOP Requirements.*

5.4.1 *Drilling Operations from Bottom-Supported Rigs.* Before drilling below this string with a bottom setting rig, a diverter system utilizing an annular-type preventer and related equipment shall be installed for circulating the drilling fluid to the drilling structure. The diverter system shall be equipped with remote-control valves in the main and diverter flow lines that can be operated from the control panel prior to shutting in the well. The diverter lines shall vent in different directions to permit downwind diversion. A schematic diagram and operational procedure for the diverter system shall be submitted with the Application for Permit to Drill (Form 9-331 C) to the District Supervisor for approval.

5.4.2 *Floating Drilling Operations.* In drilling operations where a floating or semi-submersible type of drilling vessel is used and formation competency at the structural casing setting depth is not adequate to permit circulation of drilling fluids to the vessel while drilling the conductor hole, a program which provides for safety in these operations shall be described and submitted to the District Supervisor for approval. This program shall include all known

[1] When drilling fluids are circulated to the drilling vessel, a diverter system as described in subparagraph 5.4.1 shall be installed on top of the marine riser.

[2] If returns to the surface cannot be established, refer to subparagraph 5.4.2.

[3] The choke and kill lines or equivalent vent lines, equipped with necessary connections and fittings, can be used for diversion, if approved by the District Supervisor, or an annular preventer or pressure-rotating, packoff-type head, equipped with suitable diversion lines, shall be installed on top of the marine riser.

[4] To be installed on top of the marine riser. The diverter system shall provide, as a minimum two 15-centimer (6-inch) internal diameter lines and full-opening valves.

[5] When a tapered drill string is in use, the BOP stack shall be equipped with one of the following pipe ram configurations:

a. Two (2) sets of pipe rams for the larger size string and one (1) set for the smaller size string of drill pipe.

b. Two (2) sets of pipe rams for the larger size string and one (1) set of variable bore pipe rams to fit both sizes of pipe.

c. Two (2) sets of variable bore pipe rams to fit both sizes of pipe.

d. One (1) set of pipe rams for the larger size string and one (1) set of variable bore pipe rams to fit both sizes of pipe.

e. One (1) set of pipe rams for the larger size string, one (1) set of pipe rams for the smaller pipe, and one (1) set of variable bore pipe rams to fit both sizes of pipe.

[1] The diverter system shall include a minimum of two 15-centimeter (6-inch) internal diameter lines and full-opening valves. The flowpath from the BOP to the branch point of diverter lines in new systems shall have a minimum internal diameter of 15 centimeters (6 inches).

[2] When a tapered drill string is in use, the BOP stack shall be equipped with one of the following pipe ram configurations:

a. Two (2) sets of pipe rams for the larger size string and one (1) set for the smaller size string of drill pipe.

b. Two (2) sets of pipe rams for the larger size string and one (1) set of variable bore pipe rams to fit both sizes of pipe.

c. Two (2) sets of variable bore pipe rams to fit both sizes of pipe.

d. Two (2) sets of pipe rams for the larger size string. The blind ram cavity shall be equipped with blind shear rams and the blind ram actuator shall be converted to operate the blind shear rams. A crossover sub to the larger size pipe shall be readily available on the rig floor.

e. One (1) set of pipe rams for the larger size string and one (1) set of variable bore pipe rams to fit both sizes of pipe.

f. One (1) set of pipe rams for the larger size string, one (1) set of pipe rams for the smaller pipe, and one (1) set of variable bore pipe rams to fit both sizes of pipe.

pertinent information, including seismic and geologic data, water depth, drilling-fluid hydrostatic pressure, a schematic diagram indicating the equipment to be installed from the rotary table to the proposed conductor-casing seat, and a contingency plan for moving off location.

5.5 *Conductor Casing.* Before drilling below this string, at least one remote-controlled, annular-type blowout preventer shall be installed. A diverter system and other equipment for circulating the drilling fluid to the drilling structure or vessel shall be installed as described in subparagraph 5.4.1.

5.6 *Surface and Intermediate Casing.* Before drilling below these strings, the blowout-preventer system shall consist of at least four remote-controlled, hydraulically operated blowout preventers including at least two equipped with pipe rams, one with blind rams, and one annular type. Subsea blowout-preventer stacks used with floating drilling vessels shall include one set of blind shear rams.

5.7 *Testing of BOP Systems.* Prior to conducting high-pressure tests, all BOPs shall be tested to a low pressure of 1,400 to 2,000 kPa (203 to 290 psi). All BOP tests shall be recorded in the driller's report.

5.7.1 *BOP Testing Frequency.* Surface and subsea BOP stacks shall be tested as follows:

a. When installed.

b. Before drilling out after each string of casing has been set.

c. At least once each week, but not exceeding 7 days between tests, alternating between control stations. If either control system is not functional, further drilling operations shall be suspended until that system becomes operable. A period of more than 7 days between blowout-preventer tests is allowed when well operations prevent testing and remedial efforts are being performed, provided the tests will be conducted as soon as possible before normal operations resume, and the reason for postponing testing is entered into the log. Well operations which prevent testing are stuck drill pipe and pressure-control operations. Testing shall be at staggered intervals to allow each drilling crew to operate the equipment.

The weekly test is not required for blind and blind shear rams. These rams need only be tested prior to drilling out after each casing string has been set.

d. Following repairs that require disconnecting a pressure seal in the assembly.

5.7.2 *Pressure Testing Surface BOP Systems.* Ram-type BOPs and related control equipment including the choke manifold shall be tested at the anticipated surface pressure or at 70 percent of the minimum internal yield pressure of the casing, whichever is the lesser. The annular-type BOP shall be tested at 70 percent of its rated working pressure or 70 percent of the minimum internal yield pressure of the casing, whichever is the lesser.

5.7.3 *Pressure Testing Subsea BOP Systems.* Subsea BOPs and all related well-control equipment shall be stump tested at the surface with water to the anticipated surface pressure, except that the annular-type BOP shall not be tested above 70 percent of its rated working pressure. After the installation of the BOP stack on the seafloor, the control equipment and ram-type BOPs shall be tested as required under subparagraph 5.7.2.

5.7.4 *Actuation of Auxiliary Well-Control Equipment.* In conjunction with the weekly pressure test of surface and subsea BOP systems, auxiliary well-control equipment such as choke manifold valves, kelly cocks, and drill pipe safety valves shall be actuated. Casing safety valves shall be actuated prior to running casing.

5.8 *Inspection and Maintenance.* All BOP systems, marine risers, and associated equipment shall be inspected and maintained to assure that the equipment will function properly. The manufacturers' recommended inspection and maintenance procedures are acceptable as guidelines in complying with this requirement. The BOP systems and marine risers shall be visually inspected at least once each day if the weather and sea conditions permit the inspection. Inspection of subsea installations may be accomplished by the use of television equipment.

5.9 *Blowout-Preventer Drills.* All drilling personnel shall be indoctrinated in blowout-preventer drills and be familiar with the blowout-preventer equipment before starting work on the well. A blowout-preventer drill shall be conducted for each drilling crew in accordance with the well-control drill requirements of the U.S. Geological Survey (USGS) Outer Continental Shelf Standard "Training and Qualifications of Personnel in Well-Control Equipment and Techniques for Drilling on Offshore Locations," No. T 1 (GSS–OCS–T1), First Edition, December 1977, or subsequent revisions thereto. A BOP drill may be required by a USGS designated representative at any time during the drilling operation, after notifying and consulting with the lessee's senior representative present.

All BOP drills shall be recorded in the driller's report.

6. *Mud Program.* The characteristics, use, and testing of drilling mud and the implementation of related drilling procedures shall be designed to prevent the loss of well control. Sufficient quantities of mud materials shall be maintained readily accessible for use at all times to assure well control

Mud temperatures shall be controlled to minimize heat loss to the permafrost and to minimize thawing of the permafrost which can result in serious well problems while drilling through the permafrost. To insure maximum safety, hydrate zones shall be anticipated and diagnosed quickly, and drilled using the latest state-of-the-art methods. Provided that the hydrate zones are adequately protected, drilling can continue on a site specific basis without the need to cool the mud thereafter.

6.1 *Mud Control.* Before starting out of the hole with drill pipe, the mud shall be properly conditioned. Proper conditioning requires either circulation with the drill pipe just off bottom to the extent that the annular volume is displaced, or proper documentation in the driller's report prior to pulling the drill pipe as follows:

a. there is no indication of influx of formation fluids prior to starting to pull the drill pipe from the hole.

b. The weight of the returning mud is essentially the same as the weight of the mud entering the hole. In the event that the returning mud is lighter than the entering mud by a weight differential equal to or greater than 0.2 pound per gallon, the mud shall be circulated until the annular volume is displaced, and the mud properties shall be checked for the influx of gas or liquid.

c. Other mud properties recorded on the daily drilling log are within the specified ranges required by the mud program.

When the mud in the hole is circulated, the driller's report shall be so noted.

When coming out of the hole with drill pipe, the annulus shall be filled with mud before the change in mud level decreases the hydrostatic pressure 517 kPa (75 psi) or every 5 stands of drill pipe, whichever gives a lower decrease in hydrostatic pressure. The number of stands of drill pipe and drill collars that may be pulled prior to filling the hole and the equivalent mud volume shall be calculated and posted. A mechanical, volumetric, or electronic device for measuring the amount of mud required to fill the hole shall be utilized.

When there is an indication of swabbing or influx of formation fluids, the necessary safety devices and action shall be employed to control the well. The mud shall be circulated and

conditioned, on or near bottom, unless well or mud conditions prevent running the drill pipe back to the bottom.

For each casing string, the maximum pressure to be contained under the blowout preventer, before controlling excess pressure by bleeding through the choke, shall be posted near the driller's control console.

An operable gas separator shall be installed in the mud system prior to commencement of drilling operations. The separator shall be maintained for use throughout the drilling and completion of the well.

The mud in the hole shall be circulated or reverse-circulated prior to pulling the drill-stem test tools from the hole.

6.2 *Mud Testing and Monitoring Equipment.* Mud-testing equipment shall be maintained on the drilling rig at all times, and mud tests shall be performed once each tour, or more frequently, as conditions warrant. Such tests shall be conducted in accordance with procedures outlined in "API Recommended Practice for Standard Procedure for Testing Drilling Fluids," API RP 13B, Seventh Edition, April 1978, or subsequent revisions which the Deputy Chief, Conservation Division—Offshore Minerals Regulation, has approved for use. The results of the tests shall be recorded and maintained at the drill site.

The following mud-system monitoring equipment shall be installed with derrick floor indicators and used when mud returns are established and throughout subsequent drilling operations:

a. Recording mud pit level indicator to determine mud pit volume gains and losses. This indicator shall include both a visual and an audio warning device.

b. Mud-volume measuring device for accurately determining mud volumes required to fill the hole on trips.

c. Mud-return indicator to determine that returns essentially equal the pump discharge rate.

d. Gas-detecting equipment to monitor the drilling mud returns, with indicators located in the mud-logging compartment or on the derrick floor. If the indicators are in the mud-logging compartment, there shall be a means of immediate communication with the rig floor, and the equipment shall be continually manned.

6.3 *Mud Quantities.* The lessee shall include, with his Application for Permit to Drill, a tabulation of well depth versus minimum quantities of mud material, including weighting material, to be maintained at the drill site to assure well control.

When the mud quantity required exceeds the storage capacity of the drilling facility, the lessee shall maintain maximum mud inventories and must receive approval from the District Supervisor of the lessee's plans to resupply mud inventories in the event of an emergency. The plan shall include an estimate of the time required for delivery of the mud supplies.

Daily inventories of mud materials, including weighting material, shall be recorded and maintained at the well site. Drilling operations shall be suspended in the absence of minimum quantities of mud material specified in the table or as modified in the approved plan.

6.4 *Safety Precautions in Enclosed Mud-Handling Areas.* All enclosed mud-handling areas where dangerous concentrations of combustible gases may accumulate shall be equipped with a ventilation system and with gas monitors. These enclosed areas shall be:

a. Ventilated with high-capacity mechanical ventilation systems capable of changing the air once every 2 minutes automatically on signal from a gas detector or gas detectors, that are operative at all times, indicating the presence of gas.

b. Maintained at a negative pressure relative to the surrounding areas where discharge to an adjacent enclosed area may be hazardous. The negative pressure areas are to be protected with a pressure sensitive alarm.

c. Fitted with gas detectors and alarms.

d. Equipped with electrical equipment of the "explosion proof" type. Alternatively, the equipment may be pressurized to prevent the ingress of explosive gases, and where air is used for pressurizing, the air intake shall be located outside of, and as far as practicable from, hazardous areas.

7. *Supervision, Surveillance, and Training.*

7.1 *Supervision.* A representative of the lessee shall provide onsite supervision of drilling operations on a 24-hour basis.

7.2 *Surveillance.* From the time drilling operations are initiated and until the well is completed or abandoned, a member of the drilling crew or the toolpusher shall maintain rig-floor surveillance continuously, unless the well is secured with blowout preventers, bridge plugs, storm packer, or cement plugs.

7.3 *Training.* Prior to conducting any drilling operations, lessee and drilling contractor personnel shall be trained and qualified in accordance with the provisions of the USGS Outer Continental Shelf Standard "Training and Qualifications of Personnel in Well-Control Equipment and Techniques for Drilling on Offshore Locations," No. T 1 (GSS–OCS–T 1), First Edition, December 1977, or subsequent revisions thereto.

In order to maintain qualification, any driller, toolpusher, or operator's representative, shall successfully complete a USGS-approved refresher course annually and repeat the basic well-control course every 4 years, as described in the provisions of GSS–OCS–T 1. Credit for these courses shall be obtained from USGS-approved schools. The refresher course shall be completed within 45 days of the student's anniversary date. The anniversary date is established upon the student's successful completion of a basic course in well control.

Records shall be maintained at the drill site for the affected personnel, indicating the specific training and refresher courses successfully completed, the dates of completion, and the names and dates of the courses.

In those areas which are subject to subfreezing conditions, the lessee shall ensure that personnel responsible for maintenance of the blowout-preventer stack, the associated-control equipment, and the hydraulic-control fluids shall be instructed in the proper procedures to prevent freezing of the hydraulic-control fluids in the control system and the fluids in the choke and kill lines.

8. *Hydrogen Sulfide.* When drilling operations are planned which will penetrate reservoirs known or expected to contain hydrogen sulfide (H_2S), or in those areas where the presence of H_2S is unknown, or upon encountering H_2S, the preventive measures and the operating practices set forth in USGS Outer Continental Shelf Standard "Safety Requirements for Drilling Operations in a Hydrogen Sulfide Environment," No. 1 (GSS–OCS–1), First Edition, February 1976, or subsequent revisions thereto, shall be followed.

9. *Critical Operations and Curtailment Plans.* Certain operations performed in drilling are more critical than others with respect to well control, and for the prevention of fire, explosion, oil spills, and other discharges or emissions. The lessee shall submit with the Exploration Plan or Development and Production Plan a Critical Operations and Curtailment Plan to be followed while conducting drilling operations on each lease. This plan shall include:

a. A list or description of the critical drilling operations that are, or are likely to be, conducted on the lease. This list or description shall specify the operations to be ceased, limited, or not to be commenced under given

circumstances or conditions. This list shall include operations such as:

(1) Drilling in close proximity to another well.

(2) Drill-stem testing.

(3) Running and cementing casing.

(4) Cutting and recovering casing.

(5) Logging or wireline operations.

(6) Well-completion operations.

(7) Moving the drilling vessel off location in an emergency, repositioning the vessel on location, and reestablishing entry into the well.

b. A list or description of circumstances or conditions under which such critical operations shall be curtailed. This list or description shall be developed from all the factors and conditions relating to the conduct of operations on the lease, and shall consider but not necesarily be limited to the following:

(1) Whether the drilling operations are to be conducted from mobile or fixed platforms.

(2) The availability and capability of containment and cleanup equipment and spill-control system response time.

(3) Abnormal or unusual conditions expected to be encountered during drilling operations.

(4) Known or anticipated meteorological, oceanographic, and ice conditions.

(5) Availability of personnel and equipment for particular operations to be conducted.

(6) Other factors peculiar to the particular lease under consideration.

c. The name of the person who has responsibility as the person-in-charge of overall drilling operations.

When any circumstance or condition listed or described in the plan occurs or other operational limits are encountered, the lessee shall notify the District Supervisor and shall curtail the critical operations as set forth under 9a.

Deviations from the plan shall require prior approval of the District Supervisor. If emergency action requires deviation from the plan, the District Supervisor shall be notified as soon as possible. The lessee shall review the plan at least annually. The lessee shall notify the District Supervisor of the results of this review. Any amendments or modifications of the plan are subject to the approval of the District Supervisor.

10. *Field Drilling Rules.* When sufficient geological and engineering information is obtained as a result of drilling operations, the lessee may make an application or the DCM, Offshore Field Operations, may require an application for the establishment of field drilling rules. After field drilling rules have been established by the DCM, Offshore Field Operations, development wells shall be drilled in accordance with these rules and the requirements of this Order which are not affected by such rules.

11. *Departures.* All departures from the requirements specified in this Order shall be subject to approval, pursuant to 30 CFR 250.11(b).

Rodney A. Smith,

Deputy Conservation Manager, Offshore Field Operations.

Approved:

Robert L. Rioux,

Deputy Chief, Conservation Division—Offshore Minerals Regulation.

United States Department of the Interior, Geological Survey Conservation Division

Alaska Region, Arctic

OCS Order No. 3

Effective———

Plugging and Abandonment of Wells

This Order is issued pursuant to the authority prescribed in 30 CFR 250.10, 250.11, and in accordance with 30 CFR 250.15 and 250.92. The lessee shall comply with the following minimum plugging and abandonment procedures which have general application to all wells drilled for oil and gas. Plugging and abandonment operations shall not be commenced prior to obtaining approval from the appropriate District Supervisor. Oral or telegraphic approvals shall be in accordance with 30 CFR 250.13.

1. *Application for Approval to Abandon a Well.* In accordance with 30 CFR 250.92, the lessee shall submit for approval a Form 9–331, Sundry Notices and Reports on Wells, containing the following information:

1.1 *Notice of Intention to Abandon a Well.* A detailed statement of the proposed work for abandonment of any well. For all wells, the statement shall describe the proposed work (including, by depths, the kind, location, and length of plugs) and plans for mudding, cementing, shooting, testing, and removing casing, and other pertinent information. The statement as to a producible well shall set forth the reasons for abandonment, the amount and date of last production, and complete data from the last well test.

1.2 *Subsequent Report of Abandonment.* A detailed report of the manner in which the abandonment or plugging work was accomplished, including the nature and quantities of materials used in the plugging and the location and extent, by depths, of casing left in the well, and the volume of mud fluid used. If an attempt was made to cut and pull any casing string, a description of the methods used and results obtained must be included.

2. *Permanent Abandonment.*

2.1 *Isolation of Zones in Open Hole.* In uncased portions of wells, cement plugs shall be spaced to extend 30 meters (98 feet) below the bottom to 30 meters (98 feet) above the top of any oil, gas, and freshwater zones so as to isolate them in the strata in which they are found and to prevent them from escaping into other strata or the surface. The placement of additional cement plugs to prevent the migration of formation fluids in the well bore may be required by the District Supervisor.

2.2 *Isolation of Open Hole.* Where the is open hole below the casing, a cement plug shall be placed in the deepest casing string in accordance with "a" or "b" below. In the event lost circulation conditions have been experienced or are anticipated, a permanent-type bridge plug may be placed in accordance with "c" below:

a. A cement plug set by the displacement method so as to extend a minimum of 30 meters (98 feet) above and 30 meters (98 feet) below the casing shoe.

b. A cement retainer with effective back-pressure control set not less than 15 meters (49 feet) nor more than 30 meters (98 feet) above the casing shoe, with a cement plug calculated to extend at least 30 meters (98 feet) below the casing shoe and 15 meters (49 feet) above the retainer.

c. A permanent-type bridge plug set within 45 meters (148 feet) above the casing shoe with 15 meters (49 feet) of cement on top of the bridge plug. This bridge plug shall be tested in accordance with subparagraph 2.7 prior to placing subsequent plugs.

2.3 *Plugging or Isolating Perforated Intervals.* A cement plug shall be set by the displacement method opposite all open perforations (perforations not squeezed with cement) extending a minimum of 30 meters (98 feet) above and 30 meters (98 feet) below the perforated interval or down to a casing plug, whichever is less. In lieu of setting a cement plug by the displacement method, the following two methods are acceptable, provided the perforations are isolated from the hole below:

a. A cement retainer with effective back-pressure control set not less than 15 meters (49 feet) nor more than 30 meters (98 feet) above the top of the perforated interval with a cement plug calculated to extend at least 30 meters (98 feet) below the bottom of the perforated interval and 15 meters (49 feet) above the retainer.

b. A permanent-type bridge plug set within 45 meters (148 feet) above the top of the perforated interval with 15 meters (49 feet) of cement on top of the bridge plug.

2.4 *Plugging of Casing Stubs.* If casing is cut and recovered leaving a stub, one of the following methods shall be used to plug the casing stub:

2.4.1 *Stub Termination Inside Casing String.* A stub terminating inside a casing string shall be plugged by one of the following methods:

a. A cement plug set so as to extend 30 meters (98 feet) above 30 meters (98 feet) below the stub.

b. A cement retainer set 15 meters (49 feet) above the stub with a volume of cement equivalent to 45 meters (148 feet) squeezed below the retainer and with an additional 15 meters (49 feet) placed above the retainer.

c. A permanent bridge plug set 15 meters (49 feet) above the stub and capped with 15 meters (49 feet) of cement.

2.4.2 *Stub Termination Below Casing String.* If the stub is below the next larger string, plugging shall be accomplished in accordance with either subparagraph 2.1 or 2.2.

2.5 *Plugging of Annular Space.* Any annular space communicating with any open hole and extending to the ocean floor shall be plugged with cement.

2.6 *Surface Plug.* A cement plug at least 45 meters (148 feet) in length, with the top of the plug 45 meters (148 feet) or less below the ocean floor, shall be placed in the smallest string of casing which extends to the ocean floor.

2.7 *Testing of Plugs.* The setting and location of the first plug below the surface plug shall be verified by one of the following methods:

a. By placing a minimum pipe weight of 6,800 kilograms (15,000 pounds) on the cement plug, cement retainer, or bridge plug. The cement placed above the bridge plug or retainer need not be tested.

b. By testing the plug with a minimum pump pressure of 6,9000 kPa (1,000 psi) with no more than a 10-percent pressure drop during a 15-minute period.

2.8 *Mud.* Each of the respective intervals of the hole between the various plugs shall be filled with mud fluid of sufficient density to exert hydrostatic pressure exceeding the greatest formation pressure encountered while drilling the intervals between the plugs. Fluid left in the hole adjacent to the permafrost zone shall have a freezing point below the temperature of the permafrost zone and shall be treated to minimize corrosion of the casing. Any oil base fluid left in the hole will require prior approval of the District Supervisor.

2.9 *Clearane of Location.* All casing, wellhead equipment, and piling shall be removed to a depth of at least 5 meters (16 feet) below the ocean floor, or to a depth approved by the District Supervisor after a review of data on the ocean bottom conditions. The lessee shall verify that the location has been cleared of all obstructions.

2.10 *Cement.* The cement used for cement plugs placed across the permafrost zones shall be designed to set before freezing and to have a low heat of hydration.

3. *Temporary Abandonment.* Any drilling well which is to be temporarily abandoned shall be mudded and cemented as required for permanent abandonment except for the requirements in subparagraphs 2.6 and 2.9. When a drilling well is temporarily abandoned, a bridge plug or a cement plug shall be set at the base of the deepest casing string. If a cement plug is set, it is not necessary for the cement plug to extend below the casing shoe into the open hole.

The lessee shall set a retrievable or permanent bridge plug, or a cement plug at least 30 meters (98 feet) in length in the casing between 5 and 60 meters (16 and 197 feet) below the ocean floor.

When a casing stub extends above the ocean floor, the lessee shall comply with the requirements of OCS Order No. 1, paragraph 4, "Identification of Subsea Objects."

4. *Departures.* All departures from the requirements specified in this Order shall be subject to approval, pursuant to 30 CFR 250.11(b).

Rodney A. Smith,

Deputy Conservation Manager, Offshore Field Operations.

Approved.

Robert L. Rioux,

Deputy Chief, Conservation Division—Offshore Minerals Regulation.

United States Department of the Interior Geological Survey Conservation Division

Alaska Region, Artic

OCS Order No. 4 Effective ————

Determination of Well Producibility

This Order is issued pursuant to the authority prescribed in 30 CFR 250.10, 250.11, and in accordance with 30 CFR 250.12. An OCS lease provides for extension beyond its primary term for as long as oil or gas may be produced from the lease in paying quantities. The term "paying quantities" as used herein means production of oil and gas in quantities sufficient to yield a return in excess of operating costs. An OCS lease may be maintained beyond the primary term, in the absence of actual production, when a suspension of production has been approved in accordance with 30 CFR 250.12.

1. *Application for Determination of Well Producibility.* An application shall be submitted to the District Supervisor for the determination of every new well's capability of producting until a well, drilled on the lease, has been determined to be capable of producing oil or gas in paying quantities. The application shall be submitted within 60 days after the drilling rig has been moved from the well.

2. *Criteria for the Determination of Well Producibility.* The Deputy Conservation Manager (DCM), Offshore Field Operations, shall prescribe which of the following criteria is to be used to determine the capability of a well to produce in paying quantities.

2.1 *Production Tests.* All tests must be witnessed by an authorized representative of the U.S. Geological Survey. Test data accompanied by the lessee's affidavit, or third-party test data, may be accepted in lieu of a witnessed test, provided approval is obtained from the District Supervisor prior to the performance of the test. All tests must conform to the following minimum requirements:

a. A production test for oil wells of at least 2 hours' duration following stabilization of flow.

b. A deliverability test for gas wells of at least 2 hours' duration following stabilization of flow or 4-point back-pressure test.

2.2 *Production Capability Determination.* When the District Supervisor determines that open hole evaluation data, such as wireline formation tests, drill stem tests, core data, and logs, have been demonstrated as reliable in a geologic area, such data may be considered as acceptable evidence that a well is capable of producing in paying quantities.

3. *Departures.* All departures from the requirements specified in this Order shall be subject to approval, pursuant to 30 CFR 250.11(b).

Rodney A. Smith,

Deputy Conservation Manager, Offshore Field Operations.

Approved.

Robert L. Rioux,

Deputy Chief, Conservation Division—Offshore Minerals Regulation.

United States Department of the Interior Geological Survey Conservation Division

Alaska Region, Artic

OCS Order No. 5

Effective———

Production Safety Systems

This Order is issued pursuant to the authority prescribed in 30 CFR 250.10 and 250.11 and in accordance with 30 CFR 250.30, 250.38, 250.45, and 250.46. The lessee shall be responsible for compliance with the requirements of this Order in the installation and operation of the production safety systems on all platforms and structures located on the leasehold including those facilities not operated or owned by the lessee. All applications for approval under the provisions of this Order shall be submitted to the District Supervisor.

This Order requires the lessee to submit plans, applications, reports, data, and other information. In all cases where the lessee(s) has(have) identified another party as designated lease operator in accordance with 30 CFR 250.31, and where the term "operator" is defined in accordance with 30 CFR 250.2(gg), the required information may be submitted by the designated lease operator.

1. *Use of Best Available and Safest Technologies (BAST).* The lessee is encouraged to continue the development of safety-system technology. As research and product improvement results in increased effectiveness of existing safety equipment or the development of new equipment systems, such equipment may be used and, if such technologies provide a significant cost effective incremental benefit to safety, health, or the environment, shall be required to be used if determined to be BAST.

Conformance to the standards, codes, and practices referenced in this Order will be considered to be the application of BAST. Specific equipment and procedures or systems not covered by standards, codes, or practices will be analyzed to determine if the failure of such would have a significant effect on safety, health, or the environment. If such are identified and until specific performance standards are developed or endorsed by the U.S. Geological Survey (USGS), the lessee shall submit such information necessary to indicate the use of BAST, the alternatives considered to the specific equipment or procedures, and the rationale why one alternative technology was considered in place of another. This analysis shall include a discussion of the costs involved in the use of such technology and the incremental benefits gained.

2. *Quality Assurance and Performance of Safety and Pollution-Prevention Equipment.* Safety and Pollution-Prevention Equipment (SPPE) shall conform to the following quality assurance standards:

a. American National Standards Institute/American Society of Mechanical Engineers Standard "Quality Assurance and Certification of Safety and Pollution Prevention Equipment Used in Offshore Oil and Gas Operations," ANSI/ASME SPPE-1, latest edition with all addenda.

b. American National Standards Institute/American Society of Mechanical Engineers Standard "Accreditation of Testing Laboratories for Safety and Pollution Prevention Equipment Used in Offshore Oil and Gas Operations," ANSI/ASME-SPPE-2, latest edition with all addenda.

The aplicable SPPE components, and the applicable SPPE specifications are identified in subparagraph 3.2 and subparagraph 4.2.

3. *Subsurface-Safety Devices.*

3.1 *Installation.* All tubing installations open to hydrocarbon-bearing zones shall be equipped with a subsurface-safety device such as a Surface-Controlled Subsurface-Safety Valve (SCSSV), a Subsurface-Controlled Subsurface-Safety Valve (SSCSV), an injection valve, a tubing plug, or a tubular/annular subsurface-safety device, unless, after application and justification, the well is determined to be incapable of flowing. Criteria and procedural guidelines for the determination of the capability of a well to flow are established by and are available from the District Supervisor. The device shall be installed within 2 days after production is stabilized. The well shall be attended in the immediate vicinity of the well so that emergency actions may be taken, if necessary, while the well is open to flow from a hydrocarbon-bearing zone, until a subsurface-safety device is installed.

In non-permafrost areas, the device shall be installed at a depth of 30 meters (98 feet) or more below the ocean floor. In permafrost areas, the setting depth of the subsurface-safety device shall be approved by the District Supervisor on a case-by-case basis.

3.1.1 *Subsurface-Safety Valves.* All tubing installations shall be equipped with a surface-controlled, or other remotely controlled, subsurface-safety device. Alternatives to this requirement may be approved by the Deputy Conservation Manager (DCM), Offshore Field Operations, when greater reliability or safety can be demonstrated.

3.2 *Specification for Subsurface-Safety Valves.* Surface-controlled and subsurface-controlled subsurface-safety valves required by subparagraphs 3.4 and 3.5, which are installed or replaced, shall conform to "American Petroleum Institute (API) Specification for Subsurface-Safety Valves," API Spec 14A, Fourth Edition, November 1979, with the exception of section 6, Appendix A and Appendix J of this specification, except for specific provisions thereof that are required in sections 1 through 5 of this specification, or subsequent revisions which the Deputy Chief, Conservation Division—Offshore Minerals Regulation, has approved for use at the time of installation. The API monogram is optional, whereas the requirement for the OCS symbol is mandatory. A valve qualified to a previous edition of API Spec 14A is acceptable provided that the valve enters inventory within 3 years of its qualifying performance test date.

For purposes of this requirement, the term "replacement" is defined as occurring when that portion of the valve assembly containing the serial number is removed from inventory and a new certified valve is placed in inventory.

3.3 *Design, Installation, and Operation.* Subsurface-safety devices shall be designed, adjusted, installed, and maintained to insure reliable operation. During testing and inspection procedures, the well shall not be left unattended while open to production unless a properly operating subsurface-safety device has been installed in the well.

3.4 *Surface-Controlled Subsurface-Safety Valves.* All tubing installations open to a hydrocarbon-bearing zone shall be equipped with a surface-controlled subsurface-safety valve, except as specified in subparagraphs 3.1, 3.5, an 3.6. The surface controls may be located on the site or at a remote location.

The lessee shall furnish evidence that the surface-controled subsurface-safety devices and related equipment are capable of normal opeation under subfreezing conditions.

3.4.1. *Testing of Surface-Controlled Subsurface-Safety Valves.* Each surface-controlled, or other remotely controlled, subsurface-safety device installed in a well shall be tested in place for proper operation when installed or reinstalled and thereafter at intervals not exceeding 6 months. If the device does not operate properly, it shall be removed, repaired,

reinstalled or replaced, and tested to insure proper operation.

3.5 *Subsurface-Controlled Subsurface-Safety Valves.* Tubing installations in wells completed from single-well or multiwell satellite caissons or ocean floor completions may be equipped with a subsurface-controlled subsurface-safety valve in lieu of a surface-controlled, or other remotely controlled, subsurface-safety valve.

3.5.1 *Inspection and Maintenance of Subsurface-Controlled Subsurface-Safety Valves.* Each subsurface-controlled subsurface-safety valve installed in a well shall be removed, inspected, and repaired or adjusted as necessary and reinstalled at intervals not exceeding:

(1) 6 months for those valves not installed in a landing nipple.

(2) 12 months for those valves installed in a landing nipple.

3.6 *Tubing Plugs in Shut-in Wells.* A tubing plug shall be installed in lieu of, or in addition to, other subsurface-safety devices if a well has been shut-in for a period of 6 months. In nonpermafrost areas, tubing plugs shall be set at a depth of 30 meters (98 feet) or more below the ocean floor. In permafrost areas, each tubing-plug installation shall be approved by the District Supervisor on a case-by-case basis. All tubing plugs installed shall be of the pump-through type. All wells perforated and completed but not placed on production shall be equipped with a subsurface-safety valve or tubing plug within 2 days after completion. A surface-controlled subsurface-safety valve of the pump-through type may be used as a pump-through tubing plug for the purpose of this subparagraph: *Provided,* The surface control has been rendered inoperative. A shut-in well which is equipped with a tubing plug shall be inspected for leakage by opening the well to possible flow at intervals not exceeding 6 months. If a liquid leakage rate in excess of 400 cc/min or a gas leakage rate in excess of 7 dm^3/sec (15 cubic ft/min) is observed, the plug shall be removed, repaired, and reinstalled, or an additional tubing plug may be installed in lieu of removal and repair.

3.7 *Injection Wells.* A surface-controlled subsurface-safety valve or an injection valve capable of preventing backflow shall be installed in all wells placed in injection service.

Surface-controlled subsurface-safety valves shall be tested in accordance with subparagraph 3.4.1. Injection valves shall be tested in the manner as outlined for testing tubing plugs in subparagraph 3.6.

These requirements are not applicable if the District Supervisor concurs that the well is incapable of flowing. The lessee shall verify the no-flow condition of the well annually and submit an annual report certifying the no-flow status of the well.

3.8 *Temporary Removal for Routine Operations.* Each wireline- or pumpdown-retrievable subsurface-safety device may be removed, without further authorization or notice, for a routine operation which does not require the approval of a Sundry Notice and Report on Wells (Form 9–331) for a period not to exceed 15 days. The well shall be identified by a sign on the wellhead stating that the subsurface-safety device has been removed. The removal of the subsurface-safety device shall be noted in the records as required by subparagraph 3.11g. The well shall be attended in the immediate vicinity of the well so that emergency actions may be taken, if necessary, while the well is open to flow from a hydrocarbon-bearing zone until the subsurface-safety device is reinstalled, unless attendance has been waived by the District Supervisor. The well shall not be open to flow while the subsurface-safety device is removed except when flowing the well is necessary for that particular operation.

The provisions of this paragraph are not applicable to the testing and inspection procedures in subparagraphs 3.4.1, 3.5.1, 3.6, and 3.7.

3.9 *Additional Safety Equipment.* All tubing installations in which a wireline- or pumpdown-retrievable subsurface-safety device is installed shall be equipped with a landing nipple, with flow couplings or other protective equipment above and below, to provide for the setting of the subsurface-safety valve. The control system for all surface-controlled subsurface-safety valves shall be an integral part of the platform Emergency Shutdown System (ESD) as defined in Appendix C, Section C1 of "API Recommended Practice for Analysis, Design, Installation, and Testing of Basic Surface-Safety Systems on Offshore Production Platforms," API RP 14C, Second Edition, January 1978, or subsequent revisions which the Deputy Chief, Conservation Division—Offshore Minerals Regulation, has approved for use. In addition to the activation of the ESD system by manual action on the platform, the system may be activated by a signal from a remote location. Surface-controlled subsurface-safety valves shall close in response to shut-in signals from the ESD system or the fire loop, or both.

3.10 *Emergency Action.* All tubing installations open to hydrocarbon-bearing zones and capable of flowing in which the subsurface-safety device has been removed, in accordance with the provisions of this Order, shall be identified by a sign on the well-head stating that the subsurface-safety device has been removed. A subsurface-safety device shall be available for each well on the platform. In the event of an emergency such as an impending storm, this device shall be properly installed as soon as possible with due consideration being given to personnel safety.

3.11 *Records.* The lessee shall maintain records for a minimum period of 5 years for each subsurface-safety device installed. These records shall be maintained in the nearest offshore field office for a minimum period of 2 years. If the lessee has no such offshore field office, then the records shall be kept in the nearest onshore field office. The records may then be transferred to the onshore field office for the remaining 3 years of the 5-year retention period. These records shall be available for review by any authorized representative of the USGS. The records to be maintained shall contain verification of:

a. The manufacturer's design, including make, model, and type. For subsurface-controlled valves, number of the spacers, size of beans, springs, and the pressure settings.

b. The devices having been manufactured in accordance with the quality-assurance requirements of ANSI/ASME–SPPE–1 (formerly ANSI/ASME–OCS–1) as required by paragraph 2.

c. The completion and return of the receiving report to the manufacturer as required by ANSI/ASME–SPPE–1.

d. The record of all configuration modifications to the certified design.

e. Installation at the required setting depth and in accordance with the manufacturer's instructions.

f. The identity of the personnel qualified in accordance with subparagraph 5.7 who directed all installations and removals.

g. The results of tests required by this Order, the dates of removals and reinstallations, and the reasons for removals and reinstallations.

h. The completion and submission of all failure reports required by paragraph 5 and all investigation reports required by paragraphs OE–2529 and OE–2670 of ANSI/ASME–SPPE–1.

3.12 *Reports.* Well completion reports (Form 9–330) and any subsequent reports of workover (Form 9–331) shall include the manufacturer, the type, and the installed depth of the subsurface-safety devices.

4. *Design, Installation, and Operation of Surface Production Safety Systems.*

All production facilities, including separators, treaters, compressors, headers, and flowlines, shall be designed, installed, and maintained in a manner which will facilitate an efficient, safe, and pollution-free operation.

The lessee shall furnish evidence that the surface-safety system and related equipment are capable of normal operation under subfreezing conditions, and that all equipment and operating procedures take into account floating ice, icing, and other extreme environmental conditions that may occur in the area.

4.1 *New Platforms.* New platform production facilities shall be protected with a basic and ancillary surface-safety system designed, analyzed, tested, and maintained in operating condition in accordance with the provisions of API RP 14 C, except Section A9, "Pipelines," which will be covered under OCS Order No. 9, and the additional requirements of Order No. 5. For this application, the word "should" contained in API RP 14 C shall be read "shall," except for those contained in explanatory statements, sections 3.4c and 4.3a(4)(a)–(f). If processing components are to be utilized, other than those for which Safety Analysis Checklists (SAC's) are included in API RP 14C, the analysis technique and documentation specified therein shall be utilized to determine the effects and requirements of these components upon the safety system.

4.2 *Specification for Wellhead Surface-Safety Valves.* All wellhead Surface-Safety Valves (SSV's) required by subparagraph 4.1 shall conform to "API Specification for Wellhead Surface Safety Valves for Offshore Service," API Spec 14D, Third Edition, November 1980, with the exception of Appendix A and Appendix J of this specification, except for specific provisions thereof that are required in sections 1 through 5 of this specification, or subsequent revisions which the Deputy Chief, Conservation Division—Offshore Minerals Regulation, has approved for use at the time of installation. The API monogram is optional, whereas the requirement for the OCS symbol is mandatory.

4.3 *Submittal of Safety-System Design and Installation Features.* Prior to installation, the lessee shall submit for approval to the District Supervisor, in duplicate, information relative to design and installation features, as indicated in subparagraphs "a" through "g." This information shall also be maintained at the lessee's onshore field engineering office. All approvals are subject to field verifications. This information shall include:

a. A schematic flow diagram showing size, capacity, and design working pressure of separators, treaters, storage tanks, compressors, pipeline pumps, and metering devices.

b. A schematic flow diagram (reference API RP 14 C, example: figure E1) and the related Safety Analysis Function Evaluation (SAFE) chart (reference API RP 14C, Subsection 4.3c). These diagrams and charts shall be developed in accordance with the provisions of API RP 14C and the additional requirements of this Order.

c. A schematic piping diagram showing the size and maximum-allowable working pressure with reference to welding specification(s) or code(s) used. The maximum-allowable working pressures shall be determined in accordance with "API Recommended Practice for Design and Installation of Offshore Production Platform Piping Systems," API RP 14E, First Edition, August 1975, and Supplement 2, October 1977, or subsequent revisions which the Deputy Chief, Conservation Division—Offshore Minerals Regulation, has approved for use. The recommendations contained in API RP 14E are acceptable for the design and installation of the platform piping system.

d. A diagram of the firefighting system.

e. Electrical system information including the following:

(1) A plan of each platform deck outlining any nonrestricted area, i.e., areas which are unclassified with respect to electrical equipment installations and outlining areas in which potential ignition sources, other than electrical, are to be installed. The area outline shall include the following information:

(a) Any surrounding production or other hydrocarbon source and a description of the deck, overhead, and firewall.

(b) Location of generators, control rooms, panel boards, major cabling/conduit routes, and identification of the wiring method, including the identification of each wire and cable type that is utilized.

(2) Elementary electrical schematic of any platform safety-shutdown system with a functional legend.

(3) Classification of areas for electrical installations in accordance with the National Electrical Code, 1978 Edition, and with the "API Recommended Practice for Classification of Areas for Electrical Installations at Drilling Rigs and Production Facilities on Lands and on Marine Fixed and Mobile Platforms," API RP 500B, Second Edition, July 1973, or subsequent revisions which the Deputy Chief, Conservation Division—Offshore Minerals Regulation, has approved for use.

f. The design and schematics of the installation and maintenance of all fire and gas detection systems shall include the following:

(1) Type, location, and number of detection heads.

(2) Type and kind of alarm, including emergency equipment to be activated.

(3) Method used for detection.

(4) Method and frequency of calibration.

(5) Name of organization to perform system inspection and calibration.

(6) A functional block diagram of the detection system, including the electric power supply.

g. Certification that the design for the mechanical and electrical systems to be installed was approved by registered professional engineers. After these systems are installed, the lessee shall submit a statement to the District Supervisor certifying that the new installations conform to the approved designs or the lessee shall request approval of the "As-Built" changes.

5. *Additional Safety and Pollution-Control Requirements.* The following requirements modify or are in addition to those contained in API RP 14C.

5.1 *Design, Installation, and Operation.*

5.1.1 *Pressure Vessels.* Unless otherwise qualified for use according to subparagraph 5.1.1d below, pressure vessels shall be designed, fabricated, stamped, and maintained in accordance with specific sections of the ASME Boiler and Pressure Vessel Code as listed below. The pressure vessels shall conform to the July 1, 1977, edition of the Code or subsequent revisions which the Deputy Chief, Conservation Division—Offshore Minerals Regulation, has approved for use.

a. Pressure-relief valves shall be designed, installed, and maintained in accordance with applicable provisions of sections I, IV, and VIII. The relief valves shall conform to the valve-sizing and pressure-relieving requirements specified in these documents; however, the relief valves shall be set no higher than the maximum-allowable working pressure of the vessel. All relief valves and vents shall be piped in such a way as to prevent fluid from striking personnel or ignition sources.

b. Steam generators shall be equipped with Level Safety Low controls (LSL) in accordance with applicable provisions of sections I and IV.

c. The lessee shall determine, by the use of pressure recorders, the operating pressure ranges of all pressure-operated vessels in order to establish the pressure-sensor settings. Current

pressure-recorder charts shall be maintained at the nearest offshore field office. The high-pressure shut-in sensor shall be set no higher than 10 percent above the highest operating pressure of the vessel. This setting shall also be sufficiently below the relief valve's set pressure to assure that the pressure source is shut in before the relief valve starts relieving. The low-pressure shut-in pressure-sensor setting shall be no lower than 15 percent or 35 kilopascals (kPa) (5 psi), whichever is greater, below the lowest pressure in the operating range. The pressure-sensor setting of low-pressure sensors on pressure vessels which operate at less than 35 kilopascals (kPa) (5 psi) shall be approved by the District Supervisor on a case-by-case basis.

d. All pressure or fired vessels used in the production of oil or gas shall conform to the requirements stipulated in the edition of the ASME Boiler and Pressure Vessel Code, sections I, IV, and VIII, as appropriate, in effect at the time the vessel is ordered. Uncoded vessels shall be hydrostatically tested to a pressure 1.5 times their working pressures prior to placing in service. The test date, test pressure, and working pressure shall be marked on the vessel in a prominent place. A record of the test shall be maintained by the lessee in the field area.

5.1.2 *Flowlines.*

a. All flowlines from wells shall be equipped with high- and low-pressure shut-in sensors located in accordance with Section A1 and Figure A1 of API RP 14 C. The lessee shall determine, by the use of pressure recorders, the operating pressure ranges of flowlines in order to establish pressure-sensor settings. Current pressure-recorder charts shall be maintained at the nearest offshore field office.

The high-pressure shut-in sensor(s) shall be set no higher than 10 percent above the highest operating pressure of the line; but, in all cases, it shall be set sufficiently below the maximum shut-in wellhead pressure or the gas-lift supply pressure to assure actuation of the surface-safety valve. The low-pressure shut-in sensor(s) shall be set no lower than 10 percent or 35 kPa (5 psi), whichever is greater, below the lowest operating pressure of the line in which it is installed.

b. If a well flows directly to the pipeline before separation, the flowline and valves from the well located upstream of, and including, the header inlet valve(s) shall have a working pressure equal to or greater than the maximum shut-in pressure of the well, unless the flowline is protected by one of the following:

(1) A relief valve which vents into the platform flare scrubber or some other location approved by the District Supervisor.

(2) An additional automatic shutdown valve controlled by an independent high-pressure sensor. The platform flare scrubber shall be designed to handle, without liquid-huydrocarbon carryover to the flare, the maximum-anticipated flow of liquid-hydrocarbons which may be relieved to the vessel.

5.1.3 *Pressure Sensors.* Pressure sensors may be of the automatic- or nonautomatic-reset type. When the automatic-reset types are used, a nonautomatic-reset relay shall be installed. All pressure sensors shall be equipped to permit testing with an external pressure source.

5.1.4 *Emergency Shutdown System.* The manually operated ESD valve shall be quick-opening and nonrestricted to enable the rapid actuation of the shutdown system. ESD stations may utilize a loop of breakable synthetic tubing in lieu of a valve only at the boat landing.

On an emergency shutdown, the Surface-Controlled Subsurface-Safety Valve (SCSSV) shall close in not more than 2 minutes after the shut-in signal has closed the surface safety valve (SSV). Design delayed closure time greater than 2 minutes shall be justified by the lessee based on the individual well's mechanical/production characteristics and approved by the District Supervisor.

Electro-pneumatic systems shall meet the corresponding design and functional requirements as those which apply to pneumatic systems.

A schematic of the ESD system which indicates the control functions of all safety devices shall be maintained on the platform or nearest offshore field office.

5.1.5 *Engine Exhausts.* Engine exhausts shall be equipped to comply with the insulation and personnel-protection requirements of API RP 14C, Section 4.2c(4). Exhaust piping from diesel engines shall be equipped with spark arrestors.

5.1.6 *Glycol-Dehydration Units.* A pressure-relief system or an adequate vent shall be installed on the glycol regenerator, or at a location approved by the District Supervisor, which will prevent overpressurization of all glycol-dehydration units. The set pressure of the pressure-relief system shall be determined by the lessee and approved by the District Supervisor. The discharge of the relief valve shall be vented in a nonhazardous manner. The glycol-dehydration unit shall be properly maintained to prevent overpressurization of the unit.

5.1.7 *Gas Compressors.* Each compressor shall be equipped with the following protective equipment:

(1) A PSH, a PSL, a PSV, and an LSH to protect each interstage and suction scrubber.

(2) An LSL to protect each interstage and suction scrubber, unless the fluid is dumped through a choke restriction to another pressure vessel. An LSL shut-in control(s) installed in interstage and suction scrubber(s) may be designed to actuate the automatic shutdown valve(s) (SDV's) installed in the scrubber dump line(s).

(3) A TSH on each compressor cylinder or other components as applicable.

(4) In addition to the provisions of API RP 14C, Subsection A8.3, PSH and PSL shut-in sensors and LSH shut-in controls protecting compressor suction and interstage scrubbers shall be designed to actuate automatic SDV's located in each compressor suction and fuel gas line so that the compressor unit and the associated vessels can be isolated from all input sources.

All automatic SDV's installed in compressor suction and fuel gas piping shall also be actuated by the shutdown of the prime mover. Compressor installations of 745 kilowatts (1,000 horsepower) or less are excluded from those requirements of API RP 14C, A8.3d, which provide for installation of a blowdown valve (BDV) on the discharge line.

5.1.8 *Firefighting Systems.* Firefighting systems shall conform to Subsection 5.2, "Fire Water Systems," of "API Recommended Practice for Fire Prevention and Control on Open Type Offshore Production Platforms," API RP 14G, First Edition, September 1978, or subsequent revisions which the Deputy Chief, Conservation Division—Offshore Minerals Regulation, has approved for use, and the additional requirements of this subparagraph.

A firewater system consisting of rigid pipe with firehose stations shall be installed. The firewater system shall be installed to provide needed protection in all areas where production-handling equipment is located. A fixed water-spray system shall be installed in enclosed well-bay areas where hydrocarbon vapors and accumulate.

Acceptable pump drivers include diesel engines, natural gas engines, and electric motors. Fuel or power shall be available for at least 30 minutes of run-time during platform shut-in time. If necessary, an alternate fuel supply shall be installed to provide for this pump-operating time unless an alternate

firefighting system has been approved by the District Supervisor.

A firefighting system using chemicals may be used or may be required in lieu of a water system if the District Supervisor determines that the use of a chemical system provides equivalent fire protection control. A diagram of the firefighting system showing the location of all firefighting equipment shall be posted in a prominent place on the platform or structure.

5.1.9 *Fire and Gas Detection System.*

a. Fire (flame, heat, or smoke) sensors shall be used in all enclosed high-hazard areas. Gas sensors shall be used in all inadequately ventilated, enclosed, high-hazard areas. Adequate ventilation is as defined in API RP 14C, Appendix C, paragraph C1.3b.

b. All detection systems shall be capable of continuous monitoring. Fire detection systems and portions of combustible gas detection systems related to the higher gas concentration levels shall be of the manual-reset type. Combustible gas detection systems related to the lower gas concentration level may be of the automatic-reset type.

c. A fuel gas odorant or an automatic gas-detection and alarm system are required in enclosed, continuously manned areas of the facility.

d. The District Supervisor may require a gas detector or alarm in any potentially hazardous area.

e. Fire detection systems shall be of an approved type, designed and installed in accordance with the National Fire Protection Association Standard for Automatic Fire Detectors, No. 72E, 1974, or subsequent revisions which the Deputy Chief, Conservation Division—Offshore Minerals Regulation, has approved for use. Gas detection systems shall be of an approved type, designed and installed in accordance with sections 9.1 and 9.2 of "API Recommended Practice For Design and Installation of Electrical Systems for Offshore Production Platforms," API RP 14F, First Edition, July 1978, or subsequent revisions which the Deputy Chief, Conservation Division—Offshore Minerals Regulation, has approved for use.

5.1.10 *Electrical Equipment.* The following requirements shall be applicable to all electrical equipment and systems:

a. All engines with ignition systems shall be equipped with a low-tension ignition system of a low-fire-hazard type and shall be designed and maintained to minimize the release of sufficient electrical energy to cause ignition of an external, combustible mixture.

b. All electrical generators, motors, and lighting systems shall be installed, protected, and maintained in accordance with the edition of the National Electrical Code and API RP 500B in effect at the time of approval.

c. At the time of approval, wiring methods shall conform to the National Electrical Code, 1978 Edition, or to the Institute of Electrical and Electronic Engineers (IEEE) "Recommended Practice for Electric Installation on Shipboard," IEEE Std. 45–1977, or subsequent revisions which the Deputy Chief, Conservation Division—Offshore Minerals Regulation, has approved for use. Each conductor of a wire, a cable, or a bus bar shall be made of copper on all installations.

d. The elementary electrical schematic of the platform safety-shutdown system required by subparagraph 4.3e(2) shall be maintained on the platform or structure. This schematic shall indicate the control functions of all electrically actuated safety devices.

e. Maintenance of these systems shall be by personnel who are familiar with the construction and operation of the equipment and the hazards involved.

f. An auxiliary power supply shall be installed to provide emergency power, capable of operating all electrical equipment required to maintain safety of operations, in the event of a failure in the primary electrical power supply. This requirement is not applicable to those systems, or portions of systems, which are designed to fail-safe.

5.1.11 *Erosion.* A program of erosion control shall be in effect for wells or fields having a history of sand production. The erosion-control program may include sand probes, X-ray, ultrasonic, or other satisfactory monitoring methods. An annual report, by lease, indicating the wells which have erosion-control programs in effect and the results of the programs shall be submitted by the first of December to the programs shall be submitted by the first of December to the USGS Conservation Manger in the appropriate Regional Office.

5.2 *General Platform Operations.*

a. Surface- or subsurface-safety devices shall not be bypassed or blocked out of service unless they are temporarily out of service for startup, maintenance, or testing procedures. Only the minimum number of safety devices necessary for the operation shall be taken out of service. Personnel shall monitor the bypassed or blocked-out functions. Any surface- or surface-safety device which is temporarily out of service shall be flagged.

b. When wells are disconnected from producing facilities and blind-flanged or equipped with a tubing plug, compliance is not required with the provisions of API RP 14C or this Order concerning:

(1) Installation of automatic fail-close SSV on wellhead assemblies.

(2) Installation of the PSH and the PSL shut-in sensors downstream of the choke in flowlines from wells.

(3) Installation of flow safety valves (FSV's) in header individual flowlines.

c. When pressure or atmospheric vessels are positively isolated from production facilities (for example, inlet valve locked closed or inlet line blind-flanged) and are to remain isolated for an extended period of time, safety device compliance is not required with API RP 14C or this Order.

d. All open-ended lines connected to producing facilities shall be plugged or blind-flanged, except those lines designed to be open-ended, such as flared or vent lines.

5.3 *Simultaneous Platform Operations.* Prior to conducting activites simultaneously with production operations which could increase the possibility of occurrence of undesirable events, such as harm to personnel or to the environment or damage to equipment, a "General Plan for Conducting Simultaneous Operations" in a producing field shall be filed for approval with the District Supervisor. This plan shall be modified and updated by supplemental plans when actual simultaneous operations are scheduled which are significantly different from those covered in the General Plan.

Activities requiring these plans are drilling, completion, workover, wireline, pumpdown, and major construction operations.

5.3.1 *General Plan.* The "General Plan for Conducting Simultaneous Operations" shall include:

a. A narrative description of operations.

b. Procedures for the mitigation of potentially undesirable events including:

(1) The guidelines the lessee will follow to assure coordination and control of simultaneous activities.

(2) The identity of the persons having overall responsibility at the site for the safety of platform operations.

5.3.2 *Supplemental Plan.* The "Supplemental Plan for Conducting Simultaneous Operations" shall include:

a. A floor plan of each platform deck indicating critical areas of simultaneous activities.

b. An outline of any additional safety measures that are required for simultaneous operations.

c. Specification of any added or special equipment or procedural conditions imposed when simultaneous activities are in progress.

5.4 *Welding and Burning Practices and Procedures.* The following requirements are applicable to any welding or burning practice or procedure performed on:

a. An offshore mobile-drilling unit during the drilling mode.

b. A mobile workover unit during any drilling, completion, recompletion, remedial, repair, stimulation, or other workover activity.

c. A platform, structure, artificial island, or other installation during any drilling, completion, workover, or production operation.

d. A platform, structure, artificial island, or other installation which contains a well open to a hydrocarbon-bearing zone.

For the purpose of this Order, the terms "welding" and "burning" are defined to include arc or acetylene cutting and arc or acetylene welding.

All offshore welding and burning shall be minimized by onshore fabrication when feasible.

5.4.1 *General Welding, Burning, and Hot Tapping Plan.* Each lessee shall file for approval by the District Supervisor a "Welding, Burning, and Hot Tapping Safe Practices and Procedures Plan." The plan shall include the qualification standards or requirements for personnel and the methods by which the lessee will assure that only personnel meeting such standards or requirements are utilized. A copy of this plan shall be available in the field area. Any person designated as a welding supervisor shall be thoroughly familiar with this plan. An approved plan is required prior to the conduct of any welding, burning or hot tapping operation. All welding and burning equipment shall be inspected prior to beginning any welding or burning. Welding machines located on production or process platforms shall be equipped with spark arrestors and drip pans. Welding leads shall be completely insulated and in good condition; oxygen and acetylene bottles secured in a safe place; and hoses leak-free and equipped with proper fittings, gauges, and regulators.

5.4.2 *Designated Safe-Welding and Burning Areas.* The lessee shall establish, if feasible, and so designate areas on the platform determined to be safe-welding areas pursuant to the National Fire Protection Association Bulletin "Cutting and Welding Processes," No. 51 B, 1976, or subsequent revisions which the Deputy Chief, Conservation Division—Offshore Minerals Regulation, has approved for use. Approval for the use of such areas shall be obtained from the District Supervisor. These designated areas shall be identified in the General Plan and a drawing showing the location of these areas shall be maintained on the facility. Welding or burning performed in any other areas shall be performed in compliance with the procedures set forth in subparagraph 5.4.3.

5.4.3 *Undesignated Welding and Burning Areas.* All welding or burning which cannot be done in an approved safe-welding area shall be performed in compliance with the procedures outlined below:

a. Prior to the commencement of any welding or burning operation on a structure, the lessee's designated person-in-charge at the installation shall personally inspect the qualifications of the welder or welders to assure that they are properly qualified in accordance with the lessee-approved qualification standards or requirements for welders. The designated person-in-charge and the welders shall personally inspect the work area for potential fire and explosion hazards. After it has been determined that it is safe to proceed with the welding or burning operation, the designated person-in-charge shall issue a written authorization for the work.

b. During all welding and burning operations, one or more persons shall be designated as a Fire Watch. Persons assigned as a Fire Watch shall have no other duties while actual welding or burning operations are in progress. If welding is to be done in an area which is not equipped with a gas detector, the Fire Watch shall also maintain a continuous surveillance with a portable gas detector during welding.

c. Prior to any welding or burning operation, the Fire Watch shall have in his possession firefighting equipment in a usable condition. At the end of the welding operation, the equipment shall be returned to a usable condition.

d. No welding, other than approved hot tapping, shall be done on piping, containers, tanks, or other vessels which have contained a flammable substance unless the contents have been rendered inert and determined to be safe for welding or burning by the designated person-in-charge.

e. If drilling, workover, or wireline operations are in progress on the platform, welding operations in other than approved safe-welding areas shall not be conducted unless the well(s) where these operations are in progress contain noncombustible fluids and the entry of formation hydrocarbons into the wellbore is precluded. All other provisions of this section shall also be applicable.

f. If welding or burning operations are conducted in the well-bay or production area, all producing wells shall be shut in at the surface-safety valve.

5.5 *Safety Device Testing.* The safety-system devices which are required by this Order shall be tested by the lessee at the interval specified below or more frequently if operating conditions warrant.

Testing shall be in accordance with API RP 14C, appendix D, and the following:

a. All PSV's shall be tested for operation at least once every 12 months. these valves shall be either bench-tested or equipped to permit testing with an external pressure source.

b. All Pressure Sensors-High/Low (PSHL) shall be tested at least once each calendar month, but at no time shall more than 6 weeks elapse between tests.

c. All SSV's shall be tested for operation and for leakage at least once each calendar month, but at no time shall more than 6 weeks elapse between tests. the SSV's shall be tested for operation in accordance with the test procedure specified in API RP 14C, appendix D, section D4, table D2, subsection L, and tested for leakage in accordance with subsection M. If the valve does not operate properly or any fluid flow is observed in step 3 of the leakage test, the valve shall be repaired or replaced.

d. All flowline FSV's shall be checked for leakage at least once each calendar month, but at no time shall more than 6 weeks elapse between tests. The FSV's shall be tested for leakage in accordance with the test procedure specified in API RP 14C, appendix D, section D4, table D2, subsection D. If the leakage measured in step 6 exceeds a liquid flow of 400 cc/min or a gas flow of 7dm³/sec (15 cubic ft/min), the FSV's shall be repaired or replaced.

e. All LSH and LSL controls shall be tested at least once each calendar month, but at no time shall more than 6 weeks elapse between tests. These tests shall be conducted by raising and lowering the liquid level across the level-control detector.

f. All automatic inlet SDV's which are actuated by a sensor on a vessel or a compressor shall be tested for operation at least once each calendar month, but at no time shall more than 6 weeks elapse between tests.

g. All SDV's located in liquid-discharge lines and actuated by vessel low-level sensors shall be tested for operation once each calendar month, but at no time shall more than 6 weeks elapse between tests.

h. the TSH shutdown controls installed on compressors in lieu of a PSH and PSL on interstage scrubbers

shall be tested every 6 months and repaired or replaced as necessary.

i. All pumps for firewater systems shall be inspected and test-operated weekly.

j. All fire (flame, heat, or smoke) and gas detection systems shall be tested for operation and recalibrated every 6 months.

k. The lessee shall notify the District Supervisor when the lessee is ready to conduct a preproduction test and inspection of the integrated safety system. The lessee shall also notify the District Supervisor upon commencement of production in order that a post-production test and inspection of the integrated system may be conducted.

l. All TSH devices on fired components shall be tested at least once every 12 months.

m. The ESD system shall be tested for operation at least once each calendar month but at no time shall more than 6 weeks elapse between tests. The test may be conducted by closing at least one SSV from each of the ESD stations.

5.6 *Records.* The lessee shall maintain records for a minimum period of 5 years for each surface-safety device installed. These records shall be maintained in the nearest offshore field office for a minimum period of 2 years. If the lessee has no such offshore field office, then the records shall be kept in the nearest onshore field office. The records may then be transferred to the onshore field office for the remaining 3 years of the 5-year retention period. These records shall be available for review by any authorized representative of the USGS. The records shall show the present status and history of each device, including dates and details of installation, inspection, testing, repairing, adjustments, and reinstallation.

5.6.1 *Surface-Safety Valve and Associated Actuator Records.* Records for surface-safety valves and associated actuators which require compliance with paragraph 2 shall contain additional information showing verification of:

a. The devices having been manufactured in accordance with the quality assurance requirements of ANSI/ASME–SPPE–1 (formerly ANSI/ASME–OCS–1) as required by paragraph 2.

b. The completion and return of the receiving report to the manufacturer as required by ANSI/ASME–SUPPE–1.

c. The completion and submission of all failure reports required by paragraph 6 and all investigation reports required by paragraph OE–2529 and OE–2670 of ANSI/ASME–SPPE–1.

5.7 *Safety Device Training.* Before January 1, 1982, the lessee shall ensure that all personnel engaged in installing, inspecting, testing, and maintaining these safety devices will have been qualified under a program as recommended by "API Recommended Practice for Qualification Programs for Offshore Production Personnel Who Work With Anti-Pollution Safety Devices," API RP T–2, revised October 1975, or subsequent revisions which the Deputy Chief, Conservation Division—Offshore Minerals Regulation, has approved for use.

Documented evidence of the qualifications of individuals performing these functions shall be maintained in the field area.

Manufacturers' representatives need not be qualified in accordance with API RP T–2 if they are working on equipment supplied by their company, provided they have received training and are qualified by the manufacturer to install, service, or repair the specific safety device or safety system, and if they are directly supervised by an API RP T–2 qualified person who is capable of evaluating the impact of the work on the total system.

On-the-job trainees working with safety devices shall be directly supervised by a qualified person.

Before January 1, 1981, the lessee shall submit an application for approval to the Deputy Chief, Conservation Division—Offshore Minerals Regulation, describing the training to be conducted and the methods the lessee will utilize.

The application shall include:

a. A designation of the lessee's representative who is responsible for training and coordinating training matters with the USGS.

b. The categories of personnel to be qualified.

c. The training organizations and courses to be utilized.

d. The method for ensuring the qualification of third-party personnel.

e. The method for determining when additional training or requalification is required and the method for obtaining this training and requalification.

f. The method of monitoring operations to ensure that only qualified personnel perform certain functions.

g. The method of maintaining documented evidence of qualification at the work site.

6. *Failure and Inventory Reporting System (FIRS).* The USGS has established a safety and pollution-prevention device Failure and Inventory Reporting System (FIRS), to enhance the reliability and safety of operations in the OCS. This system applies to offshore structures, including satellites and jackets, which produce or process hydrocarbons and includes the attendant portions of hydrocarbon pipelines, when physically located on the structure.

When the devices specified herein are used as a part of the production safety and pollution-prevention system, the lessee shall:

a. Submit an initial inventory and periodic updates in accordance with the procedures described in subparagraph 6.1.3.

b. Report all device failures which occur. The report content and format shall be in accordance with the procedures described in subparagraph 6.1.4.

c. If the method of data submitted as described in subparagraph 6.1.1 is USGS Form 9–1994 and Form 9–1995, the lessee shall submit the original of the form to the USGS and retain the two copies. Inventory and failure data required by this Order shall be submitted to the USGS Conservation Manager in the appropriate Regional Office.

6.1. *Data and Reporting Requirements.*

6.1.1. *Format.* Inventory and failure data shall be submitted in a format containing the same information that is in the Safety Device Inventory Report (Form 9–1994) and the Safety Device Failure Report (Form 9–1995), and as outlined in the respective User's Instruction Booklets. Copies of the forms and booklets may be obtained from the USGS Conservation Manager in the appropriate Regional Office.

The specific method of submitting the required data may be selected from the following:

a. USGS Forms 9–1994 and 9–1995, using a standard coding convention (e.g., all letters capitalized, Z, I, letter O, number 0).

b. ADP card decks of standard 80-column cards.

c. Magnetic tapes which are 9-track, 800 BPI, unlabeled, blocking cannot exceed 1,040 characters, odd parity, single gap (i.e., compatible with IBM equipment EBCDIC).

Regardless of which method is used for submitting the inventory and failure data, a cover letter forwarding the data to the USGS shall contain the signature of the person initiating/approving the information contained therein.

When Form 9–1995 is used, the form shall contain in the lower right coner a signature of the person initiating/approving the report.

6.1.2. *Device Coverage.* Inventory and failure reports are to be submitted on the safety and pollution-prevention devices on offshore structures, including satellites and jackets, which produce or process hydrocarbons, and the

hydrocarbon pipelines thereon. These reports shall be submitted on the following devices:

a. Blowdown Vales (BDV)
b. Burner Flame detectors (BSL)
c. Check Valves (FSV)
d. Combustible Gas Detectors (ASH)
e. Emergency Shutdown Valves (ESD)
f. Level Sensors High (LSH); Low (LSL); Hi/Lo (LSHL)
g. Pressure Sensors High (PSH); Low (PSL); Hi-Lo (PSHL)
h. Relief Valves (PSV)
i. Shutdown Valves (SDV)
j. Subsurface-Safety Valves (SSSV)
k. Surface-Safety Valves (SSV)
l. Temperature Sensors High (TSH); Low (TSL); Hi/Lo (TSHL)
m. Valve Actuators on shutdown valves, blowdown valves, and surface-safety valves (VA)

6.1.3 *Device Inventory Reporting.*

6.1.3.1 *Initial Inventory.* A complete initial inventory of the active safety and pollution-prevention devices shall be submitted no later than 1 month after the initial platform production date.

6.1.3.2 *Inventory Updates.* An updating of or addition/deletion to the latest inventory shall be submitted on a monthly basis so as to maintain a current and accurate data base. The inventory will be updated by using the contents of the Safety Device Inventory Report (Form 9–1994) and the Safety Device Failure Report (Form 9–1995), as described in the FIRS Instruction Booklet.

Inventory updating due to the addition, deletion, or changeout of a device is accomplished *by the lessee* reporting all of the data required in the Safety Device Inventory Report (Form 9–1994). Whenever a device fails and is either replaced with a new device or "fixed" and put back into service, the inventory shall be updated to reflect this change. Inventory updating, due to the failure of a device, will be performed *by the USGS,* using the contents of the Safety Device Failure Report (Form 9–1995). Inventory updating information shall be received no later than 30 days following the month in which the device change was made.

6.1.3.3 *Inventory-Reporting Methods.* Inventory data shall be reported either on the Safety Device Inventory Reporting forms (Form 9–1994), punched cards, or magnetic tapes. The reports shall contain all of the required information in the standard format as described in subparagraph 6.1.1.

6.1.3.4 *Inventory Verification.* The device inventory shall be verified by the lessee to ensure that the inventory data base is maintained on a current basis and that changes are being incorporated as they occur. The verification shall be accomplished no more frequently than once each 6-month period. When verification is required, the USGS will provide the lessee with a copy of the information on record, in the lessee's selected reporting format. The lessee shall review the information and either submit a letter stating that the information is correct, or make the appropriate corrections to the information provided by the USGS. The letter or appropriate corrections shall be received no later than 30 days following the month in which the inventory information which is to be verified was forwarded to the lessee.

6.1.3.5 *Inventory-Reporting Deviation.* A lessee may submit an inventory, update, or verification report differing from that described in subparagraph 6.1.3 when authorized by the USGS.

6.1.4 *Device Failure Reporting.*

6.1.4.1 *Failure-Data Submittal.* The failure data, as defined in subparagraph 6.1.4.3, shall be received no later than 30 days following the month in which the failure was detected. These data must contain all of the required information and be submitted in the standard format either on Safety Device Failure Report forms (Form-9–1995), punched cards, or magnetic tape, as previously described in subparagraph 6.1.1. Information on the failed device must match that previously submitted in inventory reporting. A formal failure analysis is not required by this Order, but each failed device shall undergo sufficient test/disassembly to establish the basic cause(s) of the failure.

6.1.4.2 *Failure-Data Verification.* After receipt of the complete failure data from the lessees, the USGS will make a printout of all failures by manufacturer, model, and reported cause. Each manufacturer listed will be furnished a copy of the printout containing the reported failures of his devices only. If he disagrees with the reported failure causes, he is invited to investigate the questioned causes in coordination with the reporting lessee and provide a coordinated reply within 6 weeks after receipt of the printout. If no reply is received within that time period, the originally reported causes will be considered to be correct, and the data will be evaluated accordingly.

6.1.4.3 *Failure Definition.* The safety and pollution-prevention device Failure and Inventory Reporting System does not differentiate between a malfunction and a failure. For the purpose of this program, a failure is defined as the inability of a device to perform its designed function within specified limits. A device is considered to have failed if it does not operate properly (perform its function) as required within the specified test tolerances. Examples of device failures are included in the FIRS Instruction Booklet.

A failure report is not required for:

a. Adjustments made within specified tolerances.

b. Adjustments required due to changes in operating conditions.

6.2 *Records.* The lessee shall maintain FIRS data records for a minimum period of 5 years. Equipment failure records shall be maintained in the nearest offshore field office for a minimum period of 2 years. If the lessee has no such offshore field office, then the records shall be kept in the nearest onshore field office. The records may then be transferred to the onshore field office for the remaining 3 years of the 5-year retention period. The records shall be available for review by any authorized representative of the USGS.

7. *Crane Operations.* Cranes shall be operated and maintained in accordance with U.S. Coast Guard regulations.

8. *Employee Orientation and Motivation Programs for Personnel Working Offshore.* The lessee shall make a planned, continuing effort to eliminate accidents due to human error. This effort shall include the training of personnel in their functions. A program to achieve safe and pollution-free operations shall be established. This program shall include instructions in the provision of "API Recommended Practice Orientation Program for Personnel Going Offshore for the First Time," API RP T–1, January 1974, or subsequent revisions which the Deputy Chief, Conservation Division—Offshore Minerals Reguation, has approved for use. "API Employee Motivation Programs for Safety and Prevention of Pollution in Offshore Operations," API Bulletin T–5, September 1974, or subsequent revisions which the Deputy Chief, Conservation Division—Offshore Minerals Regulation, has approved for use shall be used as a guide in developing employee safety and pollution-prevention motivation programs.

9. *Requirements for Drilling Rigs.*

9.1 *Fixed Structures.* The following requirements contained in this Order are applicable to drilling rigs on fixed structures:

a. Paragraph 1, "Use of Best Available and Safest Technologies (BAST)."

b. Subparagraph 5.1.10, "Electrical Equipment."

c. Subparagraph 5.4, "Welding Practices and Procedures."

d. Paragraph 8, "Employee Orientation and Motivation Programs for Personnel Working Offshore."

9.2 *Mobile Drilling Units.* The following requirements contained in this

Order are applicable to drilling rigs on mobile drilling units:

a. Paragraph 1, "Use of Best Available and Safest Technologies (BAST)."

b. Subparagraph 5.4, "Welding Practices and Procedures."

c. Paragraph 8, "Employee Orientation and Motivation Programs for Personnel Working Offshore."

10. *Departures.* All departures from the requirements specified in this Order shall be subject to approval, pursuant to 30 CFR 250.11(b).

Rodney A. Smith,

Deputy Conservation Manager, Offshore Field Operations.

Approved:

Robert L. Rioux,

Deputy Chief, Conservation Division—Offshore Minerals Regulation.

United States Department of the Interior Geological Survey Conservation Division

Alaska Region—Arctic, OCS Order No. 7, Effective ———, Pollution Prevention and Control

This Order is issued pursuant to the authority prescribed in 30 CFR 250.10, 250.11, and in accordance with 30 CFR 250.43. The lessee shall comply with the following requirements:

1. *Pollution Prevention.* During the exploration, development, production, and transportation of oil and gas, the lessee shall prevent pollution of the ocean. Furthermore, by the disposal of waste materials into the ocean, the lessee shall not create conditions which will adversely affect the public health, life, property, aquatic life, wildlife, recreation, navigation, commercial fishing, or other uses of the ocean.

1.1 *Liquid Disposal.*

1.1.1 *Drilling-Mud Components.* The lessee shall submit, as a part of the Application for Permit to Drill (Form 9–331 C), a detailed list of drilling-mud components including the common chemical or chemical trade name of each component, a list of the drilling-mud additives anticipated for use in meeting special drilling requirements, and the proposed method of drilling-mud disposal. The disposal of drilling mud is subject to the Environmental Protection Agency's permitting procedures, pursuant to the Federal Water Pollution Control Act, as amended. Approval of the method of drilling-mud disposal into the ocean shall be obtained from the District Supervisor; each request will be decided on a case-by-case basis.

1.1.2 *Hydrocarbon-Handling Equipment.* All hydrocarbon-handling equipment for testing and production such as separators, tanks, and treaters shall be designed and operated to prevent pollution. Maintenance or repairs which are necessary to prevent pollution of the ocean shall be undertaken immediately.

1.1.3 *Curbs, Gutters, and Drains for Fixed Platforms or Structures and Mobile Drilling Units.*

a. *Fixed Platforms, Structures, and Artificial Islands.* Curbs, gutters, drip pans, and drains shall be installed in all deck areas in a manner necessary to collect all contaminants and piped to a properly designed, operated, and maintained sump system which will automatically maintain the oil at a level sufficient to prevent discharge of oil into OCS waters. Sump piles shall not be used as processing devices to treat or skim liquids, but shall be used to collect treated produced water, treated sand, liquids from drip pans and deck drains, and as a final trap for hydrocarbon liquids in event of equipment upsets.

On artificial islands, all vessels containing hydrocarbons shall be placed inside an impervious berm. The volume enclosed by the berm shall be in excess of the volume of vessels containing hydrocarbons. In addition, the rig mat shall be made impervious, and all drainage ditches shall be directed away from the drilling rig to an impervious sump.

b. *Mobile Drilling Units.* Curbs, gutters, and drains which collect contaminants associated with the drilling operation on a mobile drilling unit shall be installed as required by subparagraph 1.1.3a. Curbs, gutters, and drains which collect contaminants not associated with the drilling operation are subject to regulation by the U.S. Coast Guard.

1.1.4 *Discharges from Fixed Platforms or Structures and Mobile Drilling Units.* Discharges from fixed platforms or structures and mobile drilling units, including sanitary waste, produced water, drilling mud, and deck drainage, are subject to the Environmental Protection Agency's permitting procedures, pursuant to the Federal Water Pollution Control Act, as amended.

1.2 *Solid Material Disposal.*

1.2.1 *Well Solids.* The disposal of drill cuttings, sand, and other well solids containing oil is subject to the Environmental Protection Agency's permitting procedures, pursuant to the Federal Water Pollution Control Act, as amended. Approval of the method of disposal of drill cuttings, sand, and other well solids shall be obtained from the District Supervisor.

1.2.2 *Containers.* Containers and other similar solid waste materials shall not be disposed of into the ocean.

1.2.3 *Equipment.* Disposal of equipment into the ocean is prohibited except under emergency conditions. The location and description of equipment disposed of into OCS waters shall be reported to the U.S. Coast Guard in accordance with paragraph 4 of OCS Order No. 1.

2. *Personnel, Inspections, and Reports.*

2.1 *Personnel.* The lessee's personnel shall be instructed in the techniques of equipment maintenance and operation for the prevention of pollution. Contractor personnel providing services offshore shall be informed in writing, prior to executing contracts, of the lessee's obligations to prevent pollution and of the provisions of this Order.

2.2 *Pollution Inspections.*

2.2.1 *Manned Facilities.* Manned drilling and production facilities shall be inspected daily to determine if pollution is occurring. Maintenance or repairs which are necessary to prevent pollution of the ocean waters shall be undertaken and performed immediately.

2.2.2 *Unattended Facilities.* Unattended facilities, including those equipped with remote control and monitoring systems, shall be inspected daily or at intervals prescribed by the District Supervisor to determine if pollution is occurring. Daily inspections may be postponed in the event of adverse weather conditions. Necessary maintenance or repairs shall be made immediately.

2.3 *Pollution Reports.* All spills of oil and liquid pollutants shall be reported orally to the District Supervisor and shall be confirmed in writing. All reports shall include the cause, location volume of spill, and action taken. Reports of spills of more than 5.0 cubic meters (31.5 barrels) shall include information on the sea state, meteorological conditions, size, and appearance of slick. All spills of oil and liquid pollutants shall also be reported to the U.S. Coast Guard in accordance with the procedures contained in 33 CFR 135.305 and 135.307.

2.3.1 *Spills.* Spills shall be reported orally within the following time limits:

a. Within 12 hours, if spills are 1.0 cubic meter (6.3 barrels) or less.

b. Without delay, if spills are more than 1.0 cubic meter (6.3 barrels).

2.3.2 *Observed Malfunctions.* Lessees shall notify each other observed pollution resulting from another's operation.

3. *Pollution-Control Equipment and Materials and Oil Spill Contingency Plans.* The lessee shall submit a description of procedures, personnel, and equipment that will be used in reporting, cleanup, and prevention of the spread of any pollution resulting from an

oil spill which might occur during exploration or development activities. The following subparagraphs describe the minimum requirements for pollution-control equipment and procedures.

3.1 *Equipment and Materials.* Pollution-control equipment and materials shall be maintained by, or shall be available to, each lessee at an offshore location or at a location approved by the Deputy Conservation Manager (DCM), Offshore Field Operations. The equipment shall include containment booms, skimming apparatus, cleanup materials, chemcial agents and other items needed for the existing climatic conditions, and shall be available prior to the commencement of drilling and production operations. The equipment and materials shall be inspected monthly and maintained in a state of readiness for use. The results of the inspections shall be recorded and maintained at the site.

3.2 *Oil Spill Contigency Plans.* The lessee shall submit an Oil Spill Contingency Plan for approval by the DCM, Offshore Field Operations, with or prior to submitting an Exploration Plan or a Development and Production Plan. Oil Spill Contingency Plans shall be reviewed annually. All modifications of the Oil Spill Contigency Plan and the results from the review of the plan shall be submitted to the DCM, Offshore Field Operations, for approval. The Oil Spill Contigency Plan shall contain the following:

a. Provisions to assure that full resource capability is known and can be committed during an oil spill, including the identification and inventory of applicable equipment, materials, and supplies which are available locally and regionally, both committed and uncommitted, and the time required for deployment of the equipment.

b. Provisions for varying degrees of response effort depending on the severity of the oil spill.

c. Provisions for identifying and protecting areas of special biological sensitivity.

d. Establishment of procedures for the purpose of early detection and timely notification of an oil spill including a current list of names, telephone numbers, and addresses of the responsible persons and alternates on call to receive notification of an oil spill, and the names, telephone numbers, and addresses of regulatory organizations and agencies to be notified when an oil spill is discovered.

e. Provisions for well-defined and specific actions to be taken after discovery and notifiation of an oil spill, including:

(1) Specification of an oil spill response operating team consisting of trained, prepared, and available operating personnel.

(2) Predesignation of an oil spill response coordinator who is charged with the responsibility and is delegated commensurate authority for directing and coordinating response operations.

(3) A preplanned location for an oil spill response operations center and a reliable communications system for directing the coordinated overall response operations.

(4) Provisions for disposal of recovered spill materials.

4. *Drills and Training.*

4.1 *Drills.* Drills for familiarization with pollution-control equipment and operational procedures shall be the lessee's responsibility and shall be held at least once every 12 months by the lessee or a contractor serving the lessee. The personnel identified as the oil spill response operating team in the Contingency Plan shall participate in these drills. The drills shall be realistics and shall include deployment of equipment. A time schedule with a list of equipment to be deployed shall be submitted to the DCM, Offshore Field Operations, for approval. The drill schedule shall provide sufficient advance notice to allow U.S. Geological Survey personnel to witness any of the drills. Drills shall be recorded, and the records shall be made available to U.S. Geological Survey personnel. Where drill performance and results are deemed inadequate, the DCM, Offshore Field Operations, may require an increase in the frequency or a change in the location of the drills until satisfactory results are achieved.

4.2 *Training.* The lessee shall ensure that training classes for familiarization with pollution-control equipment and operational procedures are provided for the oil spill response operating team. The supervisory personnel responsible for directing the oil spill response operations shall receive oil spill control instruction suitable for all seasons. The lessee shall retain course completion certificates or attendance records issued by the organization where the instruction was provided. These records shall be available to any authorized representative of the U.S. Geological Survey upon request.

5. *Spill Control and Removal.* Immediate corrective action shall be taken in all cases where pollution has occurred. Corrective action taken under the lessee's Oil Spill Contingency Plan shall be subject to modification when directed by the DCM, Offshore Field Operations. The primary jurisdiction to require corrective action to abate the source of pollution shall remain with the DCM, Offshore Field Operations, pursuant to the provisions of this Order and the Memorandum of Understanding (MOU) between the Department of Transportation (U.S. Coast Guard) and the Department of the Interior (U.S. Geological Survey), dated August 16, 1971. The use of chemical agents or other additives shall be permitted only after approval by the DCM, Offshore Field Operations, in accordance with Annex X, National Oil and Hazardous Substances Pollution Contingency Plan, and in accordance with the previously mentioned MOU.

6. *Departures.* All departures from the requirements specified in this Order shall be subject to approval, pursuant to 30 CFR 250.11(b).

Rodney A. Smith,

Deputy Conservation Manager, Offshore Field Operations.

Approved:

Robert L. Rioux,

Deputy Chief, Conservation Division—Offshore Minerals Regulation.

U.S. Department of the Interior, Geological Survey Conservation Division

Alaska Region, Arctic—OCS Order No. 8

Effective ———

Platforms and Structures

This Order is issued pursuant to the authority prescribed in 30 CFR 250.10 and 30 CFR 250.11 and in accordance with 30 CFR 250.18.

1. Applicability.

1.1 *New Platforms.* Subsequent to the effective date of this Order, all new fixed or bottom-founded platforms or other structures (e.g., single-pile caissons, ice islands, and gravel islands) shall be designed, fabricated, and installed in accordance with the applicable provisions of the document, entitled "Requirements for Verifying the Structural Integrity of OCS Platforms," and shall require approval under the provisions of this Order.

Where doubt exists as to the applicability of this Order, questions shall be referred to the Deputy Conservation Manager (DCM), Offshore Field Operations.

1.2 *Major Modifications and Repairs.* Subsequent to the effective date of this Order, major modifications and repairs of damage to all fixed or bottom-founded platforms or other structures shall require approval by the DCM, Offshore Field Operations. Major modifications are defined as any structural change which materially

alters the original plan or any major deviation from operations. Major repairs or damage are defined as operations involving members affecting the structural integrity of a portion of or all of the platform or other structure.

Repairs to primary structural elements may be made to restore an existing permitted condition without prior approval under emergency conditions. The DCM, Offshore Field Operations, shall be notified within 24 hours of the damage and subsequent repairs, and approval shall be obtained.

Where doubt exists as to the applicability of this Order, questions shall be referred to the DCM, Offshore Field Operations.

1.3 *Platform Verification.* All new platforms or other structures, and major modifications to platforms or other structures, shall be subject to review under the requirements of the Platform Verification Program and to the approval of the DCM, Offshore Field Operations.

1.4 *References.* Other aspects of the Platform Verification Program are described in more detail in the following documents, and these documents shall be considered as references for this Order.

1.4.1 *Operating Procedures for the OCS Platform Verification Program.* The document, entitled "Operating Procedures for the OCS Platform Verification Program," October 1979, describes the elements of the Platform Verification Program, the verification steps, the function of the Platform Verification Section, and the procedures for resolution of disputes; defines standards which shall be met by individuals or organizations in order to be approved as Certified Verification Agents (CVA); and provides instructions to the CVA.

1.4.2 *Requirements for Verifying the Structural Integrity of OCS Platforms.* The document, entitled "Requirements for Verifying the Structural Integrity of OCS Platforms," October 1979, is identified in this Order as "Requirements." It identifies mandatory state-of-the-art performance standards which shall be met in designing, fabricating, and installing platforms or other structures and major modifications to platforms or other structures.

1.4.3 *Appendices to Requirements for Verifying the Structural Integrity of OCS Platforms.* The document, entitled "Appendices to Requirements for Verifying the Structural Integrity of OCS Platforms," October 1979, is identified in this Order as "Appendices." It identifies alternative engineering design procedures which may be utilized, where applicable, to conform to the "Requirements."

1.4.4 *Commentary on Requirements for Verifying the Structural Integrity of OCS Platforms.* The document, entitled "Commentary on Requirements for Verifying the Structural Integrity of OCS Platforms," October 1979, is identified in this Order as "Commentary." It provides an explanation of the basic intent of the "Requirements" and also discusses the "Requirements," the "Appendices," and the current relative development of the state of practice for pertinent parts of both.

2. Responsibility

2.1 *Submission.* All applications for approval under the provisions of this Order shall be submitted to the DCM, Offshore Field Operations. All significant changes or modifications (i.e., any structural change which materially alters the original plans or any major deviation from operations) to approved applications shall be submitted for approval to the DCM, Offshore Field Operations. The lessee assumes risk of making changes or modifications without prior approval of the DCM, Offshore Field Operations. Where doubt exists as to whether a change is significant, questions shall be referred to the DCM, Offshore Field Operations.

2.2 *Certification.* The lessee shall have detailed structural plans and specifications for new platforms or other structures and major modifications certified by a registered professional structural engineer or civil engineer specializing in structural design. The lessee shall also sign and date the following certification:

(Lessee) certifies that the design of the (structure/modification) has been certified by a registered professional structural engineer or a civil engineer specializing in structural design, and the (structure/modification) will be fabricated, installed, and maintained as described in the application and any approved modification thereto. Certified design and as-built plans and specifications will be on file at ————.

2.3 *Verification.* The lessee shall nominate a CVA(s) in the verification plan and have the design, fabrication, and installation of all platforms or other structures and modifications to platforms or other structures which are subject to review under the requirements of the Platform Verification Program, verified by a CVA(s).

2.4 *Approval.* For new platforms or other structures and major modifications thereto subject to review under the requirements of the Platform Verification Program, the lessee shall obtain approval for the design and fabrication from the DCM, Offshore Field Operations, prior to transporting the platform or other structure to the installation site.

2.5 *Notification.* The lessee shall be responsibile for notifying the DCM, Offshore Field Operations, at least 1 week prior to transporting the platform or other structure to the installation site.

3. Submission.

3.1 *General.* The lessee shall submit to the DCM, Offshore Field Operations, in triplicate, all documentation necessary for approval of new platforms or other structures and major modifications in accordance with the provisions of this Order. Listed hereafter is the documentation which shall be submitted; however, more detailed information and data may be required on a case-by-case basis and upon specific request by the DCM, Offshore Field Operations.

3.2 Design

3.2.1 *Design Documentation.* The lessee shall submit design documentation with or subsequent to the submittal of the Exploration Plan or the Development and Production Plan. The design documentation shall include design drawings and material specifications for primary load-bearing members included in the space frame analysis, the certification by the lessee, and the name of the registered professional engineer. In addition, the design documentation shall incorporate the following:

a. General platform information.

b. Environmental and loading information.

c. Foundation information.

d. Structural information.

3.2.1.1 *General Platform Information.* The general platform information shall include the following:

a. Identification data including the platform or structure designation, the lease number, the area name, the block number, and the lessee's name.

b. Location data consisting of longitude and latitude coordinates, Universal Transverse Mercator grid system coordinates, state plane coordinates in the Lambert or Transverse Mercator Projection system, and a plat drawn to a scale of 1 centimeter=240 meters (1 inch=2,000 feet) showing surface location and distance from the nearest lease lines.

c. Intended primary use and other intended functions such as planned drilling, production, processing, well protection, compression, pumping or storage facility, or other operations.

d. Personnel facilities, personnel access to living quarters, number and

location of boat landings, heliports, cranes, and evacuation routes.

e. Platform or structure details which consist of drawings, plats, front and side elevations of the entire structure, and plan views that clearly illustrate the following: essential parts (i.e., equipment arrangement, number and location of well slots); design loadings of each deck; water depth; nominal size and thickness of all primary load-bearing jacket and deck structural members; nominal size, makeup, thickness, and design penetration of piling.

f. Corrosion protection or durability details which consist of the corrosion-protection method; expected life; and durability criteria for the submerged, splash, and atmospheric zones.

3.2.1.2 *Environmental and Loading Information.* The environmental and loading information shall include the following:

a. Environmental data, which consist of a summary listing of data, as addressed in the "Requirements," that have a bearing on the design, installation, and operation (e.g., wave heights and periods, current, vertical distribution of wind and gust velocities, water depth, storm and astronomical tide data, marine growth, snow and ice effects, and air and sea temperatures).

b. Derived loads which consist of a listing of total design functional loads and loads due to wind, wave, ice, and current forces for longitudinal, transversal, and diagonal approaches.

3.2.1.3 *Foundation Information.* The foundation information shall include the following:

a. Seabed testing results which consist of a brief summary of the major strata encountered at the location of the boring(s) presented in tabular form, a detailed subsurface profile illustrating results of field and laboratory testing, a listing of field and laboratory investigations and tests with a basic summary of resultant determinations, the identification of properties and conditions of the seabed and the subsoil, and the identification of any manmade hazards or obstructions.

b. Load effects which consist of a description of the effect of the environmental and functional loads on the foundation.

c. A soil stability report including a determination, with supporting information, of the susceptibility or non-susceptibility of the area to soil movement and, if susceptible to soil movement, an analysis of slope and soil stability.

d. Foundation design criteria which consist of a summary of the design criteria as specified in the "Requirements."

e. Seafloor survey results which consist of a summary of the survey specified in the "Requirements."

3.2.1.4 *Structural Information.* The structural information shall include the following:

a. Design life criteria which consist of the identification of the basis of the design life of the structure.

b. Design loading and criteria which consist of a summary description of the design load conditions and design load combinations taking into consideration the worst environmental and operational conditions anticipated over the service life of the plate form or structure.

c. Material specifications which consist of a listing and description of the appropriate specifications.

d. Design strength criteria which consist of a description of the method(s) used in design (i.e., elastic, plastic ductility, ultimate).

e. Fatigue assessment details which consist of a summary of the fatigue analysis as specified in the "Requirements." The requirement for fatigue analysis shall be determined on a case-by-case basis. Where doubt exists concerning the requirement for this analysis, questions shall be referred to the DCM, Offshore Field Operations.

3.2.2 *Design Verification Plan.* For new platforms or other structures, and for modifications which are subject to review under the requirements of the Platform Verification Program, the lessee shall submit a design verification plan with or subsequent to the submittal of the Development and Production Plan. The verification plan shall include a short summary which nominates the CVA, states the qualifications of the CVA, describes how the lessee intends to use the CVA, identifies the level of work to be performed by the CVA, and identifies the documents which will be furnished with the platform application. Furthermore, the documentation listed under 3.2.1, as well as computer program descriptions which consist of abstracts of the computer programs used or to be used in various phases of the design process, shall be submitted as a part of the design verification plan.

The design verification plan shall be resubmitted for approval if the CVA changes, if the CVA's qualifications change, or if the level of work to be performed by the CVA changes. However, the summary of technical details need not be resubmitted unless changes are made in the technical details.

3.3 *Fabrication.* For new platforms or other structures and for modifications which are subject to review under the requirements of the Platform Verification Program, the lessee shall submit a fabrication verification plan subsequent to the submittal of the design. The plan shall include a short summary which nominates the CVA, states the qualifications of the CVA, describes how the lessee intends to use the CVA, identifies the level of work to be performed by the CVA, and identifies the documents which will be furnished to the CVA. The plan shall include fabrication drawings and material specifications of all the primary load-bearing members included in the space-frame analysis and a summary description of the following:

a. Structural tolerances.

b. Welding procedures.

c. Fabrication standards.

d. Material quality-control procedures.

e. Methods and extent of Nondestructive Examinations (NDE) for welds and materials.

f. Quality assurance procedures.

The fabrication verification plan shall be resubmitted for approval if the CVA changes, if the CVA's qualifications change, or if the level of work to be performed by the CVA changes. However, the summary of technical details need not be resubmitted unless changes are made in the technical details.

3.4 *Installation.* For new platforms or other structures and for modifications subject to review under the requirements of the Platform Verification Program, the lessee shall submit an installation verification plan subsequent to the submittal of the fabrication verification plan. The plan shall include a short summary which nominates the CVA, states the qualifications of the CVA, describes how the lessee intends to use the CVA, identifies the level of work to be performed by the CVA, and identifies the documents which will be furnished to the CVA. The plan shall also include a summary description of the planned marine operations, contingencies considered, alternate courses of action, and a summary description of the inspections to be performed during marine operations, including a graphical identification of areas to be inspected and acceptance/rejection criterion. The installation verification plan shall be resubmitted for approval if the CVA changes, if the CVA's qualifications change, or if the level of work to be performed by the CVA changes. However, the summary of technical details need not be resubmitted unless changes are made in the technical details.

For structures fabricated and installed in place (e.g., ice islands and gravel islands), the fabrication and installation verification plans may be combined.

4. *Records.* The lessee shall compile, retain, and make available for review for the functional life of the platform or other structure that is subject to the provisions of this Order, the as-built structural drawings, the design assumptions and analysis, and a summary of the NDE records.

5. *Departures.* All departures from the requirements specified in this Order shall be subject to approval pursuant to 30 CFR 250.11(b).

Rodney A. Smith,

Deputy Conservation Manager, Offshore Field Operations.

Approved:

Robert L. Rioux,

Deputy Chief, Conservation Division—Offshore Minerals Regulation.

U.S. Department of the Interior, Geological Survey Conservation Division

Alaska Region, Arctic

OCS Order No. 12

Effective ———

Public Inspection of Records

This Order is issued pursuant to the authority prescribed in 30 CFR 250.10, 250.11, and in accordance with 30 CFR 250.3, 250.34, 252.6, and 43 CFR Part 2. Requests for information made under the Freedom of Information Act, 5 U.S.C. § 552, will be governed by the provisions of 43 CFR Part 2 (40 FR 7304, February 19, 1975).

1. *Filing of Reports.* All reports on Forms 9–152, 9–330, 9–331, 9–331 C, 9–1869, 9–1870, and the forms used to report the results of multipoint back-pressure tests shall be filed by the lessee in accordance with the following:

a. All reports submitted on these forms shall include a copy with the words "Public Information" shown on the lower right-hand corner. This copy of the form shall be made available for public inspection.

b. All items on the form not marked "Public Information" shall be completed in full, and such forms and all attachments thereto shall not be available for public inspection.

c. The copy marked "Public Information" shall be completed in full except that the items described in subparagraphs 2.1 through 2.4 below, and the attachments relating to such items, may be excluded.

2. *Availability of Records.* The following records pertaining to leases wells in the Outer Continental Shelf (OCS) and submitted under 30 CFR 250 shall be made available for public inspection, as specified below, in the Regional Office:

2.1 *Form 9–152—Monthly Report of Operations.* All information contained on this form shall be available except proprietary information which may be included in the remarks column. The lessee shall delete such proprietary data from the public information copy.

2.2 *Form 9–330—Well-Completion or Recompletion Report and Log.*

2.2.1 *Prior to Commencement.* Prior to commencement of production, all information contained on this form shall be available except:

a. Item 1a, Type of Well.

b. Item 4, Location of Well, at top production interval and at total depth.

c. Item 22, If Multiple Completion, how many.

d. Item 24, Producing Interval.

e. Item 26, Type Electric and Other Logs Run.

f. Item 28, Casing Record.

g. Item 29, Liner Record.

h. Item 30, Tubing Record.

i. Item 31, Perforation Record.

j. Item 32, Acid, Shot, Fracture, Cement Squeeze, Etc.

k. Item 33, Production.

l. Item 37, Summary of Porous Zones.

m. Item 38, Geologic Markers.

2.2.2 *After Commencement of Production.* After commencement of production, all information shall be available except Item 37, Summary of Porous Zones, and Item 38, Geologic Markers.

2.2.3 *5 Years' Elapsed Time.* If production has not commenced after an elapsed time of 5 years from the date of filing Form 9–330 as required in 30 CFR 250.38(b), excluding the total time that operations and production are suspended by direction of the Secretary of the Interior, or his duly authorized representative, and further excluding the total time that operations and production are stopped or prohibited by Court Order, all information contained on this form shall be available except Item 37, Summary of Porous Zones, and Item 38, Geologic Markers. Within 90 days prior to the end of the 5-year period, exclusive of exceptions noted above, the lessee shall file a Form 9–330 containing all information requested on the form except Item 37, Summary of Porous Zones, and Item 38, Geologic Markers, to be made available for public inspection. Objections to the release of such information may be submitted with the completed Form 9–330.

2.3 *Form 9–331—Sundry Notices and Reports on Wells.*

2.3.1 *"Request for Approval to."* When used as a "Request for Approval to" conduct operations, all information contained on this form shall be available except Item 4, Location of Well, at top production interval and at total depth, and Item 17, Described Proposed or Completed Operations.

2.3.2 *"Subsequent Report of."* When used as a "Subsequent Report of" operations, and after commencement of production, all information contained in this form shall be available, except information contained in Item 17 pertaining to subsurface locations and measured and true vertical depths for all markers and zones not placed on production.

2.4 *Form 9–331 C—Application for Permit to Drill, Deepen, or Plug Back.* All information contained on this form and the location plat attached thereto shall be available except Item 4, Location of Well at Proposed Production Zone, and Item 23, Proposed Casing and Cementing Program.

2.5 *Form 9–1869—Quarterly Oil Well Test Report.* All information contained on this form shall be available.

2.6 *Form 9–1870—Semiannual Gas Well Test Report.* All information contained on this form shall be available.

2.7 *Multipoint Back Pressure Test Report.* All information contained in this report shall be available.

2.8 *Sales of Lease Production.* Information contained on the monthly U.S. Geological Survey computer printout showing sales volumes, value, and royalty on production of oil, condensate, gas, and liquid products by lease shall be made available.

2.9 *Availability of Inspection Records.* All accident-investigation reports, pollution-incident reports, facilities-inspection data, and records of enforcement actions are also available for public inspection.

2.10 *Availability of Data and Information Submitted by Lessees.* Certain inormation submitted by lessees, as a result of OCS Orders and OCS Notices to Lessees and Operators, is nonproprietary in nature, or release of such information is necessary for the proper development of the lease. This information will be made available for public inspection, except for those portions which the lessee shall designate, with the approval of the Deputy Conservation Manager (DCM), Offshore Field Operations, as trade secrets and commercial or financial information which is privileged or confidential. The available information will include:

a. Notice of support activity.

b. Oceanographic and meteorological data collected from drilling units and

production facilities during the period of operations.

c. Results of site surveys required prior to drilling or placement of platforms or structures, such as shallow geologic hazards surveys, archaeological/cultural resource surveys, or other surveys related to the placement of platforms or structures.

d. Drawings, maximum environmental design criteria, and rated capability data of mobile drilling units and structures.

e. Oil Spill Contingency Plans.

f. Critical Operations and Curtailment Plans.

g. Other data required under 30 CFR 250.34.

2.11 T3Expired Leases. All information is available upon the expiration of a lease.

3. *Information Exempt from Public Inspection.* The information in subparagraphs 2.1 through 2.4 which has been restricted from public inspection is classified as geological and geophysical data. Except as provided in 30 CFR 250.3, 250.4, and 252.7, the release of this data is subject to the following restrictions:

3.1 T3Leases Issued Prior to June 11, 1976. For leases issued prior to June 11, 1976, the classified data is exempt from disclosure under exemption No. (9) of the Freedom of Information Act (5 U.S.C. 552(b)(9) and 43 CFR 2.13 subsection (c), *Statutory Exemptions,* (9)).

3.2 T3Leases Issued After June 11, 1976. For leases issued after June 11, 1976, the classified data is available in accordance with 30 CFR 250.3, *Data and information to be made available to the public,* as follows:

a. Geophysical data, processed geophysical information, and interpreted geological and geophysical information shall not be available for public inspection, except as provided in 2.10c, without consent of the lessee as long as the lease remains in effect or for a period of 10 years after the date of submission, whichever is less, unless the DCM, Offshore Field Operations, with the approval of the Director, determines that earlier release of this information is necessary for proper development of the field or area.

b. Geological data and analyzed geological information shall not be made available for public inspection without the consent of the lessee as long as the lease remains in effect or for a period of 2 years after the date of submission, whichever is less, unless the DCM, Offshore Field Operations, with the approval of the Director, determines that earlier release of such information is necessary for the proper development of the field or area. In accordance with 30 CFR 250.38, *Well Records* data and well records shall be transmitted to the DCM, Offshore Field Operations, upon request or, if not requested, within 30 days following completion of suspension of any well. For the purpose of orderly release of data, in all cases the date of submission will be considered to be 30 days following such completion or suspension.

4. *Departures.* All departures from the requirements specified in this Order shall be subject to approval, pursuant to 30 CFR 250.11(b).

Rodney A. Smith,

Deputy Conservation Manager, Offshore Fields Operations.

Approved:

Robert L. Rioux,

Deputy Chief, Conservation Division—Offshore Minerals Regulations.

[FR Doc. 80-39343 Filed 12-18-80; 8:45 am]

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Friday
December 19, 1980

Part VII

Department of Labor

Wage and Hour Division, Employment Standards Administration

Labor Standards on Projects or Productions Assisted by Grants from the National Endowments for the Arts and Humanities

DEPARTMENT OF LABOR

Wage and Hour Division, Employment Standards Administration

29 CFR Part 505

Labor Standards on Projects or Productions Assisted by Grants from the National Endowments for the Arts and Humanities

AGENCY: Wage and Hour Division, Labor.

ACTION: Proposed rule.

SUMMARY: It is proposed to revise the Regulations on Labor standards covering professional performers and supporting or related technical personnel employed on projects or productions assisted by grants from the National Endowment for the Arts and the National Endowment for the Humanities to properly reflect the prevailing minimum compensation for the applicable crafts. The National Foundation on the Arts and Humanities Act of 1965 was amended in 1976 to expand labor standards coverage to include professional personnel and related or supporting personnel employed on projects or productions assisted by grants from the National Endowment for the Humanities. We are interested in obtaining all forms of information from interested parties who have knowledge concerning compensation paid to the various crafts of performers and technical personnel in an attempt to promulgate regulations that would ultimately reflect prevailing compensation paid to the various crafts in the industry. We are particularly interested in obtaining information relating to the presumptions contained in the existing regulations. Thus, we are submitting revised regulations for public comment in which proposed changes are being made to reflect these statutory amendments and to incorporate interpretations of the existing regulation that have been adopted in the course of administering and enforcing these labor standards provisions. With regard to this existing regulation, 29 CFR Part 505, thorough substantive updating and clarification have not occurred since 1967.

DATE: Comments in triplicate must be received on or before February 17, 1981.

ADDRESS: Comments should be sent to Henry T. White, Jr., Deputy Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Room S-3502, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

FOR FURTHER INFORMATION CONTACT: Herbert J. Cohen, Assistant Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Room S-3502, 200 Constitution Avenue, N.W., Washington, D.C. 20210, telephone: (202) 523-8353.

SUPPLEMENTARY INFORMATION: In 1976 Congress amended the National Foundation on the Arts and Humanities Act of 1965 (20 U.S.C. 954(i) and 956(g)) and, among other things, provided that Humanities grant recipients would also be subject to prevailing minimum compensation standards. Sections 5(j) and 7(g) of the Act (20 U.S.C. 954(i) and 956(g)) require all grant recipients to furnish adequate assurances to pay not less than the minimum compensation to their professional employees and related or supporting professional personnel as determined by the Secretary of Labor to be the prevailing minimum compensation for persons employed in similar activities.

The method of determining prevailing compensation since 1967 when the present regulation was adopted is based on collective bargaining agreements which take into consideration the type of performance, nature of the operation, such as repertory, stock, or experimental companies, non-profit and profit, and potential for income in part based on size. The compensation determination must also recognize the unique market and competition for the skills of the professional performing artist as well as the problems posed by production through television, video, and audio tape reproduction, and traveling performing companies. The agreements on which the determinations have been based in the past have been negotiated by the representatives of professional performing artists and employers throughout the country. Thus, a presumption was adopted at that time that the compensation provided for in connection with the 10 named labor organizations in § 505.3(a) was the prevailing minimum compensation for the various performers and related or supporting professional personnel. Also, provisions were made in § 505.3(b) to grant a variation from the prevailing minimum compensation established under § 505.3(a).

While this agency is interested in obtaining all pertinent information on wages paid to performers and technical personnel in the industry, the following proposed revision of Regulation Part 505 in published for comment. Revised part 505 incorporates labor standards for professional performers and related or supporting professional personnel employed by grantees of the National Endowment for the Humanities and amends certain administrative procedures as they apply to professional performers and related or supporting professional personnel employed by grantees of the National Endowment for the Arts. Highlights of the proposed revisions are summarized below.

1. Section 505.1—Conforming changes are made to this section as necessary to reflect the statutory amendment.

2. Section 505.2—This section proposes to change the definition of the term "professional" pursuant to § 505.2. Experience in enforcing these regulations since 1967 has demonstrated the necessity to expand the definition of "amateur" to include those performers and supporting personnel who may receive reimbursement for expenses incurred on a production. We are particularly interested in receiving comments on these proposed definitions and would welcome all suggestions from knowledgeable persons for improvement on the definitions so that the terms "professional" and "amateur" would be defined in a manner that is compatible with their use by this industry. Other conforming changes are made as necessary to reflect the statutory amendment.

3. Section 505.3(a)—The proposed revisions of this section expand the basis for the determination of the prevailing minimum compensation. We are particularly interested in receiving all comments from knowledgeable persons as to whether the prevailing minimum compensation for all crafts has been properly determined or whether some other rate is prevailing for some or all of the crafts. We would welcome payment data on non-Government supported grants or performances for all of the affected crafts to assist this agency in determining the prevailing minimum compensation. In addition, conforming changes are made as necessary to reflect the statutory amendment.

4. Section 505.3(b)—This section provides additional details concerning data which the Administrator has determined to be necessary when requesting a variation from the prevailing minimum compensation established by § 505.3(a); for example, the lower minimum compensation that is to be paid and the number of affected employees. While none of these factors is controlling in making a determination, in total they assist in indicating whether a variation should be granted.

5. Section 505.3(c)—This proposed new section is added to establish procedures to determine a prevailing minimum compensation for all crafts performing cultural activities under

applicable grants that do not come within the purview of § 505.3(a).

6. Section 505.3(d)—This proposed new section is added to establish that not less than the Federal minimum wage as prescribed by the Fair Labor Standards Act, must be paid for hours worked by a grantee's professional and related or supporting personnel.

7. Sections 505.4 and 505.5—Conforming changes are made to these sections as necessary to reflect statutory amendments.

8. Section 505.6—This section is revised to conform with the requirements of the Occupational Safety and Health Act and to make conforming changes to reflect statutory amendment to the National Foundation on the Arts and Humanities Act.

9. Section 505.7—The "Failure to comply" section has been expanded to clarify the regulatory lists that will be maintained by the Secretary's representatives and to provide in more detail the administrative procedure that will be followed in the event that non-compliance of the previously specified labor standards on the part of a grantee of the National Endowment for the Arts or the National Endowment for the Humanities occurs.

Comments, current wage data and any or all pertinent information are solicited from those persons, grantees and the general public who are familiar with cultural activities throughout this nation concerning the application of this Proposed Rule on the programs funded through grants supplied by either Endowment. This agency encourages the public to submit such relevant comments in order that the final regulation accurately reflects the wage scales and practices prevailing in the industry.

This document was prepared under the direction and control of Herbert J. Cohen, Assistant Administrator for Fair Labor Standards, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Room S-3502, 200 Constitution Avenue, N.W., Washington, D.C. 20210, Telephone 202-523-8353.

The Department of Labor has determined that the proposal in this document is not a major regulation that requires the preparation of a regulatory analysis within the meaning of Executive Order 12044 and the Department's guidelines published at 44 FR 5570.

Accordingly, it is proposed to revise Part 505 of Title 29 as set forth below.

Signed at Washington, D.C., this 10th day of December, 1980.

Donald Elisburg,

Assistant Secretary of Labor for Employment Standards.

PART 505—LABOR STANDARDS ON PROJECTS OR PRODUCTIONS ASSISTED BY GRANTS FROM THE NATIONAL ENDOWMENTS FOR THE ARTS AND HUMANITIES

Sec.

505.1 Purpose and scope.
505.2 Definitions.
505.3 Prevailing minimum compensation.
505.4 Receipt of grant funds.
505.5 Adequate assurances.
505.6 Safety and health standards.
505.7 Failure to comply.

Authority: Sec. 5(j), Pub. L. 89-209, 79 Stat. 848 (20 U.S.C. 954 (i)); Sec. 7(g), Pub. L. 94-462, 90 Stat. 1971 (20 U.S.C. 956(g)) and Secretary's Order 16-75 (40 FR 55913) and Employment Standards Administration Order No. 78-1 (43 FR 51469).

§ 505.1 Purpose and scope.

(a) The regulations contained in this part set forth the procedures which are deemed necessary and appropriate to carry out the provisions of section 5(j) and section 7(g) of the National Foundation on the Arts and Humanities Act of 1965, as amended, 20 U.S.C. 954(i), 20 U.S.C. 956(g). As a condition to the receipt of any grant, the grantees must give adequate assurances that all professional performers and related or supporting personnel shall receive not less than the prevailing minimum compensation as determined by the Secretary of Labor on projects or productions assisted by grants from the National Endowment for the Arts and the National Endowment for the Humanities.

(b) Regulations and procedures relating to wages on construction projects as provided in section 5(j) of the National Foundation on the Arts and Humanities Act of 1965, as amended, may be found in Parts 3 and 5 of this Title.

(c) Standards of overtime compensation for laborers or mechanics may be found in the Contract Work Hours and Safety Standards Act, 76 Stat. 357, 40 U.S.C. 327, *et. seq.* and Part 5 of this Title.

§ 505.2 Definitions.

(a) The term "Act", means the National Foundation on the Arts and the Humanities Act of 1965, as amended, 79 Stat. 848, 20 U.S.C. 954(i), and 956(g).

(b) The term "Secretary" means the Secretary of Labor.

(c) The term "Administrator" means the Administrator of the Wage and Hour Division who exercises responsibilities for the Secretary over the requirements pertaining to wages.

(d) The term "Assistant Secretary" means the Assistant Secretary for Occupational Safety and Health, U.S. Department of Labor, who exercises responsibilities for the Secretary over the requirements pertaining to safety and health.

(e) "Professional" in the phrase "professional performer and related or supporting professional personnel" shall include all those who work for compensation on a project or production which is assisted by a grant from the National Endowment for the Arts and the Humanities regardless of whether paid out of grant funds. It shall not include those whose status is "amateur" because their engagement for performance or supporting work contemplates no compensation. Compensation does not mean reimbursement of expenses (i.e., meals, costumes, make-up, etc.). The words "related or supporting * * * personnel" in the same phrase shall include all those whose work is related to the particular project or production such as musicians, stage hands, scenery designers, technicians, electricians and moving picture machine operators, as distinguished from those who operate a place for receiving an audience without reference to the particular project or production being exhibited, such as ushers, janitors, and those who sell and collect tickets. The phrase shall not include laborers and mechanics employed by contractors or subcontractors on construction projects, but their compensation is regulated under section 5(k) of the Act. The phrase "professional performers and related or supporting professional personnel" shall not include persons employed as regular faculty or staff of an educational institution performing primary duties commonly associated with the teaching process. It shall include persons employed by educational institutions primarily to engage in activities customarily performed by the performing artists or by those who assist in the presentation of the performing arts and the humanities.

§ 505.3 Prevailing minimum compensation.

(a) *Generally.* The prevailing minimum compensation shall be established by labor organizations which are affiliated with one of the following:

Actor's Equity Association
Screen Actors Guild, Inc.
Screen Extras Guild, Inc.
American Guild of Musical Artists, Inc.

International Alliance of Theatrical Stage Employees and Moving Picture Machine Operator
American Federation of Musicians
National Association of Broadcast Employees and Technicians
American Federation of Television and Radio Artists
International Brotherhood fo Electrical Workers
American Guild of Variety Artists
Writers Guild

It has been determined that these contracts provide the minimum compensation (including fringe benefits) to be paid such professional performers and related or supporting professional personnel. The compensation provided in each of these contracts is hereby determined to be the prevailing minimum compensation for each of the professional performers and related or supporting professional personnel to which it applies or would apply if he or she were a member of the appropriate one of the above mentioned labor organizations. Such determination shall be subject to variation, however, on behalf of any adversely affected professional worker or grantee as provided in paragraph (b) of this section.

(b) *Variations.* (1) *On behalf of professional workers.* Any professional performer or related or supporting professional personnel desiring employment on any such project or production and any labor organization repesenting any one of them may protest the determination made in paragraph (a) of this section. Such variation request shall be in writing, shall be directed to the Administrator, shall identify the locality or localities and the class or classes of professional performers and related or supporting professional personnel to whom it relates, and shall present all of the evidence available to the applicant relating to the prevailing minimum compensation. Upon receipt of the variation application, the Administrator, may, at his or her discretion conduct a public hearing at which time all interested parties will be able to participate. In any event, all interested parties will be given twenty-one (21) days after notification of the variation request to comment on the variation application. The Administrator will make a determination concerning each such variation request to the extent necessary to resolve the issue for any approved grant application.

(2) *On behalf of grantees.* Any grant applicant that proposes to compensate related or supporting professional personnel in an amount less that the prevailing minimum compensation determined in paragraph (a) of this section shall submit a variation request to the Administrator which contains the following information:

(i) The lower minimum compensation that the grantee proposes to pay;

(ii) Granting agency, a copy of the grant application, desired period of grant and the amount of each grant request;

(iii) Number of affected professional employees and the craft (or crafts) in question;

(iv) Nature of the proposed performances;

(v) The name of competing organizations who employed persons in the same or similar occupations;

(vi) The number of performances that these organizations performed in the past year;

(vii) All other relevant information in support of the variation application;

(viii) Whether the applicant desires a public hearing in support of the application.

Upon receipt of the variation application, the Administrator will determine whether a public hearing is necessary and appropriate. If no public hearing is appropriate, any interested party will be given twenty-one (21) days after notification of the variation application to comment in favor of or in opposition to the variation request. Upon receipt of all comments or after the public hearing is concluded, the variation request will be resolved by the Administrator.

(c) *Additional classifications.* The prevailing minimum compensation for professional performers and related or supporting professional personnel who are to perform activities which do not come within the jurisdiction of one of the above named labor organizations shall be specifically determined by the Administrator. A written request shall be made describing the activity in question, suggesting a proposed wage rate and a copy of the grant application. Within sixty (60) days the Administrator shall approve the proposed rate or substitute a rate deemed appropriate for the activity in question.

(d) *Minimum wage rate.* The Administrator has determined that in no instance may less than the Federal minimum wage as prescribed by the Fair Labor Standards Act be paid to the affected employees for their hours of work.

§ 505.4 Receipt of grant funds.

(a) The grantee shall not receive funds authorized by section 5 of the Act until adequate initial assurancs pursuant to section 5(i)(1) and (2) and section 7(g)(1) and (2) of the Act as provided in §§ 505.5(a) and 505.6 have been filed with the Chairperson of the National Endowment of the Arts or the Chairperson of the National Endowment of the Humanities. Neither shall he or she receive any such funds if and after the Chairperson of the National Endowment of the Arts or Chairperson of the National Endowment of the Humanities is advised by the Secretary that continuing assurances as provided in § 505.5(b) are inadequate or that labor standards contemplated by section 5(i)(1) and (2) and section 7(g)(1) and (2) of the Act have not been observed.

(b) In order to facilitate such assurance so that the grantee may receive the grant funds promptly, the Chairpersons of the National Endowment of the Arts and the Humanities will transmit to each grantee of a grant under section 5 of the Arts and Humanities Act of 1965, as amended, with the grant letter a copy of these regulations together with two copies of the assurance form (USDL Form No. 1-297). He or she will advise the grantee that before the grant may be received, the grantee must give assurances that all professional performers and related or supporting professional personnel (other than laborers or mechanics with respect to whom labor standards are prescribed in section 5(k) of the Act), will be paid without subsequent deduction or rebate on any account not less than the minimum compensation determined in § 505.3(a) unless a variation is obtained under § 505.3(b) and that the safety and health requirements under § 505.6 are met. The Chairpersons will maintain a file in Washington, D.C., for a period of six (6) years and make available upon request to the Secretary the original signed Form USDL No. 1-297 and a copy of the grant letter together with any supplementary documents needed to give a description of the project or production to be financed in whole or part under the grant.

§ 505.5 Adequate assurances.

(a) *Initial assurances.* Unless the grantee seeks variation of the determination of prevailing minimum compensation contained in § 505.3, or variation of the safety and health standards contained in § 505.6, execution of USDL Form No. 1-297 will constitute his or her initial assurances. If variation of the prevailing minimum compensation provided in § 505.3(a) is sought under § 505.3(b) the information called for by § 505.3(b) shall be furnished in lieu of assurances on USDL Form No. 1-297 and appropriate assurances will be drafted by the Administrator for the grantee upon

resolution of the application for variation.

(b) *Continuing assurances.* (1) The grantee shall maintain and preserve sufficient records as an assurance of compliance with section 5(i)(1) and (2) and section 7(g)(1) and (2) of the Act and shall make such reports therefrom to the Secretary as necessary or appropriate to assure the adequacy of the assurances given. These records shall include the following information relating to each performer and related or supporting personnel for whom a prevailing minimum compensation determination has been made pursuant to § 505.3. In addition the record required in paragraph (b)(1)(vii) of this section shall be kept for all employees engaged in the project or production assisted by the grant.

(i) Name.

(ii) Home address.

(iii) Occupation.

(iv) Basic unit of compensation (such as the amount of a weekly or monthly salary, talent or performance fee hourly rate or other basis on which compensation is computed), including fringe benefits or amounts paid in lieu thereof.

(v) Work performed for each pay period expressed in terms of the total units of compensation fully and partially completed.

(vi) Total compensation paid each pay period, deductions made, and date of payment, including amounts paid for fringe benefits and the person to whom they were paid, and

(vii) Brief description of any injury incurred while performing under the grant and the dates and duration of disability. Such records shall be kept for a period of three (3) years after completion of the project or production to which they pertain.

(2) The grantee shall permit the Administrator and the Assistant Secretary or their representatives to investigate and gather data regarding the wages, hours, safety, health, and other conditions and practices of employment related to the project or production, and to enter and inspect such project or production and such records (and make such transcriptions thereof), question such employees, and investigate such facts, conditions, practicies, or matters as may be deemed necessary or appropriate to determine whether the grantee has violated the labor standards contemplated by section 5(i) and section 7(g) of the Act, or which may aid in the enforcement of such standards.

(c) *Determination of adequacy.* The Administrator and Assistant Secretary shall determine the adequacy of assurances within each of their respective areas of responsibilities, given pursuant to paragraphs (a) and (b) of this section and may revise their determination at any time.

§ 505.6 Safety and health standards.

(a) *Standards.* Section 5(i)(2) and section 7(g)(2) of the Act provides that "(2) no part of any project or production which is financed in whole or part under this section will be performed or engaged in under working conditions which are unsanitary or hazardous or dangerous to the health and safety of the employees engaged in such project or production. The Secretary of Labor shall have the authority to prescribe standards * * * as he may deem necessary or appropriate to carry out" this provision. The applicable safety and health standards shall be those published in 29 CFR Parts 1910 and 1926, including matters incorporated by reference therein. Evidence of compliance with State laws relating to health and sanitation will be considered prima facie evidence of compliance with the safety and health requirements of the Act and any contract subject thereto, and it shall be sufficient unless rebutted or overcome by a preponderance of evidence or a failure to comply with any applicable safety and health standards published in 29 CFR Part 1910 and 1926, including matters incorporated by reference therein. The standards expressed in 29 CFR Parts 1910 and 1926 are for application to ordinary employment situations; compliance with them shall not relieve anyone from the obligation to provide protection for the health and safety of his or her employees in unusual employment situations. Neither do such standards purport to describe all of the working conditions which are unsanitary or hazardous or dangerous to the health and safety of employees. Where such other working conditions may be found to be unsanitary or hazardous or dangerous to the health and safety of employees, professionally accepted safety and health practices will be used.

(b) *Variances.* (1) Variances from standards applied under paragraph (a) of this section may be granted under the same circumstances in which variances may be granted under section 6(b)(6)(A) or 6(d) of the Williams-Steiger Occupational Safety and Health Act of 1970 (29 U.S.C. 655). The procedures for the granting of variances and for related relief are those published in Part 1905 of this title.

(2) Any requests for variances shall also be considered requests for variances under the Williams-Steiger Occupational Safety and Health Act of 1970, and any variance from a standard applied under paragraph (a) of this section and in Part 1910 of this title shall be deemed a variance from the standards under both the National Foundation on the Arts and Humanities Act of 1965 and the Williams-Steiger Occupational Safety and Health Act of 1970.

§ 505.7 Failure to comply.

(a) *The Secretary's representatives shall maintain two lists:* (1) A list of those grantees who are considered to be responsible in a willful manner for instances of failure to comply with the obligation of the grantee specified in section 5(j)(1) and (2) and section 7(g)(1) and (2) of the Act, as amended. Those grantees appearing on list (1) will remain on the list for a period of three years.

(2) A list of those grantees who are considered to be responsible for instances of failure to comply with the obligation of the grantees in Section 5(i)(1) and (2) and section 7(g)(1) and (2) of the Act, as amended, which are considered to be of such nature as to cast doubt on the reliability of formal assurances subsequently given; and/or where adjustment of the violations satisfactory to the Secretary was not properly made. Those grantees appearing on list (2) will remain on the list for a period not exceeding three years.

Assurances from persons or organizations on list (2) or any organization in which such named person or persons have a substantial interest should be considered inadequate until such time as they may, by appropriate application to the Secretary's representative (in this case, the Administrator) achieve their removal from such lists.

(b) *Procedures.* (1) At such time that the Administrator has sufficient knowledge or information that a grantee under the National Foundation on the Arts and the Humanities, as amended, 20 U.S.C 954(j) and 956(g), has failed to comply with the prevailing minimum compensation under this section, the Administrator will recommend the initiation of enforcement proceedings.

(2) Enforcement proceedings will be instituted by the Associate Solicitor for General Legal Services by issuing a complaint and causing the complaint to be served upon the respondent by certified mail and the matter referred for hearing to the Chief Administrative Law Judge, U.S. Department of Labor.

(3) Contest. The complaint shall contain a clear and concise factual statement sufficient to inform the

respondent of the acts or practices alleged to have been committed in violation of the Act or of the contractual obligation.

(4) Notice of hearing. The Administrative Law Judge shall notify the parties of the date, time and place for a hearing within thirty (30) days after the service of the complaint.

(5) The following conditions will control the enforcement proceedings:

(i) Appearances.

(A) Representation. The parties, other than the Secretary, will file an appearance within thirty (30) days of receipt of the complaint and may appear at the hearing in person, by counsel, or otherwise. The Secretary shall be represented by attorneys from the Office of the Solicitor of Labor.

(B) Failure to appear. In the event that a party appears at the hearing and no party appears for the opposing side, the party who is present shall have an election to present evidence in whole or such portion thereof sufficient to make a prima facie case before the Administrative Law Judge. Failure to appear at a hearing shall not be deemed to be a waiver of the right to be served with a copy of the Administrative Law Judge's decision.

(ii) Motions and requests. Motions or requests shall be filed with the Chief Administrative Law Judge, except that those made during the course of the hearing shall be filed with the Administrative Law Judge or shall be stated orally and made part of the transcript of record. Each motion or request shall state the particular order, ruling or action desired, and the grounds thereof. The Administrative Law Judge is authorized to rule upon all motions or requests filed or made prior to the filing of the decision.

(iii) Hearings.

(A) Order of proceeding. Except as may be determined otherwise by the Administrative Law Judge counsel for the Department of Labor shall proceed first at the hearing.

(B) Evidence. (*1*) In general. The testimony of witnesses shall be upon oath or affirmation administered by the Administrative Law Judge and shall be subject to such cross-examination as may be required for a full and true disclosure of the facts. The Administrative Law Judge may exclude evidence which is immaterial, irrelevant, or unduly repetitious.

(*2*) Objections. If a party objects to the admission or rejection of any evidence or to the limitation of the scope of any examination or cross-examination or the failure to limit such scope, the party shall state briefly the grounds for such objection. Rulings on all objections shall appear in the record. Only objections made before the Administrative Law Judge may be relied upon subsequently in the proceeding. Formal exception to an adverse ruling is not required.

(C) Official notice. Official notice may be taken of any material fact not appearing in evidence in the record which is among the traditional matters of judicial notice and also concerning which the Department of Labor by reason of its functions is presumed to be expert: *Provided,* That the parties shall be given adequate notice at the hearing or by reference in the Administrative Law Judge's decision of the matters so noticed, and shall be given adequate opportunity to show the contrary.

(D) Amendments to the Complaint. At any time prior to the close of the hearing, the complaint may be amended at the discretion of the Administrative Law Judge and on such terms as he or she may approve.

(E) Transcript. A transcript shall be made of the proceeding.

(6) Decision and Order.

(i) Proposed findings of fact, conclusions, and order. Within thirty (30) days after receipt of notice that the transcript of the testimony has been filed or such additional time as the Administrative Law Judge may allow, each party may file with the Administrative Law Judge proposed findings of fact, conclusions of law, and an order, together with a supporting brief expressing the reasons for such proposals. Such proposals and brief shall be served on all parties, and shall refer to all portions of the record and to all authorities relied upon in support of each proposal.

(ii) Decisions of the Administrative Law Judge. Within a reasonable time after the time allowed for the filing of proposed findings of fact, conclusions of law, and order, or after submission of an agreement containing consent findings and order, the Administrative Law Judge shall make his or her decision as to whether the grantee should be included on one of the failure to comply lists.

(7) Within thirty (30) days after the date of the decision of the Administrative Law Judge (or such additional time as is granted by the Secretary of Labor), any party aggrieved thereby may file a petition for review thereof with supporting reasons. Such party shall transmit the petition in writing to the Secretary of Labor, with a copy thereof to the Chief Administrative Law Judge. The Petition shall refer to the specific findings of fact, conclusions of law, or order at issue.

(8) Upon the final decision of the Administrative Law Judge or the Secretary of Labor, as appropriate, the Administrator shall promptly forward to the Endowment for the Arts and the Endowment for the Humanities the name or names of the grantees to be placed on the failure to comply lists.

[FR Doc. 80-39448 Filed 12-18-80; 8:45 am]

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Federal Register

Friday
December 19, 1980

Part VIII

Department of Justice

Bureau of Prisons

Management of Inmates in Federal Penal and Correctional Institutions

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 524

Control, Custody, Care, Treatment and Instruction of Inmates; Central Inmate Monitoring System

AGENCY: Bureau of Prisons.

ACTION: Final rule.

SUMMARY: The Bureau of Prisons is publishing final rules for the management of inmates in Federal penal and correctional institutions. Published rules of the Bureau of Prisons relate to the control, custody, care, treatment, and instruction of inmates. This installment encompasses the Bureau of Prisons' final rule on the Central Inmate Monitoring System. This rule provides Bureau procedures to monitor and control the transfer and community activities of certain inmates who present special needs for management.

DATE: Effective Date: January 19, 1981.

ADDRESS: Office of General Counsel, Bureau of Prisons, Room 762, 320 1st Street, NW., Washington, D.C. 20534.

FOR FURTHER INFORMATION CONTACT: Mike Pearlman, Office of General Counsel, Bureau of Prisons, phone 202/724/3062.

SUPPLEMENTARY INFORMATION: In this document the Bureau of Prisons is publishing its final rule on its central inmate monitoring system. This subject was previously published in the Federal Register as a proposed rule May 20, 1980 (at 45 FR 33942 et seq.) Interested persons were invited to submit comments on the proposed rule. On the basis of public comment and internal staff review of Bureau policies, some changes have been made. Members of the public may submit further comments concerning the final rule by writing the previously cited address. These comments will be considered but will receive no further response in the Federal Register. Public comments which were received and the changes which were made are discussed below.

Summary of Changes/Other Comments

Part 524, Subpart F—Central Inmate Monitoring System

1. § 524.70—Final § 524.70 is revised to recognize that approval by both the Regional and Central Office may be required before CMC inmates are approved for transfers or community activities which have been recommended by the Warden. The final rule substitutes the term "to contribute to" for "to ensure". A Central Monitoring Case (CMC) classification is one of many methods used by the Bureau to provide for the safe and orderly operation of its institutions. A comment that a CMC classification affects transfers and participation in community release programs is correct only insofar as additional review is provided. It does not preclude program participation. A comment that such a classification affects the parole process fails to recognize the U.S. Parole Commission's presumptive parole concept, specifically that an inmate's presumptive release date gives little, if any, consideration to institutional conduct. The parole process is entirely separate from the Bureau of Prisons' CMC classification.

A comment that the monitoring system may be used for intra-prison transfers or housing assignments is reflected, in part, by the Bureau's policy on Intake Screening which requires staff to determine if the new inmate is a CMC. This procedure ensures against the mingling of separatees. Staff also review subsequent intra-prison transfers and housing assignments by all inmates, including a CMC.

2. § 524.71—The last sentence of proposed § 524.71 specified that no inmate was to have direct contact with any CMC data or information. This language is deleted as there is no intent to restrict the inmate from access to disclosable CMC information pertaining to himself. § 524.73 recognizes the inmate's right to this information. Information may also be requested under the Freedom of Information Act.

3. § 524.72—Throughout the final rule, CMC status is identified as a "classification" as opposed to the proposed rule's "designation". Final § 524.72(a)(1) is revised to include inmates who are identified by the Department of Justice as witness security cases and who are housed in an institution's general population. Deleted is reference to the Department of Justice's Witness Security Program. § 524.72(a)(2) is retitled "Protective Custody Units" and includes inmates who are identified by the Department of Justice or Bureau of Prisons as witness security cases, and who are housed in a protective custody unit. Deleted is reference to the Department of Justice and Bureau of Prisons Witness Security Programs and housing in an "MCC Witness Protection Unit". The revised language in both (a)(1) and (a)(2) is intended to clarify the status of these persons. The title of § 524.72(a)(4) is revised to recognize that the section also includes "Threats to Government Officials". § 524.72(a)(5) inserts the limiting phrase "as the result of their criminal activity". § 524.72(a)(6) substitutes the phrase "disruptive groups" for "prison gangs". Prison gangs is retained as one example of a disruptive group. § 524.72(a)(7) is reworded and substitutes, in the title of the section, the phrase "Control Units" for "Special". The intent of the section is unchanged.

§ 524.72(a)(8) is also reworded, with the phrase "General Population" substituted for "General" in the section's title. Reference to a "recent history of violence or escape attempts or actions" is deleted from the final rule as this section's intent is to identify individuals who, while not requiring placement in a special control unit, do warrant closer review. § 524.72(a)(11) is retitled "Separation Cases in State Custody".

A comment favored additional specificity in several of the categories, citing Categories 3, 5, 6, 7, and 8 as being "broad and undefined", and as holding an "enormous potential to be applied in an unconstitutional, impermissible manner." Bureau categories are neither unnecessarily broad nor unconstitutional. Category 7 refers to inmates in control unit placements for which the Bureau has specific criteria (see Part 541, Subpart D). The requirement in Category 6 for the existence of a "history" clearly identifies a major basis for this classification. Category 3 gives the basis on which a CMC classification is made. Internal staff instructions identify factors which contribute to recognition as a "large-scale sophisticated criminal activity", including hierarchical leadership, offenses involving over $100,000, etc. We believe the changes made in the final rule on Categories 5 and 8 address, at least in part, some of the commenter's concerns. The insertion of the phrase "as the result of their criminal activity" narrows the scope of this section. The term "broad publicity" refers to national media coverage by a syndicated news association and/or continued local coverage. Contrary to a commenter's assumption, this category is not intended to protect prison administrators from embarrassment, but provides a management tool to help determine whether the release of an individual subjected to "broad publicity" is pre-mature and will therefore undermine the public's respect for the administration of justice. The final rule language for Category 8 imposes no restrictions on the inmate but serves as a management tool to identify those persons who are

considered to be extremely assaultive or escape risks.

Contrary to another comment, a CMC classification does not of itself remove an inmate from the general population nor label an inmate a "snitch". In fact, most persons classified as CMC reside without difficulty in the institution's general population. The categories which are used have been developed from long experience with the categories of inmates who present special problems to managers. While specificity is desirable, further definition of criteria for placement is not possible, without unnecessarily limiting the scope of each category and failing to anticipate future developments. A comment that the lack of clarity does not allow for objection is disputed by the Bureau's past experience. The Bureau receives appeals by inmates of placements in the CMC system, from which it is reasonable to conclude that inmates in general understand the nature of the CMC categories and the reasons for placement.

Final § 524.72(c) substitutes the phrase "confirmed and/or tentatively classified" for "designated and/or tentatively designated". The intent of the section is unchanged.

4. § 524.73—Final § 524.73 (b), (c), and (e) specifies that the CMC coordinator is to "ensure" that the required notifications are given, as opposed to giving them himself. Final § 524.73 (c) and (d) deletes the extranous phrases "if the inmate so desires" and "under paragraph (c) of this section". The last sentence of proposed § 524.73(e) is deleted since its general intent is included in final § 524.73(f). Final § 524.73(e) recognizes that an inmate may appeal a final CMC decision "at any time". § 524.73(f) is revised to authorize removal of the inmate's name from a CMC classification for any reason, including non-conformation. When the classification is removed, the final rule requires removal from the inmate's file of all references to the CMC classification with the exception of the notification form. In the proposed rule, the retention of this form was authorized only in the event of non-confirmation. However, retention of the CMC notification in the inmate's file serves as acknowledgment that the CMC classification is removed and ensures that staff does not, for lack of this knowledge, reinitiate the CMC classification. It is necessary to have documented recording of the processing. Final § 524.73(f) provides for the inmate to receive a copy, not the original, of the notification form. Final § 524.73 (c), (e), and (f) specify that where an inmate refuses to sign the notification form, staff witnessing the refusal shall indicate the refusal on the form and then sign the form.

A commenter objects to the deletion of the inmate's option to respond orally to a CMC classification because the requirement for written comments or objections is unduly restrictive. A CMC classification is reviewed at various levels, and an oral response is not realistic. The inmate may express objections orally to institutional staff, but this does not ensure that those views are transmitted with the desired emphasis. The inmate is the best person to present objections. When requested, staff can assist an inmate in the preparation of written objections.

A comment on § 524.73(f) objects to the lack of objective criteria for removing an inmate's name from the monitoring list. Removal from a CMC category is dependent on the particular situation. For example, a Category 12 (Separation) inmate will be removed from CMC when the inmate(s) from whom separation was necessary no longer resides within the institution. We fail to see how more specific criteria can be rendered. An inmate at the time of the tentative CMC classification is advised of the basis for the action. The inmate may object to this classification and, if subsequently confirmed, may appeal this action at any time. § 524.75 requires a semi-annual review for new information or change in behavior which may support removal as a CMC case. Staff examine the basis for the CMC classification, with which the inmate is familiar, and determine the need for CMC continuation based on the current relevancy of that information.

5. § 524.74—Final § 524.74 substitutes the phrase "tentatively classified or confirmed" for "designated or tentatively designated". The phrase "except a satellite camp at the facility where already located" is deleted, as this intent is clearly expressed in § 524.74(d). The phrase "including day passes" is deleted from final § 524.74(b)(4) as its scope is encompassed within the term "furloughs".

Section 524.74(b)(5) is revised to state "outside commuting distance of the institution", rather than to specify a 25 mile radius. Proposed § 524.74(f) becomes final § 524.74(c). Proposed § 524.74(c), (d) and (e) becomes final § 524.74(d), (e), and (f). Final § 524.74(e) substitutes the broader phrase "within commuting distance of the institution" for "within a 25 mile radius of the institution". Proposed § 524.74(e) required both Regional and Central Office approval prior to a CMC inmate in Categories 03–06 being approved for furloughs and work or study release. Final § 524.74(f) recognizes this procedure as appropriate on all activity clearances (except as provided in final § 524.74(d) and (e)) for inmates in Categories 03–06.

6. § 524.76—Final § 524.76, "CMC Classification of Parole/Mandatory Release Violators" is new. The rule provides that inmates who were either confirmed or tentatively classified CMC at the time of release and who are subsequently returned as parole/mandatory release violators are to retain their CMC status pending review of factors leading to the CMC classification. The rule requires renotification of an inmate who was tentatively classified CMC at the time of release. Where all criteria for a CMC classification are not met, the inmate's name is to be removed from the CMC list. When an inmate was a confirmed CMC at the time of release, this status is retained upon the inmate's return to a Bureau institution, provided all current criteria for the CMC classification are still met. Where the criteria are not met, the CMC coordinator is to contact the confirming authority for a final determination on the inmate's current CMC status. By its inclusion, this procedure is intended to help fulfill the intent of § 524.70, specifically to provide protection for all concerned and to contribute to the safe and orderly running of the institution.

Conclusion

Accordingly, pursuant to the rulemaking authority vested in the Attorney General in 5 USC 552(a) and delegated to the Director of the Bureau of Prisons in 28 CFR 0.96(t), 28 CFR Chapter V is amended as set forth below. The effective date of these rules is January 19, 1981.

Dated: December 16, 1980.

Norman A. Carlson,

Director, Bureau of Prisons.

SUBCHAPTER B—INMATE ADMISSION, CLASSIFICATION, AND TRANSFER

In Subchapter B, Part 524 is added, to read as follows:

PART 524—CLASSIFICATION OF INMATES

Subpart A–E [Reserved]

Subpart F—Central Inmate Monitoring System

Sec.

524.70 Purpose and scope.
524.71 Responsibility.
524.72 Central inmate monitoring case categories.
524.73 Procedures.

524.74 CMC activities clearance.
524.75 Review of CMC status.
524.76 CMC classification of parole/mandatory release violators.

Authority: 5 USC 301; 18 USC 4001, 4042, 4081, 4082, 5015, 5039; 28 USC 509, 510; Title V, Pub. L. 91-452, 84 Stat. 933 (18 USC, Chapter 223); 28 CFR 0.95-0.99.

Subpart A-E [Reserved]

Subpart F—Central Inmate Monitoring System

§ 524.70 Purpose and scope.

The Bureau of Prisons monitors and controls the transfer and community activities of certain inmates who present special needs for management. Such inmates, known as Central Monitoring Cases (CMC), require Central Office and/or Regional Office approval for transfers or community activities recommended by the Warden. This monitoring is not for the purpose of precluding inmates in the system from transfers or from participation in community activities, when the inmate is otherwise eligible, but rather to provide protection for all concerned and to contribute to the safe and orderly running of Federal institutions.

§ 524.71 Responsibility.

Authority for actions relative to the Central Inmate Monitoring System is delegated to the Assistant Director, Correctional Programs Division, to Regional Directors, and to Wardens. Each of these persons shall designate a CMC coordinator (for the Central Office, each Regional Office, and each institution, respectively).

§ 524.72 Central inmate monitoring case categories.

(a) Central inmate monitoring cases are classified according to the following categories:

(1) 01 *Witness Security Program:* Inmates who are identified by the Department of Justice as witness security cases and who are housed in an institution's general population.

(2) 02 *Protective Custody Units:* Inmates who are identified by the Department of Justice or the Bureau of Prisons as witness security cases and who are housed in a protective custody unit.

(3) 03 *Sophisticated Criminal Activity:* Inmates who have been involved in large-scale, sophisticated criminal activity.

(4) 04 *Threats To Government Officials/Secret Service Surveillance:* Inmates who have made threats to government officials or have been identified by the U.S. Secret Service as requiring special surveillance.

(5) 05 *Broad Publicity:* Inmates who have received widespread publicity as the result of their criminal activity.

(6) 06 *Disruptive Groups:* Inmates who have belong to or are closely associated with disruptive groups (e.g., prison gangs), which have a history of disrupting institutional operations and security in either state or federal penal facilities.

(7) 07 *Assaultive Persons or Escape Risks—Control Units:* Inmates who are extremely assaultive or escape risks and require housing in special control units.

(8) 08 *Assaultive Persons or Escape Risks—General Population:* Inmates who are extremely assaultive or escape risks who can function in general population.

(9) 09 *Special Supervision:* Inmates who require special supervision and/or placement for their protection from *unknown* inmates.

(10) 10 *Future Separations:* Individuals who may come into federal custody in the future and should be separated from individuals currently in federal custody.

(11) 11 *Separation Cases in State Custody:* Inmates housed in state facilities for separation and protection purposes.

(12) 12 *Separation:* Inmates who may not be confined in the same facility with other specified individuals.

(b) Except as provided in § 524.74(c)-(f): (1) The Central Office will control confirmation of cases, transfers, and community activities of persons in Categories (1) through (6) of this section;

(2) The Regional Office will control confirmation of cases, transfers, and community activities of persons in Categories (7) through (11) of this section; and

(3) The Regional Office will control transfers and community activities of persons, and the Warden will control confirmation of cases in Category (12) of this section.

(c) When an inmate is confirmed and/or tentatively classified a Central Monitoring Case in two or more categories, the highest confirming authority shall control confirmation, transfers, and community activities (except as provided in § 524.74(c)-(f)) for that inmate. For example, where an inmate is tentatively classified both a Category 04, Secret Service Surveillance, and a Category 12, Separation, the Central Office Inmate Monitoring Program Section shall make the decision as to confirmation.

§ 524.73 Procedures.

Staff shall use the following procedure in making central inmate monitoring classifications:

(a) An inmate may be identified at any time for tentative classification as a central inmate monitoring case by the appropriate staff at the Central Office, Regional Office, or institution. This tentative classification takes effect when proper notifications are made to authorities at the institution where the inmate is confined and at the Central Office or Regional Office.

(b) The institution's CMC Coordinator shall ensure that the affected inmate is advised in writing as promptly as possible of the tentative classification and the basis for it. The notice of the basis may be limited in the interest of security or safety. For example, in separation cases under § 524.72, notice will not ordinarily include the names of those from whom the inmate must be separated. On the other hand, in sophisticated criminal involvement cases under § 524.72, adequate notice shall include specific reference to the sophisticated criminal involvement, that is, the crime or crimes for which the inmate was convicted, or explicit and reliable information of other sophisticated criminal activity.

(c) The institution's CMC Coordinator shall ensure that the inmate tentatively classified as a Central Monitoring Case is given an opportunity to respond and object in writing to the classification. If the inmate indicates that information must be obtained from outside the institution, the inmate will be given a reasonable time (ordinarily not to exceed 30 days) to provide it. The inmate shall sign for and receive a copy of the notification form. If the inmate refuses to sign the notification form, staff witnessing the refusal shall indicate this fact on the notification form and then sign the form.

(d) The CMC Coordinator shall forward to the confirming authority complete information regarding the central inmate monitoring system classification, including, but not limited to, a summary of the inmate's objections and a copy of all written material submitted by the inmate.

(e) The confirming authority shall make a final decision based on material submitted and shall notify the institution's CMC Coordinator in writing of the decision. The institution's CMC Coordinator shall ensure that the inmate is notified of the final decision. The CMC Coordinator shall ensure that the inmate is also advised that appeal of the decision is possible at any time through the Administrative Remedy Procedure. The inmate shall sign for and receive the original of the notification form, and a copy shall be placed in the inmate's central file. If the inmate refuses to sign the notification form, staff witnessing

the refusal shall indicate this fact on the notification form and then sign the form.

(f) When an inmate's name is ordered removed for any reason from the central inmate monitoring system, staff shall remove from the inmate's file all references to the CMC classification, with the exception of the notification form. Staff shall also remove all references to the CMC classification from any other written material in such a way that any person reviewing the file material will not be able to ascertain that such a classification was made. The confirming authority shall notify the inmate in writing of the removal of the specific CMC classification. The inmate shall sign for and receive a copy of this notification form. If the inmate refuses to sign the notification form, staff witnessing the refusal shall indicate this refusal on the notification form and then sign the form.

§ 524.74 CMC activities clearance.

(a) If tentatively classified or confirmed as a central inmate monitoring case, an inmate may not be transferred (except for medical emergencies) and may not particiate in community programs without specific prior approval from the appropriate confirming authority.

(b) Except as provided in paragraphs (c)–(f) of this section, clearance by the Central Office or Regional Office (depending upon designated category) is required prior to the CMC inmate's participation in the following activities.

(1) Transfer to another Federal facility;

(2) Transfer to non-Federal facilities or contract CTC's (for continued service of Federal sentence);

(3) Writ release to Federal, State, and/or local jurisdictions;

(4) Furloughs;

(5) Escorted trips outside commuting distance of the institution; and

(6) Work or Study Release.

(c) The Central Office Inmate Monitoring Section shall be the confirming authority on all activities clearance for a CMC inmate in Category 01–02.

(d) The Warden may approve the transfer of a CMC inmate in Categories 03–12 from the Warden's institution to that institution's satellite camp.

(e) The Warden may approve a CMC inmate in Categories 03–12 for an escorted trip within commuting distance of the institution.

(f) Except as provided in paragraphs (d) and (e) of this section, activity clearances for a CMC inmate in Categories 03–06 require approval of both the Regional Director and the Central Office Inmate Monitoring Section.

§ 524.75 Review of CMC status.

With the exception of CMC Category 01 and Category 02 inmates, the Warden shall ensure that each CMC inmate is reviewed on a semi-annual basis for new information, or change in behavior or status which may substantiate the inmate's removal as a central monitoring case.

§ 524.76 CMC classification of parole/mandatory release violators.

Inmates who are recommitted to federal custody because of a parole/mandatory release violation and who were at the time of their release tentative or confirmed CMC cases shall retain this CMC status pending a review of factors relative to the CMC classification.

(a) When an inmate was tentatively classified at time of release as a Central Monitoring Case, the institution's CMC coordinator shall reinstitute the CMC procedures, and ensure the inmate is renotified. If all criteria for a CMC classification are not met, the CMC coordinator shall arrange to remove the inmate's name from the CMC list, in accordance with the procedures of § 524.73.

(b) When an inmate was a confirmed Central Monitoring Case at time of release, the institution's CMC coordinator shall ensure that all criteria for a continued CMC classification are met. When it appears that the inmate no longer requires a CMC classification, the CMC coordinator shall ensure that the confirming authority is notified in writing of this determination. The confirming authority makes the final decision relative to an inmate's removal from CMC status. The inmate retains the CMC classification pending a decision by the confirming authority.

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Part IX

Department of Labor

Employment and Training Administration

Labor Certification Process for the Permanent Employment of Aliens in the United States; Final Rule

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 656

Labor Certification Process for the Permanent Employment of Aliens in the United States

AGENCY: Employment and Training Administration, Labor.

ACTION: Final rule.

SUMMARY: The Employment and Training Administration of the Department of Labor is amending its regulations relating to the certification of immigrant aliens for permanent employment in the United States. The amendments are intended to clarify some apparent ambiguities in the regulations, to make the regulations easier to read, and to reflect the experience of the Employment and Training Administration in administering the regulations since their promulgation in 1977.

EFFECTIVE DATE: These amendments apply to applications for permanent alien labor certification received for processing on or after January 19, 1981.

FOR FURTHER INFORMATION CONTACT: Mr. Aaron Bodin, Chief, Division of Labor Certifications, Telephone: 202–376–6295.

SUPPLEMENTARY INFORMATION: On January 22, 1980, the Employment and Training Administration (ETA) of the Department of Labor (DOL) published a Notice of Proposed Rulemaking, proposing to amend ETA's regulations at 20 CFR Part 656, for clarification, and to reflect ETA's experience in administering Part 656 since its effective date of February 18, 1977. See 42 FR 3441 (January 18, 1977). This document adopts final regulations based upon that January 1980 Notice of Proposed Rulemaking. ETA's regulations for the certification of immigrant aliens for permanent employment in the United States are issued pursuant to section 212(a)(14) of the Immigration and Nationality Act (Act). 8 U.S.C. 1182(a)(14).

Permanent Alien Employment Certification Process

Before the Department of State and the Immigration and Naturalization Service (INS) may issue visas and admit certain immigrant aliens to work permanently in the United States, the Secretary of Labor must first certify to the Secretary of State and to the Attorney General that:

(a) There are not sufficient United States workers, who are able, willing, qualified, and available at the time of the application for a visa and admission into the United States and at the place where the alien is to perform the work; and

(b) The employment of the alien will not adversely affect the wages and working conditions of similarly employed United States workers. 8 U.S.C. 1182(a)(14).

If DOL determines that there are no able, willing, qualified, and available U.S. workers, and that employment of the alien will not adversely affect the wages and working conditions of similarly employed U.S. workers, DOL so certifies to INS and to the Department of State, by issuing a permanent alien labor certification.

If DOL cannot make one or both of the above findings, the application for permanent alien employment certification is denied. DOL may be unable to make the two required findings for one or more reasons, including, but not limited to:

(a) The employer has not adequately recruited U.S. workers for the job offered to the alien, or has not followed the proper procedural steps in Part 656.

(b) The employer has not met its burden of proof under section 291 of the Act (8 U.S.C. 1361), that is, the employer has not submitted sufficient evidence of attempts to obtain available U.S. workers, and/or the employer has not submitted sufficient evidence that the wages and working conditions which the employer is offering will not adversely affect the wages and working conditions of similarly employed U.S. workers. With respect to the burden of proof, section 291 of the Act (8 U.S.C. 1361) states, in pertinent part, that:

> Whenever any person makes application for a visa or any other document required for entry, or makes application for admission, or otherwise attempts to enter the United States, the burden of proof shall be upon such person to establish that he is eligible to receive such visa or such document, or is not subject to exclusion under any provision of this Act * * *.

(c) DOL through its own knowledge and experience, finds that U.S. workers are available and/or that an adverse effect on similarly employed U.S. workers will result, and the employer has not met the burden of rebutting DOL's finding or findings.

Department of Labor Regulations

DOL has promulgated regulations at 20 CFR Part 656 governing the labor certification process described above for the permanent employment of immigrant aliens in the United States. Part 656 was promulgated pursuant to and implements section 212(a)(14) of the Act (8 U.S.C. 1182(a)(14)).

The regulations at 20 CFR Part 656 set forth the factfinding process designed to develop information sufficient to support the granting or denial of a permanent labor certification. They describe the potential of the nationwide system of public employment offices (the "Job Service") to assist employers in finding available U.S. workers, and how the factfinding process is utilized by DOL as the basis of information for the certification determination. See also 20 CFR Parts 601–604, 621, and 651–658; and 29 U.S.C. Chapter 4B.

Part 656 also sets forth the responsibilities of employers who desire to permanently employ immigrant aliens in the United States. Such employers are required to demonstrate that they have attempted to recruit U.S. workers through advertising, through the Job Service System, and by other specified means. The purpose is to assure an adequate test of the availability of U.S. workers to perform the work, and to insure that aliens are not employed under conditions adversely affecting the wages and working conditions of similarly employed U.S. workers.

The amendments made in this document will not change the elements of the program discussed above, which adequately implement the mandate in section 212(a)(14) of the Act (8 U.S.C. 1182(a)(14)).

Comments on Proposed Rule

The Notice of Proposed Rulemaking invited interested parties to submit written comments on the proposed amendments on or before March 24, 1980. 45 FR 4918 (January 22, 1980). More than 500 comments, from individuals and organizations, were received by ETA. All of the comments were reviewed and considered in the preparation of this final rulemaking. Many of the commenters stated that the amendments would clarify, simplify, and improve the permanent alien labor certification process. A number of commenters were critical of one or more of the amendments, and suggested alternatives and improvements. Other comments were outside the scope of the proposed rule. ETA found the vast majority of the comments to be helpful in gaining insight into the way the public views the permanent alien labor certification process, and this document adopts a number of the suggestions submitted by the public. Many of the other comments will be the basis of future consideration for improvement of the program. The paragraphs that follow discuss the comments and the

amendments adopted by this document as a final rule. Unless otherwise noted, regulatory citations to 20 CFR Part 656 are to that Part as amended by this final rulemaking document.

Dietitians (deleted)

DOL had proposed to delete dietetics from the list of precertified occupations on *Schedule A*.

Two commenters felt that dietitians should not be removed from *Schedule A* unless a finding is made by ETA that there are no geographic areas in the United States which have a shortage of dietitians. In addition, they stated that the evidence on which the proposal was made also should have been published for public comment.

Information available to ETA revealed that more than half of the approximately 45,000 dietitians in the United States are employed by hospitals, clinics, nursing homes, the Veterans Administration, and the U.S. Public Health Service. In addition, 39,030 of all dietitians are registered with the American Dietetics Association; more than 5,000 of these registered dietitians are on file with the U.S. Office of Personnel Management for employment consideration. The American Hospital Association, Health Food Services Division, advised ETA that some recent U.S. college graduates in dietetics have been forced to accept low level jobs in dietetics because of the limited availability of jobs as dietitians.

The above data, in the absence of information to the contrary, are compelling enough to completely remove the field of dietetics from *Schedule A*. This will not preclude an employer from filing a request for an individual labor certification and making a test of the particular local labor market in which the job is located.

Physicians (and Surgeons) (20 CFR 656.10(a)(2), 656.20(d), and 656.22(c)(2))

DOL had proposed to amend the testing requirements for physicians (and surgeons) to conform to current law. 20 CFR 656.20(d) and 656.22(c)(2)(i). Also, in shortage areas for specific medical specialties, as designated by the Department of Health and Human Services (HHS), alien specialists in such specialties would be on the precertification list—*Schedule A*. 20 CFR 656.10(a)(2) and 656.22(c)(2).

Several commenters questioned DOL's authority to require passage of an examination by physicians (and surgeons) for purposes of labor certification. One suggested that the Federation Licensing Examination (FLEX) be accepted as an alternative examination. Another commenter requested that Regional Health Administrators of HHS be given only 30 days to issue a certification of a shortage area; after which the *Schedule A* labor certification would automatically issue. Several commenters felt that the *Schedule A* process is too burdensome. Two commenters felt that exceptionally qualified physicians of renown in only one country should be included on *Schedule A*, and should be exempted from educational or testing requirements as is the case with exceptionally qualified physicians of international renown.

Section 212(a)(32) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(32)) and Section 602(a) of the Health Professions Educational Assistance Act of 1976 (8 U.S.C. 1182 note), as amended, require that alien graduates of foreign medical schools not accredited by a body or bodies approved for the purpose by the Secretary of Education pass Parts I and II of the National Board of Medical Examiners Examination (NBMEE) or an equivalent examination as determined by the Secretary of HHS. The Visa Qualifying Examination (VQE) offered by the Educational Commission for Foreign Medical Graduates (ECFMG) was determined by the Secretary of HHS to be the equivalent examination. Under this determination, the FLEX examination cannot be accepted as an alternative to the VQE or the NBMEE. The regulations require that alien physicians (or surgeons) document that they have passed Parts I and II of the NBMEE or the VQE for purposes of labor certification to avoid having aliens who would be excluded from the United States by the above-cited statutes filing applications for labor certification unnecessarily.

DOL's consultation with HHS regarding geographic areas in the United States in which there are inadequate numbers of health professionals to meet health care needs revealed that a number of factors affect HHS's determinations; and that the making of individual determinations by the Regional Health Administrator (RHA) for each area of intended employment is the most efficient and equitable methodology.

To impose a requirement that, unless the RHA issue a certification within 30 days, certification becomes automatic and places an unreasonable burden on another Federal agency. Additionally, it would be contrary to the Secretary of Labor's responsibility under the Immigration and Nationality Act to make labor certification determinations based on availability and adverse effect.

Only those physicians (or surgeons) of international renown and those who will be employed in geographic areas certified by RHAs as shortage areas are included on *Schedule A*. Establishing that a physician has only national renown, especially from a nation with limited medical education and medical resources, is not sufficient for DOL to predetermine that there would be no adverse effect on workers in the United States. Absent passage of the NBMEE or VQE, the achievements of nationally known physicians (and surgeons) cannot be shown to be of the caliber necessary to avoid adverse effect, as required under the Immigration and Nationality Act.

Professional Nurses (20 CFR 656.10(a)(3) and 656.22(c)(3))

About 80 percent of the comments related to the proposal that foreign professional nurses be required to pass the Commission on Graduates of Foreign Nursing Schools (CGFNS) Examination. Commenters included State licensing authorities, nurse associations, hospital associations, schools of nursing, foreign nurse graduates, nurse recruitment agencies, and individuals. The comments were divided almost equally into support and opposition to the proposal.

The CGFNS is an independent nonprofit organization established because various Federal agencies (*e.g.*, HHS, DOL, and the Department of Education) were concerned over the increasing number of foreign nurses entering the United States who could not pass State professional nursing licensing examinations. The CGFNS developed a screening examination to test the capabilities of foreign nurses in all the areas of nursing for which U.S. nurse-graduates are responsible. The examination provides an objective estimate of the nurses' ability to pass State licensing examinations. The examination is given in April and October of each year in the United States and approximately 30 other countries throughout the world. Further information may be obtained from the Commission on Graduates of Foreign Nursing Schools (CGFNS), 3624 Market Street, Philadelphia, Pennsylvania 19104.

ETA will require the CGFNS examination for permanent employment of foreign professional nurses in the United States. Although the examination requirement may reduce the number of foreign nurses able to immigrate to the United States, it is not in the public interest to grant certification to nurses who will not be able to practice their

profession and who will likely limit or otherwise adversely affect wages or job opportunities for U.S. workers in lower-skilled jobs.

Information supplied to ETA by various State boards of nursing indicate that about 80 percent of foreign-trained nurses fail to pass State licensing examinations. Most States do not allow nursing school graduates to perform professional duties after failing the licensing examinations, so for all practical purposes, these aliens are no longer available as professional nurses.

Several commenters incorrectly interpreted the examination requirement to include foreign nurse graduates who already hold licenses in a State where they will be performing professional nursing services. Therefore, the regulation has been modified to make clear that foreign nurse graduates who already hold full and unrestricted licenses in a State where they will be performing professional nursing services will be exempt from the CGFNS testing requirement. A foreign nurse also would not need to take the CGFNS examination should a State issue a license based on reciprocity or upon its review of foreign nursing credentials and training programs. Foreign nurses who have temporary, provisional, or otherwise restricted licenses in the State of intended employment, or who are licensed in another State, but not in the State of intended employment, are not exempt from the CGFNS examination.

A number of commenters requested that Canadian nurses be exempted from the examination, suggesting that most of these nurses are able to secure State licensure by examination or reciprocity. There are significant differences between United States and Canadian nursing education programs, although they are similar in some respects. In addition, not all nurses from Canada are fluent enough in the English language to pass State licensing examinations. It is the DOL's intention to apply the same standard for all foreign professional nurses who will be permanently employed in the United States.

The proposed rule also would have placed professional nurses on the *Schedule A* precertification list in areas determined by HHS to be shortage areas for the particular setting for which certification was sought. Many commenters objected to this restriction. They asserted that there are not sufficient professional nurses who are able, willing, qualified, and available to work in many rural and urban areas. This has been confirmed by the American Nurses Association, the National League for Nursing, and the American Hospital Association.

DOL has been persuaded by this evidence. The final regulation includes on *Schedule A* all professional nurses who have passed the CGFNS examination or who hold a full and unrestricted license in the State where they will be performing professional nursing services. A certification from a Regional Health Administrator will not be required.

A foreign nurse who cannot provide the required documentation will not be considered for labor certification as a nurse under *Schedule A* or otherwise. 20 CFR 656.22(c)(3) and 656.29(b).

Intracompany Transferees (20 CFR 656.10(d) and 656.22(f))

ETA proposed to amend *Schedule A*, Group IV (intracompany executive and managerial transferees), to require that prior employment be outside the United States, that the employer has been doing business in the U.S. for one year, and to reaffirm that the alien be eligible for an L-1 visa (8 U.S.C. 1101(a)(15)(L)) on the basis of other than specialized knowledge.

Schedule A, Group IV, was designed to facilitate the movement of managers and executives between the foreign and U.S. affiliates of international corporations and organizations, since these aliens' experience abroad uniquely qualifies them for employment in the United States. ETA is unable to make this same general finding for intracompany transferees who are not managers or executives, but who qualify for L-1 visas (temporary intracompany transferees) on the basis of specialized knowledge.

Under the proposal, adopted in final, an intracompany transferee will be required to have been employed outside the United States by the international corporation or organization as a manager or executive for one continuous year immediately before entering the United States. In addition, the international corporation or organization must have been "doing business" (as defined below) in the United States for at least one year at the time of application.

Twelve attorneys (including one representing the Association of Immigration and Nationality Lawyers) and one corporation objected to the above requirements and the definition of "doing business."

The commenters contend that these requirements will hinder expansion of international trade and foreign investment in the United States; are restrictive and burdensome because they surpass the requirements for an L-1 visa; and are contrary to Congressional intent to facilitate establishment of U.S. branches of foreign businesses. The commenters also requested that investors (see 8 CFR 212.8(b)(14)) and intracompany transferees with specialized knowledge (but who are not executives or managers) be included on *Schedule A*. The commenters also contend that the definition of "doing business" ("a regular, systematic, and continuous course of conduct including both the offer of and the provision of goods and/or services by the employer, and [which] shall not be limited to the mere presence of an agent or office in the United States") will have a substantial effect on the ability of many foreign enterprises to commence operations in the United States.

In establishing Group IV of *Schedule A*, DOL's original intent was to include only those intracompany transferees who have worked as managers or executives outside the United States for one year before entering the United States. The revised definitions of Group IV aliens clarifies the Department's original intent. This does not preclude other intracompany transferees from obtaining a labor certification. The international corporation or organization may file a job offer on the alien's behalf, after adequately recruiting and otherwise testing the market for qualified U.S. workers.

The new requirement that international corporations or organizations be established and doing business in the United States for at least one year prior to submission of an application for *Schedule A*, Group IV, precertification further assures DOL that the integrity of Group IV is maintained and that the employer is a bona fide *international* corporation or organization.

The Immigration and Naturalization Service, by regulation, has exempted alien investors from the labor certification requirements of Section 212(a)(14) of the Immigration and Nationality Act. See 8 CFR 212.8(b)(14). An investor is described as an alien who establishes on Form I-526 that she or he has invested, or is actively in the process of investing capital of at least $40,000 in an enterprise in the United States of which she or he will be a principal manager, and that the enterprise will employ a person or persons in the United States who are U.S. citizens or aliens lawfully admitted for permanent residence, exclusive of the alien, her or his spouse, and children. Alien workers enter the United States under immigration preferences (see 8 U.S.C. 1153(a)(3) and (6)), but alien investors do not receive a preference (see 8 U.S.C. 1153(a)(8)). A

labor certification is, therefore, inappropriate for investors.

The requirements for Group IV do not preclude the establishment of international corporations or organizations in the United States. Aliens may be temporarily transferred to the United States to establish U.S. offices, on L-1 or other temporary business visas, for up to three years, and the alien can apply for permanent labor certification after the U.S. operation has been doing business for one year.

General Filing Instructions (20 CFR 656.20)

Several attorneys favored the proposal to use INS Form G-28 (Notice of Appearance) to standardize the attorney notice of appearance. While some State job service agencies suggested that INS Form G-28 be signed by the employer and the alien, DOL will not require the signature of the employer and/or the alien, since such signatures are not required normally for attorneys' clients. Of course, the employer is required to sign the application form [20 CFR 656.21(a)]; and the alien must sign the Statement of Qualifications [20 CFR 656.21(a)(1)].

Employers and aliens also may have agents represent them throughout the labor certification process. The agent authorization is included on the *Application for Alien Employment Certification* form and is signed by the employer and/or the alien.

Some attorneys objected to the provision which prohibits the alien's attorney or agent from participating in interviews of U.S. workers for the job opportunity offered the alien. DOL, however, reaffirms its determination that the alien's agent or attorney cannot, in good faith, consider U.S. workers for a job opportunity, and at the same time effectively represent the alien to whom the job has been offered.

One commenter suggested that agents and attorneys suspended or disbarred from practice before the Board of Immigration Appeals be heard again by ETA before being denied the right to act for the employer and/or the alien in labor certification matters. Nevertheless, adopting the considered action of that Board is reasonable and acceptable. An additional hearing procedure for ETA in such cases would be unnecessary and duplicative.

Basic Labor Certification Process (20 CFR 656.21)

Most of the general documentation requirements for the basic labor certification process have not been changed in content from existing regulations, but were renumbered and published as part of the proposed rulemaking to make the new requirements easier to understand. A broad range of comments were received regarding new and existing provisions under the basic labor certification process, as follows:

Prior Recruitment Efforts (20 CFR 656.21(b)(1))

Eight commenters stated that the regulations are not clear on whether advertising is required prior to the filing of the *Application for Alien Employment Certification*. Prior advertising is not required under the amended regulations. However, if the employer *has* recruited by advertising or by other means, the results of such recruitment should be filed with the application. Recruitment required by DOL will be conducted after the application is filed with the appropriate local office of the State job service. The regulations have been clarified to reflect this.

Private Room for Live-In Household Domestic Workers (20 CFR 656.21(a)(3)(ii)(I))

Several State job service agencies commented that the requirement for a private room for household domestic service workers who are required to live on the employer's premises should be spelled out in the regulations. Although this requirement previously was spelled out in the instructions to the *Application for Alien Employment Certification* form, it is now listed in the regulations as a condition required to be in the employment contract.

Unduly Restrictive Job Requirements (20 CFR 656.21(b)(2))

The proposed rule added two clarifying requirements to the regulations, relating to job opportunities where the worker is required to live on the employer's premises, and to job opportunities described with an employer preference.

Seven attorneys objected to the provision that a requirement that the worker live on the employer's premises be documented as a business necessity. They contended that a household is not a business, that this requirement is an unwarranted intrusion into personal lives of individuals, and that living on the employer's premises is customary for household domestic service workers.

The specific language in the regulations did not refer only to private households, but to all job opportunities which require the worker to live on the employers' premises, although the majority of such job opportunities have been in private households. It is not the intention of DOL to intrude into the personal affairs of individuals or to single out private households. The provision is intended to emphasize the need to document the business necessity for a requirement that is not normally required for the job in the United States or is not defined for the job in the *Dictionary of Occupational Titles*. It merely clarifies DOL's consistent interpretation of its previous rules, and therefore is retained in the final rule.

Several commenters objected to unduly restrictive preferences being treated as if they were requirements. These commenters assert that a prohibition against unduly restrictive preferences is contrary to normal recruiting practices of employers and employment agencies. Nevertheless, DOL has found that this is a necessary and reasonable requirement for purposes of labor certification: to assure that interested U.S. workers who are able, willing, qualified, and available for job opportunities offered to alien workers are considered for these jobs. It has been DOL's experience that unduly restrictive employer preferences may have an inhibiting effect on recruitment; and that interested workers view employer preferences as requirements and are reluctant to apply for job opportunities described with preferences which the workers do not meet.

Posting (20 CFR 656.21(b)(3))

The proposed rule both eased and clarified the requirement that employers post notices of the job opportunity within their organization. Employment for private households is exempted from the requirement. The rule clarifies how long the notice must be posted and where it should be posted. The requirement to post is intended to be part of a reasonable effort by the employer to recruit U.S. workers, and is not onerous. It informs the employer's current employees, and visitors to the employer's premises, that there is a job opportunity. These employees and visitors, while perhaps themselves unqualified, may know of available U.S. workers who are qualified. DOL has found that such "word-of-mouth" recruitment may be the most prevalent method of filling jobs. See U.S. DEPARTMENT OF LABOR, EMPLOYMENT AND TRAINING ADMINISTRATION RESEARCH AND DEVELOPMENT MONOGRAPH NO. 59, *The Public Employment Service and Help Wanted Ads* (1978) at 9; see also CAMIL ASSOCIATES, RECRUITMENT, JOB SEARCH AND THE UNITED STATES EMPLOYMENT SERVICE (1975); and U.S. DEPARTMENT OF LABOR, BUREAU OF LABOR

STATISTICS, JOB SEEKING METHODS USED BY AMERICAN WORKERS (1975).

Several commenters objected to the posting requirement because it does not exempt businesses or organizations which do not post job opportunities as part of their normal recruitment. They also requested that the posting requirement be clarified as it relates to businesses with multiple places of employment.

In the final rule, internal posting continues to be a requirement for all job opportunities (except for private households) filed under the basic labor certification process, primarily because the commenters have failed to show that posting is not a very effective method of recruiting workers. In adopting uniform standards of recruitment, DOL cannot set different recruiting requirements for each employer. DOL merely requires the employer to conduct such recruitment as an employer making a reasonable effort to employ U.S. workers would conduct.

The regulations have been clarified, however, to require that the posting appear only at the business establishment where the job opportunity is located. This is not intended to discourage an employer from seeking U.S. workers by posting notices of the job opportunity at more than one or at all its places of business.

A number of State job service agencies and ETA regional offices requested that the minimum size be specified for a posted notice. DOL has determined not to regulate the size of the notice with such specificity. As long as the posting is made in such a manner as to be conspicuous and clearly visible, it is not necessary to regulate the actual size of the posting. The revised language is designed to alert employers that such posting practices as placing actual size copies of newspaper advertisements on crowded bulletin boards are unacceptable.

Rejection of U.S. Workers (20 CFR 656.21(b)(7))

Two commenters questioned whether U.S. workers already employed at substantially the same wages and working conditions as offered to the alien should be considered able, willing, qualified, and available for the job opportunity offered to the alien worker. This provision was not changed substantively in the proposed or final rules. DOL's determination of availability under the Immigration and Nationality Act is not restricted to consideration of only those U.S. workers who are unemployed or partially employed. DOL does not intend to preclude consideration of U.S. workers who, for whatever reason, are seeking a change in employment and are able, willing, qualified and available for job opportunities offered to aliens.

Prevailing Wages (20 CFR 656.20(c) (2) and (3), 656.21(e), and 656.40)

Several commenters requested that the regulations require that the local job service office disclose the factual basis of prevailing wage calculations, including whether the industry norm is commission only. Two objected to the prohibition against wages being based on commissions when this compensation arrangement is normal for the industry. These comments are on provisions unchanged substantively from the current rules.

The regulations already require that the local office put its prevailing wage calculations into writing. Applicants for permanent labor certification may request, and are entitled to be provided, the bases of the local office prevailing wage findings. Additionally, unless a guaranteed wage is offered the alien and to U.S. workers, DOL cannot certify to INS that the wages and working conditions of similarly employed U.S. workers will not be adversely affected by employment of the alien. This DOL finding has been upheld specifically in *Morrison and Morrison, Inc.* v. *Secretary of Labor of the United States,* —— F. 2d —— (10th Cir. July 14, 1980).

Job Service Job Order (20 CFR 656.21(f))

Several commenters objected to the unchanged rule that the local job service office determine whether a job offer is acceptable before placing a job order into the regular job service recruitment system. The commenters incorrectly have interpreted this to mean that a local office can refuse to process an *Application for Alien Employment Certification* if it determines the job offer is unacceptable.

Nevertheless, the regulations now clearly state that only the ETA Certifying Officer can make such a determination. A local office may not refuse to process an *Application for Alien Employment Certification;* however, the local office cannot assist an employer in recruiting U.S. workers through the Job Service System unless the job opportunity's terms and conditions comply with Job Service Regulations. See 20 CFR Parts 601–604, 621, and 651–658; and 29 CFR Parts 26 and 75; see also 45 FR 39454–39484 (June 10, 1980). If a job offer is unacceptable as a job order under the Job Service Regulations, the local office should advise the employer to remedy the defects. If the employer refuses to do so, the local office will advise the employer that it is unable to recruit U.S. workers for the job opportunity through the Job Service System and that the application will be forwarded to the appropriate ETA Certifying Officer for determination. The final rule clarifies this process.

Advertising (20 CFR 656.21(g))

Over 60 commenters, including State job service agencies, universities, and attorneys, objected to the proposed rule that the local job service office place recruitment advertisements for the employer (referring applicants to the job service) and to the State job service handling the money for advertisements. Many also objected to the proposal that the local office approve the text of such advertisements. Some commenters felt that the role of the local office should be to assist the employer in preparing the text of the advertisements. All commenters felt that the employers should maintain the responsibility for the recruitment advertisements.

DOL has been persuaded by the comments. Requirements for advertising have been revised to require advertising to be published only over the name of the local office of the State job service. That office will refer applicants to the employer. The employer's name may not appear in the advertisement. An employer may, of course, seek U.S. workers by placing advertisements over its own name and is encouraged to submit documentation of such efforts to the Certifying Officer. Employers will have responsibility for placing advertisements over the job service office's name, and for making payments for advertisements directly to the publisher. The local job service office may assist the employer in determining the appropriate newspaper of publication and in preparing the text of the advertisement.

More than 15 commenters objected to restriction of advertisements to business days, assserting that Sunday is a popular day for publishing classified advertisements. Several commenters felt that proposal to require three days of advertising is excessive and too expensive. Confusion on how "three consecutive days" of advertising would apply to weekly or intermittent publications was expressed by some commenters.

The final rule specifies that advertisements published in a newspaper of general circulation must be published for any three consecutive days. DOL does not agree that three days of advertising is excessive or too expensive for an employer who is attempting a reasonable effort to recruit U.S. workers. Employment of alien

workers should only occur when the employer has been unsuccessful in recruiting U.S. workers.

Advertisements placed in professional, trade, or ethnic periodicals that are published on other than a daily basis need only be published once—in the edition of the periodical published after filing the application.

Reduction of Recruitment Efforts (20 CFR 656.21(i))

Several State job service agencies and ETA regional offices objected to the proposal to allow Certifying Officers to reduce recruitment efforts, asserting that the basis for granting the reduction is too vague and subject to various interpretations. Some attorneys and organizations commenting on the proposed rule favored this provision, but asked that the local job service office rather than the Certifying Officer be given the authority to reduce recruitment efforts.

DOL believes that a reduction in recruitment efforts may be appropriate when the employer has tested the labor market prior to filing the application. However, it is agreed that the language, "for good cause shown," is too vague to give employers and Certifying Officers guidance in determining which circumstances permit a reduction in recruitment efforts. The procedure for requesting a reduction in recruitment, and the responsibilities of local job service and regional ETA offices have been specified in the final rule.

The Congress has given the Secretary of Labor the responsibility for making determinations with respect to the availability of qualified U.S. workers and the potential adverse effect of permanent alien employment. 8 U.S.C. 1182(a)(14). Since this responsibility must rest with DOL, it would be inappropriate for the local office of the State job service to authorize the reduction of recruitment efforts.

Miscellaneous Recruitment Requirements

Several State job service agencies favored the proposed rule that applications be returned to employers after 45 days of employer and/or alien inactivity, such as failure to provide responses within 45 days. 20 CFR 656.21(h). Some attorneys who commented felt that a corresponding time limit should be placed on State job service agencies to process applications and objected to a change of the date of acceptance on applications which have been returned. See 20 CFR 656.30(b)(1) and 22 CFR 42.62.

The 30-day recruitment period already in the regulations [20 CFR 656.21(f)(1)], to a large extent, places time constraints on the local job service office's processing of applications. The recruitment period begins upon receipt of a completed application. At the close of the recruitment period, the local office obtains the results from the employer and prepares the application for transmittal to the ETA regional office or the State job service office. The proposed provision providing for return of applications to employers after 45 days of inactivity, and requiring those applications to be refiled as new applications, is being retained in order to reduce backlogs in State job service offices. Excessive extensions of time in the local office beyond the 30-day recruitment period are caused, in general, by employer failure to provide requested documentation or information in a timely manner. Such applications that are refiled will be considered new applications. Therefore, the proposed rule is adopted.

Several commenters objected to the proposed provision which states that the local job service office shall wait 30 days from the date of publication of the employer's advertisement to transmit the application to the State or regional offices, asserting that this in effect, would extend the recruitment period beyond 30 days, especially when the job opportunity is advertised in a professional, trade, or ethnic publication. 20 CFR 656.21(j)(1). This provision applies only to advertisements placed in publications other than daily newspapers. It is anticipated that most responses from U.S. workers to such advertisements will be in the form of resumes. Thus, a period of 30 days from the advertisement date is reasonable. It may take that long to fully disseminate the advertisement, to prepare and transmit resumes, to interview job applicants, and to transmit a report on the results of the employer's interview and consideration of the workers.

Occupations Designated for Special Handling (20 CFR 656.21a)

College and University Teachers (20 CFR 656.21a(a))

The proposed rule set forth a revised recruitment requirement for job opportunities as college and university teachers. The basis for this special handling is the distinct way in which such positions are treated in the Immigration and Nationality Act. In most occupations, U.S. workers are considered available for the job opportunity if they are able, willing, and at least minimally qualified for the job offered to the alien. 8 U.S.C. 1182(a)(14). In the cases of job opportunities as college and university teachers, U.S. workers must be at least as qualified or more qualified than the alien for whom permanent labor certification is sought. *Id.*

Seven universities requested that researchers at colleges and universities be treated the same as college and university teachers. The National Research Council requested that all scientists and engineers be accorded the same special handling, and that major corporations be allowed to document that they have selected the best qualified candidate for research positions. There is no statutory basis for special handling of researchers, scientists, and engineers. The distinct tests of availability for college and university teachers [and aliens of exceptional ability in the performing arts) are unique in the labor certification process. The "equally qualified" provision cannot be extended to other occupations. For other occupations, the Act specifies that U.S. workers need only be able, willing, qualified and available.

Two universities commenting on the proposed rule requested that employers be permitted to file applications for employment certification of college and university teachers as long as 18 to 24 months after a selection of the alien has taken place, rather than the proposed 12 months. [It is possible under the nonimmigrant provisions of the Immigration and Nationality Act for aliens to have been selected competitively and employed prior to the filing of an application for adjustment of status to that of permanent resident.) Several commenters requested clarification on handling applications where the selection will have been made more than 12 months before the effective date of the regulations.

DOL has found these arguments to be persuasive. Therefore, the period in which colleges and universities must file applications for college and university teachers, after a selection has been made pursuant to a competitive recruitment and selection process, has been extended to 18 months. In applications where the competitive recruitment and selection process took place more than 18 months before the effective date of these regulations, the employer will have until December 31, 1981, to file the application without regard to the 18-month restriction.

Some commenters stated that the documentation required for the competitive recruitment and selection process is excessive. However, DOL consulted with representatives of major universities in developing the documentation requirements for the

competitive recruitment and selection process. Those employers agreed that the requirements are reasonable and can be easily documented by colleges and universities.

Aliens of Exceptional Ability in the Performing Arts (20 CFR 656.21a(a))

One commenter suggested that the regulations be revised to require aliens of exceptional ability in the performing arts to document that their work experience required, and their intended work in the United States will require, exceptional ability. This suggestion has been adopted in the final rule and represents no substantive change from prior practice.

One commenter felt that advertising should not be required for performing artists. DOL cannot ignore, however, the high unemployment rate for U.S. workers in the performing arts. DOL would be derelict in its responsibilities under the Immigration and Nationality Act, if employers were not required to recruit U.S. Workers for job opportunities in the performing arts offered to aliens.

At the suggeston of one commenter, a clarifying provision has been added to § 656.21a, "Occupations Designated for Special Handling", which provides that applications which are denied under that section may be refiled pursuant to §656.21., "Basic Labor Certification Process". 20 CFR 656.21a(c).

Schedule A Process (20 CFR 656.10 and 656.22)

Comments on the *Schedule A* Process for job opportunities as physicians (and surgeons), professional nurses, and intracompany transferees have been discussed above.

Several universities requested that aliens of exceptional ability, but who do not have international acclaim, be included on *Schedule A*. The National Research Council requested that *Schedule A* be modified to include scientists and engineers who possess a doctoral degree, and who show clear potential for future acclaim or recognition, and who have accomplishments in highly specialized scientific or technical fields. The standards for *Schedule A* precertification of aliens of exceptional ability in a science or art (so-called "Group II" aliens) under the current regulations do preclude many scientists and artists from qualifying for precertification. Many of these aliens are excluded because they have not received internationally recognized prizes or awards; some are not members of associations requiring outstanding achievements of their members. Of course, all of the aliens could have attempted to obtain certification under the basic labor certification process.

ETA worked very closely with representatives of major universities to develop modifications to the current Group II standards. DOL has determined that international acclaim however, is a reasonable indicator of exceptional ability for *Schedule A* to facilitate the admission of those aliens whose immigration to the United States would benefit substantially the United States economy, culture, security, or welfare.

Since a *Schedule A* precertification is granted without regard to the individual alien's impact on the U.S. labor market, the standards for precertification must be high enough to assure against the displacement of, or adverse effect on, U.S. workers. DOL, therefore, is retaining the requirement of international acclaim for Group II aliens. Setting the receipt of a doctoral degree as sole grounds for Group II certification would include some aliens lacking exceptional ability, and exclude others who have exceptional ability. Similarly, a predetermination based upon potential for future acclaim would be highly subjective and difficult to administer fairly.

Several commenters stated that the documentation requirements for Group II are a favorable improvement over the current regulations. One commenter requested that the rule clarify the requirement concerning published material by or about the alien. More definitive language has been included in the final rule.

Some commenters suggested other occupational categories to be added to *Schedule A*. Since these suggestions are outside the scope of the proposed rule, they were not considered in the present rulemaking.

Schedule B Process (20 CFR 656.11 and 656.23)

Schedule B contains occupations for which the Administrator, U.S. Employment Service, has predetermined that U.S. workers are able, willing, qualified, and available or that employment of aliens would adversely affect the wages or working conditions of similarly employed U.S. workers. The employer may petition for a waiver of this finding.

The proposed rule would permit employers (and the aliens, if in conjunction with the employers) to rebut proposed denials of petitions for waiver of *Schedule B*. A number of commenters favored this proposed amendment, and it is adopted in the final rule.

The process for requesting *Schedule B* waivers also is simplified in the final rule. A written request for a waiver should be filed, along with the *Application for Alien Employment Certification*, at the appropriate local job service office. The job service will include the petition for waiver in the application file that is transmitted to the Certifying Officer.

Labor Certification Determinations (20 CFR 656.24)

Several State job service agencies and ETA regional offices objected to the proposal to allow Certifying Officers to excuse partially the employer's failure to comply fully with the regulations. Some other commenters favored this change. State job service agencies and ETA regional offices assert that the proposal would encourage employers to exert undue pressure on State and Federal personnel to grant exceptions; and would inundate State and Federal offices with requests to excuse failures to comply.

In view of the concerns expressed, it appears that this provision has been misinterpreted. Employers are expected to comply fully with the regulations governing labor certifications and may *not* request the Certifying Officers to excuse failures to comply. A certification may be granted only when the Certifying Officer:

(1) Is considering an application,

(2) Sees that the employer has omitted or failed to supply an item required by the regulations, and

(3) Concludes that the item is not material to a proper determination of availability and adverse effect.

Technical Amendments

Other minor technical amendments, such as nomenclature changes to conform to 20 CFR 651.7 (45 FR 39457; June 10, 1980), have been made in the final rule. The most significant change is the general usage of the term "job service" in place of the term "employment service." The administrative-judicial review procedures in § 656.26 are clarified to state explicitly that the Administrative Law Judge is to consider only such evidence as was before the Certifying Officer.

Development of Rule; Regulatory Impact; and Catalog of Federal Domestic Assistance:

This final rulemaking document was prepared under the direction and control of Mr. David O. Williams, Administrator, U.S. Employment Service, Employment and Training Administration, U.S. Department of Labor, Washington, D.C.

The economic and other impact of this final rule is not so significant as to require the development of a regulatory analysis. See 44 FR 5576 (January 26, 1979).

This program is described under *Catalog of Federal Domestic Assistance* Number 17.203, "Certification for Immigrant Workers."

Final Rule

For the reasons set out in the preamble, Part 656 of Chapter V of Title 20, Code of Federal Regulations, is revised to read as follows:

PART 656—LABOR CERTIFICATION PROCESS FOR PERMANENT EMPLOYMENT OF ALIENS IN THE UNITED STATES

Subpart A—Purpose and Scope of Part 656

Sec.

656.1 Purpose and scope of Part 656.
656.2 Description of the Immigration and Nationality Act and of the Department of Labor's role thereunder.

Subpart B—Occupational Labor Certification Determinations

656.10 *Schedule A.*
656.11 *Schedule B.*

Subpart C—Labor Certification Process

656.20 General filing instructions.
656.21 Basic labor certification application process.
656.21a Applications for labor certifications for occupations designated for special handling.
656.22 Applications for labor certifications for *Schedule A* occupations.
656.23 Applications for labor certifications for *Schedule B* occupations; requests for waivers from *Schedule B.*
656.24 Labor certification determinations.
656.25 Procedures following a labor certification determination.
656.26 Administrative-judicial review of denials of labor certification.
656.27 Hearings.
656.27a Published decisions.
656.28 Document transmittal following the granting of a labor certification.
656.29 Filing of a new application after the denial of a labor certification.
656.30 Validity of and invalidation of labor certifications.
656.31 Labor certification applications involving fraud or willful misrepresentation.
656.32 Fees for services and documents.

Subpart D—Determination of Prevailing Wage

656.40 Determination of prevailing wage for labor certification purposes.

Subpart E—Definitions

656.50 Definitions, for purposes of this Part, of terms used in this Part.

Subpart F—Addresses

656.60 Addresses of Department of Labor regional offices.
656.61 Addresses of Regional Health Administrators, Public Health Service regional offices, Department of HHS.
656.62 Locations of Immigration and Naturalization Service offices.

Authority: Sec. 212(a)(14) of the Immigration and Nationality Act, 8 U.S.C. 1182(a)(14); Wagner-Peyser Act of 1933, as amended, 29 U.S.C. 49 *et seq.*; and 5 U.S.C. 301; unless otherwise noted.

Subpart A—Purpose and Scope of Part 656

§ 656.1 Purpose and scope of Part 656.

(a) Under section 212(a)(14) of the Immigration and Nationality Act (Act) (8 U.S.C. 1182(a)(14)) certain aliens may not obtain a visa for entrance into the United States in order to engage in permanent employment unless the Secretary of Labor has first certified to the Secretary of State and to the Attorney General that:

(1) There are not sufficient United States workers, who are able, willing, qualified and available at the time of application for a visa and admission into the United States and at the place where the alien is to perform the work, and

(2) The employment of the alien will not adversely affect the wages and working conditions of United States workers similarly employed.

(b) The regulations under this Part set forth the procedures whereby such immigrant labor certifications may be applied for, and given or denied.

(c) Correspondence and questions concerning the regulations in this Part 656 should be addressed to: Division of Labor Certifications, United States Employment Service, 601 D Street NW., Washington, D.C. 20213.

§ 656.2 Description of the Immigration and Nationality Act and of the Department of Labor's role thereunder.

(a)(1) *Description of the Act.* The Immigration and Nationality (Act) (8 U.S.C. 1101 *et seq.*) regulates the admission of aliens into the United States. The Act designates the Attorney General and the Secretary of State as the principal administrators of its provisions.

(2) The Immigration and Naturalization Service (INS) performs most of the Attorney General's functions under the Act. (See 8 CFR 2.1)

(3) The Consular offices of the Department of State throughout the world are generally the initial contact for aliens in foreign countries who wish to come to the United States. These offices determine the type of visa for which aliens may be eligible, obtain visa eligibility documentation, and issue visas.

(b) *Burden of proof under the Act.* Section 291 of the Act (8 U.S.C. 1361) states, in pertinent part, that:

> Whenever any person makes application for a visa or any other document required for entry, or makes application for admission, or otherwise attempts to enter the United States, the burden of proof shall be upon such person to establish that he is eligible to receive such visa or such document, or is not subject to exclusion under any provision of this Act
> * * *

(c) *Numerical limitations on immigrant visas under the Act.* (1) Immigrant visas may be given only on an individual basis;

(2) Except for so-called "special immigrants" (8 U.S.C. 1101(a)(27)) and for immediate relatives of U.S. citizens, to whom no numerical restriction applies, only 270,000 immigrant visas may be issued in each fiscal year. (See 8 U.S.C. 1151.)

(3) No numerical restriction exists on the number of labor certifications which may be issued by the Department of Labor in any year.

(d) *Visa preferences including non-preference status.* (1) Under section 203 of the Act (8 U.S.C. 1153) certain immigrants are eligible for preferences in obtaining visas. The INS has responsibility for determining whether such aliens qualify for preferences. The preferences for which an immigrant may be eligible are:

(i) First, second, fourth and fifth preferences, which require a close family relationship between the alien and a United States citizen or permanent resident alien of the United States;

(ii) Third preference, which requires that the alien's services be sought by an employer, and that the alien be a qualified member of a profession or a person who, because of exceptional ability in the sciences or the arts, will substantially benefit prospectively the national economy, cultural interests, or welfare of the United States; and

(iii) Sixth preference, which requires that the alien be capable of performing some specific kind of skilled or unskilled labor, which is not of a temporary or seasonal nature, and for which a shortage of employable and willing persons exists in the United States.

(2) Under section 203(a)(7) of the Act (8 U.S.C. 1153(a)(7)) aliens, who are not immediate relatives of U.S. citizens, and who are not eligible for one of the preferences described in paragraph (d)(1) of this section, may be eligible for a nonpreference status and obtain visas strictly in chronological order.

(3) Under section 207 of the Act (8 U.S.C. 1157) aliens who are refugees may be admitted in limited numbers,

without the requirement of a permanent labor certification. Such alien refugees may apply later for adjustment of status to permanent residents, without the requirement of a permanent labor certification. (8 U.S.C. 1159(c)).

(e) *Role of the Department of Labor.* (1) The role of the Department of Labor under the Act derives from section 212(a)(14) (8 U.S.C. 1182(a)(14)), which provides that certain aliens who seek to immigrate to the United States for the purpose of employment in the United States are not eligible for a visa and shall be excluded unless the Secretary of Labor has first certified to the Secretary of State and to the Attorney General that:

(i) There are not sufficient United States workers, who are able, willing, qualified and available at the time of application for a visa and admission into the United States and at the place where the alien is to perform the work, and

(ii) The employment of the alien will not adversely affect the wages and working conditions of United States workers similarly employed.

(2) This certification is referred to in this Part as a "labor certification".

(3) Aliens required to be a beneficiary of a labor certification by section 212(a)(14) of the Act (8 U.S.C. 1182(a)(14)) are:

(i) Aliens who are eligible for a non-preference status as described in paragraph (d)(2) of this section; and

(ii) Aliens who are eligible for third or sixth preferences described in paragraphs (d)(1)(ii) and (d)(1)(iii) of this section.

(4) The Department of Labor issues labor certifications for both the temporary and permanent employment of aliens in the United States. The regulations under this Part apply only to labor certifications for permanent employment.

Subpart B—Occupational Labor Certification Determinations

§ 656.10 Schedule A.

The Administrator, United States Employment Service (Administrator), has determined that there are not sufficient United States workers who are able, willing, qualified, and available for the occupations listed below on *Schedule A* and that the wages and working conditions of United States workers similarly employed will not be adversely affected by the employment of aliens in *Schedule A* occupations. An alien seeking a labor certification for an occupation listed on *Schedule A* may apply for that labor certification pursuant to § 656.22.

Schedule A

(a) Group I:

(1) Persons who will be employed as physical therapists, and who possess all the qualifications necessary to take the physical therapist licensing examination in the State in which they propose to practice physical therapy.

(2) Alien graduates of foreign medical schools who will be employed as physicians (or surgeons) in a geographic area which has been designated by the Secretary of Department of Health and Human Services (HHS) as a *Health Manpower Shortage Area* for the alien's medical specialty, or has been identified otherwise by the Secretary of HHS as having an insufficient number of physicians in the alien's medical specialty, in accordance with section 906 of Health Professions Education Assistance Act (8 U.S.C. 1182 note).

(3) Aliens who will be employed as professional nurses; and (i) who have passed the Commission on Graduates of Foreign Nursing Schools (CGFNS) Examination; or (ii) who hold a full and unrestricted license to practice professional nursing in the State of intended employment.

(4) Definitions of Group I occupations:

(i) "Physical therapist" means a person who applies the art and science of physical therapy to the treatment of patients with disabilities, disorders and injuries to relieve pain, develop or restore function, and maintain performance, using physical means, such as exercise, massage, heat, water, light, and electricity, as prescribed by a physician (or surgeon).

(ii) "Physician (or surgeon)" is defined in § 656.50.

(iii) "Professional nurse" is defined in § 656.50.

(b) Group II:

Aliens (except for aliens in the performing arts) of exceptional ability in the sciences or arts including college and university teachers of exceptional ability who have been practicing their science or art during the year prior to application and who intend to practice the same science or art in the United States. For purposes of this group, the term "science or art" means any field of knowledge and/or skill with respect to which colleges and universities commonly offer specialized courses leading to a degree in the knowledge and/or skill. An alien, however, need not have studied at a college or university in order to qualify for the Group II occupation.

(c) Group III:

(1) Aliens who seek admission to the United States in order to perform a religious occupation, such as the preaching or teaching of religion; and

(2) Aliens with a religious commitment who seek admission into the United States in order to work for a nonprofit religious organization.

(d) Group IV:

(1) Aliens who have been admitted to the United States in order to work in, and who are currently working in, managerial or executive positions with the same international corporations or organizations with which they were continuously employed as managers or executives outside the United States for one year before they were admitted.

(2) Aliens outside the United States who will be engaged in the United States in managerial or executive positions with the same international corporations or organizations with which they have been continuously employed as managers or executives outside the United States for the immediately prior year.

(3) For the purposes of this paragraph (d), the international corporation or organization must have been established and doing business in the United States for a period of at least one year prior to the submission of the application for the alien to qualify under *Schedule A*, Group IV. For the purposes of this paragraph (d), "doing business" shall mean a regular, systematic, and continuous course of conduct, including both the offer of and the provision of goods and/or services by the employer, and shall not be limited to the mere presence in the United States of an agent or office of the international corporation or organization.

§ 656.11 Schedule B.

(A) The Administrator has determined that there generally are sufficient United States workers who are able, willing, qualified and available for the occupations listed below on *Schedule B* and that the wages and working conditions of United States workers similarly employed will generally be adversely affected by the employment in the United States of aliens in *Schedule B* occupations. An employer seeking a labor certification for an occupation listed on *Schedule B* may petition for a waiver pursuant to § 656.23.

Schedule B

(1) Assemblers
(2) Attendants, Parking Lot
(3) Attendants (Service Workers such as Personal Service Attendants, Amusement and Recreation Service Attendants)
(4) Automobile Service Station Attendants
(5) Bartenders
(6) Bookkeepers II
(7) Caretakers
(8) Cashiers
(9) Charworkers and Cleaners
(10) Chauffeurs and Taxicab Drivers
(11) Cleaners, Hotel and Motel
(12) Clerks, General
(13) Clerks, Hotel
(14) Clerks and Checkers, Grocery Stores
(15) Clerk Typists
(16) Cooks, Short Order
(17) Counter and Fountain Workers
(18) Dining Room Attendants
(19) Electric Truck Operators
(20) Elevator Operators
(21) Floorworkers
(22) Groundskeepers
(23) Guards
(24) Helpers, any industry
(25) Hotel Cleaners
(26) Household Domestic Service Workers
(27) Housekeepers
(28) Janitors
(29) Key Punch Operators
(30) Kitchen Workers

(31) Laborers, Common
(32) Laborers, Farm
(33) Laborers, Mine
(34) Loopers and Toppers
(35) Material Handlers
(36) Nurses' Aides and Orderlies
(37) Packers, Markers, Bottlers and Related
(38) Porters
(39) Receptionists
(40) Sailors and Deck Hands
(41) Sales Clerks, General
(42) Sewing Machine Operators and Handstitchers
(43) Stock Room and Warehouse Workers
(44) Streetcar and Bus Conductors
(45) Telephone Operators
(46) Truck Drivers and Tractor Drivers
(47) Typists, Lesser Skilled
(48) Ushers, Recreation and Amusement
(49) Yard Workers

(b) *Descriptions of Schedule B occupations.* (1) *"Assemblers"* perform one or more repetitive tasks to assemble components and subassemblies using hand or power tools to mass produce a variety of components, products or equipment. They perform such activities as riveting, drilling, filing, bolting, soldering, spot welding, cementing, gluing, cutting and fitting. They may use clamps or other work aids to hold parts during assembly, inspect or test components, or tend previously set-up or automatic machines.

(2) *"Attendants, Parking Lot"* park automobiles for customers in parking lots or garages and may collect fees based on time span of parking.

(3) *"Attendants (Service Workers such as Personal Service Attendants, Amusement and Recreation Service Attendants)"* perform a variety of routine tasks attending to the personal needs of customers at such places as amusement parks, bath houses, clothing check-rooms, and dressing rooms, including such tasks as taking and issuing tickets, checking and issuing clothing and supplies, cleaning premises and equipment, answering inquiries, checking lists, and maintaining simple records.

(4) *"Automobile Service Station Attendants"* service automotive vehicles with fuel, lubricants, and automotive accessories at drive-in service facilities; may also compute charges and collect fees from customers.

(5) *"Bartenders"* prepare, mix, and dispense alcoholic beverages for consumption by bar customers, and compute and collect charges for drinks.

(6) *"Bookkeepers II"* keep records of one facet of an establishment's financial transactions by maintaining one set of books; specialize in such areas as accounts-payable, accounts-receivable, or interest accrued rather than a complete set of records.

(7) *"Caretakers"* perform a combination of duties to keep a private home clean and in good condition such as cleaning and dusting furniture and furnishings, hallways and lavatories; beating, vacuuming, and scrubbing rugs; washing windows, waxing and polishing floors; removing and hanging draperies; cleaning and oiling furnances and other equipment; repairing mechanical and electrical appliances; and painting.

(8) *"Cashiers"* receive payments made by customers for goods or services, make change, give receipts, operate cash registers, balance cash accounts, prepare bank deposits and perform other related duties.

(9) *"Charworkers and Cleaners"* keep the premises of commercial establishments, office buildings, or apartment hosues in clean and orderly condition by performing, according to a set routine, such tasks as mopping and sweeping floors, dusting and polishing furniture and fixtures, and vacuuming rugs.

(10) *"Chauffeurs and Taxicab Drivers"* drive automobiles to convey passengers according to the passengers' instructions.

(11) *"Cleaners, Hotel and Motel"* clean hotel rooms and halls, sweep and mop floors, dust furniture, empty wastebaskets, and make beds.

(12) *"Clerks, General"* perform a variety of routine clerical tasks not requiring knowledge of systems or procedures such as copying and posting data, proofreading records or forms, counting, weighing, or measuring material, routing correspondence, answering telephones, conveying messages, and running errands.

(13) *"Clerks, Hotel"* perform a variety of routine tasks to serve hotel guests such as registering guests, dispensing keys, distributing mail, collecting payments, and adjusting complaints.

(14) *"Clerks and Checkers, Grocery Stores"* itemize, total, and receive payments for purchases in grocery stores, usually using cash registers; often assist customers in locating items, stock shelves, and keep stock-control and sales-transaction records.

(15) *"Clerk Typists"* perform general clerical work which, for the majority of duties, requires the use of typewriters: perform such activities as typing reports, bills, application forms, shipping tickets, and other matters from clerical records, filing records and reports, posting information to records, sorting and distributing mail, answering phones and similar duties.

(16) *"Cooks—Short Order"* prepare and cook to order all kinds of short-preparation-time foods; may perform such activities as carving meats, filling orders from a steamtable, preparing sandwiches, salads and beverages, and serving meals over a counter.

(17) *"Counter and Fountain Workers"* serve food to patrons at lunchroom counters, cafeterias, soda fountains, or similar public eating places; take orders from customers and frequently prepare simple items, such as desert dishes; itemize and total checks; receive payment and make change; clean work areas and equipment.

(18) *"Dining Room Attendants"* facilitate food service in eating places by performing such tasks as removing dirty dishes, replenishing linen and silver supplies, serving water and butter to patrons, and cleaning and polishing equipment.

(19) *"Electric Truck Operators"* drive gasoline- or electric-powered industrial trucks or tractors equipped with forklift, elevating platform, or trailer hitch to move and stack equipment and materials in a warehouse, storage yard, or factory.

(20) *"Elevator Operators"* operate elevators to transport passengers and freight between building floors.

(21) *"Floorworkers"* perform a variety of routine tasks in support of other workers in and around such work sites as factory floors and service areas, frequently at the beck and call of others; perform such tasks as cleaning floors, materials and equipment, distributing materials and tools to workers, running errands, delivering messages, emptying containers, and removing materials from work areas to storage or shipping areas.

(22) *"Groundskeepers"* maintain grounds of industrial, commercial, or public property in good condition by performing such tasks as cutting lawns, trimming hedges, pruning trees, repairing fences, planting flowers, and shoveling snow.

(23) *"Guards"* guard and patrol premises of industrial or business establishments or similar types of property to prevent theft and other crimes and prevent possible injury to others.

(24) *"Helpers (any industry)"* perform a variety of duties to assist other workers who are usually of a higher level of competency of expertness by furnishing such workers with materials, tools, and supplies, cleaning work areas, machines and equipment, feeding or offbearing machines, and/or holding materials or tools.

(25) *"Hotel Cleaners"* perform routine tasks to keep hotel premises neat and clean such as cleaning rugs, washing walls, ceilings and windows, moving furniture, mopping and waxing floors, and polishing metalwork.

(26) *"Household Domestic Service Workers"* perform a variety of tasks in private households, such as cleaning, dusting, washing, ironing, making beds, maintaining clothes, marketing, cooking, serving food, and caring for children or disabled persons. This definition, however, applies only to workers who have had less than one year of documented full-time paid experience in the tasks to be performed, working on a live-in or live-out basis in private households or in public or private institutions or establishments where the worker has performed tasks equivalent to tasks normally associated with the maintenance of a private household. This definition does not include household workers who primarily provide health or instructional services.

(27) *"Housekeepers"* supervise workers engaged in maintaining interiors of commercial residential buildings in a clean and orderly fashion, assign duties to cleaners (hotel and motel), charworkers, and hotel cleaners, inspect finished work, and maintain supplies of equipment and materials.

(28) *"Janitors"* keep hotels, office buildings, apartment houses, or similar buildings in clean and orderly condition, and tend furnaces and boilers to provide heat and hot water; perform such tasks as sweeping and mopping floors, emptying trash containers, and doing minor painting and plumbing repairs; often maintain their residence at their places of work.

(29) *"Keypunch Operators"*, using machines similar in action to typewriters, punch holes in cards in such a position that each hole can be identified as representing a specific item of information. These punched cards may be used with electronic computers or tabulating machines.

(30) *"Kitchen Workers"* perform routine tasks in the kitchens of restaurants. Their primary responsibility is to maintain work areas and equipment in a clean and orderly fashion by performing such tasks as mopping floors, removing trash, washing pots and pans, transferring supplies and equipment, and washing and peeling vegetables.

(31) *"Laborers, Common"* perform routine tasks, upon instructions and according to set routine, in an industrial, construction or manufacturing environment such as loading and moving equipment and supplies, cleaning work areas, and distributing tools.

(32) *"Laborers, Farm"* plant, cultivate, and harvest farm products, following the instructions of supervisors, often working as members of a team. Their typical tasks are watering and feeding livestock; picking fruit and vegetables, and cleaning storage areas and equipment.

(33) *"Laborers, Mine"* perform routine tasks in underground or surface mines, pits, or quarries, or at tipples, mills, or preparation plants such as cleaning work areas, shoveling coal onto conveyors, pushing mine cars from working faces to haulage roads, and loading or sorting material onto wheelbarrows.

(34) *"Loopers and Toppers"* (i) tend machines that shear nap, loose threads, and knots from cloth surfaces to give uniform finish and texture, (ii) operate looping machines to close openings in the toes of seamless hose or join knitted garment parts, (iii) loop stitches or ribbed garment parts on the points of transfer bars to facilitate the transfer of garment parts to the needles of knitting machines.

(35) *"Material Handlers"* load, unload, and convey materials within or near plants, yards, or worksites under specific instructions.

(36) *"Nurses' Aides and Orderlies"* assist in the care of hospital patients by performing such activities as bathing, dressing and undressing patients and giving alcohol rubs, serving and collecting food trays, cleaning and shaving hair from the skin areas of operative cases, lifting patients onto and from beds, transporting patients to treatment units, changing bed linens, running errands, and directing visitors.

(37) *"Packers, Markers, Bottlers, and Related"* pack products into containers, such as cartons or crates, mark identifying information on articles, insure that filled bottles are properly sealed and marked, often working in teams on or at end of assembly lines.

(38) *"Porters"* (i) carry baggage by hand or handtruck for airline, railroad or bus passengers, and perform related personal services in and around public transportation environments.

(ii) Keep building premises, working areas in production departments of industrial organizations, or similar sites in clean and orderly condition.

(39) *"Receptionists"* receive clients or customers coming into establishments, ascertain their wants, and direct them accordingly; perform such activities as arranging appointments, directing callers to their destinations, recording names, times, nature of business and persons seen and answering phones.

(40) *"Sailors and Deck Hands"* stand deck watches and perform a variety of tasks to preserve painted surfaces of ships and to maintain lines, running gear, and cargo handling gear in safe operating condition; perform such tasks as mopping decks, chipping rust, painting chipped areas, and splicing rope.

(41) *"Sales Clerks, General"* receive payment for merchandise in retail establishments, wrap or bag merchandise, and keep shelves stocked.

(42) *"Sewing Machine Operators and Hand-Stitchers"* (i) operate single- or multiple-needle sewing machines to join parts in the manufacture of such products as awnings, carpets, and gloves; specialize in one type of sewing machine limited to joining operations; (ii) join and reinforce parts of articles such as garments and curtains, sew button-holes and attach fasteners to such articles, or sew decorative trimmings on such articles, using needles and threads.

(43) *"Stock Room and Warehouse Workers"* receive, store, ship, and distribute materials, tools, equipment, and products within establishments as directed by others.

(44) *"Streetcar and Bus Conductors"* collect fares or tickets from passengers, issue transfers, open and close doors, announce stops, answer questions, and signal operators to start or stop.

(45) *"Telephone Operators"* operate telephone switchboards to relay incoming and internal calls to phones in an establishment, and make connections with external lines for outgoing calls; often take messages, supply information and keep records of calls and charges; often are involved primarily in establishing, or aiding telephone users in establishing, local or long distance telephone connections.

(46) *"Truck Drivers and Tractor Drivers"* (i) drive trucks to transport materials, merchandise, equipment or people to and from specified destinations, such as plants, railroad stations, and offices. (ii) Drive tractors to move materials, draw implements, pull out objects imbedded in the ground, or pull cables of winches to raise, lower, or load heavy materials or equipment.

(47) *"Typists, Lesser Skilled"* type straight-copy material, such as letters, reports, stencils, and addresses, from drafts or corrected copies. They are not required to prepare materials involving the understanding of complicated technical terminology, the arrangement and setting of complex tabular detail or similar items. Their typing speed in English does not exceed 52 words per minute on a manual typewriter and/or 60 words per minute on an electric typewriter and their error rate is 12 or more errors per 5 minute typing period on representative business correspondence.

(48) *"Ushers (Recreation and Amusement)"* assist patrons at entertainment events to find seats,

search for lost articles, and locate facilities.

(49) *"Yard Workers"* maintain the grounds of private residences in good order by performing such tasks as mowing and watering lawns, planting flowers and shrubs, and repairing and painting fences. They work on the instructions of private employers.

(c) *Requests for waivers from Schedule B.* Any employer who desires a labor certification involving a *Schedule B* occupation may request such a waiver by submitting a written request along with the *Application for Alien Employment* Certification form at the appropriate local employment service office pursuant to § 656.23.

(d) The Administrator may revise *Schedule B* from time to time on the Administrator's own initiative, upon the request of a Regional Administrator, Employment and Training Administration, or upon the written request of any other person which sets forth reasonable grounds therefor. Such requests should be mailed to the Administrator, United States Employment Service, Room 8000, Patrick Henry Building, 601 D Street, NW., Washington, D.C. 20213.

Subpart C—Labor Certification Process

§ 656.20 General filing instructions.

(a) A request for a labor certification on behalf of any alien who is required by the Act to become a beneficiary of a labor certification in order to obtain permanent resident status in the United States may be filed as follows:

(1) Except as provided in paragraphs (a)(2) through (4) of this section, an application for a labor certification shall be filed pursuant to this section and § 656.21.

(2) An employer seeking a labor certification for an occupation designated for special handling shall apply for a labor certification pursuant to this section and § 656.21a.

(3) An alien seeking labor certification for an occupation listed on *Schedule A* may apply for a labor certification pursuant to this section and § 656.22.

(4) An employer seeking a labor certification for an occupation listed on *Schedule B* shall apply for a waiver and a labor certification pursuant to this section and §§ 656.21 and 656.23.

(b)(1) Aliens and employers may have agents represent them throughout the labor certification process. If an alien and/or an employer intends to be represented by an agent, the alien and/or the employer shall sign the statement set forth on the *Application for Alien Employment Certification* form: That the agent is representing the alien and/or employer and that the alien and/or employer takes full responsibility for the accuracy of any representations made by the agent.

(2) Aliens and employers may have attorneys represent them. Each attorney shall file a notice of appearance on Immigration and Naturalization Service (INS) Form G–28, naming the attorney's client or clients. Whenever, under this Part, any notice or other document is required to be sent to an employer or alien, the document shall be sent to their attorney or attorneys who have filed notices of appearance on INS Form G–28, if they have such an attorney or attorneys.

(3)(i) It is contrary to the best interests of U.S. workers to have the alien and/or agents or attorneys for the alien participate in interviewing or considering U.S. workers for the job offered the alien. As the beneficiary of a labor certification application, the alien cannot represent the best interests of U.S. workers in the job opportunity. The alien's agent and/or attorney cannot represent the alien effectively and at the same time truly be seeking U.S. workers for the job opportunity. Therefore, the alien and/or the alien's agent and/or attorney may not interview or consider U.S. workers for the job offered to the alien, unless the agent and/or attorney is the employer's representative as described in paragraph (b)(3)(ii) of this section.

(ii) The employer's representative who interviews or considers U.S. workers for the job offered to the alien shall be the person who normally interviews or considers, on behalf of the employer, applicants for job opportunities such as that offered the alien, but which do not involve labor certifications.

(4) No person under suspension or disbarment from practice before the United States Department of Justice's Board of Immigration Appeals pursuant to 8 CFR 292.3 shall be permitted to act as an agent, representative, or attorney for an employer and/or alien under this Part.

(c) Job offers filed on behalf of aliens on the *Application for Alien Employment Certification* form must clearly show that:

(1) The employer has enough funds available to pay the wage or salary offered the alien;

(2) The wage offered equals or exceeds the prevailing wage determined pursuant to § 656.40, and the wage the employer will pay to the alien when the alien begins work will equal or exceed the prevailing wage which is applicable at the time the alien begins work;

(3) The wage offered is not based on commissions, bonuses or other incentives, unless the employer guarantees a wage paid on a weekly, bi-weekly, or monthly basis;

(4) The employer will be able to place the alien on the payroll on or before the date of the alien's proposed entrance into the United States;

(5) The job opportunity does not involve unlawful discrimination by race, creed, color, national origin, age, sex, religion, handicap, or citizenship;

(6) The employer's job opportunity is not:

(i) Vacant because the former occupant is on strike or is being locked out in the course of a labor dispute involving a work stoppage; or

(ii) At issue in a labor dispute involving a work stoppage;

(7) The employer's job opportunity's terms, conditions and occupational environment are not contrary to Federal, State or local law; and

(8) The job opportunity has been and is clearly open to any qualified U.S. worker.

(9) The conditions of employment listed in paragraphs (c) (1) through (8) of this section shall be sworn (or affirmed) to, under penalty of perjury pursuant to 28 U.S.C. 1746, on the *Application for Alien Employment Certification* form.

(d) If the application involves labor certification as a physician (or surgeon) (except a physician (or surgeon) of international renown), the labor certification application shall include the following documentation:

(1)(i) Documentation which shows clearly that the alien has passed Parts I and II of the National Board of Medical Examiners Examination (NBMEE), or the Visa Qualifying Examination (VQE) offered by the Educational Commission for Foreign Medical Graduates (ECFMG); or

(ii) Documentation which shows clearly that:

(A) The alien was on January 9, 1977, a doctor of medicine fully and permanently licensed to practice medicine in a State within the United States;

(B) The alien held on January 9, 1977, a valid specialty certificate issued by a constituent board of the American Board of Medical Specialties; and

(C) The alien was on January 9, 1977, practicing medicine in a State within the United States; or

(iii) The alien is a graduate of a school of medicine accredited by a body or bodies approved for the purpose by the Secretary of Education or that Secretary's designee (regardless of whether such school of medicine is in the United States).

(e) Whenever any document is submitted to a State or Federal agency pursuant to this Part, the document either shall be in the English language or shall be accompanied by a written translation into the English language, certified by the translator as to the accuracy of the translation and his/her competency to translate.

(f) The forms required under this Part for applications for labor certification are available at U.S. Consular offices abroad, at INS offices in the United States, and at local offices of the State; job service agencies. The forms will contain instructions on how to comply with the documentation requirements for applying for a labor certification under this Part.

§ 656.21 Basic labor certification process.

(a) Except as otherwise provided by §§ 656.21a and 656.22, an employer who desires to apply for a labor certification on behalf of an alien shall file, signed by hand and in duplicate, a Department of Labor *Application for Alien Employment Certification* form and any attachments required by this Part with the local Job Service office serving the area where the alien proposes to be employed. The employer shall set forth on the *Application for Alien Employment Certification* form, as appropriate, or in attachments:

(1) A statement of the qualifications of the alien, signed by the alien;

(2) A description of the job offer for the alien employment, including the items required by paragraph (b) of this section; and

(3) If the application involves a job offer as a live-in household domestic service worker:

(i) A statement describing the household living accommodations;

(ii) Two copies of the employment contract, each signed and dated by both the employer and the alien (not by their agents). The contract shall clearly state:

(A) The wages to be paid on an hourly and weekly basis;

(B) Total hours of employment per week, and exact hours of daily employment;

(C) That the alien is free to leave the employer's premises during all non-work hours except that the alien may work overtime if paid for the overtime at no less than the legally required hourly rate;

(D) That the alien will reside on the employer's premises;

(E) Complete details of the duties to be performed by the alien;

(F) The total amount of any money to be advanced by the employer with details of specific items, and the terms of repayment by the alien of any such advance by the employer;

(G) That in no event shall the alien be required to give more than two weeks' notice of intent to leave the employment contracted for and that the employer must give the alien at least two weeks' notice before terminating employment;

(H) That a duplicate contract has been furnished to the alien;

(I) That a private room and board will be provided at no cost to the worker; and

(J) Any other agreement or conditions not specified on the *Application for Alien Employment Certification* form; and

(iii)(A) Documentation of the alien's paid experience in the form of statements from past or present employers setting forth the dates (month and year) employment started and ended, hours of work per day, number of days worked per week, place where the alien worked, detailed statement of duties performed on the job, equipment and appliances used, and the amount of wages paid per week or month. The total paid experience must be equal to one full year's employment on a full-time basis. For example, two year's experience working half-days is the equivalent of one year's full time experience. Time spent in a household domestic service training course cannot be included in the required one year of paid experience.

(B) Each statement must contain the name and address of the person who signed it and show the date on which the statement was signed. A statement not in the English language shall be accompanied by a written translation into the English language certified by the translator as to the accuracy of the translation, and as to the translator's competency to translate.

(b) Except for labor certification applications involving occupations designated for special handling (see § 656.21a) and *Schedule A* occupations (see §§ 656.10 and 656.22), the employer may submit, as a part of every labor certification application, on the *Application for Alien Employment Certification* form or in attachments, as appropriate, the following clear documentation:

(1) If the employer has attempted to recruit U.S. workers prior to filing the application for certification, the employer shall document the employer's reasonable good faith efforts to recruit U.S. workers without success through the Job Service System and/or through other labor referral and recruitment sources normal to the occupation:

(i) this documentation shall include documentation of the employer's recruitment efforts for the job opportunity which shall:

(A) List the sources the employer may have used for recruitment, including, but not limited to, advertising; public and/or private employment agencies; colleges or universities; vocational, trade, or technical schools; labor unions; and/or development or promotion from within the employer's organization;

(B) Identify each recruitment source by name;

(C) Give the number of U.S. workers responding to the employer's recruitment;

(D) Give the number of interviews conducted with U.S. workers;

(I) Specify the lawful job-related reasons for not hiring each U.S. worker interviewed; and

(F) Specify the wages and working conditions offered to the U.S. workers; and

(ii) If the employer advertised the job opportunity prior to filing the application for certification, the employer shall include also a copy of at least one such advertisement.

(2) The employer shall document that the job opportunity has been and is being described without unduly restrictive job requirements:

(i) The job opportunity's requirements, unless adequately documented as arising from business necessity:

(A) Shall be those normally required for the job in the United States;

(B) Shall be those defined for the job in the *Dictionary of Occupational Titles (D.O.T.)* including those for subclasses of jobs;

(C) Shall not include requirements for a language other than English.

(ii) If the job opportunity involves a combination of duties, for example engineer-pilot, the employer must document that it has normally employed persons for that combination of duties and/or workers customarily perform the combination of duties in the area of intended employment, and or the combination job opportunity is based on a business necessity.

(iii) If the job opportunity involves a requirement that the worker live on the employer's premises, the employer shall document adequately that the requirement is a business necessity.

(iv) If the job opportunity has been or is being described with an employer preference, the employer preference shall be deemed to be a job requirement for purposes of this paragraph (b)(2).

(3) Except for job opportunities for private households, the employer shall document that it has posted notices of the job opportunity at its place of business:

(i) Notices of the job opportunity posted by the employer shall contain the information required for advertisements by paragraph (g)(3) through (g)(8) of this section, except that they shall direct applicants to report to the employer, not the local employment service office;

(ii) Notices of the job opportunity shall be posted by the employer for at least 10 consecutive business days; shall be clearly visible and unobstructed while posted; and shall be posted in conspicuous places, where the employer's U.S. workers readily can read the posted notice on the way to or from their place of employment. Appropriate locations for posting notices of the job opportunity include, but are not limited to, locations in the immediate proximity of wage and hour notices required by 29 CFR 516.4 or occupational safety and health notices required by 29 CFR 1903.2(a).

(4) The employer shall document that its other efforts to locate and employ U.S. workers for the job opportunity, such as recruitment efforts by means of private employment agencies, labor unions, advertisements placed with radio or TV stations, recruitment at trade schools, colleges, and universities or attempts to fill the job opportunity by development or promotion from among its present employees, have been and continue to be unsuccessful. Such efforts may be required after the filing of an application if appropriate to the occupation.

(5) If unions are customarily used as a recruitment source in the area or industry, the employer shall document that they were unable to refer U.S. workers.

(6) The employer shall document that its requirements for the job opportunity, as described, represent the employer's actual minimum requirements for the job opportunity, and the employer has not hired workers with less training or experience for jobs similar to that involved in the job opportunity or that it is not feasible to hire workers with less training or experience than that required by the employer's job offer.

(7) If U.S. workers have applied for the job opportunity, the employer shall document that they were rejected solely for lawful job-related reasons.

(c) The local job service office shall determine if the application is for a labor certification involving *Schedule A*. If the application is for a *Schedule A* labor certification, the local job service office shall advise the employer that the forms must be filed with an INS or Consular Office pursuant to § 656.22, and shall explain that the Administrator has determined that U.S. workers in the occupation are unavailable throughout the United States (unless a geographic limitation is applicable) and that the employment of the alien in the occupation will not adversely affect U.S. workers similarly employed.

(d) The local office shall date stamp the application (see § 656.30 for the significance of this date), and shall make sure that the *Application for Alien Employment Certification* form is complete. If it is not complete the local office shall return it to the employer and shall advise the employer to refile it when it is completed.

(e) The local Job Service office shall calculate, to the extent of its expertise using wage information available to it, the prevailing wage for the job opportunity pursuant to § 656.40 and shall put its finding into writing. If the local office finds that the rate of wages offered is below the prevailing wage, it shall advise the employer in writing to increase the amount offered. If the employer refuses to do so, the local office shall advise the employer that the refusal is a ground for denial of the application by the Certifying Officer; and that if the denial becomes final, the application will have to be refiled at the local office as a new application.

(f) The local Job Service office, using the information on job offer portion of the *Application for Alien Employment Certification* form, shall prepare and process a Job Service job order:

(1) If the job offer is acceptable, the local office, in cooperation with the employer, then shall attempt to recruit United States workers for the job opportunity for a period of thirty days, by placing the job order into the regular Job Service recruitment system.

(2) If the employer's job offer is discriminatory or otherwise unacceptable as a job order under the Job Service (JS) Regulations (as defined at § 651.7 of this chapter), the local office, as appropriate, either shall contact the employer to try to remedy the defect or shall return the *Application for Alien Employment Certification* form to the employer with instructions on how to remedy the defect. If the employer refuses to remedy the defect, the local office shall advise the employer that it is unable to recruit U.S. workers for the job opportunity and that the application will be transmitted to the Certifying Officer for determination.

(g) In conjunction with the recruitment efforts under paragraph (f) of this section, the employer shall place an advertisement for the job opportunity in a newspaper of general circulation or in a professional, trade, or ethnic publication, whichever is appropriate to the occupation and most likely to bring responses from able, willing, qualified, and available U.S. workers. The employer may request the local office's assistance in drafting the text. The advertisement shall:

(1) Direct applicants to report or send resumes, as appropriate for the occupation to the local Job Service office for referral to the employer;

(2) Include a local office identification number and the complete address or telephone number of the local office, but shall not identify the employer;

(3) Describe the job opportunity with particularity;

(4) State the rate of pay, which shall not be below the prevailing wage for the occupation, as calculated pursuant to § 656.40;

(5) Offer prevailing working conditions;

(6) State the employer's minimum job requirements;

(7) Offer training if the job opportunity is the type for which employers normally provide training;

(8) Offer wages, terms, and conditions of employment which are no less favorable than those offered to the alien; and

(9) If published in a newspaper of general circulation, be published for at least three consecutive days; or, if published in a professional, trade, or ethnic publication, be published in the next published edition.

(h) The employer shall supply the local office with required documentation or requested information in a timely manner. If documentation or requested information is not received within 45 calendar days of the date of the request the local office shall return the *Application for Alien Employment Certification* form, and any supporting documents submitted by the employer and/or the alien, to the employer to be filed as a new application.

(i) The Certifying Officer may reduce the employer's recruitment efforts required by paragraphs (b)(3), (f), and/or (g) of this section if the employer satisfactorily documents that the employer has adequately tested the labor market with no success at least at the prevailing wage and working conditions; but no such reduction may be granted for job offers involving occupations listed on *Schedule B*.

(1) To request a reduction of recruitment efforts pursuant to this paragraph (i), the employer shall file a written request along with the *Application for Alien Employment Certification* form at the appropriate local Job Service office. The request shall contain:

(i) Documentary evidence that within the immediately preceding six months the employer has made good faith

efforts to recruit U.S. workers for the job opportunity, at least at the prevailing wage and working conditions, through sources normal to the occupation; and

(ii) Any other information which the employer believes will support the contention that further recruitment will be unsuccessful.

(2) Upon receipt of a written request for a reduction in recruitment efforts pursuant to this paragraph (i), the local office shall date stamp the request and the application form and shall review and process the application pursuant to this § 656.21, but without regard to paragraphs (b)(3), (f), and (g), and (j)(1) of this section (*i.e.*, the internal notice, advertisement, and job order; and the wait for results).

(3) After reviewing and processing the application pursuant to paragraph (i)(2) of this section, the local office (and the State Job Service office) shall process the application pursuant to paragraphs (j)(2) and (k) of this section.

(4) The Certifying Officer shall review the documentation submitted by the employer and the comments of the local office. The Certifying Officer shall notify the employer and the local (or State employment service) office of the Certifying Officer's decision on the request to reduce partially or completely the recruitment efforts required of the employer.

(5) Unless the Certifying Officer decides to reduce completely the recruitment efforts required of the employer, the Certifying Officer shall return the application to the local (or State) office so that the employer might recruit workers to the extent required in the Certifying Officer's decision, and in the manner required by paragraphs (b)(3), (f), (g), and (j)(1) of this section (*i.e.*, by internal notice, employment service job order, and advertising; and a wait for results). If the Certifying Officer decides to reduce completely the recruitment efforts required of the employer, the Certifying Officer then shall determine, pursuant to § 656.24 whether to grant or to deny the application.

(j)(1) The employer shall provide to the local office a written report of the results of all the employer's post-application recruitment efforts during the 30-day recruitment period; except that for job opportunities advertised in professional and trade, or ethnic publications, the written report shall be provided *no less than* 30 calendar days from the date of the publication of the employer's advertisement. The report of recruitment results shall:

(i) Identify each recruitment source by name;

(ii) State the number of U.S. workers responding to the employer's recruitment;

(iii) State the names, addresses, and provide resumes (if any) of the U.S. workers interviewed for the job opportunity and job title of the person who interviewed each worker; and

(iv) Explain, with specificity, the lawful job-related reasons for not hiring each U.S. worker interviewed.

(2) If, after the required recruitment period, the recruitment is not successful, the local office shall send the application, its prevailing wage finding, copies of all documents in the particular application file, and any additional appropriate information (such as local labor market data), to the Job Service agency's State office or, if authorized, to the regional Certifying Officer.

(k) A Job Service agency's State office which receives an application pursuant to paragraph (j)(2) of this section may add appropriate data or comments, and shall transmit the application promptly to the appropriate Certifying Officer.

§ 656.21a Applications for labor certifications for occupations designated for special handling.

(a) An employer shall apply for a labor certification to employ an alien as a college or university teacher or an alien represented to be of exceptional ability in the performing arts by filing, in duplicate, an *Application for Alien Employment Certification* form, and any attachments required by this Part, with the local Job Service office serving the area where the alien proposes to be employed.

(1) The employer shall set forth the following on the *Application for Alien Employment Certification* form, as appropriate, or in attachments:

(i) The employer shall submit a statement of the qualifications of the alien, signed by the alien.

(ii) The employer shall submit a full description of the job offer for the alien employment.

(iii) If the application involves a job offer as a college or university teacher, the employer shall submit documentation to show clearly that the employer selected the alien for the job opportunity pursuant to a competitive recruitment and selection process, through which the alien was found to be more qualified than any of the United States workers who applied for the job. For purposes of this paragraph (a)(1)(iii), evidence of the "competitive recruitment and selection process" shall include:

(A) A statement, signed by an official who has actual hiring authority, from the employer outlining in detail the complete recruitment procedure undertaken; and which shall set forth:

(*1*) The total number of applicants for the job opportunity;

(*2*) The specific lawful job-related reasons why the alien is more qualified than each U.S. worker who applied for the job; and

(*3*) A final report of the faculty, student, and/or administrative body making the recommendation or selection of the alien, at the completion of the competitive recruitment and selection process;

(B) A copy of at least one advertisement for the job opportunity placed in a national professional journal, giving the name and the date(s) of publication; and which states the job title, duties, and requirements;

(C) Evidence of all other recruitment sources utilized; and

(D) A written statement attesting to the degree of the alien's educational or professional qualifications and academic achievements.

(E) Applications for permanent alien labor certification which are filed after December 31, 1981, for job opportunities as college and university teachers, shall be filed within 18 months after a selection is made pursuant to a competitive recruitment and selection process.

(iv) If the application is for an alien represented to have exceptional ability in the performing arts, the employer shall document that the alien's work experience during the past twelve months did require, and the alien's intended work in the United States will require, exceptional ability; and shall submit:

(A) Documentation to show this exceptional ability, such as:

(*1*) Documents attesting to the current widespread acclaim and international recognition accorded to the alien, and receipt of internationally recognized prizes or awards for excellence;

(*2*) Published material by or about the alien, such as critical reviews or articles in major newspapers, periodicals, and/or trade journals (the title, date, and author of such material shall be indicated);

(*3*) Documentary evidence of earnings commensurate with the claimed level of ability;

(*4*) Playbills and starbillings;

(*5*) Documents attesting to the outstanding reputation of theaters, concert halls, night clubs, and other establishments in which the alien has appeared, or is scheduled to appear; and/or

(*6*) Documents attesting to the outstanding reputation of repertory companies, ballet troupes, orchestras, or

other organizations in which or with which the alien has performed during the past year in a leading or starring capacity; and

(B) A copy of at least one advertisement placed in a national publication appropriate to the occupation (and a statement of the results of that recruitment) which shall:

(1) Identify the employer's name, address, and the location of the employment, if other than the employer's location;

(2) Describe the job opportunity with particularity;

(3) State the rate of pay, which shall not be below the prevailing wage for the occupation, as calculated pursuant to § 656.40;

(4) Offer prevailing working conditions;

(5) State the employer's minimum job requirements;

(6) Offer training if the job opportunity is the type for which employers normally provide training; and

(7) Offer wages, terms, and conditions of employment which are no less favorable than those offered to the alien; and

(C) Documentation that unions, if customarily used as a recruitment source in the area or industry, were unable to refer equally qualified U.S. workers.

(2) The local Job Service office, upon receipt of an application for a college or university teacher or an alien represented to have exceptional ability in the performing arts, shall follow the application processing and prevailing wage determination procedures set forth in §§ 656.21 (d) and (e), and shall transmit a file containing the application, the local office's prevailing wage findings, and any other information it determines is appropriate, to the State Job Service agency office, or if authorized by the State office, to the appropriate Certifying Officer.

(3) If the local Job Service office transmits the file described in paragraph (a)(3) of this section to the State office, the State office shall follow the procedures set forth at § 656.21(k).

(b)(1) An employer shall apply for a labor certification to employ an alien (who has been employed legally as a nonimmigrant sheepherder in the United States for at least 33 of the preceding 36 months) as a sheepherder by filing an *Application for Alien Employment Certification* form, and any attachments required by this paragraph (b), directly with a Department of State Consular Officer or with a District Office of INS, not with a local or State office of a State Job Service agency, and not with an office of DOL. The documentation for such an application shall include:

(i) A completed *Application for Alien Employment Certification* form, including the Job Offer for Alien Employment, and the Statement of Qualification of Alien; and

(ii) A signed letter or letters from all U.S. employers who have employed the alien as a sheepherder during the immediately preceding 36 months, attesting that the alien has been employed in the United States lawfully and continuously as a sheepherder, for at least 33 of the immediately preceding 36 months.

(2) An Immigration Officer, or a Consular Officer, shall review the application and the letters attesting to the alien's previous employment as a sheepherder in the United States, and shall determine whether or not the alien and the employer(s) have met the requirements of this paragraph (b).

(i) The determination of the Immigration or Consular Officer pursuant to this paragraph (b) shall be conclusive and final. The employer(s) and the alien, therefore, may not make use of the review procedures set forth at §§ 656.26 and 656.27.

(ii) If the alien and the employer(s) have met the requirements of this paragraph (b), the Immigration or Consular Officer shall indicate on the *Application for Alien Employment Certification* form the occupation, the immigration or consular office which made the determination pursuant to this paragraph (b), and the date of the determination (see § 656.30 for the significance of this date). The Immigration or Consular Officer then shall forward promptly to the Administrator copies of the *Application for Alien Employment Certification* form, without the attachments.

(c) If an application for a college or university teacher, an alien represented to be of exceptional ability in the performing arts, or a sheepherder does not meet the requirements for an occupation designated for special handling under this § 656.21a, the application may be filed pursuant to § 656.21.

§ 656.22 Applications for labor certifications for Schedule A occupations.

(a) An alien or agent of an alien shall apply for a labor certification for a *Schedule A* occupation by filing an *Application for Alien Employment Certification* form in duplicate with a U.S. Consular office abroad or with an INS office in the United States, not with the Department of Labor or a State job service local office.

(b) An alien whose occupation is on *Schedule A* and who is seeking a third or sixth preference, as described in § 656.2(d)(1) (ii) and (iii), shall show evidence of prearranged employment by having an employer complete, and sign, the job offer description portion of the *Application for Alien Employment Certification* form. There is, however, no need for the employer to provide the other documentation required under this Part for non-*Schedule A* occupations.

(c) Aliens seeking labor certifications under Group I of *Schedule A* shall file as part of their labor certification applications documentary evidence of the following:

(1) Aliens seeking *Schedule A* labor certifications as physical therapists (§ 656.10(a)(1)) shall file as part of their labor certification applications a letter or statement signed by an authorized State physical therapy licensing official in the State of intended employment, stating that the alien is qualified to take that State's written licensing examination for physical therapists. Application for certification of permanent employment as a physical therapist may be made only pursuant to this § 656.22, and not pursuant to §§ 656.21, 656.21a, or § 656.23.

(2) Aliens seeking *Schedule A* labor certifications as physicians (or surgeons) (§ 656.10(a)(2)) shall file, as part of their labor certification applications, the following:

(i) Documentation required by § 656.20(d); and

(ii) A statement signed by the appropriate Regional Health Administrator of the Department of Health and Human Services (HHS) stating:

(A) That the job opportunity is located within a designated *Health Manpower Shortage Area* for the alien's medical (or surgical) specialty; or

(B) That the job opportunity is located within an area which has an insufficient number of physicians (or surgeons) in the alien's medical specialty.

(iii) Aliens seeking *Schedule A* labor certification as physicians (or surgeons), shall request the applicable shortage statements, described in paragraph (c)(2)(ii) of this section, by making a written request to the appropriate Regional Health Administrator of HHS (Addresses of appropriate HHS Regional Health Administrators are listed at § 656.61). The written request shall include:

(A) The alien's name;

(B) The alien's medical (or surgical) specialty;

(C) The complete name and address of the alien's intended employer; and

(D) The names of the county and State where the job opportunity is located.

(3) Aliens seeking *Schedule A* labor certifications as professional nurses (§ 656.10(a)(3)) shall file as part of their labor certification applications, documentation that the alien has passed the Commission on Graduates of Foreign Nursing Schools (CGFNS) Examination; or that the alien holds a full and unrestricted license to practice professional nursing in the State of intended employment. Application for certification of employment as a professional nurse may be made only pursuant to this § 656.22(a)(3), and not pursuant to §§ 656.21, 656.21a, or § 656.23.

(d) Aliens seeking labor certifications under Group II of *Schedule A* shall file as part of their labor certification applications documentary evidence testifying to the current widespread acclaim and international recognition accorded them by recognized experts in their field; and documentation showing that their work in that field during the past year did, and their intended work in the United States will, require exceptional ability. In addition, the aliens must file, as part of their labor certification applications, documentation from at least two of the following seven groups:

(1) Documentation of the alien's receipt of internationally recognized prizes or awards for excellence in the field for which certification is sought;

(2) Documentation of the alien's membership in international associations, in the field for which certification is sought, which require outstanding achievements of their members, as judged by recognized international experts in their disciplines or fields;

(3) Published material in professional publications about the alien, relating to the alien's work in the field for which certification is sought, which shall include the title, date, and author of such published material;

(4) Evidence of the alien's participation on a panel, or individually, as a judge of the work of others in the same or in an allied field of specialization to that for which certification is sought;

(5) Evidence of the alien's original scientific or scholarly research contributions of major significance in the field for which certification is sought;

(6) Evidence of the alien's authorship of published scientific or scholarly articles in the field for which certification is sought, in international professional journals or professional journals with an international circulation; and/or

(7) Evidence of the display of alien's work, in the field for which certification is sought, at artistic exhibitions in more than one country.

(e) Aliens seeking a labor certification under Group III of *Schedule A* shall file as part of their labor certification applications documentary evidence showing that they have been primarily engaged in the religious occupation or in working for the nonprofit religious organization for the previous two years, and they will be principally engaged (more than 50 percent of working time) in the United States in performing the religious occupation or working for the non-profit religious organization.

(f)(1) Aliens seeking labor certifications under Group IV of *Schedule A* shall meet, at the time of filing the application, the eligibility requirements of the Immigration and Nationality Act for an L-1 nonimmigrant visa classification as a manager or an executive. See 8 U.S.C. 1101(a)(15)(L); and 8 CFR 214.2(1). However, persons who are eligible for an L-1 visa on the basis of specialized knowledge, but not managerial or executive experience, do not meet the requirements for Group IV of *Schedule A*. The actual filing of an L-1 visa petition is not required.

(2) Aliens seeking labor certifications under Group IV of *Schedule A* shall file as part of their labor certification applications a written verification of employment statement, signed by an authorized officer of the international corporation or organization which will employ the alien in the United States. The written verification of employment statement shall set forth:

(i) The dates of the alien's employment with the international corporation or organization;

(ii) The name(s) of the components of that employer for which the alien has been and/or is being employed, inside and outside the United States;

(iii) Unless such information has been entered on the *Application for Alien Employment Certification* form, a description of the positions held by the alien within the international corporation or organization, and the dates the alien held each position; and

(iv) The dates the international corporation or organization was established and has been doing business in the United States prior to the submission of the application. The term "doing business" is defined in paragraph (d)(3) of *Schedule A* (§ 656.10(d)(3)).

(g) If the alien is requesting a preference described at § 656.2(d) and if the alien has filed an *Application for Alien Employment Certification* form at a Consular office, the Consular Officer shall review the form as appropriate and shall then forward the application to the INS in accordance with the procedures of the Department of State and the INS.

(h) An Immigration Officer, or Consular Officer (except as provided in paragraph (g) of this section), shall determine whether the alien has met the applicable requirements of this section and of *Schedule A* (§ 656.10), shall review the application and shall determine whether or not the alien is qualified for and intends to pursue the *Schedule A* occupation.

(1) The Immigration or Consular Officer may request an advisory opinion as to whether the alien is qualified for the *Schedule A* occupation from the Division of Labor Certifications, United States Employment Service, 601 D Street, NW., Washington, D.C. 20213.

(2) The *Schedule A* determination of the INS or Department of State shall be conclusive and final. The alien, therefore, may not make use of the review procedures set forth at § 656.26.

(i) If the alien qualifies for the occupation, the Immigration or Consular Officer shall indicate the occupation on the *Application for Alien Employment Certification* form. The Consular or Immigration Officer shall then promptly forward a copy of the *Application for Alien Employment Certification* form, without attachments, to the Administrator, indicating thereon the occupation, the Immigration or Consular office which made the *Schedule A* determination and the date of the determination (see § 656.30 for the significance of this date).

§ 656.23 Applications for labor certifications for *Schedule B* occupations; requests for waivers from *Schedule B*

(a) Occupations listed on *Schedule B* require little or no education or experience, and employees can be trained quickly to perform them satisfactorily. In addition, many of these occupations are entry jobs in their industries which offer opportunities for high school graduates and other U.S. workers who otherwise would have difficulty finding their first employment and gaining work experience. The Administrator has determined that there is generally a nationwide surplus of U.S. workers who are available for and who can qualify for *Schedule B* job opportunities which offer prevailing wages and working conditions.

(b) Some of the occupations on *Schedule B* are also often characterized by relatively low wages, long and irregular working hours, and poor working conditions which lead to excessive turnover. In most instances,

the Administrator has determined through past experience that the employment of aliens has failed to resolve such employment problems since the aliens, like U.S. workers, often quickly move to other jobs. This results in an adverse effect upon the wages and working conditions of U.S. workers who are employed in occupations which require similar education and experience.

(c) Therefore, the Administrator has determined that for occupations listed on *Schedule B* U.S. workers are generally available throughout the United States, and that the employment of aliens in *Schedule B* occupations will generally adversely affect the wages and working conditions of U.S. workers similarly employed.

(d) An individual employer or the employer's attorney or agent may petition the regional Certifying Officer for the geographic area in which the job opportunity is located for a *Schedule B* waiver on behalf of an alien with respect to a specific job opportunity. The petition shall be submitted to the local Job Service office serving the geographic area of intended employment. The petition shall include a written request for a *Schedule B* waiver, a completed *Application for Alien Employment Certification* form, and the following documentation:

(1) The documentation required by §§ 656.20(b), (c), (e), and (f) and 656.21; and

(2) Documentary verification, which the employer has obtained from the local job service office which contains the job opportunity in its administrative area, that the employer has had a job order for the same job on file with the same local office for a period of 30 calendar days and that the local office and the employer, using the job order, were not able to obtain a qualified U.S. worker.

(e) The regional Certifying Officer, using the procedures and standards set forth in § 656.24, shall either grant or deny the waiver and shall inform the employer of the determination in writing.

(f) If the waiver is granted, the regional Certifying Officer shall issue a labor certification.

(g) If the waiver is denied, the regional Certifying Officer shall follow the procedures set forth at paragraphs (c) through (g) of § 656.25.

§ 656.24 Labor certification determinations.

(a) If the labor certification presents a special or unique problem, the regional Certifying Officer may refer the application to the national Certifying Officer for determination. If the Administrator has directed that certain types of applications or specific applications be handled in the USES national office, the regional Certifying Officer shall refer such applications to the national Certifying Officer.

(b) The regional or national Certifying Officer, as appropriate, shall make a determination either to grant the labor certification or to issue a *Notice of Findings* on the basis of whether or not:

(1) The employer has met the requirements of this Part. However, where the Certifying Officer determines that the employer has committed harmless error, the Certifying Officer nevertheless may grant the labor certification, *Provided,* That the labor market has been tested sufficiently to warrant a finding of unavailability of and lack of adverse effect on U.S. workers. Where the Certifying Officer makes such a determination, the Certifying Officer shall document it in the application file.

(2) There is in the United States a worker who is able, willing, qualified and available for and at the place of the job opportunity according to the following standards:

(i) The Certifying Officer, in judging whether a U.S. worker is willing to take the job opportunity, shall look at the documented results of the employer's and the job service office's recruitment efforts, and shall determine if there are other appropriate sources of workers where the employer should have recruited or might be able to recruit U.S. workers.

(ii) The Certifying Officer shall consider a U.S. worker able and qualified for the job opportunity if the worker, by education, training, experience, or a combination thereof, is able to perform in the normally accepted manner the duties involved in the occupation as customarily performed by other U.S. workers similarly employed, except that, if the application involves a job opportunity as a college or university teacher, or for an alien whom the Certifying Officer determines to be currently of exceptional ability in the performing arts, the U.S. worker must be at least as qualified as the alien.

(iii) In determining whether U.S. workers are available, the Certifying Officer shall consider as many sources as are appropriate and shall look to the nationwide system of public employment offices (the "Job Service") as one source.

(iv) In determining whether a U.S. worker is available at the place of the job opportunity, the Certifying Officer shall consider U.S. workers living or working in the area of intended employment, and may also consider U.S. workers who are willing to move from elsewhere to take the job at their own expenses, or, if the prevailing practice among employers employing workers in the occupation in the area of intended employment is to pay such relocation expenses, at the employer's expense.

(3) The employment of the alien will have an adverse effect upon the wages and working conditions of U.S. workers similarly employed. In making this determination the Certifying Officer shall consider such things as labor market information, the special circumstances of the industry, organization, and/or occupation, the prevailing wage in the area of intended employment, and the prevailing working conditions, such as hours, in the occupation.

§ 656.25 Procedures following a labor certification determination.

(a) After making a labor certification determination, the Certifying Officer shall notify the employer in writing of the determination and shall send a copy of the notice to the alien.

(b) If a labor certification is granted, the Certifying Officer shall follow the document transmittal procedures set forth at § 656.28.

(c) If a labor certification is not granted, the Certifying Officer shall issue to the employer, with a copy to the alien, a *Notice of Findings,* as defined in § 656.50. The *Notice of Findings* shall:

(1) Contain the date on which the *Notice of Findings* was issued;

(2) State the specific bases on which the decision to issue the *Notice of Findings* was made;

(3) Specify a date, 35 calendar days from the date of the *Notice of Findings,* by which documentary evidence and/or written argument may be submitted to cure the defects or to otherwise rebut the bases of the determination, and advise that if the rebuttal evidence and/or argument have not been mailed by certified mail by the date specified:

(i) The *Notice of Findings* shall automatically become the final decision of the Secretary denying the labor certification;

(ii) Failure to file a rebuttal in a timely manner shall constitute a refusal to exhaust available administrative remedies; and

(iii) The administrative-judicial review procedure provided in § 656.26 shall not be available; and

(4) Quote the rebuttal procedures set forth at paragraphs (d), (e), and (f) of this section.

(d) Written rebuttal arguments and evidence may be submitted:

(1) By the employer; and

(2) By the alien, but only if the employer also has submitted a rebuttal.

(e)(1) Documentary evidence and/or written arguments to rebut all of the bases of a *Notice of Findings,* which may include evidence that the defects noticed therein have been cured, shall be mailed by certified mail on or before the date specified in the *Notice of Findings* to the Certifying Officer who issued the *Notice of Findings.*

(2) Failure to file a rebuttal in a timely manner shall constitute a failure to exhaust available administrative appellate remedies.

(3) All findings in the *Notice of Findings* not rebutted shall be deemed admitted.

(f) If a rebuttal, as described above, is submitted on time, the Certifying Officer shall review that evidence in relation to the evidence in the file, and shall then either grant or deny the labor certification pursuant to the standards set forth in § 656.24(b).

(g) The Certifying Officer shall send a *Final Determination* form to the employer, and shall send a copy to the alien.

(1) If a labor certification is granted, the Certifying Officer shall follow the document transmittal procedures set forth at § 656.28.

(2) If the labor certification is denied, the *Final Determination* form shall:

(i) Contain the date of the determination;

(ii) State the reasons for the determination;

(iii) Quote the request for review procedures at § 656.26 (a) and (b); and

(iv) Advise that, if a request for review is not made within the specified time, the denial shall become the final determination of the Secretary.

§ 656.26 Administrative-judicial review of denials of labor certification.

(a) If a labor certification is denied, a request for an administrative-judicial review of the denial may be made:

(1) By the employer; and

(2) By the alien, but only if the employer also requests such a review.

(b)(1) The request for review shall be in writing and shall be mailed by certified mail to the Certifying Officer who denied the application within 35 calendar days of the date of the determination, that is, by the date specified on the *Final Determination* form; shall clearly identify the particular labor certification determination from which review is sought; shall set forth the particular grounds for the request; and shall include all the documents which accompanied the *Final Determination* form.

(2) Failure to file a request for review in a timely manner shall constitute a failure to exhaust available administrative remedies.

(3) If the denial of labor certification involves an application for a job opportunity as a college or university teacher or an application on behalf of an alien represented to be of exceptional ability in the performing arts, the employer may designate the names and addresses of persons or organizations of specialized competence which the employer has asked to submit *amicus* briefs.

(4) The request for review, statements, briefs, and other submissions of the parties and *amicus curiae* shall contain only legal argument and only such evidence that was within the record upon which the denial of labor certification was based.

(c) Upon the receipt of a request for review, the Certifying Officer shall immediately assemble an indexed Appeal File:

(1) The Appeal File shall be in chronological order, shall have the index on top followed by the most recent document, and shall have numbered pages. The Appeal File shall contain the request for review, the complete application file, and copies of all the written material, such as pertinent parts and pages of surveys and/or reports upon which the denial was based.

(2) The Certifying Officer shall send the Appeal File to the Chief Administrative Law Judge, Office of Administrative Law Judges, Suite 700—Vanguard Building, 1111 20th Street NW., Washington, D.C. 20036.

(3) In denials involving college and university teachers and aliens represented to be of exceptional ability in the performing arts, two additional copies of the Appeal File shall be sent to the Chief Administrative Law Judge.

(4) The Certifying Officer shall send a copy of the Appeal File to the Solicitor of Labor, Attn: Associate Solicitor for Employment and Training Legal Services, Suite N2101—Frances Perkins Bldg., 200 Constitution Avenue NW., Washington, D.C. 20210.

(5) Unless the certification was denied by the national Certifying Officer, the Certifying Officer shall send a copy of the Appeal File to the Administrator.

(6) The Certifying Officer shall send copies of the index to the Appeal File to the employer and to the alien. The Certifying Officer shall afford the employer and the alien the opportunity to examine the complete Appeal File at the office of the Certifying Officer, for the purpose of satisfying the employer and the alien as to the contents. The employer and/or the alien may furnish or suggest directly to the Administrative Law Judge the addition of any documentation which is not in the Appeal File, but which was submitted prior to the issuance of the *Final Determination* form. The employer and/or the alien shall submit such documentation in writing, and shall send a copy to the Associate Solicitor for Employment and Training Legal Services, Office of the Solicitor, U.S. Department of Labor, Washington, D.C. 20210.

(d) An administrative Law Judge, designated by the Chief Administrative Law Judge, shall afford all parties, including the Solicitor, 21 days to submit or decline to submit any appropriate Statement of Position or legal brief. The Department of Labor shall be represented solely by attorneys within the Office of the Solicitor of Labor. In the cases of denials involving college and university teachers and aliens represented to be of exceptional ability in the performing arts, if the employer has designated a person or organization which the employer has asked to submit an *amicus* brief, the Administrative Law Judge shall afford the person or organization 21 days to submit an *amicus* brief. Briefs, statements, and *amicus* briefs submitted pursuant to this paragraph shall be deemed timely if either mailed or delivered to the Administrative Law Judge on or before the end of the 21-day period set forth in this paragraph; and shall be consistent with the requirements of paragraph (b)(4) of this section.

(e) The Administrative Law Judge shall review the denial of labor certification on the basis of the record upon which the denial of labor certification was made, the request for review and any legal briefs submitted and shall:

(1) Affirm the denial of the labor certification; or

(2) Direct the Certifying Officer to grant the certification; or

(3) Remand the matter to the Certifying Officer for further consideration or factfinding and determination; or

(4) Direct that a hearing be held on the case.

(f) The Administrative Law Judge shall notify the employer, the alien, the Certifying Officer, and the Solicitor of the determination, and shall return the record to the Certifying Officer unless the case has been set for hearing.

(g) If the case is remanded, the Certifying Officer shall do the additional factfinding or consideration, make a new determination, and issue a new *Final Determination* form.

(h) If the case has been set for hearing, the Administrative Law Judge shall notify the employer, the alien, the Certifying Officer and the Solicitor:

(1) Of the date, time, and place of the hearing; and

(2) That the hearing may be rescheduled upon written request and for good cause shown.

(i) If a labor certification has been ordered granted, the Certifying Officer shall grant the certification and shall follow the document transmittal procedures set forth at § 656.28.

§ 656.27 Hearings.

(a) If a hearing has been ordered by the Administrative Law Judge pursuant to § 656.26 (e)(4) of this Part, the Administrative Law Judge;

(1) May reschedule the hearing, as appropriate;

(2) Shall regulate the course of the hearing;

(3) Shall assure that all relevant issues are considered;

(4) Shall rule on the introduction of evidence and testimony;

(5) Shall rule on appropriate motions; and

(6) Shall take any other action, consistent with due process, necessary to insure an orderly hearing.

(b) The testimony at the hearing shall be recorded and transcribed except to the extent the substance thereof is stipulated for the record.

(c) The Department of Labor shall be represented by the Solicitor of Labor.

(d) The parties shall be afforded the opportunity to present, examine, and cross-examine witnesses.

(e) The Administrative Law Judge may elicit testimony from witnesses, but shall not act as advocate for any party.

(f) The Administrative Law Judge may receive and make part of the record documentary evidence offered by any party. Copies thereof shall be made available to the other interested parties by the party submitting the evidence.

(g) The case record, or any portion thereof, shall be available for inspection and copying by any party at, prior to, or subsequent to the hearing upon request. Special procedures may be used for disclosure of medical and psychological records such as disclosure to a physician designated by the individual.

(h) The hearing shall be conducted in accordance with sections 5–8 of the Administrative Procedures Act, 5 U.S.C. 553 *et seq.*

(i) Technical rules of evidence shall not apply, but rules or principles designed to assure production of the most credible evidence available, and to subject testimony to test by cross-examination, shall be applied where reasonably necessary by the Administrative Law Judge conducting the hearing. The Administrative Law Judge may exclude irrelevant, immaterial, or undully repetitious evidence.

(j) The general provisions governing discovery as provided in the Rules of Civil Procedure for the United States District Court, Title V, 28 U.S.C., Rules 26 through 37, may be made applicable in any hearing conducted under this part to the extent that the Administrative Law Judge concludes that their use would promote the efficient advancement of the hearing.

(k) When a public officer is a respondent in a hearing in the officer's official capacity and during its pendency dies, resigns, or otherwise ceases to hold office, the proceeding does not abate and the officer's successor shall be automatically substituted as a party. Proceedings following the substitution shall be in the name of the substituted party, but any misnomer not affecting the substantive rights of the parties shall be disregarded. An order of substitution may be entered at any time, but the omission to enter such an order shall not affect the substitution.

(l) The Administrative Law Judge shall have jurisdiction to decide all issues of fact and related issues of law, but shall not have jurisdiction to decide upon the validity of Federal statutes or regulations.

(m) The Administrative Law Judge may rule:

(1) That the case is improperly before the Administrative Law Judge, that is, that there is a lack of jurisdiction over the case;

(2) That the request for review has been withdrawn in writing;

(3) That reasonable cause exists to believe that the request for review has been abandoned or that repeated requests for re-scheduling are arbitrary and for the purpose of unduly delaying or avoiding a hearing; or

(4) Render such other rulings as are appropriate to the issues in question.

(n) The Administrative Law Judge shall prepare a written decision and order. The decision shall state its legal and/or factual bases. The Administrative Law Judge shall send a copy of the decision and order to the employer, the alien, the Certifying Officer, the Administrator, and the Solicitor. The Administrative Law Judge may order the labor certification granted, affirm the denial of the certification, or remand the case to the Certifying Officer for further fact-finding.

(o) Except when a case is remanded to the Certifying Officer for further fact-finding, the decision of the Administrative Law Judge shall be the final decision of the Secretary of Labor.

§ 656.27a Published decisions.

(a) From time to time, the Office of Administrative Law Judges shall designate decisions of an Administrative Law Judge (or previous decisions of Hearing Officers) under §§ 656.26 and/or 656.27 to be printed and published. The Office of Administrative Law Judges will arrange to make such decisions available for sale to the general public.

(b) The Administrator shall provide to all Certifying Officers copies of all decisions published pursuant to paragraph (a) of this section.

§ 656.28 Document transmittal following the grant of a labor certification.

If a labor certification is granted, except for labor certifications for occupations listed on *Schedule A* (§ 656.10) and for employment as a sheepherder pursuant to § 656.21a(b), the Certifying Officer shall:

(a) If the employer already has indicated in writing that it will file a petition for a preference described at § 656.2(d)(1), send the certified application containing the official labor certification stamp, supporting documents, and complete *Final Determination* form to the employer or, if appropriate, to the employer's agent. The *Final Determination* form shall indicate that the employer should submit all the documents to the appropriate INS office.

(b) If the employer has not indicated in writing whether or not it will, or that it will not, file a petition for a preference described at § 656.2(d)(1);

(1) If the alien is abroad and non-preference numbers are currently available, send the certified application containing the offical labor certification stamp, supporting documents, and complete *Final Determination* form to the appropriate Consular office;

(2) If the alien is in the U.S. and preference or non-preference numbers are currently available, send the certified application containing the official labor certification stamp, supporting documentation, and complete *Final Determination* form to the employer, or, if appropriate, to the employer's agent. The *Final Determination* form shall indicate that the employer should submit all the documents to the appropriate INS office; and

(3) Whether the alien is abroad or in the U.S., if preference or non-preference numbers are not currently available, send the certified application containing

the offical labor certification stamp, supporting documentation, and complete *Final Determination* form to the employer, or, if appropriate, to the employer's agent, indicating that the employer should file all the documents with the appropriate INS office.

§ 656.29 Filing of a new application after the denial of a labor certification.

(a) A new application for labor certification by the same employer involving the same occupation may be filed at any time after the expiration of 6 months from the date of a denial of certification by the Certifying Officer, except that, if the certification was denied solely because the wage or salary offered was below the prevailing wage, the employer may reapply immediately pursuant to §§ 656.21, 656.21a, or 656.23, as appropriate.

(b) An alien who is denied a labor certification for a *Schedule A* occupation, except for employment as a physical therapist or as a professional nurse, may at any time have an employer file for a labor certification on the alien's behalf pursuant to § 656.21. Labor certifications for professional nurses and for physical therapists shall be considered only pursuant to §§ 656.10 and 656.22.

§ 656.30 Validity of and invalidation of labor certifications.

(a) Except as provided in paragraph (d) of this section, a labor certification is valid indefinitely. Labor certifications for Household Domestic Service Workers and teachers which were granted under the previous regulations at 29 CFR Part 60 and which lapsed after one year, shall be deemed automatically revalidated on the effective date of this Part.

(b)(1) Labor certifications involving job offers shall be deemed validated as of the date of the local job service office date stamped the application; and

(2) Labor certifications for *Schedule A* occupations shall be deemed validated as of the date the applications were dated by the Immigration or Consular Officer.

(c)(1) A labor certification for a *Schedule A* occupation is valid only for the occupation set forth on the *Application for Alien Employment Certification* form and throughout the United States unless the certification contains a geographic limitation.

(2) A labor certification involving a specific job offer is valid only for the particular job opportunity and for the area of intended employment stated on the *Application for Alien Employment Certification form.*

(d) After issuance labor certifications are subject to invalidation by the INS or by a Consul of the Department of State upon a determination, made in accordance with those agencies, procedures or by a Court, of fraud or willful misrepresentation of a material fact involving the labor certification application. If evidence of such fraud or willful misrepresentation becomes known to a Regional Administrator, Employment and Training Administration or to the Administrator, the Regional Administrator or Administrator, as appropriate, shall notify in writing the INS or State Department, as appropriate. A copy of the notification shall be sent to the regional or national office, as appropriate, of the Department of Labor's Office of Inspector General.

(e) Certifying Officers shall issue duplicate labor certifications only upon the written request of a Consular or Immigration Officer. Certifying Officers shall issue such duplicate certifications only to the Consular or Immigration Officer who submitted the written request. An alien, employer, or an employer or alien's agent, therefore, may petition an Immigration or Consular Officer to request a duplicate from a Certifying Officer.

§ 656.31 Labor certification applications involving fraud or willful misrepresentation.

(a) If possible fraud or willful misrepresentation involving a labor certification is discovered prior to a final labor certification determination, the Certifying Officer shall refer the matter to the INS for investigation, shall notify the employer in writing, and shall send a copy of the notification to the alien, and to the Department of Labor's Office of Inspector General. If 90 days pass without the filing of a criminal indictment or information, the Certifying Officer shall continue to process the application.

(b) If it is learned that an application is the subject of a criminal indictment or information filed in a Court, the processing of the application shall be halted until the judicial process is completed. The Certifying Officer shall notify the employer of this fact in writing and shall send a copy of the notification to the alien, and to the Department of Labor's Office of Inspector General.

(c) If a Court finds that there was no fraud or willful misrepresentation, or if the Department of Justice decides not to prosecute, the Certifying Officer shall not deny the labor certification application on the grounds of fraud or willful misrepresentation. The application, of course, may be denied for other reasons pursuant to this Part.

(d) If a Court, the INS or the Department of State determines that there was fraud or willful misrepresentation involving a labor certification application, the application shall be deemed invalidated, processing shall be terminated, a notice of the termination and the reason therefor shall be sent by the Certifying Officer to the employer, and a copy of the notification shall be sent by the Certifying Officer to the alien, and to the Department of Labor's Office of Inspector General.

§ 656.32 Fees for services and documents.

(a) No Department of Labor or State job service agency employee shall charge a fee in connection with the filing, determination, reconsideration, or review of applications for labor certification. Such employees, on request, shall advise applicants on the completion of applications and on procedures set forth in this Part without charge. No charge shall be made for the issuance or transmission of a labor certification.

(b) The Department of Labor's regulations under the Freedom of Information Act at 29 CFR Part 70 on the Examination and Copying of Labor Department Documents provide that fees may be charged for special searching and copying services. These fees shall be applicable to requests to the Department for copies of documents in the custody of the Department which were produced pursuant to this Part, except for official copies of labor certification documents.

Subpart D—Determination of Prevailing Wage

§ 656.40 Determination of prevailing wage for labor certification purposes.

(a) Whether the wage or salary stated in a labor certification application involving a job offer equals the prevailing wage as required by § 656.21(b)(3), shall be determined as follows:

(1) If the job opportunity is in an occupation which is subject to a wage determination in the area under the Davis-Bacon Act, 40 U.S.C. 276a et seq., 29 CFR Part 1, or the McNamara-O'Hara Service Contract Act, 41 U.S.C. 351 et seq., 29 CFR Part 4, the prevailing wage shall be at the rate required under the statutory determination. Certifying Officers shall request the assistance of the DOL Employment Standards Adminstration wage specialists if they

need assistance in making this determination.

(2) If the job opportunity is in an occupation which is not covered by a prevailing wage determined under the Davis-Bacon Act or the McNamara-O'Hara Service Contract Act, the prevailing wage for labor certification purposes shall be:

(i) The average rate of wages; that is, the rate of wages to be determined, to the extent feasible, by adding the wage paid to workers similarly employed in the area of intended employment and dividing the total by the number of such workers. Since it is not always feasible to determine such an average rate of wages with exact precision, the wage set forth in the application shall be considered as meeting the prevailing wage standard if it is within 5 percent of the average rate of wages; or

(ii) If the job opportunity is covered by a union contract which was negotiated at arms-length between a union and the employer, the wage rate set forth in the union contract shall be considered as not adversely affecting the wages of U.S. workers similarly employed, that is, it shall be considered the "prevailing wage" for labor certification purposes.

(b) For purposes of this section, "similarly employed" shall mean "having substantially comparable jobs in the occupational category in the area of intended employment," except that, if no such workers are employed by employers other than the employer applicant in the area of intended employment, "similarly employed" shall mean:

(1) "Having jobs requiring a substantially similar level of skills within the area of intended employment"; or

(2) If there are no substantially comparable jobs in the area of intended employment, "having substantially comparable jobs with employers outside of the area of intended employment."

(c) A prevailing wage determination for labor certification purposes made pursuant to this section shall not permit an employer to pay a wage lower than that required under any other Federal, State or local law.

Subpart E—Definitions

§ 656.50 Definitions, for purposes of this Part, of terms used in this Part.

"Act" means the Immigration and Nationality Act, as amended, 8 U.S.C. 1101 *et seq.*

"Administrative Law Judge" means an official appointed pursuant to 5 U.S.C. 3105.

"Administrator" means the chief official of the United States Employment Service or the Administrator's designee.

"Agent" means a person who is not an employee of an employer, and who has been designated in writing to act on behalf of an alien or employer in connection with an application for labor certification.

"Application" means an *Application for Alien Employment Certification* form and any other documents submitted by an alien and/or employer (or their agents) in applying for a labor certification under this Part.

"Area of intended employment" means the area within normal commuting distance of the place (address) of intended employment. If the place of intended employment is within a Standard Metropolitan Statistical Area (SMSA), any place within the SMSA is deemed to be within normal commuting distance of the place of intended employment.

"Assistant Secretary" means the Assistant Secretary of Labor for Employment and Training, the chief official of the Employment and Training Administration.

"Attorney" means any person who is a member in good standing of the bar of the highest court of any State, Possession, Territory, or Commonwealth of the United States, or the District of Columbia, and who is not under any order of any court or of the Board of Immigration Appeals suspending, enjoining, restraining, disbarring, or otherwise restricting him or her in the practice of law.

"Attorney General" means the chief official of the U.S. Department of Justice or the designee of the Attorney General.

"Certifying Officer" means a Department of Labor official who makes determinations about whether or not to grant applications for labor certifications:

(1) A regional Certifying Officer designated by a Regional Administrator, Employment and Training Administration (RA) makes such determinations in a regional office of the Department;

(2) A regional Certifying Officer designated by the Administrator makes such determinations for the Virgin Islands;

(3) A national Certifying Officer makes such determinations in the national office of the USES.

(4) The addresses of the regional Certifying Officers are set forth in § 656.60 of this Part.

"Chief Administrative Law Judge" means the chief official of the Office of Administrative Law Judges of the Department of Labor.

"Consular Officer" means an official of the U.S. Department of State who handles applications for labor certifications pursuant to this Part.

"Employment" means permanent full-time work by an employee for an employer other than oneself. For purposes of this definition an investor is not an employee.

"Employment and Training Administration (ETA)" means the agency within the Department of Labor (DOL) which includes the United States Employment Service (USES).

"Employer" means a person, association, firm, or a corporation which currently has a location within the United States to which U.S. workers may be referred for employment, and which proposes to employ a full-time worker at a place within the United States or the authorized representative of such a person, association, firm, or corporation. For purposes of this definition an "authorized representative" means an employee of the employer whose position or legal status authorizes the employee to act for the employer in labor certification matters.

"*Final Determination* form" means the form used by the Certifying Officer to notify employers (and aliens) of labor certification determinations (and was formerly known as the "*Determination and Transmittal* form").

"HHS" means the U.S. Department of Health and Human Services.

"Immigration and Naturalization Service (INS)" means the agency within the U.S. Department of Justice which administers that Department's principal functions under the Act.

"Immigration Officer" means an official of the Immigration and Naturalization Service (INS) who handles applications for labor certifications pursuant to this Part.

"INS", see Immigration and Naturalization Service.

"Job opportunity" means a job opening for employment at a place in the United States to which U.S. workers can be referred.

"Labor certification" means the certification to the Secretary of State and to the Attorney General of the determination by the Secretary of Labor pursuant to section 212(a)(14) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(14)):

(1) That there are not sufficient U.S. workers who are able, willing, qualified, and available at the time of an alien's application for a visa and admission to the United States and at the place where the alien is to perform the work; and

(2) That the employment of the alien will not adversely affect the wages and

working conditions of similarly employed U.S. workers.

"Local Job Service office" and "local office" mean a full-time office of a State Job Service agency (also known as a State employment service), which is maintained for the purpose of providing placement and other services of the Job Service System, and which serves a particular geographic area within a State. Unless specified otherwise in this Part, the local office performing the functions required by this Part shall be the local Job Service office serving the area where the job opportunity is located.

"*Notice of Findings*" means a notice which sets for the bases upon which a Certifying Officer intends to deny a labor certification unless the bases are satisfactorily rebutted.

"Occupation designated for special handling" means an occupation, described at § 656.21a, for which DOL has determined that special labor market tests are appropriate.

"Physicians (and/or surgeons)" means persons who apply the art and science of medicine or surgery primarily in patient care to the diagnosis, prevention, and treatment of human diseases, disorders of the mind, and pregnancy. This definition includes persons practicing medicine, surgery, osteopathy, psychiatry, and opthamology. The physician or surgeon may specialize in treating a specific area of the body, or a particular disease, sex, or age group.

"Professional nurses" means persons who apply the art and science and nursing, which reflects comprehension of principles derived from the physical, biological, and behavioral sciences. Professional nursing generally includes the making of clinical judgements concerning the observation, care, and counsel of persons requiring nursing care; and administering of medicines and treatments prescribed by the physician or dentist; the participation in activities for the promotion of health and the prevention of illness in others. A program of study for professional nurses generally includes theory and practice in clinical areas such as: obstetrics, surgery, pediatrics, psychiatry, and medicine. This definition includes only those occupations within Occupational Group No. 075 of the *Dictionary of Occupational Title* (4th ed.)

"Regional Administrator, Employment and Training Administration (RA)" means the chief official of the Employment and Training Administration (ETA) in a Department of Labor (DOL) regional office.

"Regional Health Administrator" means the chief offical of the Public Health Service Regional Office, Department of HHS, in each HHS region, or the Regional Health Administrator's designee. The addresses of the appropriate Regional Health Administrators for *Schedule A* employment as a physician (or surgeon) are listed at § 656.61.

"*Schedule A*" means the list of occupations set forth at § 656.10, with respect to which the Administrator has determined that there are not sufficient United States workers who are able, willing, qualified and available, and that the employment of aliens in such occupations will not adversely affect the wages and working conditions of United States workers similarly employed.

"*Schedule B*" means the list of occupations set forth in § 656.11, with respect to which the Administrator has determined that there are generally sufficient United States workers who are able, willing, qualified and available, and that the employment of aliens in such occupations will generally adversely affect the wages and working conditions of the United States workers similarly employed.

"Secretary" means the Secretary of Labor, the chief official of the U.S. Department of Labor, or the Secretary's designee.

"Secretary of Health and Human Services (HHS)" means the chief official of the U.S. Department of Health and Human Services (HHS) or the Secretary of HHS' designee.

"Secretary of State" means the chief official of the U.S. Department of State or the Secretary of State's designee.

"United States," when used in a geographic sense, means the fifty States, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, and Guam.

"United States Employment Service (USES)" means the agency of the U.S. Department of Labor, established under the Wagner-Peyser Act of 1933 (29 U.S.C. 49 *et seq.*), which is charged with administering the national system of public employment offices (the "Job Service (JS)") and with carrying out the functions of the Secretary under section 212(a)(14) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(14)).

"United States worker" means any worker who, whether U.S. citizen or alien, is legally permitted to work permanently within the United States.

Subpart F—Addresses

§ 656.60 Addresses of Department of Labor regional offices.

Region I (Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont): Room 1707, J. F. Kennedy Federal Building, Government Center, Boston, MA 02203.

Region II (New York, New Jersey, and Puerto Rico): Room 3713, 1515 Broadway, New York, NY 10036.

Region III (Delaware, Maryland, Pennsylvania, Virginia, West Virginia and the District of Columbia): P.O. Box 8796, Philadelphia, PA 19101 (3535 Market Street. Do not use street address for mailing purposes.)

Region IV (Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee): Room 405, 1371 Peachtree Street, NE., Atlanta, GA 30309.

Region V (Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin): 230 S. Dearborn Street, Chicago, IL 60604.

Region VI (Arkansas, Louisiana, New Mexico, Oklahoma, and Texas): Room 317, 555 Griffin Square Building, Griffin and Young Streets, Dallas, TX 75202.

Region VII (Iowa, Kansas, Missouri, and Nebraska): Room 1000, Federal Building, 911 Walnut Street, Kansas City, MO 64106.

Region VIII (Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming): 1961 Stout Street, Denver, CO 80202.

Region IX (Arizona, California, Guam, Hawaii, and Nevada): Box 36084, Federal Office Building, 450 Golden Gate Avenue, San Francisco, CA 94102.

Region X (Alaska, Idaho, Oregon, and Washington): Room 1145 Federal Office Building, 909 First Avenue, Seattle, WA 98174..

Virgin Islands—First National City Bank Building, Veterans Drive, St. Thomas, V.I. 00801.

§ 656.61 Addresses of Regional Health Administrators, Public Health Service Regional Offices, of HHS.

For the purposes of § 656.22(c)(2) the addresses of the appropriate Regional Health Administrators for each State are as follows:

Region I (Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont): Regional Health Administrator, Department of HHS, J. F. Kennedy Federal Building, Government Center, Boston, MA 02203.

Region II (New York, New Jersey, Puerto Rico, and the U.S. Virgin Islands): Regional Health Administrator, Department of HHS, 26 Federal Plaza, New York, NY 10007.

Region III (Delaware, the District of Columbia, Maryland, Pennsylvania, Virginia, and West Virginia): Regional Health Administrator, Department of HHS, P.O. Box 13716, (3535 Market Street. Do no use street address for mailing purposes.), Philadelphia, PA 19101.

Region IV (Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee): Regional Health

Administrator, Department of HHS, 101 Marietta Tower, Atlanta, GA 30323.

Region V (Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin): Regional Health Administrator, Department of HHS, 300 South Wacker Drive, Chicago, IL 60606.

Region VI (Arkansas, Louisiana, New Mexico, Oklahoma, and Texas): Regional Health Administrator, Department of HHS, 1200 Main Tower Building, Dallas, TX 75202.

Region VII (Iowa, Kansas, Missouri, and Nebraska): Regional Health Administrator, Department of HHS, Federal Office Building, 601 East 12th Street, Kansas City, MO 64106.

Region VIII (Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming): Regional Health Administrator, Department of HHS, Federal Office Building, 1961 Stout Street, Denver, CO 80294.

Region IX (Arizona, California, Guam, Hawaii, and Nevada): Regional Health Administrator, Department of HHS, Federal Office Building, 50 United Nations Plaza, San Francisco, CA 94102.

Region X (Alaska, Idaho, Oregon, and Washington): Regional Health Administrator, Department of HHS, Arcade Plaza Building, 1321 Second Avenue, Seattle, WA 98101.

§ 656.62 Locations of Immigration and Naturalization Service Offices.

For the purposes of §§ 656.21a(b) and 656.22, the locations of INS offices in the United States are listed at 8 CFR 100.4

Signed at Washington, D.C., this 16th day of December 1980.

Ray Marshall,

Secretary of Labor.

[FR Doc. 80-39513 Filed 12-18-80; 8:45 am]

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Part X

Environmental Protection Agency

Benzene Emissions From Benzene Storage Vessels; Proposed Rule and Notice of Public Hearing

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 61

[AD-FRL-1609-8]

Benzene Emissions From Benzene Storage Vessels; National Emission Standard for Hazardous Air Pollutants; Hearing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed Rule and Notice of Public Hearing.

SUMMARY: The proposed standard would limit benzene emissions from each new and existing storage vessel with a capacity greater than 4 cubic meters used to store pure benzene. Each new and existing benzene storage vessel would be required to have a fixed roof in combination with an internal floating roof that rests on the liquid surface inside the storage vessel. Each storage vessel would also have to be equipped with a liquid-mounted primary seal and a continuous secondary seal. Periodic inspections of the internal floating roof and seals would be required to help ensure that the equipment is being properly operated and maintained.

The proposed standard implements Section 112 of the Clean Air Act and is based on the Administrator's determination of June 8, 1977, that benzene presents a significant carcinogenic risk to human health as a result of benzene emissions to the atmosphere from one or more stationary source categories and is, therefore, a hazardous air pollutant. The intent of the standard is to protect the public health with an ample margin of safety.

A public hearing will be held to provide interested persons an opportunity for oral presentation of data, views, or arguments concerning the proposed standard for benzene storage vessels.

DATES: *Comments.* Comments must be received on or before March 12, 1981.

Public Hearing. A public hearing will be held on February 10, 1981 beginning at 9:00 a.m.

Request to Speak at Hearing. Persons wishing to present oral testimony must contact EPA by February 3, 1981.

ADDRESSES: *Comments.* Comments should be submitted (in duplicate, if possible) to: Central Docket Section (A-130), Attention: Docket No. A-80-14, U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460.

Public Hearing. The public hearing will be held at EPA Administration Bldg. Auditorium, Research Triangle Park, N.C. Persons wishing to present oral testimony should notify Ms. Naomi Durkee, Emission Standards and Engineering Division (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541-5331.

Background Information Document. The background information document for the proposed standard is contained in the docket and may be obtained from the U.S. EPA library (MD-35), Research Triangle Park, North Carolina 27711, telephone number (919) 541-2777. Please refer to "Benzene Emissions from Benzene Storage Vessels—Background Information for Proposed Standards," (EPA-450/3-80-034a). Other pertinent documents that may be obtained from this address include: "Assessment of Health Effects of Benzene Germane to Low Level Exposures," "Assessment of Human Exposures to Atmospheric Benzene," and "Carcinogen Assessment Group's Report on Population Risk to Ambient Benzene Exposures."

Docket. Docket No. A-80-14, which contains supporting information used in developing the proposed standard, is available for public inspection and copying between 8:00 a.m. and 4:00 p.m., Monday through Friday, at EPA's Central Docket Section, West Tower Lobby, Gallery 1, Waterside Mall, 401 M Street, S.W., Washington, D.C. 20460. Supplementary information on the regulation of benzene emissions can be obtained from the Maleic Anhydride Docket No. OAQPS-79-3, which is available for public review at EPA's Central Docket Section. A fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Wyatt, Emission Standards and Engineering Division (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541-5477.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, under the authority of Section 112(b)(1)(B) of the Clean Air Act (as amended), the Administrator is proposing a national emission standard for benzene emissions from benzene storage vessels. The proposed standard has been developed consistent with the EPA "Policy and Procedures for Identifying, Assessing, and Regulating Airborne Substances Posing a Risk of Cancer" (44 FR 58642) proposed on October 10, 1979, although these policy and procedures are not final. As prescribed in Section 112(b)(1)(A) of the Act, the proposal of this standard was preceded by the Administrator's determination that benzene is a hazardous air pollutant as defined in Section 112(a)(1) of the Act. Accordingly, the Administrator revised the list of hazardous air pollutants on June 8, 1977, by adding benzene (42 FR 29332).

A background information document has been prepared that contains information on benzene storage vessels, the available technologies for controlling benzene emissions from these storage vessels, and an analysis of the environmental, energy, economic, and inflationary impacts of the regulatory alternatives. Information on the health effects of benzene is contained in documents prepared by or for EPA entitled the "Assessment of Health Effects of Benzene Germane to Low Level Exposure," the "Assessment of Human Exposures to Atmospheric Benzene," and the "Carcinogen Assessment Group's Report on Population Risk to Ambient Benzene Exposures." The information contained in these documents is summarized in this preamble. All references used for the information contained in the preamble can be found in one of the four documents, except as noted.

Proposed Standard

The proposed standard would apply to each new and existing storage vessel used to store benzene with a specific gravity within the range of specific gravities specified for Industrial Grade benzene in ASTM-D-836-77, and which has a storage capacity greater than 4 cubic meters. It would not apply to storage vessels used for storing benzene at coke oven byproduct facilities because a separate standard is being developed for these storage vessels.

The proposed standard would reduce benzene emissions from the affected storage vessels by requiring that each storage vessel have a fixed roof in combination with an internal floating roof that rests on the liquid surface. It would also require that each internal floating roof have a liquid-mounted primary seal and a continuous secondary seal. Equipment demonstrated to be equivalent in terms of emissions reduction would also be allowed.

To help ensure that the control equipment is being properly operated and maintained, periodic inspections of the control equipment would be required. The internal floating roof, primary seal, and secondary seal would have to be inspected from inside each storage vessel prior to filling of the vessel and at least once every 5 years thereafter. A floating roof having defects or a seal having holes or tears would have to be repaired before the storage vessel could be filled with benzene.

The internal floating roof and the secondary seal would also have to be inspected through roof hatches on the fixed roof at least once every 3 months. As viewed through the roof hatches, if there were product accumulated on or visible defects in the internal floating roof, visible gaps between the secondary seal and the wall of the storage vessel, or holes, tears, or other openings in the secondary seal or the seal fabric, these items would have to be repaired or replaced. All repairs would have to be made within 30 days or the storage vessel would have to be emptied.

Each existing source would have to comply with the standard within 90 days of its effective date, unless a waiver of compliance is obtained. A waiver of compliance could be granted by the Administrator for no more than 2 years from the promulgation date.

Summary of Health, Environmental, Energy, and Economic Impacts

Approximately 500 existing benzene storage vessels would be affected by the standard. These storage vessels are located at 143 facilities including 62 benzene producing facilities (e.g., refineries), 77 benzene consuming facilities (e.g., chemical plants), and 4 bulk storage terminals.

The proposed standard would reduce the national benzene emissions from existing storage vessels from about 2,200 megagrams per year (Mg/year) to about 510 Mg/year. As a result of this emission reduction, the lifetime risk to the most exposed population would be reduced from a range of 1.5×10^{-4} to 1.0×10^{-3} to a range of 2.7×10^{-5} to 1.9×10^{-4}. The projected incidence of excess leukemia deaths resulting from exposure to benzene emissions from existing benzene storage vessels would be reduced from a range of 0.12 to 0.82 deaths per year to a range of 0.03 to 0.20 deaths per year for the 85 million people estimated to live within 20 kilometers of existing benzene storage vessels. A reduction in other health effects associated with benzene exposure (such as ctyopenia, aplastic anemia, and chromosomal aberrations) is also expected.

The proposed standard would also significantly reduce the emissions from new benzene storage vessels. By 1985 there will be an estiamted 168 new benzene storage vessels in use at 49 new facilities. Implementation of the proposed standard would reduce the 1985 emissions from new storage vessels from about 930 megagrams (Mg) to about 170 Mg. This emissions reduction would reduce the lifetime risk to the most exposed population from a range of 1.5×10^{-4} to 1.0×10^{-3} to a range of 2.7×10^{-5} to 1.9×10^{-4}. The projected incidence of excess leukemia deaths in 1985 resulting from benzene emissions from new benzene storage vessels would be reduced from a range of 0.05 to 0.34 deaths to a range of 0.01 to 0.07 deaths. The 1985 emissions from both new and currently existing benzene storage vessels would be reduced from 3,130 Mg to 680 Mg with the adoption of the proposed standard for benzene storage vessels.

The proposed standard would reduce the national benzene emissions with no potential continuous adverse impacts on other aspects of the environment. In addition, there would be no adverse energy impacts associated with the proposed standard.

The capital investment required for an existing model plant to comply with the proposed standard would range from about $33,000 to about $220,000. The net annualized cost, taking into account the value of benzene saved, would range from about $5,000 to about $29,000. The total national capital and annualized costs for existing facilities would be $11 million and $1.6 million, respectively. The price of benzene would increase by a maximum of about 0.1 percent as a result of the proposed standard. No plants are projected to close as a result of implementing the proposed standard.

The capital cost for a new model plant to comply with the proposed standard would range from about $28,000 to about $120,000. The net annualized cost would range from about $2,200 to about $11,000. The total national capital and annualized costs for new facilities constructed through 1985 to comply would be approximately $2.7 million and $260,000 respectively.

Information on Health Effects of Benzene

The Administrator announced in the June 8, 1977, Federal Register his decision to list benzene as a hazardous air pollutant under Section 112 of the Clean Air Act. A "hazardous air pollutant" is defined as an "air pollutant to which no ambient air quality standard is applicable and which * * * may reasonably be anticipated to result in an increase in mortality or an increase in serious irreversible, or incapacitating reversible illness."

Numerous occupational studies conducted over the past 50 years provide evidence of the health hazards resulting from prolonged inhalation of benzene. Benzene has been recognized since 1900 as a toxic substance capable of causing acute and chronic effects. Benzene attacks the hematopoietic system, especially the bone marrow, and its toxicity is manifested primarily by alterations in the level of the formed elements in the circulating blood (red cells, white cells, and platelets). The degree of severity of these effects ranges from mild and transit episodes to severe and fatal disorders. The mechanism by which benzene produces its toxic effects, although under investigation, is still unknown.

The adverse effects on the blood-forming tissues have been documented in studies of workers in a variety of industries and occupations including the manufacturing and processing of rubber, shoes, rotogravure, paints, chemicals, and more recently, natural rubber cast film. These studies include single-case reports, cross-sectional studies, and retrospective studies of morbidity and mortality among a defined cohort of workers industrially exposed to benzene.

Based on the entire set of these studies, the Administrator concluded that benzene exposure is casually related to a number of blood disorders, including leukemia (a cancer of the blood-forming system).* Although the studies which form the basis of this conclusion involve industrial exposure to benzene at higher levels than those found in the ambient air, the Administrator has "made a generic determination that, in view of the existing state of scientific knowledge, prudent public health policy requires that carcinogens be considered for regulatory purposes to pose some finite risk of cancer at any exposure level above zero" (44 FR 58646). Because of the widespread use of benzine, benzine emissions in the ambient air have been determined to result in significant human exposure. For these reasons, exposure to benzene emissions may reasonably be anticipated to result in one or more serious effects that can be expected to lead to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness. Therefore, the Administrator concluded that benzene satisfies the definition of a hazardous air pollutant under Section 112 of the Clean Air Act.

Rationale for Regulating Benzine Storage Vessels

Stationary source categories of benzene emissions include fugitive emissions from petroleum refineries and chemical manufacturing plants, the gasoline marketing system, process vents at several types of chemical

* Benzene has been shown to be casually related to various cytopenias (decreased levels of formed element in the circulating blood), aplastic anemia (a non-functioning bone marrow), and potentially inheritable chromosomal aberrations.

manufacturing plants, coke oven byproduct plants, and benzene storage and handling facilities.

The first step in establishing standards for benzene emissions was to determine which of the source categories emitting benzene would be regulated. Although a pollutant such as benzene may be considered for regulation under Section 112 of the Clean Air Act because emissions from a particular source category pose a significant risk, other source categories may also emit the pollutant in lesser amounts. This may occur, for example, because the source categories process very little of the substance, because the substance is present in only trace amounts in the sources' raw materials, or because the sources have installed adequate controls on their own initative or in response to other regulatory requirements.

Currently, there are 143 petroleum refineries, chemical plants, and bulk storage terminals that store benzene. At these facilities benzene is stored in either fixed-roof, external floating-roof, or internal floating-roof storage vessels. These storage vessels emit benzene in varying amounts, depending on the type and the size of the storage vessel. Controls are readily available which can significantly reduce benzene emissions from these storage vessels.

There are now about 500 benzene storage vessels in use nationwide. These storage vessels, which include about 180 fixed-roof storage vessels, 30 external floating-roof storage vessels, and 290 internal floating-roof storage vessels, emit an estimated 2,700 Mg/year of benzene. Assuming that all existing fixed-roof storage vessels with capacities greater than 150,000 liters are required to be controlled to the level recommended by the Control Techniques Guideline (CTG) for fixed-roof storage vessels *(Control of Volatile Organic Emissions from Storage of Petroleum Liquids in Fixed-Roof Tanks)* issued in December 1977 (EPA–450/2–77–036), about 140 of the existing fixed-roof storage vessels will have to be fitted with internal floating roofs. This will reduce the nationwide benzene emissions to about 2,200 Mg/year.

By 1985, using a projected industry growth rate of 5 percent per year, there will be an estimated 168 new benzene storage vessels in use. Assuming that all new storage vessels with capacities greater than about 150,000 liters are controlled to the level required by the New Source Performance Standard (NSPS) for Petroleum Liquid Storage Vessels ("Petroleum Liquid Storage Vessels; Standards of Performance for New Stationary Sources") promulgated on April 4, 1980 (45 FR 23374), the nationwide benzene emissions from new storage vessels will be about 900 Mg/year.

Approximately 85 million people live within 20 kilometers of the 143 existing facilities having benzene storage vessels. This is considered the population "at risk" (i.e., the population exposed to ambient concentrations of benzene due to benzene emissions from these storage vessels). As a result of exposure to these benzene concentrations (assuming that existing storage vessels are controlled to the level recommended by the CTG), it is estimated that the maximum lifetime risk to an individual in the exposed population would be within a range of 1.5×10^{-4} to 1.0×10^{-3}. The maximum lifetime risk is the estimated probability that an individual who is exposed continuously for 70 years to the highest maximum annual average ambient benzene concentration due to benzene emissions from benzene storage vessels, will die from leukemia as a result of exposure to these emissions. In addition, it is estimated that there would be a range of 0.12 to 0.82 deaths per year within this population as a result of exposure to benzene emissions from benzene storage vessels. Although the typical operating life of the facilities that may be affected by the proposed standard is difficult to estimate, a 20-year operating life would be common to these industries. Operating lives of 50 years of more may occur, particularly in the petroleum refining industry. However, operating lives may be less than 20 years for some chemical manufacturing industries. On this basis, the estimated number of deaths which would occur over a 20-year operating life of the 143 existing facilities would range from 2.4 to 16.4.

The ranges presented here include only the uncertainty of estimates made concerning the benzene concentrations to which workers were exposed in the occupational studies of Infante, Aksoy, and Ott, that were the basis for developing the benzene unit risk factor (discussed in Appendix D of "Benzene Emissions from Benzene Storage Tanks—Background Information for Proposed Standards", EPA–450/3–80–034a), and are based on a 95 percent confidence interval that assumes the estimated concentrations are within a factor of two.

However, there are several other uncertainties associated with the estimated number of leukemia deaths that are not quantified in these ranges. The number of deaths were calculated based on an extrapolation of the leukemia risk associated with a presumably healthy white male cohort of workers to the general population, which includes men, women, children, non-whites, the aged, and the unhealthy. Uncertainty also occurs in estimating the benzene levels to which people are exposed in the vicinity of petroleum refineries, chemical plants, and bulk storage terminals. Furthermore, leukemia is the only health effect of benzene considered. Additionally, the benefits to the general population of controlling other hydrocarbon emissions from other emission sources in these plants are not quantified. Finally, these estimates do not include the cumulative or synergistic effects of concurrent exposure to benzene and other substances. As a result of these uncertainties, the number of deaths and the maximum lifetime risk due to the emissions from benzene storage vessels could be overestimated. However, and more importantly, they could just as likely be underestimated for the same reasons.

Based on the magnitude of benzene exposures associated with emissions from this source category, on the resulting estimated maximum individual risks and estimated incidence of fatal cancers in the exposed population for the life of existing sources in the category, on the projected increase in benzene emissions as a result of new sources, and on consideration of the uncertainties associated with these quantitative risk estimated (including the effects of concurrent exposures to other substances and to other benzene emissions), the Administrator finds that benzene emissions from benzene storage vessels create a significant risk of cancer and require the establishment of a national emission standard under Section 112.

The Administrator considered the alternative of taking no action to regulate benzene emissions from benzene storage vessels, and relying instead on the OSHA standard for controlling benzene emissions and standards for controlling volatile organic (VOC) emissions in the State Implementation Plans (SIPs). The current OSHA standard stipulates a level of benzene which cannot be exceeded in the work place. However, this work place standard is not expected to result in control of benzene emissions from benzene storage vessels. Consequently, the Administrator rejected reliance on the OSHA benzene standard for control of benzene emissions from benzene storage vessels.

The proposed standard would affect only those vessels storing benzene with

a specific gravity within the range of specific gravities specified for Industrial Grade benzene in ASTM-D-836-77, but would affect most benzene storage vessels. Benzene storage vessels are located primarily at petroleum refineries (where 90 percent of benzene is produced), chemical plants, and bulk storage terminals. Most of the benzene produced is ultimately used as a feedstock in the production of chemical intermediates. Production of these intermediates requires essentially pure benzene (i.e., benzene with specifications equal to or exceeding those for industrial grade benzene) in order to maximize product yield. Thus, because most of the benzene stored at refineries, chemical plants, and bulk storage terminals is destined for chemical intermediate production, which requires essentially pure benzene, limiting the coverage of the standard to pure benzene means that the vast majority of benzene storage vessels will be affected.

Benzene is stored in storage vessels with a very wide range of sizes including some very small vessels at facilities such as research laboratories. The control technology required by the proposed standard is not applicable to vessels of this small size. In addition, the amount of benzene emissions from this type of facility is negligible. As a result, it was determined that a lower cutoff limit should be established for this standard. Survey data indicate that 4 cubic meters is the smallest storage vessel used at petroleum refineries, chemical plants, and bulk storage terminals. The equipment required by the standard can be used to control emissions from storage vessels of this size. In addition, setting a cutoff limit at this level would exempt the very small storage vessels at facilities such as research laboratories. For these reasons, the Administrator selected 4 cubic meters as the lower cutoff limit for this standard.

Selection of Regulatory Alternatives

There are basically three different types of vessels used for storing benzene: fixed-roof storage vessels, external floating-roof storage vessels, and internal-floating roof storage vessels. A fixed-roof storage vessel, which generally consists of a cylindrical steel shell with a permanently-affixed roof, is designed to operate at a slight internal pressure above or below atmospheric pressure. Consequently, the emissions from this type of storage vessel can be appreciable.

An external floating-roof storage vessel, rather than having a permanently-affixed roof, has a roof which floats on the surface of the stored liquid, rising and falling with the liquid level. The liquid surface is contacted by the floating roof except in the small annular space between the roof and the wall of the storage vessel where a perimeter seal is used. As a result, the amount of liquid exposed and evaporated to the atmosphere is reduced.

An internal floating-roof storage vessel, the third type of benzene storage vessel, has both a permanently-affixed roof and a roof which floats on the liquid surface (contact roof) or is supported on pontoons several inches above the liquid surface (noncontact roof) inside the storage vessel. A noncontact internal floating roof confines a layer of saturated vapor to a small space above the liquid surface. A contact internal floating roof further reduces evaporation by eliminating the vapor space.

There are basically three methods available for reducing benzene emissions from benzene storage vessels. The first method is to reduce the evaporation of the stored product by eliminating all or part of the vapor space above the liquid surface. One way this can be accomplished is by using a roof and seal combination which floats directly on the liquid surface, thereby eliminating evaporation by restricting vapor formation. It can also be accomplished, although less effectively, by using a roof and seal combination which is supported by pontoons several inches above the liquid surface. This combination reduces emissions by confining the vapors to a small space above the liquid surface.

The second general method available for reducing benzene emissions from storage vessels is to collect the vapors as they evolve and either recover them (e.g., carbon adsorption) or destroy them (e.g., thermal oxidation). There has been little commercial operating experience using vapor control systems to reduce benzene emissions. However, these systems have been demonstrated with other organic vapors and, based on technology transfer, it is believed these systems can be used to control benzene vapors from benzene storage vessels.

The last method available for reducing emissions from benzene storage vessels involves prohibiting the storage of benzene in storage vessels.

The relative effectiveness of different combinations of floating roofs and seals in reducing benzene emissions from benzene storage vessels was recently evaluated in a study conducted for EPA. This study, which was conducted on a 6-meter (20-foot) diameter storage vessel containing benzene, evaluated the effectiveness of five roof and seal combinations including: (1) an external floating roof with a metallic shoe primary seal; (2) an externalfloating roof with a metallic shoe primary seal and a rim-mounted secondary seal; (3) a noncontact internal floating roof with shingled, vapor-mounted primary and secondary seals; (4) floating contact internal floating roof with a liquid-mounted primary seal; and (5) a contact internal floating roof with a liquid-mounted primary seal and a continuous secondary seal.

The test results from this study support engineering judgment that the emissions from a fixed-roof storage vessel can be reduced by converting it to an internal floating roof storage vessel. They also demonstrate that the emissions from an external floating-roof storage vessel can be reduced by installing a secondary seal over the primary seal. Larger reductions of the emissions can be achieved by converting the external floating-roof storage vessel to an internal floating-roof storage vessel. This would involve the installation of a fixed roof over the floating roof. The tests also indicate that the emissions from an internal floating-roof storage vessel can be reduced by using a contact internal floating roof with a liquid-mounted primary seal rather than a noncontact internal floating roof with shingled, vapor-mounted primary and secondary seals. The installation of a secondary seal on a contact internal floating roof results in even less emissions.

The emissions from each type of storage vessel could be further reduced by using a system to collect and either recover or destroy the vapors. Using such a system to control the emissions from an external floating-roof storage vessel would require that a fixed roof be installed over the floating roof.

The emissions from all three types of storage vessels could be altogether eliminated by prohibiting the storage of benzene in storage vessels.

In order to evaluate the environmental, energy, and economic impacts associated with the implementation of standards for both new and existing benzene storge vessels, regulatory alternatives were developed by applying the emissions control techniques in increasing stringency to each type of storage vessel. These regulatory alternatives were then applied to several different model plants which were developed to represent new and existing benzene producers, consumers, and bulk storage terminals.

The baseline for comparison of the alternatives for existing storage vessels

assumes that all fixed-roof storage vessels with capacities greater than 150,000 liters storing volatile petroleum liquids such as benzene have internal floating roofs as recommended by the Control Techniques Guideline (CTG) for fixed-roof storage vessels (*Control of Volatile Organic Emissions from Storage of Petroleum Liquids in Fixed-Roof Tanks*) issued in December 1977 (EPA–450/2–77–036). The CTG does not recommend controlling storage vessels with capacities less than 150,000 liters, which are generally fixed-roof storage vessels; therefore, they are assumed to be uncontrolled. The regulatory alternatives for existing sources are summarized below.

Regulatory Alternative I would require that each fixed-roof storage vessel have either a contact or a noncontact internal floating roof. This alternative would affect only fixed-roof storage vessels.

Regulatory Alternative II, in addition to the equipment required in Regulatory Alternative I, would require that each external floating-roof storage vessel have both primary and secondary seals.

Regulatory Alternative III would require that each storage vessel have a fixed roof and a contact internal floating roof with a liquid-mounted primary seal.

Regulatory Alternative IV would require that each storage vessel have a fixed roof and a contact internal floating roof with a liquid-mounted primary seal and a continuous secondary seal.

Regulatory Alternative V would require the use of vapor control systems. Two types of vapor control systems have been evaluated including carbon adsorption systems (Alternative V(A)) and thermal oxidation systems (Alternative V(B)).

Regulatory Alternative VI, the most stringent alternative, would prohibit the storage of benzene in existing storage vessels.

The baseline for comparison of the alternatives for new storage vessels is the New Source Performance Standard (NSPS) for petroleum liquid storage vessels ("Petroleum Liquid Storage Vessels; Standards of Performance for New Stationary Sources") promulgated on April 4, 1980 (45 FR 23374). This NSPS requires that each storage vessel constructed after May 18, 1978, which has a capacity greater than about 150,000 liters have either (1) an external floating roof with primary and secondary seals, or (2) a fixed roof and an internal floating roof. Storage vessels with capacities less than 150,000 liters, generally fixed-roof storage vessels, are unaffected by the NSPS. The regulatory alternatives for new sources are summarized below. These alternatives are identical to those for existing sources except for Alternative II. Because the baseline for new sources assumes more control than that for existing sources, Alternative II for existing sources is not applicable to new sources. Consequently, Alternative II for new sources is identical to Alternative III for existing sources, Alternative II for new sources is identical to Alternative IV for existing sources, etc.

Regulatory Alternative I would require that each fixed-roof storage vessel have either a contact or a noncontact internal floating roof.

Regulatory Alternative II would require that each storage vessel have a contact internal floating roof with a liquid mounted primary seal.

Regulatory Alternative III would require that each storage vessel have a contact internal floating roof with a liquid-mounted primary seal and a continuous secondary seal.

Regulatory Alternative IV would require the use of vapor control systems such as carbon adsorption (Alternative IV(A)) or thermal oxidation (Alternative IV(B)).

Regulatory Alternative V would prohibit the storage of benzene in new storage vessels.

As for existing storage vessels, the most stringent regulatory alternative for new storage vessels is the alternative which prohibits the storage of benzene in storage vessels. Prohibiting the storage of benzene in storage vessels would mean that benzene production and consumption would have to be coordinated so that all benzene would be used immediately after being produced. Such coordination between production and consumption would be very difficult to achieve in practice, especially where the production and consumption facilities are remote from each other. To avoid this problem it is possible that an owner or operator requiring benzene as a feedstock would use an alternate feedstock. However the reasonableness of a requirement which would result in the use of alternate feedstocks is more appropriately evaluated when developing standards for petroleum refineries and individual chemical processes. As a result, the Administrator did not further consider this alternative in developing a standard for either new or existing benzene storage vessels.

Selection of Basis of Proposed Standard—Existing Sources

The basis of the proposed standard for benzene emissions from benzene storage vessels was selected using a two-step process. First, the Administrator examined the regulatory alternatives and selected the one which represents best available technology (BAT) considering the environmental, energy, and economic impacts. After a regulatory alternative was selected as BAT, the Administrator examined the estimated risks remaining after the application of BAT to determine whether they are unreasonable in view of the health benefits and costs, economic impacts, and other impacts that would result if a more stringent alternative was selected.

Selection of Best Available Technology

The environmental, energy, and economic impacts considered in the selection of BAT for existing benzene storage vessels are summarize below.

Environmental Impacts

The national baseline emissions from existing benzene storage vessels are estimated to be approximately 2,200 Mg/year. Regulatory Alternative I would reduce the national benzene emissions from benzene storage vessels by less than 1 percent. Regulatory Alternative II would reduce the national storage vessel emissions by 9 percent to 2,000 Mg/year. Regulatory Alternative III would reduce the national storage vessel emissions by 61 percent to 850 Mg/year. Regulatory Alternative IV would reduce the national emissions to 510 Mg/year. This is a 77 percent reduction of the national baseline emissions from benzene storage vessels. Regulatory Alternative V(A) (carbon adsorption) would reduce the national baseline emissions by 81 percent to 420 Mg/year. Alternative V(B) (thermal oxidation) would reduce the national baseline emissions by 85 percent to 320 Mg/year.

Alternatives I through V would all have potential adverse environmental impacts associated with them. Two adverse environmental impacts associated with all of these regulatory alternatives would be benzene emissions and benzene-contaminated water resulting from the emptying and degassing of storage vessels being inspected or being retrofitted with the required control equipment. These releases would have short-term impacts, however, and the emissions resulting from these operations would be more than offset over time by the emissions reduction associated with the use of the control equipment.

Other adverse environmental impacts would result from use of a thermal oxidation system (Alternative V(B)). These impacts are associated with the use of natural gas or fuel oil to fire a thermal oxidation unit. A thermal oxidation unit which uses either of these

as supplemental fuel will produce oxides of nitrogen (NO_x). Oxides of sulfur (SO_x) would also be produced with the use of fuel oil. The emissions from a typical thermal oxidation unit could be as large as 15,000 kilograms per year (kg/year) of (SO_x) and 6,000 kg/year of NO_x.

There could also be some impacts on water quality associated with the use of carbon adsorption or thermal oxidation vapor control systems. One source of benzene-contaminated wastewater common to both types of vapor control systems is a water seal, which is used to assure that flashbacks do not propagate from the vapor control unit to the rest of the piping system. The quantity of water used in two water seals, which would be necessary to ensure safe operation of either system, would average approximately 5,700 liters per day. This would normally be sent to the plant wastewater system for treatment and disposal.

Carbon adsorption vapor control systems can have an additional source of water pollution. In a steam-regenerated carbon adsorption system, steam circulating through the carbon bed heats the carbon and raises the vapor pressure of the recovered benzene. The benzene evolved in this process is removed along with the steam, and the steam-benzene mixture is condensed and decanted. The benzene is returned to storage while benzene-contaminated water (as much as 2,000 liters per day) is sent to the plant wastewater system for treatment and disposal.

Only Alternative V(A), which involves the use of a carbon adsorption vapor control system, will likely result in any solid waste disposal impacts. The only potential impact is associated with the handling of spent carbon from the adsorption unit. Typically, the spent carbon, which is normally replaced approximately once every 10 to 15 years, is transported to a facility for reclamation and reactivation. There would be no solid waste impact associated with this operation. However, this material could be disposed of in a landfill which would result in a solid waste disposal impact. Because the owner or operator of a carbon adsorption unit will most likely choose to have the carbon reclaimed and reactivated, no impact on solid waste disposal in expected with the use of a carbon adsorption system.

Energy Impacts

There would be a slight energy benefit associated with Alternatives I through IV because the control of benzene emissions from benzene storage vessels would offset the need for companies to increase their production levels of benzene.

There would also be a slight energy benefit associated with these alternatives in terms of the benzene emissions saved. Alternatives I and II would save benzene emissions equivalent in energy to about 120 barrels and 1,400 barrels of crude oil, respectively. Alternatives III and IV would save benzene emissions equivalent in energy to about 9,200 barrels and 12,000 barrels of crude oil, respectively.

The only regulatory alternative which would involve the use of energy is the alternative which requires that each storage vessel be fitted to a vapor control system, such as a cabron adsorption system (Alternative V(A)) or a thermal oxidation system (Alternative V(B)). The use of a carbon adsorption system would require electricity to power blowers for collecting and transferring the air-benzene vapor mixture from each storage vessel to the carbon adsorption unit. Low pressure steam would be required to regenerate the carbon bed. Assuming that each facility with benzene storage vessels uses a steam-regenerated carbon adsorption system, the total national energy consumption associated with this alternative would be approximately 0.5 petajoules per year (PJ/yr). This is equivalent in energy to about 83,000 barrels of crude oil.

If the benzene emissions saved (12,000 equivalent barrels of crude oil) are taken into account, the national energy consumption would be equivalent to approximately 71,000 barrels of crude oil.

Use of a thermal oxidation system to reduce benzene vapors would also require electricity to power blowers for collecting and transferring the air-benzene vapor mixture. Supplemental fuel (e.g., natural gas) would also be required to ignite and sustain the combustion process. The total national energy consumption associated with this alternative would be approximately 0.6 PJ/yr (100,000 equivalent barrels of crude oil), assuming each facility uses a thermal oxidation system. Because no benzene is recovered or saved in the thermal oxidation process, there is no crude oil savings to offset the energy required to operate this type of vapor control system.

Economic Impacts

The economic impacts associated with each of the regulatory alternatives have been estimated using first-quarter 1979 dollars. The total national capital and net annualized costs, including solvent credit, for Alternative I are $240,000 and $70,000, respectively. The increase in the price of benzene associated with this alternative would be less than 0.02 percent.

The total national capital and net annualized costs of Alternative II would be approximately $540,000 and $42,000, respectively, and the price increase of benzene would be less than 0.02 percent.

The total national capital and net annualized costs of Alternative III would be approximately $7.3 million and $970,000, respectively, and the largest price increase of benzene would be approximately 0.06 percent.

Regulatory Alternative IV would require a total national capital cost of $11 million and a total net annualized cost of $1.6 million. The largest expected price increase of benzene associated with this alternative would be approximately 0.1. percent.

Regulatory Alternative V(A) (carbon adsorption) would require a total national capital cost of $35 million and a total net annualized cost of $10 million. The largest expected price increase of benzene would be approximately 0.8 percent. Regulatory Alternative V(B) (thermal oxidation) would require a total national capital cost of $29 million and a total net annualized cost of $9.3 million. These costs would result in a benzene price increase of approximately 0.7 percent.

In selecting best available technology (BAT) for existing sources, the Administrator examined the regulatory alternatives to determine the most advanced level of control adequately demonstrated considering the economic, energy, and environmental impacts and the technological problems associated with retrofit. The Administrator first considered the most stringent regulatory alternative, Alternative V, which would require that each storage vessel be fitted to a vapor control system. Because Alternative V(B) would provide more emissions reduction than Alternative V(A) with less economic impact, the Administrator considered Alternative V(B) rather than V(A) in selecting BAT. This is the most advanced level of control which could be required short of prohibiting the storage of benzene, and would reduce the national benzene emissions from existing storage vessels from 2,200 Mg/yr to 320 Mg/yr.

This alternative would result in a capital cost of $29 million, an annualized cost of $9.3 million, and a price increase of 0.7 percent. In addition, this alternative is the only alternative considered which has any potential continuous adverse energy and environmental impacts. Because of the magnitude of the capital and annualized

costs associated with this alternative and the fact that the use of vapor control systems would result in the use of energy and would impact other environmental media, the Administrator examined Regulatory Alternative IV before selecting BAT.

Regulatory Alternative IV would require that each storage vessel have a contact internal floating roof, a liquid-mounted primary seal, and a continuous secondary seal. This alternative represents the next less stringent level of control to that of Regulatory Alternative V, and would reduce the national benzene emissions to 510 Mg/yr. The various components of the equipment required by this alternative are in widespread commercial use, being used in many storage vessels. The national capital cost for Alternative IV would be about $11 million, the annualized cost would be about $1.6 million, and the price increase would be about 0.1 percent. Alternative IV would result in a small but positive energy impact and would have no potential continuous adverse environmental impacts.

The Administrator considered Alternatives V and IV and their economic impacts before selecting BAT. Regulatory Alternative V(B) would reduce the benzene emissions by an additional 8 percent in comparison to Regulatory Alternative IV. However, in contrast to this impact, Regulatory Alternative V(B) would result in much greater costs, economic, energy, and environmental impacts. For example, the capital cost of Alternative V(B) is three times higher and the annualized cost is six times higher for Alternative V(B) than for Alternative IV. Also, the percent price increase is as much as seven times higher. Thus, because the additional emissions reduction associated with Regulatory Alternative V(B) is small in comparison to that for Regulatory Alternative IV and the economic, energy, and secondary environmental impacts associated with Regulatory Alternative V(B) are grossly disproportionate to the emissions reduction in comparison to those for Regulatory Alternative IV, the Administrator selected Regulatory Alternative IV as BAT. Alternative IV would result in a significant emissions reduction at a reasonable cost, a small positive energy impact, and no potential continuous adverse environmental impacts. In addition, the small increase in emissions reduction and the sharp decreases in economic and cost impacts observed when comparing Alternative V(B) with Alternative IV, does not exist when comparing Alternative IV with the next less stringent alternative.

Consideration of Unreasonable Risk and Selection of the Level of the Standard

After the application of BAT (Alternative IV) to existing benzene storage vessels, it is estimated that there would be 0.03 to 0.20 deaths per year due to benzene emissions from these storage vessels. Assuming that a typical facility has an operating life of 20 years as discussed in "Rationale for Regulating Benzene Storage Vessels", the estimated number of deaths which would occur over a 20-year operating life of the 143 existing facilities would range from 0.60 to 4.0. The maximum lifetime risk to the most exposed population after the application of BAT would range from 2.7×10^{-5} to $1.9 \times 10-4$. These numbers include benzene emissions from benzene storage vessels only and not other possible sources of emissions where these storage vessels are located. Alternative V, the next more stringent alternative than BAT, would require the use of vapor control systems. If thermal oxidation systems were used, the estimated residual incidence would range from 0.02 to 0.11 deaths per year. Assuming that a typical facility has a 20-year operating life, the estimated number of deaths which would occur over a 20-year operating life of the 143 existing facilities would range from 0.40 to 2.2. The maximum lifetime risk after the application of BAT wouldf range from 4.1×10^{-5} to $2.9 \times 10-4$. However, requiring the use of vapor control systems would increase the total capital cost from $11 million to $29 million and the total annualized cost from $1.6 million to $9.3 million. It could also result in adverse impacts on air quality, water quality, and energy consumption. In view of the relatively small health benefits that would be gained with the additional costs and the potential adverse environmental impacts associated with the use of vapor control systems, the Administrator determined that the risks remaining after applying BAT to existing storage vessels are not unreasonable. The Administrator determined, therefore, that the standard for existing benzene storage vessels should be based on BAT (Alternative IV).

*The maximum lifetime risk associated with Alternative V is greater than that associated with Alternative IV because in Alternative V the benzene emissions from all storage vessels at a plant are discharged from a single stack, whereas in Alternative IV, the emissions are discharged from individual storage vessels and are, therefore, more dispersed.

Selection of Basis of Proposed Standard—New Sources

Selection of Best Available Technology

The environmental, energy, and economic impacts considered in the selection of BAT for new benzene storage vessels are summarized below. An estimated 168 new benzene storage vessels will be constructed through 1983. The number of new storage vessels was estimated by multiplying the number of new plants expected to be built through 1985 by the number of storage vessels in each model plant. Because new plants are expected to be the same size as existing plants, the number of storage vessels in each new model plant is the same as the number in each existing model plant. However, because there are fewer new plants than existing plants, the national impacts differ.

Environmental Impacts

The national baseline emissions from new benzene storage vessels are estimated to be approximately 930 Mg/year in 1985. Regulatory Alternative I would reduce the 1985 national baseline emissions from new storage vessels by about 1 percent to 920 Mg/year. Total national emissions in 1985 would be reduced by Regulatory Alternative II to approximately 290 Mg/year. This is a 69 percent reduction of the national baseline emissions from new sources in 1985. National emissions from new storage vessels in 1985 would be reduced to 170 Mg/year by Alternative III. This is an 82 percent reduction of the 1985 national baseline emissions. Regulatory Alternative IV(A) (carbon adsorption) would reduce the national baseline emissions by 85 percent to 140 Mg/year. Alternative V(B) (thermal oxidation) would reduce the national baseline emissions by 88 percent to 110 Mg/year.

The potential adverse environmental impacts associated with the various alternatives for new sources are similar to those discussed in "Selection of Basis of Proposed Standard-Existing Sources," and are not repeated here.

Energy Impacts

There would be a slight energy benefit associated with Alternatives I through III because the control of benzene emissions from benzene storage vessels would offset the need for increasing the production levels of benzene.

There would also be a slight energy benefit associated with these alternatives in terms of the benzene emissions saved. Alternative I would save benzene emissions equivalent in energy to about 68 barrels of crude oil. Alternatives II and III would save

benzene emissions equivalent in energy to about 4,400 barrels of crude oil.

The only regulatory alternatives having any energy impacts are those which require that each storage vessel be fitted to a carbon adsorption or thermal oxidation vapor control system (Regulatory Alternatives IV(A) and IV(B), respectively). The bases of these impacts are discussed in "Selection of Basis of Proposed Standard-Existing Sources" and are not repeated here. However, because the number of new plants affected by the proposed standard is different than the number of existing plants, the national energy impacts differ. The total national energy consumption in 1985 for either of these alternatives would be approximately 0.2 petajoules per year (PJ/yr). This is equivalent in energy to about 33,000 barrels of crude oil. The national energy consumption associated with Alternative IV(A) would be equivalent to approximately 28,000 barrels of crude oil after taking into account the benzene emissions saved (5,400 equivalent barrels of crude oil). The national energy consumption associated with Alternative IV(B) would be equivalent to approximately 33,000 barrels of crude oil, because there are no savings resulting from the use of a thermal oxidation system.

Economic Impacts

The economic impacts associated with each of the regulatory alternatives have been estimated using first-quarter 1979 dollars. The total national capital and net annualized costs, including solvent credit, associated with Regulatory Alternative I would be approximately $73,000 and $20,000, respectively. The increase in the price of benzene due to this alternative would be less than 0.02 percent.

In order to comply with Regulatory Alternative II, the industry would incur total capital and net annualized costs of approximately $1.7 million and $99,000, respectively. This would result in a price increase of benzene of approximately 0.05 percent.

Regulatory Alternative III would result in total national capital and net annualized costs of $2.7 million and $260,000, respectively. This alternative would result in a price increase of benzene of less than 0.1 percent.

Regulatory Alternative IV(A) (carbon adsorption) would require a total national capital cost of $12 million and a net annualized cost of $3.3 million. The largest expected price increase of benzene associated with this alternative would be approximately 0.8 percent. Regulatory Alternative IV(B) (thermal oxidation) would require a total national capital cost of $9.5 million and a net annualized cost of $3.1 million. The resulting benzene price increase would be approximately 0.7 percent.

In selecting best available technology (BAT) for new sources, the Administrator examined the regulatory alternatives to determine the most advanced level of control adequately demonstrated, considering the economic, energy, and environmental impacts. The Administrator first considered the most stringent regulatory alternative, Alternative IV, which would require that each storage vessel be fitted to a vapor control system. Because Alternative IV(B) would provide more emissions reduction than Alternative IV(A) with less economic impact, the Administrator considered Alternative IV(B) rather than Alternative IV(A) in selecting BAT. This would be the most advanced level of control which could be required without prohibiting the construction of new benzene storage vessels, and would reduce the national benzene emissions from new storage vessels in 1985 from 930 Mg/yr to 110 Mg/yr.

This alternative would result in a capital cost of $9.5 million, an annualized cost of $3.1 million, and a price increase of 0.7 percent. In addition Alternative IV(B) is the only alternative considered which has any potential continuous adverse energy and environmental impacts. Because of the magnitude of the capital and annualized costs for Alternative IV(B) and the fact that the use of vapor control systems would result in the use of energy and would impact other environmental media, the Administrator examined Regulatory Alternative III before selecting BAT.

Regulatory Alternative III would require that each storage vessel have a contact internal floating roof, a liquid-mounted primary seal, and a continuous secondary seal. This alternative represents the next less advanced level of control to that of Regulatory Alternative IV and would reduce the national benzene emissions in 1985 to 170 Mg/yr. The various components of the equipment required by this alternative are in widespread commercial use, being used in many storage vessels. The capital cost for Alternative III would be about $2.7 million, the annualized cost would be about $260,000, and the price increase would be about 0.1 percent. Alternative III would result in a small but positive energy impact and would have no potential continuous adverse environmental impacts.

The Administrator considered Alternatives IV and III and their economic impacts before selecting BAT. Regulatory Alternative IV(B) would result in an additional 6 percent emission reduction compared with Regulatory Alternative III. However, in contrast to these impacts, Regulatory Alternative IV(B) would result in much greater economic, energy, and environmental impacts. For example, the capital cost of Alternative IV(B) is four times higher and the annualized cost is 12 times higher for Alternative IV(B) than for Alternative III. Also, the percent price increase of benzene is 7 times higher. Thus, because the additional emissions reduction associated with Regulatory Alternative IV(B) is small in comparison to that for Regulatory Alternative III and the economic, energy, and secondary environmental impacts associated with Regulatory Alternative IV(B) are grossly disproportionate to the emissions reduction in comparison to those for Regulatory Alternative III, the Administrator selected Regulatory Alternative III as BAT. Alternative III would result in a significant emissions reduction at a reasonable cost, a small positive energy impact, and no potential continuous adverse environmental impacts. In addition, the small increase in emissions reduction and the sharp decrease in economic and cost impacts observed when comparing Alternative IV(B) with Alternative III, do not exist when comparing Alternative III with the next less stringent alternative.

Consideration of Unreasonable Risk and Selection of the Level of the Standard

The proposed "Policy and Procedures for Identifying, Assessing, and Regulating Airborne Substances Posing a Risk of Cancer" (44 FR 58642) includes certain requirements for the siting of new sources. These are not implemented in the proposed standard because the details of the procedures have not been formulated. New source siting requirements for storage vessels may be proposed in the future, but would only apply to new sources constructed, modified, or reconstructed after the proposal date of such siting requirements.

For new sources constructed, modified, or reconstructed in the interim, the Administrator is making a judgment on whether the estimated risks remaining after the application of BAT selected for new sources are not unreasonable in view of the health benefits and costs, economic impacts, and other impacts that would result if a more stringent alternative were selected. In making this judgment, the approach of estimating the residual risks

was based on estimates of benzene emissions from new storage vessels and on the assumption that population distributions around new storage vessels would be similar to those around existing storage vessels. The Administrator decided to use this approach because it seems the most reasonable approach in the absence of new source siting requirements.

No information is available on the future location of new storage vessels or the number of people which will be exposed to the emissions from them. They could be located at existing plant sites or entirely new sites. There is no available information to indicate that population distributions around new storage vessels will be greater or less than they are for existing storage vessels. Therefore, for purposes of estimating deaths due to emissions from new storage vessels, it was assumed that the population distributions would be the same as they are for existing storage vessels. Therefore, residual deaths were calculated for new storage vessels by using the growth projections for new storage vessel capacity and assuming the population distributions were the same for new storage vessels as for existing storage vessels. Even if the new storage vessels were added at existing plant sites, this would be an accurate assumption because the people living in the vicinity of these plants would be exposed to additional emissions and because a linear dose-response model was used to calculate deaths.

In calculating the residual maximum lifetime risk after the application of BAT to new storage vessels, it is reasonable to assume that exposures around new plant sites would be no greater than they are around existing plant sites. They could be greater if new storage vessels were added to the existing plant site associated with the maximum lifetime risk for existing sources. However, because there is no information indicating that this will occur, it was assumed that the maximum lifetime risk associated with new storage vessels would be no greater than that for existing storage vessels.

Using the assumptions discussed above, it is estimated that 0.01 to 0.07 deaths per year would occur in 1985 due to benzene emissions from new storage vessels after the application of BAT. Maximum lifetime risk to the most exposed population after the application of BAT would range from 2.7×10^{-5} to 1.9×10^{-4}. These numbers include benzene emissions from storage vessels only and not other possible sources of emissions where benzene storage vessels are located. Alternative IV, the next more stringent alternative than BAT, would require the use of vapor control systems. If thermal oxidation systems were used, the estimated residual incidence would range from 0.01 to 0.04 deaths per year and the maximum lifetime risk would range from 4.1×10^{-5} to 2.9×10^{-4}.[a] However, requiring the use of vapor control systems would increase the total capital costs from $2.7 million to $9.5 million and the total annualized costs from $0.02 million to $3 million. It could also result in potential adverse impacts on air quality, water quality, and energy consumption. In view of the relatively small health benefits that would be gained with the additional costs and the potential adverse environmental impacts associated with the use of vapor control systems, the Administrator determined that the risks remaining after the application of BAT to new storage vessels are not unreasonable. Consequently, the Administrator determined that the standard for new benzene storage vessels should be based on BAT.

Selection of Format for the Proposed Standard

In Section 112 of the Clean Air Act, the Administrator is required to prescribe an emission standard whenever it is feasible. Section 112(e) states that "if in the judgment of the Administrator, it is not feasible to prescribe or enforce an emission standard for control of a hazardous air pollutant or pollutants, he may instead promulgate a design, equipment, work practice, or operational standard, or combination thereof." The term "not feasible" is applicable if the emissions cannot be captured and vented through a vent or stack designed for that purpose or if the application of a measurement methodology is not practicable due to technological or economic limitations.

Establishing an emission standard for storage vessels would require the measurement of emissions from each storage vessel; therefore, the emissions would have to be vented in a manner that would allow the measurement of pollutant concentrations and flow rates. Storage vessels equipped with the control equipment upon which the proposed standard is based do not typically have a conveyance designed to capture the emissions or a stack or vent through which the emissions pass to the atmosphere. Equipping each storage vessel with a capture and stack system would be possible, but would be economically impracticable, especially considering that the sole purpose of the system would be for emissions testing. Another consideration is that the emissions from storage vessels are intermittent and are often at flow rates too low to measure, thereby making emissions measurement technically impracticable. For these reasons, the Administrator has concluded that establishing an emission standard is not feasible for benzene storage vessels.

The possibility of establishing a "design, equipment, work practice, or operational standard, or combination thereof" was then examined. The regulatory alternative upon which the proposed standard is based consists of certain equipment and design specifications. Operational requirements, which consist of inspection and repair requirements, are necessary to insure the continued integrity of the control equipment. Therefore, the Administrator concluded that the format of the standard should include a combination of design, equipment, work practice, and operational standards.

Modification and Reconstruction Considerations

An existing source is one which is constructed, modified, or reconstructed before the proposal date of a standard and a new source is one which is constructed, modified, or reconstructed after the proposal date of a standard. A modification occurs when there is a physical or operational change to a source accompanied by an increase in benzene emissions to the atmosphere. Several exclusions from the modification definition are listed in § 61.01(j) of the General Provisions for hazardous air pollutant standards. Reconstruction occurs when the components of an existing source are replaced to the extent that the fixed capital cost of the new components exceeds 50 percent of the fixed capital cost that would be required to construct a comparable new facility.

Even though the proposed standards for existing and new storage vessels are identical, the Clean Air Act designates different compliance periods for new and existing sources. Existing sources must comply within 90 days of the effective date, but may obtain a waiver of compliance for up to 2 years from the effective date. New sources (including modified and reconstructed sources) must comply with the standard at

[a] The maximum lifetime risk associated with Alternative IV is greater than that associated with Alternative III because in Alternative IV the benzene emissions from all storage vessels at a plant are discharged from a single stack, whereas in Alternative III the emissions are discharged from individual storage vessels and are, therefore, more dispersed.

startup, unless startup occurs before the effective date, in which case they must comply by the effective date.

Storage vessels can be used to store different materials at different times. If an existing storage vessel was being used to store a liquid other than benzene before the proposal date of the standard and is filled with benzene after the proposal date, the storage vessel would be considered modified and would, therefore, have to comply with the standard just as if it was a new source. An operational change and an increase in benzene emissions would have occurred. If this change in material stored occurred between proposal and promulgation of the standard, the storage vessel would have to be in compliance on the promulgation date of the standard. If this change in material stored occurred after promulgation of the standard, the storage vessel would have to be in compliance with the standard upon filling the vessel with benzene. This is considered reasonable because after proposal of this standard, the owner or operator has been put on notice that he would be subject to the standard prior to filling the vessel with benzene.

Because the proposed standard for existing storage vessels is identical to that for new storage vessels, and existing storage vessel which is reconstructed would have to comply with the same requirements with which it would have to comply had it not been reconstructed. However, the compliance times would be different. Therefore, the proposed standard states that the owner or operator of a source does not have to apply for approval of reconstruction under Section 61.07 of the General Provisions if the source is in compliance with the standard. Because a modification, by definition, involves an emissions increase, a storage vessel is not exempt from Section 61.07 of the General Provisions even if it does comply with the requirements of the standard.

According to the definition of reconstruction which is contained in the proposed standard, there are two criteria which the Administrator will consider in deciding whether a source is reconstructed. The first is whether "the fixed capital cost of the new components exceeds 50 percent of the fixed capital cost that would be required to construct a comparable, entirely new source." The second is whether "it is feasible, considering economic impacts and the technological problems associated with retrofit, to meet the applicable standard for new sources set forth in this subpart." The second criterion is meaningless after the waiver period with regard to the proposed standard because the standards for new and existing sources are identical. That is, the economic impacts and the technological problems associated with retrofitting existing storage vessels have already been considered, and it has already been decided that existing sources can meet the proposed standard for new sources.

Despite these considerations, both parts of the definition of reconstruction have been retained in the proposed standard because amendments to the General Provisions for Part 61 are currently being developed and will contain this definition. This definition will apply to the subpart for benzene storage vessels as well as other subparts. Except during the waiver period, the second criterion in the definition will be applicable only if in the future the standard for new and existing storage vessels is different. The full definition of reconstruction is included in the proposed standard for comment because it is possible that sometime in the future the standard could be different for new and existing benzene storage vessels.

Selection of Equipment Specifications

The equipment specified as best available technology (BAT) for controlling benzene emissions from new and existing benzene storage vessels was selected largely on the basis of emissions tests conducted for EPA on a 6-meter (20-foot) diameter storage vessel containing benzene. This equipment includes a contact internal floating roof, a liquid-mounted primary seal, and a continuous secondary seal.

The standard would allow the owner or operator of a storage vessel to use other equipment or procedures to reduce benzene emissions from the storage vessel if the equipment or procedure is demonstrated to be equivalent in reducing emissions to that equipment required by the standard. Equivalence could be demonstrated by one of several methods including (1) an actual emissions test which uses a full-size or scale-model sealed storage vessel which accurately collects and measures all benzene emissions from the storage vessel, or (2) an engineering evaluation approved by the Administrator.

Based on information presented in American Petroleum Institute (API) Publication 2517 and on engineering judgment, a metallic shoe seal would be considered an equivalent control device to the liquid-mounted primary seal required by the proposed standard; consequently, a metallic shoe seal would be allowed by the proposed standard. In addition, a vapor control system which is designed to reduce the benzene emissions discharged from a storage vessel at an efficiency of at least 95 percent (by weight) and which is operated at the design specifications to achieve this emissions reduction would be considered an equivalent control system if it is approved by the Administrator, and would be allowed by the proposed standard. This control level has been selected because it provides an approximately equal emissions reduction to the equipment specified by the proposed standard, relative to the emissions from a fixed-roof storage vessel. The efficiency of the vapor control system would be calculated by comparing the controlled emissions to those emissions which would occur from a fixed-roof storage vessel without a vapor control system.

Selection of Initial Inspection and Reporting Requirements

Because direct measurement of the emissions from storage vessels is impracticable, the proposed standard would not require an initial test to determine the emissions from each affected storage vessel. Instead, the standard would require that the owner or operator of each storage vessel submit a report to the Administrator describing the control equipment being used to reduce benzene emissions.

The owner or operator would also be required to inspect and report the condition of the control equipment before filling the storage vessel with benzene. During this inspection the owner or operator would inspect for defects in the internal floating roof and for holes, tears, or other openings in the primary seal, secondary seal, and seal fabric. All defects in the floating roof and seals would have to be repaired before the storage vessel could be filled with benzene. Finally, the standard would require the owner or operator to notify the Administrator at least 30 days in advance of filling the storage vessel with benzene so that the Administrator could have the opportunity to have an observer inspect the control equipment before the storage vessel is filled. This requirement is necessary because it will be infeasible to inspect all the control equipment once the storage vessel is filled.

Control Equipment Failures and Selection of Periodic Inspection and Repair Requirements

As is the case with any control equipment, internal floating roofs and seals can fail, resulting in an increase in emissions from the respective storage vessels. One failure which can occur is

the sinking of the internal floating roof. Steel pan internal floating roofs, which rely on liquid displacement for flotation, are especially susceptible to sinking whenever liquid accumulates on the roof surface. Liquid can accumulate on steel pans for several reasons including (1) leaks or holes in the roof; (2) splashing of liquid onto the roof from the improper use of mixers at low liquid levels; (3) tipping of the roof on roof support columns as the roof rises and falls; and (4) tipping of the roof by large vapor bubbles expanding under one section of the roof. Liquid generally accumulates in one location on a steel pan causing an edge to become submerged, which eventually result in the sinking of the roof.

Other types of internal floating roofs may be less susceptible to sinking when liquid accumulates on them. These roofs include: (1) aluminum sandwich panel roofs with a honeycombed aluminum core floating in contact with the liquid, and (2) pan-type steel roofs supported on the liquid by pontoons. Aluminum sandwich panel roofs, because of their rigidity, are susceptible to failure at joints in the roof. This problem is compounded by their light weight, which promotes hangup or jamming as the roof rises and falls inside the storage vessel. Pan-type steel roofs supported by pontoons can sink if several pontoons are punctured. No failure incidence has been recorded for either of these types of roofs. However, their inherent stability dictates that their failure rates should be very low.

Seals, while not subject to abrupt failures like roofs, do deteriorate over time. For example, holes, tears, and other openings can develop in the primary and secondary seals as the seals abrade against the wall of the storage vessel. These openings, which indicate that the seal is in need of repair or replacement, may expose benzene to evaporation, reducing the effectiveness of the seal. If openings develop in a foam-filled primary seal, the foam will absorb the benzene, causing the seal to sag. This reduces the ability of this type of seal to prevent emissions from the rim space. If the primary seal is liquid-filled, openings will allow the liquid to escape, reducing the seal's effectiveness.

Gaps which develop between either the primary seal or the secondary seal and the shell of the storage vessel will also reduce the seal's ability to reduce emissions. Gaps can develop as a result of shell deformations or the inability of a seal to conform to varying gaps because of a loss of seal flexibility.

Emissions tests recently conducted for EPA have indicated that "* * * the condition (tight or gapped) of the primary seal is not as significant if a tight secondary seal is present." Based on data acquired by an air regulatory agency during seal gap inspections on 17 external floating-roof storage vessels and engineering judgment, at least 76 percent of internal floating-roof storage vessels can be expected to have no measurable gap between the secondary seal and the shell of the storage vessel. Of the remaining storage vessels, 18 percent would have tight secondary seals with total gap areas of less than 21.2 cm^2/m (1 in^2/ft) of vessel diameter and 6 percent would have severely gapped secondary seals with gap areas in excess of 212 cm^2/m (10 in^2/ft) of vessel diameter. Severely gapped secondary seals would not be very effective at reducing emissions.

Section 112(e) of the Clean Air Act states that if the Administrator prescribes an equipment standard for control of a hazardous air pollutant such as benzene, he shall "include as part of such standard such requirements as will assure the proper operation and maintenance of any element of * * * equipment." Ideally, it would be preferable to include operation and maintenance procedures in the standard which would prevent control equipment failures. However, no such procedures are available to prevent the type of failures which occur while using the control equipment specified by the proposed standard.

Because control equipment failures cannot be prevented, the next best operation and maintenance procedure is to require that the owner or operator of each storage vessel inspect the integrity of the control equipment and repair any failures. The procedure generally specified in regulations for external floating-roof storage vessels for determining the integrity of primary and secondary seals is to periodically inspect the gaps between the seals and the wall of each storage vessel while the storage vessel is in operation. However, it is not reasonable to require that inspections be conducted in internal floating-roof storage vessels containing benzene because of the benzene health hazard to which inspoectors could be exposed while inside these vessels. In addition, because seal gap data are unavailable to correlate the gaps when a roof is floating with the gas when the roof is on its leg supports, gap criteria cannot be specified for an empty storage vessel. As a result, no quantitative gap measurement criteria can be specified for internal floating-roof storage vessels used for storing benzene.

In lieu of such gap criteria, the owner or operator of each storage vessel could be required to periodically inspect the condition of the floating roof and the secondary seal from the manhole and roof hatches on the fixed roof of each storage vessel. The primary seal would not be visible during such an inspection, however, and could only be inspected from inside the storage vessel, after it had been emptied and degassed. The degassing of a storage vessel, however, produces emissions. For a medium-size storage vessel, these emissions amount to approximately 0.3 Mg each time the vessel is degassed. These emissions could conceivably be controlled through the use of a vapor control system; however, it is both technically and economically impractical to require that a facility maintain such a system to control these intermittent and infrequent emissions. As a result, the Administrator decided not to require the control of degassing emissions.

The next question regarding the inspection of primary seals concerns the frequency of such inspections. These seals have a very low failure rate and, when installed properly, are expected to last many years. In addition, emissions tests conducted for EPA have indicated that the condition of the primary seal has a minimal effect on the emissions when there is a secondary seal above the primary seal. As a result, the emissions associated with frequent degassing may actually exceed those that would be produced by not inspecting the primary seal on a frequent basis.

After considering the expected low incidence of control equipment failures, the degassing emissions that would occur in order to inspect for these failures, and the fact that the secondary seal could be expected to reduce emissions from a primary seal failure, the Administrator decided to require that complete internal inspections of the control equipment be conducted only once every 5 years.

The owner or operator of a benzene storage vessel may find it necessary on an infrequent occasion to empty and degas a storage vessel for reasons other than equipment inspections. In order to further reduce the emissions due to degassing for inspections, the Administrator decided to require an entire inspection from inside the storage vessel any time a storage vessel is degassed for any purpose. The storage vessel would not have to be degassed and inspected again for another 5 years. This would reduce emissions because it would result in only one degassing when two may have occured otherwise, one for a facility need and one for an inspection.

Once a storage vessel has been degassed and inspected, the proposed standard would require that all control equipment failures be repaired before the storage vessel is refilled with benzene. This would not only prevent any further emissions due to control equipment failures, but would also prevent the emissions resulting from a subsequent degassing to repair the failures. Such a requirement is considered reasonable because the inspection and repair program is only required every 5 years and the owner or operator can plan ahead to have the storage vessel out of service long enough to make all necessary repairs.

As discussed previously, at least some failures of the internal floating roof and secondary seal can be detected from roof hatches or manholes in the fixed roof above the internal floating roof. Failures detectable from the fixed roof include defects in or benzene accumulated on the internal floating roof, holes or tears in the secondary seal, and relatively large gaps between the secondary seal and wall of the storage vessel.

The costs of inspecting the internal floating roof and the secondary seal through the roof hatches and manholes would be small (less than 1 person-hour per inspection for the average size storage vessel). However, due to the expected low incidence of equipment failures, requiring very frequent inspections would not be reasonable, even considering the low costs. Therefore, the Administrator decided to require that such inspections be conducted only once every 3 months.

If during a 3-month inspection, the owner or operator finds that there are defects in or benzene accumulated on the floating roof, there are holes or tears in the secondary seal, or there is a visible gap between the secondary seal and the wall of the storage vessel, these failures would have to be repaired. In order to repair these failures, all benzene in the storage vessel would have to be removed and the storage vessel degassed. Once this is done, there would be no additional emissions due to the control equipment failure. For this reason, there is no reason to put a limit on the length of time allowed for repairing control equipment failures. However, it is necessary to place a time constraint on the length of time benzene would be allowed to remain in the storage vessel. The Administrator considered requiring that the benzene be removed immediately after a failure is detected. However, not all facilities could be expected to have extra storage capacity for the displaced benezene. A survey of benzene storage facilities (Docket Number A-80-14, items II-67 through II-70) indicates, however, that most facilities could within 30 days empty a storage vessel having equipment in need of repair. As a result, the Administrator has determined that it is reasonable to require in the proposed standard that the owner or operator of a storage vessel empty the storage vessel within 30 days if a failure is detected during a 3-month inspection. Additionally, the storage vessel could not be refilled with benzene until the failure is corrected.

The emissions and the residual risks used in selecting BAT and the proposed standard for existing and new sources were calculated assuming there would be no emissions due to degassing or control equipment failures. Actually, as discussed in this section, complete prevention of these failures is not possible. Operation and maintenance procedures for minimizing these emissions to the extent possible have been discussed in this section and are required by the proposed standard. In fact, however, the total emissions allowed by the standard include (1) those due to initially degassing existing storage vessels to retrofit them with control equipment, (2) those due to degassing each storage vessel each 5 years for the 5-year inspection, (3) those due to degassing a storage vessel to repair failures detected during the 3-month inspection, (4) those due to unrepaired failures in a primary seal which can be undetected for as long as 5 years, and (5) those due to unrepaired failures in the internal floating roof and secondary seal which can be undetected or unrepaired for as long as 4 months. These emissions allowed by the proposed standard are in addition to those which are released even when the required equipment is in place without defects.

The annual allowable emissions in 1985 resulting from control equipment failures and the degassing of benzene storage vessels meeting the proposed standard is estimated to be about 50 Mg. Little information is available on the expected frequency of such failures. Also, it is difficult to estimate the emissions due to failures such as holes or tears in seals. Furthermore, the emissions rate is dependent on the extent of such a hole or tear. A number of assumptions had to be made in deriving this emission estimate. These assumptions are detailed in Docket Item No. II-B-19.

The residual risks due to all emissions allowed by the proposed standard, including the emissions from equipment failures, were calculated using these emissions estimates. The residual incidence in 1985 with the proposed standard in effect would be increased by 0.003 to 0.020 deaths and the maximum lifetime risk would be increased by 7.6×10^{-6} to 5.3×10^{-5}. These increases are small due to the expected low control equipment failure rate. The only alternatives available for reducing these residual risks are those which would require the use of vapor control systems (Regulatory Alternative V for existing sources and Alternative IV for new sources) and those which prohibit the storage of benzene in storage vessels. The reasons for dismissing the latter alternatives on an across-the-industry basis are discussed in "Selection of Regulatory Alternatives." The costs and risks which would result if vapor control systems were required are discussed in the section entitled "Consideration of Unreasonable Risk and Selection of the Level of the Standard." As was stated there for continuous emissions, in view of the relatively small health benefits that would be gained with the additional costs and the potential adverse environmental impacts associated with the use of vapor control systems, the Administrator determined that the risks remaining after applying BAT for continuous emissions and emissions due to control equipment failures to existing and new storage vessels are not unreasonable.

Impacts of Reporting Requirements

The owner or operator of each storage vessel would be required to submit a report to the Administrator after each inspection conducted in accordance with the requirements of the standard. An initial report would have to be submitted following the first inspection of the storage vessel after the required control equipment has been installed. Periodic reports would also have to be submitted after each 3-month inspection and each 5-year inspection required by the standard. Each of these reports would have to identify each storage vessel which did not meet the requirements of the standard and the reason it did not meet the requirements. In the subsequent quarterly report a description of the steps taken to bring the storage vessel into compliance would have to be included. If the storage vessel has not been emptied or repaired within 30 days after being identified as out of compliance, then an interim report stating this would have to be submitted. If the storage vessel did not contain benzene prior to implementation of the standard, or if the storage vessel had to be emptied and degassed to bring

it into compliance with the standard, the owner or operator would have to notify the Administrator at least 30 days prior to filling the storage vessel so the Administrator could have the opportunity to send a representative to inspect the storage vessel prior to its filling. An estimated 10 person-years would be required for the industry to comply with these reporting requirements for all benzene storage facilities through the first 5 years of the regulation.

Public Hearing

A public hearing will be held to discuss the proposed standard for benzene storage vessels in accordance with Sections 112(b)(1)(B) and 307(b)(5) of the Clean Air Act. Persons wishing to make oral presentations regarding the proposed standard for benzene storage vessels should contact EPA at the address given in the ADDRESSES section of this preamble. Oral presentations will be limited to 15 minutes each. Any member of the public may file a written statement before, during, or within 30 days after the hearing. Written statements should be addressed to the Central Docket Section address given in the ADDRESSES section of this preamble and should refer to docket number A–80–14.

A verbatim transcript of the hearing and written statements will be available for public inspection and copying during normal working hours at EPA's Central Docket Section in Washington, D.C. (see ADDRESSES section of this preamble).

Docket

The docket is an organized and complete file of all the information submitted to or otherwise considered by EPA in the development of the proposed standard. The principal purposes of the docket are (1) to allow members of the public and industries involved to identify and locate documents so they can intelligently and effectively participate in the standard setting process, and (2) to serve as the record in case of judicial review.

Miscellaneous

As prescribed in Section 112 of the Clean Air Act, the proposal of this standard has been preceded by the Administrator's determination that benzene is a hazardos air pollutant as defined in Section 112(a)(1) of the Act. Benzene was added to the list of hazardous air pollutants on June 8, 1977.

In accordance with Section 117 of the Act, publication of this proposed standard was preceded by consultation with the appropriate advisory committees, independent experts, and Federal departments and agencies. In addition, members of the benzene task group of the Interagency Regulatory Liaison Group, representing EPA, OSHA, the Food and Drug Administration, and the Consumer Product Safety Commission, have met and reviewed the proposed regulation to ensure that the statement of the rule is jointly understood and is consistent with their programs. The Administrator welcomes comments on all aspects of the proposed standard, including economic and technological issues.

Comments are also specifically invited on the relative effectiveness of contact and noncontact internal floating roofs. Based on engineering judgment, a contact internal floating roof, which eliminates evaporation by restricting vapor formation, is more effective at reducing emissions than a noncontact roof, which reduces emission by confining the vapors to a small space above the liquid surface. Recent emissions tests conducted for EPA have demonstrated that a contact internal floating roof with a liquid-mounted primary seal and a continuous secondary seal is more effective at reducing emissions than a noncontact internal floating roof with shingled, vapor-mounted primary and secondary seals. However, because the roofs tested were equipped with different types of seals, the relative effectiveness of contact and noncontact internal floating roofs cannot be quantified. Any comments submitted to the Administrator on this issue should contain specific information and data pertinent to an evaluation of the issue.

This standard will be reviewed 5 years from the date of promulgation. This review will include an assessment of such factors as the need for integration with other programs, the existence of alternative methods of emission control, enforceability of the standard, improvements in emissions control technology, and reporting requirements. The reporting requirements in this regulation will be reviewed as required in the EPA sunset policy for reporting requirements and regulations.

Dated: December 12, 1980.

Douglas M. Costle,

Administrator.

It is proposed that 40 CFR Part 61 be amended by adding a new Subpart K as follows:

Subpart K—National Emission Standard for Benzene Emissions from Benzene Storage Vessels

Sec.

61.120 Applicability and designation of source.
61.121 Definitions.
61.122 Emission standard and compliance provisions.
61.123 Equivalent equipment and procedures.
61.124 Initial report.
61.125 Periodic reports.

Authority. Secs. 112, 114, and 301(a) of the Clean Air Act as amended (42 U.S.C. 7412, 7414, and 7601(a)), and additional authority as noted below.

Subpart K—National Emission Standard for Benzene Emissions from Benzene Storage Vessels

§ 61.120 Applicability and designation of source.

(a) The source to which this subpart applies is each storage vessel that is storing benzene and that has a storage capacity greater than 4 cubic meters. This subpart does not apply to storage vessels used for storing benzene at coke oven byproduct facilities.

(b) While the provisions of this subpart are effective, a designated source that is also subject to the provisions of 40 CFR Part 60 shall only be required to comply with the provisions of this subpart.

§ 61.121 Definitions.

Terms used in this subpart are defined in the Act, in Subpart A of this part, or in this section as follows:

"Benzene" means benzene having a specific gravity within the range of specific gravities specified for Industrial Grade benzene in ASTM–D–836–77. This specification includes Industrial Grade benzene, Nitration Grade benzene, and Refined benzene–535. (Permission will be sought from the Director of the Federal Register to incorporate this ASTM specification by reference.)

"Existing storage vessel" means each storage vessel that stores benzene and that was used to store benzene at any time prior to the proposal date of this standard.

"Fixed capital cost" means the capital needed to provide all the depreciable components.

"Internal floating roof" means a cover that rests upon the liquid surface inside a storage vessel having a permanently-affixed roof.

"Liquid-mounted seal" means a foam- or liquid-filled primary seal mounted in contact with the liquid between the wall of the storage vessel and the floating roof continuously around the circumference of the storage vessel.

"Metallic shoe seal" includes, but is not limited to, a metal sheet held vertically against the wall of the storage vessel by springs or weighted levers and is connected by braces to the floating roof. A flexible coated fabric (envelope) spans the annual space between the metal sheet and the floating roof.

"New storage vessel" means each storage vessel that is initially filled with benzene after the proposal date of this standard. Included are each vessel newly constructed and each vessel constructed prior to the proposal date of this standard.

"Primary seal" means the lower seal forming a continuous closure between the wall of the storage vessel and the internal floating roof.

"Reconstruction" means the replacement of components of an existing source to such an extent that:

(a) The fixed capital cost of the new components exceeds 50 percent of the fixed capital cost that would be required to construct a comparable, entirely new source; and

(b) It is feasible, considering economic impacts and the technological problems associated with retrofit, to meet the applicable standard for new sources set forth in this subpart.

"Secondary seal" means the upper seal forming a continuous closure between the wall of the storage vessel and the internal floating roof.

"Storage vessel" means each tank used for the storage of benzene.

§ 61.122 Emission standard and compliance provisions.

(a) The owner or operator of each storage vessel to which this subpart applies shall reduce benzene emissions to the atmosphere by meeting the following equipment and procedural requirements, or equivalent as provided in § 61.123.

(1) The owner or operator shall equip each storage vessel with a fixed roof in combination with an internal floating roof meeting the following specifications:

(i) The internal floating roof shall rest on and be in direct contact with the surface of the benzene liquid inside the storage vessel at all times, except during initial fill and those intervals when the storage vessel is completely emptied and subsequently refilled.

(ii) Each opening in the internal floating roof, except for automatic bleeder vents and leg sleeves, shall be equipped with a cover, seal, or lid which is in a closed position at all times (i.e., no visible gap), except when the device is in actual use. Automatic bleeder vents are to be closed at all times when the roof is floating, except when the roof is being floated off or is being landed on the roof leg supports.

(2) The owner or operator shall equip each storage vessel with a continuous closure device between the wall of the storage vessel and the edge of the internal floating roof. The closure device is to consist of a liquid-mounted seal and a secondary seal.

(b) The owner or operator of each storage vessel shall meet the requirements of paragraph (a) of this section, as follows:

(1) The owner or operator of each existing benzene storage vessel shall meet the requirements of paragraph (a) of this section no later than 90 days after the effective date, unless a waiver of compliance has been approved by the Administrator in accordance with § 61.11.

(2) The owner or operator of each new benzene storage vessel shall meet the requirements of paragraph (a) of this section prior to filling the storage vessel with benzene; except that if the storage vessel was filled with benzene between the proposal date of the regulations and the effective date, the owner or operator shall meet the requirements of paragraph (a) of this section on the effective date.

(c) The owner or operator of each storage vessel to which this subpart applies shall meet the following requirements after installing control equipment to comply with § 61.122(a):

(1) Visually inspect the internal floating roof, the primary seal, and the secondary seal prior to filling the storage vessel with benzene.

(i) If the owner or operator finds holes, tears or other openings in the primary seal, the secondary seal, or the seal fabric, or defects in the internal floating roof, or both, the owner or operator shall repair the items before filling the storage vessel.

(2) Visually inspect the internal floating roof and the secondary seal through manholes and roof hatches on the fixed roof at least once every 3 months.

(i) If the owner or operator finds that there is benzene accumulated on or defects in the internal floating roof, the internal floating roof is not resting on and in direct contact with the surface of the benzene liquid inside the storage vessel, there are visible gaps between the secondary seal and the wall of the storage vessel, or there are holes, tears, or other openings in the secondary seal or the seal fabric, the owner or operator shall repair the items or empty the storage vessel within 30 days.

(3) Visually inspect the internal floating roof, the primary seal, and the secondary seal whenever the storage vessel is emptied and degassed, but at least once during each 5 year period after installing control equipment to comply with § 61.122(a).

(i) In the case of the periodic 5-year inspection, notify the Administrator in writing at least 30 days prior to the refilling of each storage vessel to afford the Administrator the opportunity to have an observer present for inspecting the storage vessel prior to refilling.

(ii) If the owner or operator finds that the internal floating roof has defects, the primary seal has holes, tears, or other openings in the seal or the seal fabric, or the secondary seal has holes, tears, or other openings in the seal or the seal fabric, the owner or operator shall repair the items as necessary so that none of the conditions specified in this paragraph exist before refilling the storage vessel with benzene.

(d) Upon reconstruction, an existing storage vessel shall be considered a new storage vessel for purposes of this subpart. If it is in compliance with the requirements of § 61.122(a) for new storage vessels, it is exempt from the requirements of § 61.07.

(Sec. 114 of the Clean Air Act as amended (42 U.S.C. 7414)

§ 61.123 Equivalent equipment and procedures.

(a) Upon written application from any person, the Administrator may approve the use of equipment or procedures which have been demonstrated to his satisfaction to be equivalent in terms of reducing benzene emissions to the atmosphere to those prescribed for compliance with § 61.122(a) of this subpart. For an existing source, all requests for using an equivalent method as the inital means of control is to be submitted to the Administrator within 30 days of the effective date of the standard. For a new source, all requests for using an equivalent method is to be submitted to the Administrator with the application for approval of construction or modification required by § 61.07.

(b) Determination of equivalence to the specified equipment required in § 61.122(a) will be evaluated using the following information to be included in the written application to the Administrator:

(1) By an actual emissions test which uses a full-size or scale-model sealed storage vessel that accurately collects and measures all benzene emissions from a given control device, and which accurately simulates wind and accounts for other emission variables such as temperature and barometric pressure. The test facility shall be subject to prior approval by the Administrator. Or,

(2) By an engineering evaluation where the Administrator determines that the evaluation is an accurate method of determining equivalence.

(c) The Administrator may condition approval of equivalency on requirements that may be necessary to ensure operation and maintenace to achieve the same emission reduction as the requirements of § 61.122(a).

(d) If in the Administrator's judgment an application for equivalence may be approvable, the Administrator will publish a notice of preliminary determination in the Federal Register and provide the opportunity for public hearing. After notice and opportunity for public hearing, the Administrator will determine the equivalence of the alternative means of emission control and will publish the final determination in the Federal Register.

(e) A metallic shoe seal is considered an equivalent control device to the liquid-mounted seal required in § 61.122(a)(2). Rim vents will be set to open when the roof is being floated off the leg supports or at the manufacturer's recommended setting.

(f) The following system will be considered an equivalent system to that described in § 61.122(a), if it is approved by the Administrator:

(1) A vapor recovery system which collects all benzene vapors and gases discharged from the storage vessel, and a vapor return or disposal system which is designed to process such benzene vapors and gases so as to reduce their emission to the atmosphere by at least 95 percent by weight and which is operated at the design specifications to achieve this emission reduction. The efficiency of the vapor control system shall be calculated by comparing the controlled emissions to those emissions which would occur from a like-sized fixed-roof storage vessel without a vapor control system.

(2) In requesting approval for use of the vapor recovery system described in paragraph (f) of this section, the owner or operator shall provide the Administrator with the following information:

(i) Emission data, if available, for a similar vapor recovery and return or disposal system used on the same type of storage vessel, which can be used to determine the efficiency of the system. A complete description of the emission measurement method used must be included.

(ii) The manufacturer's design specifications and estimated emission reduction capability of the system.

(iii) The operation and maintenance plan for the system.

(iv) Any other information which will be useful to the Administrator in evaluating the effectiveness of the system in reducing benzene emissions.

(9) For the purpose of determining equivalence, flares are assumed to reduce benzene emissions to the atmosphere by 60 percent by weight unless demonstrated by emission testing to be more efficient.

(Sec. 114 of the Clean Air Act as amended (42 U.S.C. 7414)

§ 61.124 Initial report.

(a) The owner or operator of each existing storage vessel to which this subpart applies and who does not request a waiver of compliance under § 61.10, shall submit along with the report required by § 61.10 a report describing the existing controls.

(1) Where the existing controls do not meet the requirements of § 61.122(a), the owner or operator shall submit, along with the report required by § 61.10, a report describing the control equipment to be installed to comply with § 61.122(a); and

(2) Notify the Administrator in writing at least 30 days prior to the refilling of each storage vessel that was required to be emptied for installation of controls required by § 61.122(a), so that the Administrator has an opportunity to have an observer present to inspect the storage vessel before it is refilled. If it has not been necessary to completely empty the storage vessel to install controls, the onwer or operator shall submit a written report to the Administrator within 30 days after controls are installed. The report shall state the date controls were installed and shall described all deviations in controls from those described in the report submitted in accordance with paragraph (a)(1) of this section.

(b) The owner or operator who obtains a waiver of compliance under § 61.10, shall:

(1) Notify the Administrator in writing at least 30 days prior to the filling of each storage vessel that was required to be emptied for installation of controls required by § 61.122(a), so that the Administrator has an opportunity to have an observer present to inspect the storage vessel before it is filled. If it has not been necessary to completely empty the storage vessel to install controls, the owner or operator shall submit a report to the Administrator within 30 days after controls are installed. The report shall include the date controls were installed and shall describe all deviations in controls from those described in the report submitted in accordance with §61.10.

(c) The owner or operator of each new storage vessel to which this subpart applies shall submit, along with the report required by § 61.07, a report which describes the control equipment on the storage vessel, and which states the expected date for filling the storage vessel. The report shall be submitted to the Administrator at least 30 days prior to filling the storage vessel so that the Administrator has an opportunity to have an observer present to inspect the storage vessel before it is filled.

(d) The owner or operator of each new storage vessel that existed prior to the effective date of these standards shall submit, along with the report required by § 61.10, a report describing the control equipment installed on the storage vessel. The report shall be submitted within 30 days after the effective date.

(Sec. 114 of the Clean Air Act as amended (42 U.S.C. 7414)

§ 61.125 Periodic reports.

(a) The owner or operator of each storage vessel to which this subpart applies shall submit a report describing the results of each inspection conducted in accordance with § 61.122(c)(2).

(1) The first report is to be submitted 3 months after the initial report submitted in accordance with § 61.124. The first report shall include a reporting schedule stating the months that the quarterly reports will be submitted. Subsequent quarterly reports shall be submitted according to this schedule, unless a revised schedule has been submitted in the previous quarterly report.

(2) Each report shall include the date of the inspection of each storage vessel and identify each storage vessel in which benzene has accumulated on or there are defects in the internal floating roof, the internal floating roof is not resting on and in direct contact with the surface of the benzene liquid inside the storage vessel, there are visible gaps between the secondary seal and the wall of the storage vessel, or there are holes, tears, or other openings in the secondary seal or the seal fabric.

(3) Where a quarterly report identifies any condition in paragraph (a)(2) of this section the subsequent quarterly report shall describe the measures used to correct the condition, the date of storage vessel was emptied, and the date the condition was repaired.

(b) The owner or operator of each storage vessel to which this subpart applies shall submit an interim report if any condition listed in paragraph (a)(2) of this section was identified and the condition was not repaired or the storage vessel was not emptied within 30 days of the date the condition was

first identified. This report shall be postmarked no later than 40 days after the date the condition was identified.

(c) The owner or operator of each storage vessel to which this subpart applies shall submit a report describing the results of the inspection conducted in accordance with § 61.122(c)(3).

(1) The first report is to be submitted within the 5-year period after the initial report submitted in accordance with § 61.124, with subsequent reports during each 5-year period therafter.

(2) Each report shall identify each storage vessel in which the owner or operator finds that the internal floating roof has defects, the primary seal has holes, tears, or other openings in the seal or the seal fabric, or the secondary seal has holes, tears, or other openings in the seal or the seal fabric.

(3) A report shall be submitted 30 days prior to the refilling of each storage vessel describing repairs made, and giving the date of refilling of the vessel so the Administrator has an opportunity to have an observer present to inspect the storage vessel before it is refilled.

(Sec. 114 of the Clean Air Act as amended (42 U.S.C. 7414)

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Part XI

Department of State

Proposed Revision of the International Traffic in Arms Regulations (ITAR)

DEPARTMENT OF STATE

22 CFR Parts 121, 122, 123, 124, 125, 126, 127, 128, 129, 130

[SD-164]

Revision of the International Traffic in Arms Regulations (ITAR)

AGENCY: Department of State.

ACTION: Proposed rules.

SUMMARY: The public is invited to comment on the proposed revision of the International Traffic in Arms Regulations (the ITAR). The proposed revision seeks to simplify and clarify the ITAR and to make it consistent with recent statutory enactments. It includes new provisions which are designed to improve the regulatory scheme established under the Arms Export Control Act.

DATE: Due to the comprehensive nature of the changes proposed by the Department of State, the proposed revision will be open for public comment until February 27, 1981. Comments must be received in writing no later than that date.

ADDRESS: Comments should be sent to Mr. William B. Robinson, Director, Office of Munitions Control, Department of State, 2201 C Street, NW., Washington, D.C. 20520. All comments received will be available for public inspection in the Reading Room of the Department of State.

FOR FURTHER INFORMATION CONTACT: Mr. Kenneth Humborg, (202) 235-9756.

SUPPLEMENTARY INFORMATION: The ITAR were originally developed pursuant to Section 414 of the Mutual Security Act of 1954, 68 Stat. 848. The provisions of this act were to a large extent superseded in 1976 by the Arms Export Control Act. Section 38 of the Act (22 U.S.C. 2778) continued the President's authority to control the export and import of defense articles and services. This provision also authorized the President to promulgate regulations for the import and export of such articles and services, and to provide foreign policy guidance to persons involved in the export and import of such articles and services. Executive Order 11958 of January 18, 1977, as amended (42 FR 4311, 44 FR 7939, 44 FR 56673), delegated authority to the Secretary of State, in cooperation with the Secretaries of Commerce and Defense, to regulate exports of defense articles and defense services.

As a result of the enactment of the 1976 legislation, it became clear that changes would have to be made in the ITAR. For example, the Arms Export Control Act used terminology different from that used in the predecessor legislation. Also, the 1976 legislation provided authority for new substantive provisions in the ITAR. Section 39 of the Act (22 U.S.C. 2779), for example, provided authority for provisions dealing with the fees of agents and other payments. Although amendments to the ITAR were enacted to implement the substantive changes in the law, it soon became clear that the regulations needed a substantial revision in order to conform their terminology more closely with that of the 1976 legislation and subsequent amendments. The last significant revision of the ITAR had been completed in 1969, and there was in addition a need to simplify the complex structure and language of the regulations. As a result, the Department of State undertook in 1979 to revise the ITAR. The following revision is the result of this process.

The proposed revision seeks to clarify the ITAR as much as possible. It includes several new provisions or changes which are designed to improve the regulatory program under the ITAR. Specifically, the revision includes changes to the U.S. Munitions List concerning certain articles and technical data which are now to be regulated by the Department of Commerce. An example is the deletion of certain Inertial Navigation Systems (INS) destined for specific countries. This change is due primarily to the enactment of the Export Administration Act of 1979 (Section 17(c), Pub. L. 96-72), which transferred regulatory authority for certain INS exports to the Department of Commerce.

Also included in the regulations are several new definitions of key terms and phrases (e.g., defense articles and services, manufacturing license agreements, foreign person, export). Provisions have been expressly included to authorize advisory opinions in certain instances. A new chapter on confidential business information has been added due to the need for a better understanding of the Department of State's policy on this subject and because of recent amendments to the Arms Export Control Act (22 U.S.C. 2778(e)) and the Export Administration Act (50 U.S.C. App. 2411(c)).

The revision also incorporates into the text of the ITAR those informal "MC Notes" of recent years which were designed to provide regulatory guidance on the application of the ITAR. For example, a provision has been added to make it clear that the regulation of the export of technical data does not purport to interfere with the First Amendment rights of individuals.

One of the most important provisions of the proposed ITAR is the new definition of "exports" (§ 121.34). The definition and related provisions (e.g., § 123.1) make it clear that the transfer of a defense article or technical data to a foreign person (defined in § 121.35) under circumstances in which the U.S. person knows or has reason to believe that the article or data will be removed from the U.S. constitutes an export. A license is necessary for this export. The U.S. person involved in the export must obtain the license unless the foreign person involved in the transaction obtains the license and the U.S. person endorses it before transferring (i.e., exporting) the article or data. This change was designed to improve compliance with the licensing and regulatory provisions of the ITAR.

Section 108(a) of the recently enacted International Security and Development Cooperation Act of 1980 will require a further review to determine if additional defense articles and defense services should be removed from the Munitions List. Any resulting proposals for further changes to the regulations will be published separately.

It is proposed that Subchapter M of Chapter I of Title 22, Code of Federal Regulations, be revised to read as follows:

SUBCHAPTER M—INTERNATIONAL TRAFFIC IN ARMS

Part
121 Defense articles and defense services
122 Registration of manufacturers and exporters
123 Licenses for the export of unclassified defense articles
124 Manufacturing license agreements, technical assistance agreements, and other defense services
125 Licenses for the export of technical data and classified data and classified equipment
126 General policies and provisions
127 Violations and penalties
128 Administrative procedures
129 Confidential business information
130 Political contributions, fees, and commissions

SUBCHAPTER M—INTERNATIONAL TRAFFIC IN ARMS[1]

PART 121—DEFENSE ARTICLES AND DEFENSE SERVICES ENUMERATION OF ARTICLES

Sec.
121.1 The U.S. Munitions List.

[1] The basic statutory authority for this subchapter is Section 38 of the Arms Export Control Act (22 U.S.C. 2778). Section 38 authorizes the President to promulgate regulations for the import and export of defense articles and defense services and to

Footnotes continued on next page

Interpretations of the U.S. Munitions List

121.2 Interpretations of the U.S. Munitions List.
121.21 Aircraft and related articles.
121.22 Amphibious vehicles.
121.23 Apparatus and devices under Category IV(c).
121.24 Cartridges and shell casings.
121.25 Chemical agents.
121.26 End-items, components, accessories, attachments and parts.
121.27 Firearms.
121.28 Forgings, castings and machined bodies.
121.29 Military demolition blocks and blasting caps.
121.210 Military explosives.
121.211 Military fuel thickeners.
121.212 Propellants.
121.213 Vessels of war and special naval equipment.

Definitions

121.3 Definitions.
121.31 Article or defense article.
121.32 Defense articles and defense services.
121.33 District director of customs.
121.34 Export.
121.35 Foreign national or foreign person.
121.36 Hearing Commissioner.
121.37 Intransit shipment.
121.38 License.
121.39 Manufacturing license agreement.
121.310 Office of Munitions Control.
121.311 Person.
121.312 Service or defense service.
121.313 Significant military equipment.
121.314 Technical assistance agreement.
121.315 Technical data.
121.316 United States.
121.317 U.S. Person.

Authority: Sections 38 and 39, Arms Export Control Act, 90 Stat. 744, 767 (22 U.S.C. 2778 and 2779); E.O. 11958, 42 FR 4311; 22 U.S.C. 2658.

Enumeration of Articles

§ 121.1 The U.S. Munitions List.

The following articles and technical data are designated as defense articles and defense services.

CATEGORY I—FIREARMS

*(a) Nonautomatic, semi-automatic and fully automatic firearms to caliber .50 inclusive, and all components and parts for such firearms (see § 121.27).

(b) Riflescopes manufactured to military specifications, and specifically designed components therefor; firearm silencers and flash suppressors.

CATEGORY II—ARTILLERY AND PROJECTORS

*(a) Guns over caliber .50, howitzers, mortars, and recoilless rifles.

*(b) Military flamethrowers and projectors.

(c) Components and parts for the articles in paragraphs (a) and (b) of this category, including mounts and carriages for these articles.

CATEGORY III—AMMUNITION

*(a) Ammunition for the arms in Categories I and II of this section.

(b) Components, parts, accessories, and attachments for articles in paragraph (a) of this category, including cartridge cases, powder bags, bullets, jackets, cores, shells (excluding shotgun), projectiles, boosters, fuzes and components therefor, primers, and other detonating devices for such ammunition (see § 121.24).

(c) Ammunition belting and linking machines.

(d) Ammunition manufacturing machines and ammunition loading machines (except handloading ones).

CATEGORY IV—LAUNCH VEHICLES, GUIDED MISSILES, BALLISTIC MISSILES, ROCKETS, TORPEDOES, BOMBS AND MINES

*(a) rockets (except meteorological sounding rockets), bombs, grenades, torpedoes, depth charges, land and naval mines, as well as launchers for such defense articles, and demolition blocks and blasting caps (see § 121.29).

*(b) Launch vehicles, guided missiles, guided missile systems, guided missile launchers, tactical ballistic missiles, strategic ballistic missiles, and missile and anti-missile systems.

(c) Apparatus, devices, and materials for the handling, control, activation, detection, protection, discharge, or detonation of the articles in paragraphs (a) and (b) of this category (see § 121.23).

*(d) Missile and space vehicle powerplants.

*(e) Military explosive excavating devices.

*(f) Ablative materials fabricated or semi-fabricated from advanced composites (*e.g.*, silica, graphite, carbon, and boron filaments) for the articles in this category that are derived directly from or specifically developed or modified for defense articles. This includes the tape wrapping and other techniques for their production.

*(g) Non-nuclear warheads for rockets and guided missiles.

(h) All specifically designed components, parts, accessories, attachments, and associated equipment for the articles in this category.

CATEGORY V—EXPLOSIVES, PROPELLANTS, AND INCENDIARY AGENTS

*(a) Military explosives (see § 121.210).

*(b) Military fuel thickeners (see § 121.211).

(c) Propellants for the articles in Categories III and IV of this section (see § 121.212).

(d) Military pyrotechnics, except pyrotechnic materials having dual military and commercial use.

CATEGORY VI—VESSELS OF WAR AND SPECIAL NAVAL EQUIPMENT

*(a) Warships, amphibious warfare vessels, landing craft, mine warfare vessels, patrol vessels, auxiliary vessels and service craft and experimental types of naval ships (see § 121.213).

*(b) Turrets and gun mounts, missile systems, arresting gear, special weapons systems, protective systems, submarine storage batteries, catapults and other components, parts, attachments, and accessories specifically designed for combatant vessels.

(c) Mine sweeping equipment, components, parts, attachments and accessories specifically designed therefor.

(d) Harbor entrance detection devices (magnetic, pressure, and acoustic ones) and controls and components therefor.

*(e) Naval nuclear propulsion plants, their land prototypes, and special facilities for their construction, support, and maintenance. This includes any machinery, device, component, or equipment specifically developed or designed for use in such plants or facilities. (See § 123.27.)

CATEGORY VII—TANKS AND MILITARY VEHICLES

*(a) Military type armed or armored vehicles, military railway trains, and vehicles designated or modified to accommodate mountings for arms or other specialized military equipment or fitted with such items.

*(b) Military tanks, combat engineer vehicles, bridge launching vehicles, half-tracks and gun carriers.

*(c) Self-propelled guns and howitzers.

(d) Military trucks, trailers, hoists, and skids specifically designed, modified, or equipped to mount or carry weapons of Categories I, II and IV or for carrying and handling the articles in paragraph (a) of Categories III and IV.

(e) Military recovery vehicles.

*(f) Amphibious vehicles (see § 121.22).

*(g) All engines specifically designed or modified for the vehicles in paragraphs (a), (b), (c), and (f) of this category.

(h) All specifically designed components and parts, accessories, attachments, and associated equipment for the articles in this category, including military bridging and deep water fording kits.

CATEGORY VIII—AIRCRAFT, SPACECRAFT, AND ASSOCIATED EQUIPMENT

*(a) Aircraft, including helicopters, non-expansive balloons, drones, and lighter-than-air aircraft, which are designed, modified, or equipped for military purposes. This includes but is not limited to the following military purposes: Gunnery, bombing, rocket or missile launching, electronic and other

*All items preceded by an asterisk are "significant military equipment" to the extent specified in § 121.313.

Footnotes continued from last page
establish a U.S. Munitions List. The authority of the President to promulgate such regulations with respect to exports was delegated to the Secretary of State by Executive Order 11958 (42 FR 4311), subject to the concurrence of the Secretary of Commerce or the Secretary of Defense with respect to certain specified issues. Other provisions of the Arms Export Control Act constitute the authority for some of the specific provisions of these regulations (*e.g.* Section 39 (22 U.S.C. 2779) is the basic authority for Part 130 of these regulations). Authority for the regulations is also derived from the Secretary of State's general statutory authority to promulgate regulations and delegate authority concerning functions vested in the Secretary of State (22 U.S.C. 2658). By virtue of delegations of authority by the Secretary of State, these regulations are primarily administered by the Director of the Office of Munitions Control of the Department of State.

surveillance, reconnaissance, refueling, aerial mapping, military liaison, cargo carrying or dropping, personnel dropping, airborne warning and control, and military training (see § 121.21).

*(b) Spacecraft, including manned and unmanned, active and passive satellites.

*(c) Military aircraft engines, except reciprocating engines, and spacecraft engines specifically designed or modified for the aircraft and spacecraft in paragraphs (a) and (b) of this category.

*(d) Airborne equipment (including but not limited to airborne refueling equipment) specifically designed for use with the aircraft, spacecraft, and engines of the types in paragraphs (a), (b), and (c) of this category.

(e) Launching and recovery equipment for the articles in paragraphs (a) and (b) of this category, insofar as this equipment is specifically designed for military use or for use with spacecraft.

(f) Power supplies and energy sources specifically designed for spacecraft.

(g) Components, parts, accessories, attachments, and associated equipment (including ground support equipment) specifically designed or modified for the articles in paragraphs (a) through (f) of this category.

(h) Components for developmental aircraft until or unless certificated by the Federal Aviation Administration.

*(i) Ground effect machines (GEMS) specifically designed for military use, including surface effect machines and other air cushion vehicles, and all components, parts, accessories, attachments, and associated equipment specifically designed or modified for use with such machines.

*(j) Inertial navigation systems and specifically designed components therefor which are inherently capable of yielding accuracies of better than 1 to 2 nautical miles per hour circular error of probability (c.e.p.). Such systems or components which are standard equipment in civil aircraft and which are certified by the Federal Aviation Administration as being an integral part of such aircraft are subject to export regulation by the Office Of Munitions Control only if the export is intended for a controlled country described in Section 620 (f) of the Foreign Assistance Act of 1961, as amended [1] (22 U.S.C. 2370(f)) (except Yugoslavia). All exports of technical data (regardless of destination) relating to the design, development or manufacture of inertial navigation equipment, its related parts, components, or subsystems are subject to the requirements of the regulations contained in this subchapter. The export of technical data relating to the repair of parts, components, or subsystems of inertial navigation systems (including accelerometers and gyroscopes) which are not certified by the FAA as being an integral part of civil aircraft are subject to the requirements of this subchapter.

CATEGORY IX—MILITARY TRAINING EQUIPMENT

(a) Military training equipment includes but is not limited to attack trainers, radar target trainers, radar target generators, gunnery training devices, antisubmarine warfare trainers, target equipment, armament training units, flight simulation devices, operational flight trainers, flight simulators, radar trainers, and navigation trainers.

(b) Components, parts, accessories, attachments, and associated equipment specifically designed or modified for the articles in paragraph (a) of this category.

CATEGORY X—PROTECTIVE PERSONNEL EQUIPMENT

(a) Body armor specifically designed, modified or equipped for military use; articles, including clothing, designed, modified or equipped to protect against or reduce detection by radar, infrared (IR) or other sensors; attachments to military helmets, including optical sights, slewing devices or mechanisms to protect against thermal flash or lasers.

(b) Partial pressure suits and liquid oxygen converters used in aircraft (enumerated in Category VIII(a)).

(c) Protective apparel and equipment specifically designed for use with the articles in paragraphs (a) through (d) in Category XIV.

(d) Components, parts, accessories, attachments, and associated equipment specifically designed for use with the articles in paragraphs (a), (b), and (c) of this category.

CATEGORY XI—MILITARY AND SPACE ELECTRONICS

(a) Electronic equipment not included in Category XII of the Munitions List which is assigned a military designation or is specifically designed, modified or configured for military application. This includes but is not limited to the following items:

*(1) Underwater sound equipment, including towed arrays, electronic beam formed sonar, target classification equipment, and spectrographic displays; search, acquisition, tracking, moving target indication and imaging radar systems; active and passive countermeasures, counter-countermeasures; electronic fuses; identification systems; command, control and communications systems; and, regardless of designation, any experimental or developmental electronic equipment specifically designed or modified for military application, or for use with a military system.

(2) Sonic depth finders; underwater telephones; electromechanical beam forming sonars and elementary sonobuoys (except depth finders which are used on pleasure boats and for commercial and sport fishing purposes and which do not meet military specifications); radios; weather, navigation, and air traffic control radar systems; navigation guidance, object-locating methods and means; displays; telemetering equipment; and armored coaxial cable suitable for both signal and power transmission at high voltages and suitable for use in deep sea water.

(b) Space electronics: *(1) Electronic equipment specifically designed or modified for spacecraft and spaceflight.

(2) Electronic equipment specifically designed or modified for use with communications satellites.

*(c) Electronic systems or equipment specifically designed for surveillance and monitoring of the electromagnetic spectrum for intelligence or security purposes and electronic systems or equipment designed to counteract such surveillance and monitoring.

(d) Components, parts, accessories, attachments, and associated equipment specifically designed for use or currently used with the equipment in paragraphs (a) through (c) of this category.

CATEGORY XII—FIRE CONTROL, RANGE FINDER, OPTICAL AND GUIDANCE AND CONTROL EQUIPMENT

*(a) Fire control systems; gun and missile tracking and guidance systems; military infrared, image intensifier and other night sighting and night viewing equipment designed for poor visibility conditions; masers and military lasers; gun laying equipment; range, position and height finders and spotting instruments; aiming devices (electronic, gyroscopic, optic, and acoustic); bomb sights, bombing computers, military television sighting and viewing units, inertial platforms, and periscopes for the articles of this section.

(b) Inertial and other weapons or space vehicle guidance and control systems; spacecraft guidance, control and stabilization systems; astro compasses; and star trackers.

(c) Components, parts, accessories, attachments, and associated equipment specifically designed or modified for the articles in paragraphs (a) and (b) of this category.

CATEGORY XIII—AUXILIARY MILITARY EQUIPMENT

(a) Aerial cameras, space cameras, special purpose military cameras, and specialized processing equipment therefor; military photointerpretation, stereoscopic plotting, and photogrammetry equipment, and components specifically designed therefor.

(b) Speech scramblers, privacy devices, cryptographic devices (encoding and decoding), and components specifically designed therefor, ancillary equipment, and especially devised protective apparatus for such devices, components, and equipment.

(c) Self-contained diving and underwater breathing apparatus designed for a military purpose and components specifically designed therefor.

(d) Structural materials (including plate, rolled and extended shapes, bars and forgings, castings, welding consumables and metal matrix composites) developed specifically to enhance the military effectiveness of ships, aircraft, spacecraft, vehicles and associated equipment.

(e) Concealment and deception equipment, including but not limited to special paints, decoys, and simulators; and components, parts and accessories specifically designed therefor.

(f) Energy conversion devices for producing electrical energy from nuclear, thermal, or solar energy, or from chemical reaction which are specifically designed or modified for military application.

(g) Chemiluminescent compounds and solid state devices specifically designed or modified for military application.

[1] The Export Administration Act of 1979 (50 U.S.C. App. 2416(c)) deals with the export of such items to noncontrolled countries.

CATEGORY XIV—TOXICOLOGICAL AGENTS AND EQUIPMENT AND RADIOLOGICAL EQUIPMENT

*(a) Chemical agents, including lung irritants, vesicants, lachrymators, tear gases, (except tear gas formulations containing 1% or less CN or CS), sternutators and irritant smoke, and nerve gases and incapacitating agents (see § 121.25).

*(b) Biological agents adapted for use in war to produce death or disablement in human beings or animals, or to damage vegetation.

*(c) Equipment for dissemination, detection, and identification of, and defense against, the articles in paragraphs (a) and (b) of this category.

*(d) Nuclear radiation detection and measuring devices, manufactured to military specification.

(e) Components, parts, accessories, attachments, and associated equipment specifically designed or modified for the articles in paragraphs (c) and (d) of this category.

CATEGORY XV—[RESERVED]

CATEGORY XVI—NUCLEAR WEAPONS DESIGN AND TEST EQUIPMENT [2]

*(a) Any article, material, equipment, or device which is specifically designed or specifically modified for use in the design, development, or fabrication of nuclear weapons or nuclear explosive devices.

*(b) Any article, material, equipment, or device which is specifically designed or specifically modified for use in the devising, carrying out, or evaluating of nuclear weapons tests or any other nuclear explosions, except such items as are in normal commercial use for other purposes.

CATEGORY XVII—CLASSIFIED ARTICLES

*All articles, including technical data related thereto, not enumerated herein containing information which is classified as requiring protection in the interests of national security.

CATEGORY XVIII—TECHNICAL DATA

Technical Data relating to the articles designated in this subchapter as defense articles and defense services.

CATEGORY XIX—[RESERVED]

CATEGORY XX—SUBMERSIBLE VESSELS, OCEANOGRAPHIC AND ASSOCIATED EQUIPMENT

*(a) Submersible vessels, manned and unmanned, designed for military purposes or having independent capability to maneuver vertically or horizontally at depths below 1,000 feet or powered by nuclear propulsion plants.

*(b) Submersible vessels, manned or unmanned, designed in whole or in part from technology developed by or for the U.S. Armed Forces.

(c) Any of the articles in Categories VI, IX, XI, XIII, and elsewhere in § 121.1 of this subchapter that may be used with submersible vessels and oceanographic or associated equipment assigned a military designation.

(d) Equipment, components, parts, accessories, and attachments designed specifically for any of the articles in paragraphs (a) and (b) of this category.

(e) Articles and technical data for submarine nuclear propulsion plants which upon review are determined to have significant naval nuclear propulsion applicability will be considered as nuclear propulsion articles and data for the purposes of these regulations. See § 123.27.

CATEGORY XXI—[RESERVED]

CATEGORY XXII—MISCELLANEOUS ARTICLES

Any defense article and technical data relating thereto not enumerated in this subchapter which has substantial military applicability, as determined by the Director, Office of Munitions Control with the concurrence of the Department of Defense.

Interpretations of the U.S. Munitions List

§ 121.2 Interpretations of the U.S. Munitions List.

The interpretations contained in this part explain and amplify the terms used in § 121.1. These interpretations have the same force as if they were a part of the U.S. Munitions List category to which they refer. The Office of Munitions Control will provide, upon request, additional interpretative guidance to any person who needs to know whether a particular item is included on the U.S. Munitions List.

§ 121.21 Aircraft and related articles.

In Category VIII, "aircraft" means aircraft designed, modified, or equipped for a military purpose, including aircraft described as "demilitarized." All aircraft bearing an original military designation are included in Category VIII. However, the following aircraft are not so included so long as they have not been specifically equipped, reequipped, or modified for military operations:

(a) Cargo aircraft bearing "C" designations and numbered C-45 through C-118 inclusive, and C-121.

(b) Trainer aircraft bearing "T" designations and using reciprocating engines only.

(c) Utility aircraft bearing "U" designations and using reciprocating engines only.

(d) All liaison aircraft bearing an "L" designation.

(e) All observation aircraft bearing "O" designations and using reciprocating engines.

§ 121.22 Amphibious vehicles.

An "amphibious vehicle" in Category VII(f) is an automotive vehicle or chassis embodying all-wheel drive which is equipped to meet special military requirements and which has sealed electrical systems and adaptation features for deep water fording.

§ 121.23 Apparatus and devices under Category IV(c).

Category IV includes the following: Fuzes and components for the items listed in that category, bomb racks and shackles, bomb shackle release units, bomb ejectors, torpedo tubes, torpedo and guided missile boosters, guidance system materials (except those having a commercial application), launching racks and projectors, pistols (exploders), igniters, fuze arming devices, intervalometers, and components therefor, guided missile launchers and specialized handling equipment, and hardened missile launching facilities.

§ 121.24 Cartridge and shell casings.

Cartridge and shell casings are included in Category III unless, prior to export, they have been rendered useless beyond the possibility of restoration for use as a cartridge or shell casing by means of heating, flame treatment, mangling, crushing, cutting, or popping.

§ 121.25 Chemical agents.

A chemical agent in Category XIV(a) is a substance having military application which by its ordinary and direct chemical action produces a powerful physiological effect. The term "chemical agent" includes but is not limited to the following chemical compounds:

(a) Lung irritants:
(1) Diphenylcyanoarsine (DC).
(2) Fluorine (but not fluorene).
(3) Trichloronitro methane (chloropicrin PS).

(b) Vesicants:
(1) B Chlorvinyldichlorarsine (Lewisite, L).
(2) Bisdichlorethyl sulphide (Mustard gas, HD or H).
(3) Ethyldichloroarsine (ED).
(4) Methyldichloroarsine (MD).

(c) Lachrymators and tear gases:
(1) Brombenylcyanide (BBC).
(2) Chloroacetophenone (CN).
(3) Dibromodimethyl ether.
(4) Dichlorodimethyl ether (ClCi).
(5) Ethyldibromoarsine.
(6) Phenylcarbylamine chloride.
(7) Tear gas solutions (CNB and CNS).
(8) Tear gas orthochlorobenzalmalononitrile (CS).

(d) Sternutators and irritant smokes:
(1) Diphenylaminechlorarsine (Adamsite, DM).
(2) Diphenylchlorarsine (BA).
(3) Liquid pepper.

(e) Nerve gases. These are toxic componds which affect the nervous system, such as:
(1) Dimethylaminoethoxycyanophosphine oxide (GA).
(2) Methylisopropoxyfluorophosphine oxide (GB).

*See § 123.27. See also Department of Commerce Export Regulations, 15 CFR Part 378.

(3) Methylpinacolyloxyfluorophosphine oxide (GD).

(f) Antiplant chemicals, such as: Butyl 2-chloro-4-fluorophenoxyacetate (LNF).

§ 121.26 End-items, components, accessories, attachments and parts.

(a) An end-item is an assembled article ready for its intended use. Only ammunition, fuel or an other energy source is required to place it in an operating state.

(b) A component is an item which is useful only when used in conjunction with an end-item. A major component includes any assembled element which forms a portion of an end-item without which the end-item is inoperable. (Examples: Airframes, tail sections, transmissions, tank treads, hulls, etc.). A minor component includes any assembled element of a major component.

(c) Accessories and attachments are elements of any component, system, or product which are not necessary for the operation of an end-item, but which enhance the usefulness or effectiveness of the end-item. (Examples: Riflescopes, special paints, etc.)

(d) A part is any single unassembled element of a major or a minor component, accessory, or attachment which is not normally subject to disassembly without the destruction or the impairment of design use. (Examples: Rivets, wire, bolts, etc.)

(e) The software, firmware, and any related unique support tools (such as computers, linkers, editors, test case generators, diagnostic checkers, library of functions and system test diagnostics) for equipment or systems covered under any category are considered as a part of the end-product or component. Software includes the system functional design, logic flow, algorithms, application programs, operating systems and support software for design, implementation, test, operation, diagnosis and repair.

§ 121.27 Firearms.

(a) Category I(a) includes revolvers, pistols, rifles, carbines, fully automatic rifles, submachine guns, machine pistols and machine guns to caliber .50, inclusive. It excludes shotguns and muzzle loading (black powder) firearms.

(b) A "firearm" is a weapon not over .50 caliber which is designed to expel a projectile by the action of an explosive or which may be readily converted to do so.

(c) A "rifle" is a shoulder firearm which can discharge a bullet through a rifled barrel at least 16 inches in length.

(d) A "carbine" is a lightweight shoulder firearm with a barrel under 16 inches in length.

(e) A "pistol" is a hand-operated firearm having a chamber integral with or permanently aligned with the bore.

(f) A "revolver" is a hand-operated firearm with a revolving cylinder containing chambers for individual cartridges.

(g) A "submachine gun", "machine pistol" or "machine gun" is a firearm originally designed to fire, or capable of being fired, fully automatically by a single pull of the trigger.

§ 121.28 Forgings, castings and machined bodies.

Articles on the U.S. Munitions List include articles in a partially completed state (such as forgings, castings, extrusions, and machined bodies) which have reached a stage in manufacture where they are clearly identifiable as defense articles.

§ 121.29 Military demolition blocks and blasting caps.

Military demolition blocks and blasting caps referred to in Category IV do not include the following articles:

(a) Electric squibs.

(b) No. 6 and No. 8 blasting caps, including electric ones.

(c) Delay electric blasting caps (including No. 6 and No. 8 millisecond ones).

(d) Seismograph electric blasting caps (including SSS, Static-Master, Vibrocap SR, and SEISMO SR).

(e) Oil well perforating devices.

§ 121.210 Military explosives.

Military explosives in Category V include, but are not limited to, the following:

(a) Ammonium picrate.

(b) Black powder made with potassium nitrate or sodium nitrate.

(c) Cyclotetramethylene-tetranitramine (HMX).

(d) Cyclotetramethylene-trinitramine (RDX, Cyclonite, Hexogen or T4).

(e) Dinitronaphthalene.

(f) Ethylenedinitramine.

(g) Hexanitrodiphenylamine.

(h) Nitroglycerin.

(i) Nitrostarch.

(j) Pentaerythritol tetranitrate (penthrite, pentrite or PETN).

(k) Tetranitronaphthalene.

(l) Trinitroanisol.

(m) Trinitronaphthalene.

(n) Trinitrophenol (picric acid).

(o) Trinitrophenylmethylnitramine (Tetryl).

(p) Trinitrotoluene (TNT).

(q) Trinitroxylene.

(r) Ammonium perchlorate nitrocellulose (military grade).

(s) Any combinations of the above.

§ 121.211 Military fuel thickeners.

Military fuel thickeners in Category V include compounds (*e.g.*, octal) or mixtures of such compounds (*e.g.*, napalm) specifically formulated for the purpose of producing materials which, when added to petroleum products, provide a gel-type incendiary material for use in bombs, projectiles, flame throwers, or other implements of war.

§ 121.212 Propellants.

Propellants in Category V include, but are not limited to the following:

(a) Propellant powders, including smokeless shotgun powder.

(b) Hydrazine (including Monomethyl hydrazine and symmetrical dimethyl hydrazine but excluding hydrazine hydrate).

(c) Unsymmetrical dimethyl hydrazine.

(d) Hydrogen peroxide of over 85 percent concentration.

(e) Nitroguanadine or picrite.

(f) Nitrocellulose with nitrogen content of over 12.20 percent.

(g) Nitrogen tetroxide.

(h) Other solid propellant compositions, including but not limited to the following:

(1) Single base (nitrocellulose).

(2) Double base (nitrocellulose, nitroglycerin).

(3) Triple base (nitrocellulose, nitroglycerin, nitroguanidine).

(4) Composite of nitroglycerin, ammonium perchlorate, potassium perchlorate, nitronium perchlorate, guanidine (quanidinium) perchlorate, nitrogen tetroxide, ammonium nitrate or nitrocellulose with plastics, metal fuels, or rubbers added: and compounds composed only of fluorine and halogens, oxygen, or nitrogen.

(5) Special purpose high energy solid military fuels with a chemical base.

(i) Other liquid propellant compositions, including but no limited to, the following:

(1) Monopropellants (hydrazine, hydrazine nitrate, and water).

(2) Bipropellants (hydrazine, fuming nitric acid HNO3).

(3) Special purpose chemical base high energy liquid military fuels and oxidizers.

§ 121.213 Vessels of war and special naval equipment.

Vessels of war in Category VI include, but are not limited to, the following:

(a) Combatant vessels:

(1) Warships (including nuclear-powered versions):

(i) Aircraft carriers (CV, CVN)

(ii) Battleships (BB)

(iii) Cruisers (CA, CG, CGN)
(iv) Destroyers (DD, DDG)
(v) Frigates (FF, FFG)
(vi) Submarines (SS, SSN SSBN, SSG, SSAG)
(2) Other Combatant Classifications:
(i) Patrol Combatants (PG, PHM)
(ii) Amphibious Helicopter/Landing Craft Carriers (LHA, LPD, LPH)
(iii) Amphibious Landing Craft Carriers (LKA, LPA, LSD, LST)
(iv) Amphibious Command Ship (LCC)
(v) Mine Warfare Ships (MSO)
(b) Auxiliaries:
(1) Mobile Logistics Support:
(i) Under way Replishment (AD, AF, AFS, AO, AOE, AOR)
(ii) Material Support (AD, AR, AS)
(2) Support Ships:
(i) Fleet Support (ARS, ASR, ATA, ATF, ATS)
(ii) Other Auxiliaries (AG, AGDS, AGF, AGM, AGOR, AGOS, AGS, AH, AK, AKR, AOG, AOT, AP, APB, ARC, ARL, AVM, AVT)
(c) Combatant Craft:
(1) Patrol Craft:
(i) Coastal Patrol Combatants (PB, PCF, PCH, PTF)
(ii) River, Roadstead Craft (ATC, PBR)
(2) Amphibious Warfare Craft:
(i) Landing Craft (AALC, LCAC, LCM, LCPL, LCPR, LCU, LWT, SLWT)
(ii) Special Warfare Craft (LSSC, MSSC, SDV, SWCL, SWCM)
(3) Mine Warfare Craft:
(i) Mine Counter measures craft (MSB, MSD, MSI, MSM, MSR)
(d) Support and Service Craft:
(i) Tugs (YTB, YTL, YTM)
(ii) Tankers (YO, YOG, YW)
(iii) Lighters (YC, YCF, YCV, YF, YFN, YFNB, YFNX, YFR, YFRN, YFU, YG,YGN, YOGN, YON, YOS, YSR, YWN)
(iv) Miscellaneous (APL, DSRV, DSV, IX, NR, YAG, YD, YDT, YFB, YFND, YEP, YFRT, YHLC, YM, YNG, YP, YPD, YR, YRB, YRBM, YRDH, YRDM, YRR, YRST, YSD)
(e) Coast Guard Patrol and Service Vessels and Craft:
(i) Coast Guard cutter (CGC, WHEC, WMEC)
(ii) Patrol Craft (WPB)
(iii) Icebreaker (WAGB)
(iv) Oceanography vessel (WAGO)
(v) Special vessel (WIX)
(vi) Buoy tenders (WLB, WLM, WLI, WLR, WLIC)
(vii) Tugs (WYTM, WYTL)
(viii) Light ship (WLV)

Definitions

§ 121.3 Definitions.

The definitions contained in this part apply to the use throughout this subchapter of the defined terms unless a different meaning is specified. See also § 130.1 for definitions applicable to Part 130.

§ 121.31 Article or defense article.

"Article" or "defense article" means an item in § 121.1, including any item which does not itself have direct military application but which transmits technical data relating to an article (*e.g.*, models and mockups, with or without moving parts).

§ 121.32 Defense articles and defense services.

"Defense articles and defense services" means technical assistance, articles, services and technical data relating to articles and services.

§ 121.33 District director of customs.

"District director of customs" means the district directors of customs at customs headquarters ports (other than the port of New York City, New York); the regional commissioners of customs, the deputy and assistant regional commissioners of customs for customs region II at the port of New York, New York; and port directors at customs ports not designated as headquarters ports.

§ 121.34 Export.

(a) Export of defense articles and defenses services (including technical data) means:
(1) Sending, transmitting or taking defense articles and defense services out of the United States in any manner;
(2) Transferring them to a foreign national in the United States in circumstances in which the transferor knows or has reason to know that the transferred article or technical data will be sent, transmitted or taken out of the United States in any manner, or
(3) Transfer to a foreign person of title, registration, or control of:
(i) an aircraft or vessel of war, wherever located, or
(ii) A satellite launched into space from the United States.
(b) The disclosure to a foreign national of technical data relating to significant military equipment, whether in the United States or abroad, constitutes an export. The disclosure of technical data to a foreign national abroad constitutes an export. Disclosure of a technical data to a foreign national in the United States constitutes an export when the transferor knows or has reason to know that the disclosed technical data will be disclosed outside the United States. Travel abroad by a United States national or permanent resident whose personal knowledge includes technical data does not constitute an export.

§ 121.35 Foreign national or foreign person.

"Foreign national" or "foreign person" means a person (§ 121.311) who is not a citizen or national of the United States and who is not a permanent resident in the United States. This includes a foreign corporation, international organization, foreign government, and any agency or subdivision of a foreign government.

§ 121.36 Hearing Commissioner.

"Hearing Commissioner" means the Hearing Commissioner, Bureau of Trade Regulation, U.S. Department of Commerce. (See 15 CFR 388.2.)

§ 121.37 Intransit shipment.

"Intransit shipment" means a temporary import into the United States of an article which is to be reexported within twelve months, including its return to the foreign country from which it was imported.

§ 121.38 License.

"License" means a document bearing the word "license" which, when issued by the Director, Office of Munitions Control, or his authorized designee, permits the export or untransit shipment of a specified defense article or defense service (including technical data). (See §§123.1 and 125.2.)

§ 121.39 Manufacturing license agreement.

An agreement whereby a U.S. person grants a foreign person a legal right or license to manufacture defense articles abroad and which involves or contemplates (a) the export of defense articles or defense services (including technical data) or (b) the utilization of previously exported defense articles or defense services (including technical data).

§ 121.310 Office of Munitions Control.

"Office of Munitions Control" means the Office of Munitions Control, Bureau of Politico-Military Affairs, Department of State, Washington, D.C. 20520.

§ 121.311 Person.

"Person" means a natural person as well as a corporation, business association, society, group, or governmental entity. If a provision in this subchapter does not refer exclusively to a foreign person (§ 121.35) or U.S. person (§ 121.317), it refers to both.

§ 121.312 Service or defense service.

"Service" or "defense service" means any test, inspection, repair, maintenance, over haul, programming, modification or other action to alter,

improve or maintain the operation, reliability or characteristics of an article. It includes the furnishing of any technical data (see 121.315).

§ 121.313 Significant military equipment.

(a) "Significant military equipment" means articles, as identified in paragraph (b) of this section, for which special export controls are warranted because of their capacity for substantial utility in the conduct of military operations.

(b) Articles designated as significant military equipment under the criterion specified in paragraph (a) of this section include the articles (not including technical data) enumerated in § 121.1 in Categories I (a) (in quantity); II (a) and (b); III (a) (excluding ammunition for firearms in Category (I)); IV (a), (b), (d), (e), (f) and (g); V (a) (in quantity) and (b); VI (a) (limited to combatant vessels as interpreted in § 121.21(a)), (b) (inclusive only of turrets and gun mounts, missile systems, and special weapons systems) and (e); VII (a), (b), (c), (f), and (g); VIII (a), (b), (c), (d), GEMS as defined in (i), and inertial systems as defined in (j); XI (a)(1), (b)(1), (c); XII (a); XIV (a), (b), (c) and (d); XVI; XVII; and XX (a) and (b).

(c) Items in section 121.1 which are preceded by an asterisk are "significant military equipment."

§ 121.314 Technical assistance agreement.

An agreement involving the performance of defense services or the disclosure of technical data, as opposed to the granting of a right or license to manufacture defense articles.

§ 121.315 Technical data.

"Technical data" means:

(a) Unclassified information not in the public domain relating directly to:

(1) The design, production, manufacture, processing, engineering, development, operation, or reconstruction of an article; or

(2) Training in the operation, use, overhaul, repair or maintenance of an article; or

(3) The performance of a defense service (see § 121.32);

(b) Classified information relating to defense articles or defense services; and

(c) Information covered by a patent secrecy order.

§ 121.316 United States.

"United States", when used in the geographical sense, includes the several States, the Commonwealth of Puerto Rico, the insular possessions of the United States, the District of Columbia, and any territory over which the United States exercises any powers of administration, legislation, and jurisdiction.

§ 121.317 U.S. Person.

"U.S. Person" means a person (§ 121.311) who is a citizen, national, or permanent resident of the United States.

PART 122—REGISTRATION OF MANUFACTURERS AND EXPORTERS

Sec.

122.1 Registration requirements.
122.2 Application for registration.
122.3 Refund of fee.
122.4 Notification of changes in information furnished by registrants.
122.5 Maintenance of records by registrants.
122.6 Submission of application.

Authority: Section 38, Arms Export Control Act, 90 Stat. 744 (22 U.S.C. 2778); E.O. 11958, 42 FR 4311; 22 U.S.C. 2658.

§ 122.1 Registration requirements.

(a) Any person who engages in the United States in the business of either manufacturing or exporting defense articles or defense services is required to register with the Office of Munitions Control. A manufacturer of defense articles or services who does not engage in exporting must nevertheless register as a manufacturer.

(b) The fabrication of articles for experimental or scientific purposes, including research and development, is not considered as manufacture for purposes of this part.

(c) Registration is not required of a person whose pertinent business activity is confined to the production only of unclassified technical data. It is not required of persons all of whose manufacturing and export activities are licensed under the Atomic Energy Act of 1954, as amended.

§ 122.2 Application for registration.

(a) A person who is required to register may do so for periods of from 1 to 5 years upon submission of a completed Form DSP-9, and payment of a fee as follows:

1 year	$125
2 years	250
3 years	350
4 years	425
5 years	500

(b) A registrant who fails to renew a registration after its lapse and, after an intervening period, seeks to register again must pay registration fees for any part of such intervening period during which the registrant engaged in the business of manufacturing or exporting defense articles or defense services.

§ 122.3 Refund of fee.

Fees paid in advance for whole future years of a multiple year registration will be refunded upon request if the registrant ceases to engage in the manufacture or export of defense articles and defense services. A request for a refund must be submitted to the Office of Munitions Control prior to the beginning of any year for which a refund is claimed.

§ 122.4 Notification of changes in information furnished by registrants.

A registered person must notify the Department of State of material changes in the information contained in the registration. Examples of material changes include the establishment of a foreign affiliate or subsidiary, a merger, a change of location, or dealing with an additional category of defense articles or defense services.

§ 122.5 Maintenance of records by registrants.

(a) A person who is required to register must maintain records on defense articles, including records concerning the manufacture, acquisition and disposition of such articles by the registrant during each year. They will be maintained for a period of 6 years dating from the year for which registration was required. The Director, Office of Munitions Control, may prescribe a longer or shorter period in individual cases.

(b) Records maintained under this section shall be available at all times for inspection and copying by the Director, Office of Munitions Control or his designee.

§ 122.6 Submission of application.

Department of State Form DSP-9, Registration Statement, must be submitted to the Cashier, ESC/C, Department of State, Washington, D.C. 20520, together with payment by check or money order payable to the Department of State of one of the fees prescribed in § 122.2(a). The Office of Munitions Control will return to the sender any registration statement which is incomplete or which is not accompanied by payment of a proper registration fee.

PART 123—LICENSES FOR THE EXPORT OF UNCLASSIFIED DEFENSE ARTICLES

Sec.

123.1 Export licenses.
123.2 Imports.
123.3 Intransit license
123.4 Temporary export license.
123.5 License denial, revocation, suspension or amendment.
123.6 Foreign trade zones and U.S. Customs bonded warehouses.
123.7 Export to warehouse or distribution points outside the United States.

123.8 Export of vessels of war, military aircraft and satellites.
123.9 [Reserved].
123.10 Country of ultimate destination.
123.11 Movements of vessels outside U.S. territorial jurisdiction.
123.12 Canadian shipments
123.13 Shipments between U.S. possessions.
123.14 Domestic aircraft shipments via foreign ports.
123.15 Import certificate/delivery verification procedure.
123.16 Approval of a proposal to sell significant military equipment.

Exemptions

123.20 Obsolete non-automatic firearms.
123.21 Firearms and ammunition for personal use.
123.22 Firearms for personal use of members of the U.S. Armed Forces and civilian employees of the U.S. Government.
123.23 Minor components.
123.24 Border shipments.
123.25 [Reserved].
123.26 [Reserved].
123.27 Nuclear materials.
123.28 Transfers to foreign nationals within the United States.

Procedures

123.30 Applications for licenses.
123.31 Renewal and disposition of licenses.
123.32 Port of exit or entry.
123.33 filing of export and intransit licenses, and shipper's export declarations, with district directors of customs.
123.34 Shipments by mail.
123.35 Temporary exports.
123.36 Domestic aircraft shipments via a foreign country.
123.37 Advisory opinions.

Authority: Section 38, Arms Export Control Act, 90 Stat. 744 (22 U.S.C. 2778); E.O. 11958, 42 FR 4311; 22 U.S.C. 2658.

Note.—Provisions for the export of classified defense articles and defense services are contained in Part 125 of this subchapter.

§ 123.1 Export licenses.

(a) The exporter must obtain a license issued by the Office of Munitions Control prior to the export of a defense article, except when the export qualifies for an exemption under the provisions of this subchapter. A person who intends to export defense articles (see § 121.34) must obtain a license or assure that a license has been obtained prior to the export. For example, a person who intends to sell defense articles to a foreign national under circumstances in which he knows or has reason to know that the article will be taken out of the United States (see § 121.34) must obtain a license or have the license presented to him (for example, by the foreign purchaser) and must certify or acknowledge on the face of the license that it has been presented prior to the export. As a condition precedent to the issuance of an export license, the Office of Munitions Control may require all pertinent documentary information regarding the proposed transaction.

(b) An application for an export license under this part must be accompanied by a copy of the relevant DD Form 1513 in cases involving the U.S. Foreign Military Sales Program, or a copy of a firm order or letter of intent in all other cases.

§ 123.2 Imports.

No defense article may be imported into the United States unless (a) it was previously exported temporarily under a license issued by the Office of Munitions Control; (b) it constitutes an intransit shipment (see § 123.3); or (c) its import is authorized by the Secretary of the Treasury (See 27 CFR Parts 178 to 181).

§ 123.3 Intransit license.

A Temporary Import license (DSP–61) issued by the Office of Munitions Control is required for the intransit shipment of any unclassified defense article. This requirement applies, in particular, to any temporary import of a defense article of a foreign person for overhaul, repair or modification, and the subsequent direct return to the country from which it was imported. The Office of Munitions Control may require an appropriate bond. The Temporary Import license must also be used for other temporary imports. (See also §§ 123.24, 125.3(b), 125.21).

§ 123.4 Temporary export license.

A license for the temporary export of unclassified defense articles (DSP–73) may be issued by the Office of Munitions Control in lieu of export and import licenses when the article is to be exported for a period of less than twelve months and is to be returned to the United States.

§ 123.5 License denial, revocation, suspension or amendment.

(a) A license may be denied, revoked, suspended, or amended without prior notice whenever the Department of State believes that such action is advisable in furtherance of (1) world peace; (2) the security of the United States; (3) the foreign policy of the United States; or (4) whenever the Department of State believes that 22 U.S.C. § 2778 or § 2779 or any regulation contained in this subchapter has been violated; or (5) whenever the applicant or licensee has been debarred under § 127.7 or suspended under § 127.8; or (6) whenever an order of debarment or suspension has been made applicable to the applicant or licensee under § 127.9; or (7) whenever a person who has been debarred or suspended has a significant interest in the transaction.

(b) whenever a license application is denied or an outstanding license is revoked, suspended, or amended, the Office of Munitions Control will inform the applicant or licensee of the action taken and the reasons for that action.

(c) The applicant or licensee may request reconsideration of a denial and may submit additional information in support of the request. A request for reconsideration must be submitted in writing to the Office of Munitions Control within 30 days after the applicant or licensee has been informed of the adverse decision.

§ 123.6 Foreign trade zones and U.S. Customs bonded warehouses.

An export license is not required for shipments between the United States and a foreign trade zone or a U.S. Customs bonded warehouse. An export license is required for all shipments of defense articles from a foreign trade zone or a U.S. Customs bonded warehouse to foreign countries, regardless of how the articles reached the zone or warehouse.

§ 123.7 Export to warehouse or distribution points outside the United States.

A license to export defense articles to a warehouse or distribution point outside the United States for subsequent resale normally will contain conditions for special distribution controls and reporting.

§ 123.8 Export of vessels of war, military aircraft and satellites.

(a) The transfer of a privately owned vessel of war or a privately-owned military aircraft from the United States to a foreign registry requires a license from the Department of State. This requirement applies irrespective of whether the vessel or aircraft is physically located in the United States or abroad.

(b) The transfer of title of a satellite launched into space from within the United States requires a license from the Department of State.

(c) The registration in a foreign country of a privately-owned vessel of war or a privately-owned military aircraft which is not registered in the United States but which is located in the United States constitutes an export. A license from the Department of State is therefore required. (Such transactions may also require the prior approval of the Maritime Administration, Department of Commerce, or the Federal Aviation Administration, Department of Transportation.)

§ 123.9 [Reserved].

§ 123.10 Country of ultimate destination.

(a) The country designated as the country of ultimate destination on the application for an export license must be the country of ultimate end-use. The licensee must obtain the written approval of the Department of State before reselling, diverting, transferring, transshipping, or disposing of a defense article in any country other than the country of ultimate destination as stated in the export license, or in the shipper's export declaration (in the case of a country for which no export license is required under this subchapter).

(b) An application for a license to export unclassified significant military equipment (Form DSP–5) must be submitted to the Office of Munitions Control accompanied by a "Nontransfer and Use Certificate" (Form DSP–83). This form is to be executed by the foreign consignee and foreign end-user. (The export of classified military equipment also requires the submission of Form DSP–83. See § 125.21 of this subchapter). The certificate stipulates that, except as specifically authorized by prior written approval of the Department of State, the foreign consignee and foreign end-user will not reexport, resell or otherwise dispose of the significant military equipment enumerated in the application outside the country named as the location of the foreign end-user. The Office of Munitions Control may also require a Nontransfer and Use Certificate for the export of any other defense articles or defense services.

(c) When a Nontransfer and Use Certificate is required in an application for an export license, and when both the foreign consignee and the foreign end-user are non-governmental entities, the Office of Munitions Control may require that the appropriate authority of the government of the country of ultimate destination also execute the certificate. The certificate stipulates that the foreign government undertakes not to authorize the reexport, resale, or other disposition of the defense articles enumerated in the application without obtaining the prior written consent of the U.S. Government.

§ 123.11 Movements of vessels outside U.S. territorial jurisdiction.

(a) A lincense issued by the Office of Munitions Control is required whenever a vessel of war which is not a public vessel of the United States or of a foreign government makes a voyage outside the United States.

(b) An export license is not required when such a vessel of war departs from the United States without entering the territorial waters of a foreign country if no defense articles are carried as cargo. Such a vessel may not enter the territorial waters of a foreign country before returning to the United States or carry as cargo any defense article without a License for Temporary Export (Form DSP–73) from the Department of State. (See §§ 123.4 and 123.35.)

§ 123.12 Canadian shipments.

(a) District directors of customs and postmasters may permit the export without a license of any unclassified defense article, including technical data (as defined in § 121.315) for export directly to Canada for end-use in Canada, with the following exceptions:

(1) Full automatic firearms in Category I(a) which are not for end-use by the Federal Government, or a Municipal or a Provincial Government of Canada;

(2) Nuclear weapons strategic delivery systems and all specifically designed components, parts, accessories, attachments, and associated equipment therefor;

(3) Nuclear weapon design and test equipment defined in Category XVI;

(4) Naval nuclear propulsion equipment defined in Category VI(e);

(5) Aircraft defined in Category VIII(a);

(6) Submersible and oceanographic vessels and related articles defined in Category XX (a) through (e).

(7) Technical data which can only be exported pursuant to an approved manufacturing license agreement or technical assistance agreement if an applicable agreement has not been approved by the Department of State (see § 125.25(4)).

(b) The foregoing exemption from obtaining an export license for certain defense articles or technical data destined for Canada does not exempt a shipper from filing the Shipper's Export Declaration required by § 123.33 or from complying with the requirements of § 123.10.

(c) The requirements of Part 124 of this subchapter must be complied with in the situations contemplated in that part.

§ 123.13 Shipments between U.S. possessions.

An export license is not required for the shipment of a defense article between the United States, the Commonwealth of Puerto Rico, and U.S. possessions. A license is required, however, for shipment between these areas and foreign countries.

§ 123.14 Domestic aircraft shipments via foreign ports.

A license is not required for an airborne shipment of any defense article from one port in the United States to another U.S. port via a foreign country. In lieu thereof, a statement is required of the pilot (see § 123.36).

§ 123.15 Import certificate/delivery verification procedure.

The United States and a number of foreign countries have agreed on procedures designed to assure that a commodity imported into their territory will not be diverted, transhipped, or reexported to another destination except in accordance with export control regulations of the importing country. This is known as the Import Certificate/Delivery Verification Procedure (IC/DV) and may be invoked with respect to defense articles.

(a) *Exports.* The Department of State may utilize the IC/DV procedure on proposed exports of defense articles to non-government entities in the following countries: Austria, Belgium, Denmark, France, Federal Republic of Germany, Greece, Hong Kong, Italy, Japan, Luxembourg, the Netherlands, Norway, Portugal, Turkey, and the United Kingdom. In such cases, U.S. exporters may be required to submit an export license application (the completed Form DSP–5) and the original Import Certificate, which must be provided and authenticated by the government of the importing country. This document verifies that the foreign importer complied with the import regulations of the government of the importing country and that the importer declared the intention not to divert, transship or reexport the material described therein without the prior approval of that government. After delivery of the commodities to the foreign consignee, the Department of State may also require U.S. exporters to furnish Delivery Verification documentation from the government of the importing country. This documentation verifies that the delivery was in accordance with the terms of the approved export licnese. Both the "Import Certificate" and the "Delivery Verification" must be furnished to the U.S. exporter by the foreign importer.

(b) *Triangular transactions.* When a transaction involves three or more countries which have adopted the IC/DV procedure, the governments of these countries may stamp a triangular symbol on the "Import Certificate". This symbol is usually placed on the "Import Certificate" when the applicant for the "Import Certificate" (the importer) stated either (1) that there is uncertainty

whether the items covered by the "Import Certificate" will be imported into the country issuing the Import Certificate; (2) that he or she knows that the items will not be imported into the country issuing the "Import Certificate"; or (3) that, if the items are to be imported into the country issuing the "Import Certificate", they will subsequently be reexported to another destination. Thus, it is possible that the utlimate consignee and the country of ultimate destination will not coincide with that of the importer. All parties, including the ultimate consignee in the country of ultimate destination, must be shown on the completed "Import Certificate."

§ 123.16 Approval of a proposal to sell significant military equipment.

(a) The approval of the Department of State is required in the following circumstance as a condition precedent to any proposal or presentation to any foreign government or foreign national which is designed to constitute a basis for a decision to purchase defense articles or defense services through either commercial or Foreign Military Sales procedures:

(1) The subject of the proposal or presentation is significant military equipment on the United States Munitions List (see § 123.313) to be sold under a contract for $7,000,000 or more; and

(2) The equipment is intended for use by the armed forces of a foreign country; and

(3) A sale would involve the export from the United States of any defense article or defense service.

(b) A "proposal or presentation designed to constitute a basis for a decision to purchase" means the communication of information in sufficient detail that the person communicating that information knows or should have known that it would permit an intended purchaser to decide to acquire the particular significant military equipment in question. For example, a presentation which described the equipment's performance characteristics, price, and probable availability for delivery would require prior approval in any case where the three criteria specified in paragraph (a) of this section were met. By contrast, advertising or other reporting in a publication of general circulation; preliminary discussions to ascertain market potential; or merely calling attention to the fact that a company manufactures a particular item of significant military equipment would not require prior approval.

(c)(1) Every application for an export license to implement a sale which meets the three criteria specified in paragraph (a) of this section must be accompanied by a statement from the applicant which either:

(i) Refers to a specific approval previously granted with respect to the transaction; or

(ii) Certifies that no proposal or presentation requiring prior approval has been made.

(2) The Department of State may require a similar statement from the Foreign Military Sales contractor concerned in any case where the United States Government receives a request for a letter of offer for a sale which meets the three criteria specified in paragraph (a) of this section.

(d) The requirement of this section for prior approval is met by any of the following:

(1) A written statement approving the proposed sale or approving the making of a proposal or presentation.

(2) A license for the export of technical data relating to the proposed sale to the country concerned issued under § 125.2 or § 125.3.

(3) A temporary export license relating to the proposed sale for a demonstration to the armed forces of the country of export issued under § 123.35.

(e) In addition to other remedies and penalties prescribed by law or this subchapter, a failure to obtain the approval required by paragraph (a) of this section may be considered to be a reason for disapproval of a license application or a request for a letter of offer.

(f) A request for a written statement approving the making of a proposal or presentation with respect to a sale of significant military equipment (see § 123.16(d)(1)) must be by letter with five copies thereof to the Office of Munitions Control. The letter must outline in detail the intended sales effort, including usage of the equipment involved and the country (or countries) involved. The letter must be accompanied by five copies of suitable descriptive information concerning the equipment.

Exemptions

§ 123.20 Obsolete non-automatic firearms.

District directors of customs may permit the export without a license of non-automatic firearms covered by Category I(a) of § 121.1 if they were manufactured before 1898.

§ 123.21 Firearms and ammunition for personal use.

(a) District director of customs may permit a United States citizen or a permanent resident of the United States to export temporarily from the United States without a license not more than three non-automatic firearms in Category I(a) of § 121.1 and not more than 1,000 cartridges therefor. There must first be a declaration by the individual and an inspection by a customs officer. The firearms and accompanying ammunition must be with the individual's baggage or effects, whether accompanied or unaccompanied (but not mailed). They must be intended exclusively for that person's use and not for resale or other transfer or ownership. Accordingly, this exemption does not apply to firearms being exported permanently from the United States. The foregoing exemption is not applicable to a crew-member of a vessel or aircraft unless such crew-member declares the firearms to a customs officer upon each departure from the United States, and declares the intention to return them on each return to the United States. It is also not applicable to the personnel referred to in § 123.22.

(b) District directors of customs may permit a nonresident of the United States to export such firearms in Category I(a) of § 121.1 and ammunition as the nonresident brought into the United States under the provisions of 27 CFR 178.115(d). (The latter provision specifically excludes from the definition of importation the bringing into the United States of firearms and ammunition by certain nonresidents for specified purposes.)

(c) District directors of customs may permit a United States citizen or a permanent resident alien in the United States to export without a license ammunition for firearms referred to in paragraph (a) of this section: *Provided*, The quantity does not exceed 1,000 cartridges (or rounds) in any shipment. The ammunition must be for personal use and not for resale or other transfer of ownership. The foregoing exemption is not applicable to the personnel referred to in § 123.22.

§ 123.22 Firearms for personal use of members of the U.S. Armed Forces and civilian employees of the U.S. Government.

The following exemptions apply to uniformed members of the U.S. Armed Forces and U.S. civilian employees of the U.S. Government (both referred to herein as "personnel") who are assigned abroad for extended duty. These exemptions do not apply to dependents.

(a) *Firearms.* District directors of customs may permit non-automatic firearms in Category I(a) of § 121.1 and parts for such firearms to leave (but not be mailed from) the United States

without a license provided: (1) They are consigned to servicemen's clubs abroad for uniformed members of the U.S. Armed Forces; (2) in the case of a uniformed member of the U.S. Armed Forces and a civilian employee of the Department of Defense, they are consigned to the personnel for personal use and not for resale or other transfer of ownership, and if the firearms are accompanied by a written authorization from the commanding officer concerned; or (3) in the case of other U.S. Government employees, they are consigned to such personnel for personal use and not for resale or other transfer of ownership, and the Chief of the U.S. Diplomatic Mission or his designee in the country of destination has approved in writing to the Department of State the bringing of the specific types and quantities of firearms into that country.

(b) *Ammunition.* District directors of customs may permit not more than 1,000 cartridges (or rounds) of ammunition for the firearms referred to in paragraph (a) of this section to be exported (but not mailed) from the United States without a license when the firearms are on the person of the owner or with his baggage or effects, whether accompanied or unaccompanied (but not mailed).

§ 123.23 Minor components.

District directors of customs are authorized to permit the export without a license of components and parts for Category I(a) firearms, except barrels, cylinders, receivers (frames), or complete breech mechanisms, when the total value does not exceed $100 wholesale in any single transaction.

§ 123.24 Border shipments.

A shipment originating in Canada or Mexico which incidentally transits the United States enroute to a delivery point in the same country that originated the shipment is exempt from the requirement of an intransit license.

§ 123.25 [Reserved].

§ 123.26 [Reserved].

§ 123.27 Nuclear materials.

(a) The provisions of this subchapter do not apply to equipment in Category VI(e), Category XVI, and Category XVIII of § 121.1 to the extent such equipment is under the export control of the Department of Energy pursuant to the Atomic Energy Act of 1954, as amended, and the Nuclear Non-Proliferation Act of 1978.

(b) A license for the export of any machinery, device, component, equipment, or technical data relating to equipment referred to in Category VI(e) will not be granted unless the proposed export comes within the scope of an existing Agreement for Cooperation for Mutual Defense Purposes concluded pursuant to the Atomic Energy Act of 1954, as amended, with the government of the country to which the article is to be exported. Licenses may be granted in the absence of such an agreement only (1) if the proposed export involves an article which is identical to that in use in an unclassified civilian nuclear powerplant and (2) if the proposed export has no relationship to naval nuclear propulsion, and (3) if it is not for use in a naval propulsion plant.

§ 123.28 Transfer to foreign nationals within the United States.

A license is not required for the transfer of an unclassified defense article to a foreign person in the United States if the defense article is transferred for use in the United States and a written notification against taking or sending the article outside the United States without an export license is made in conjunction with the transfer. A copy of the written notification should be promptly forwarded to the Office of Munitions Control and describe the defense article involved.

Procedures

§ 123.30 Applications for licenses.

Applications for licenses for the export of defense articles must originate with a U.S. person (see § 121.311). They must be made to the Office of Munitions Control as follows:

(a) Applications for export licenses must be made on Form DSP–5 or DSP–85.

(b) Intransit license applications must be made on Form DSP–61.

(c) Temporary export license applications must be made on Form DSP–73.

(d) The following specific procedures apply to the preparation and submission of the applications:

(1) Applications for Department of State export licenses must be confined to proposed exports of defense articles.

(2) Form DSP–5, DSP–85, DSP–61, and DSP–73 applications must have an entry in each block where space is provided for an entry. Comprehensive statements concerning commodity, end-use, and specific purpose are important and should be submitted in an originial and five copies. Samples of properly executed applications are available in the Office of Munitions Control. (Ask for Munitions Control Circular No. 2.)

(3) Unused licenses and licenses which have expired must be returned to the Office of Munitions Control immediately after their validity expires.

(4) Form DSP–83, duly executed, must accompany all license applications for the export of significant military equipment (see § 121.313).

(5) Applications for export licenses should not be submitted until the applicant has a firm order or letter of intent from the purchaser or consignee.

(6) A request under the provisions of Section 38(e) of the Arms Export Control Act for confidential treatment of information provided to the Department of State must be by letter to the Office of Munitions Control, Department of State (see Part 129).

§ 123.31 Renewal and disposition of licenses.

(a) A license lapses if the defense articles are not shipped within the period authorized by the license. Defense articles to be shipped thereafter require a new application and license. The new application should refer to the lapsed license. It should not include any defense article other than the unshipped balance of the lapsed license.

(b) Unused, expired, suspended, amended, or revoked licenses must be returned immediately to the Department of State.

§ 123.32 Port of exit or entry.

An application for a license must state the proposed port of exit from the United States. If the export will consist of transferring a defense article or technical data within the U.S. to an alien, then the place where this will occur shall be stated. If applicable, the port of entry must also be stated. After a license is issued, the licensee must immediately notify the Office of Munitions Control in writing of any proposed change of the port. A copy must be sent to the district director of customs at the new port.

§ 123.33 Filing of export and intransit licenses, and shipper's export declarations, with district directors of customs

(a) The recipient of an approved export license or a foreign person to which it has been properly endorsed and transferred in accordance with § 123.1(a) must deposit the license with the district director of customs at the port of exit designated on the license before shipping the defense article in question. (For exports by mail, see § 123.34) After a license has been so deposited, the export may be made through the designated port or, if necessary, through any other port, provided the exporter complies with the procedures established by the U.S. Customs Service and § 123.32. Before shipping any defense article to port of exit, the exporter must also file a

Shippers Export Declaration (Department of Commerce Form 7525–V) with the district director of customs at such port. (For the export of technical data, see §§ 125.23 and 125.24).

(b) Before the export occurs, the district director of customs at the port of exit must authenticate the requisite Shippers Export Declaration, and endorse the approved license to show the shipment made. The district director of customs will return a copy of each authenticated shippers export declaration to the Office of Munitions Control. Every license will also be returned upon the completion of the export or upon the expiration date stated on the license, whichever occurs first.

(c) If a license is not required for an export (see § 123.20 to § 123.28) the exporter nevertheless is required to file a Shippers Export Declaration with U.S. Customs officer. The declaration must state that the proposed export is covered by a relevant section of these regulations. The certification must be made by annotating the declaration "22 CFR Part 123 applicable" and by identifying the section under which an exemption is claimed. A copy of each such declaration must be mailed immediately by the shipper to the Office of Munitions Control.

(d) District directors of customs are authorized to permit the shipment of defense articles identified on any license when the total value of the shipment does not exceed 10 percent of the aggregate monetary value (not quantity) stated in the license.

§ 123.34 Shipments by mail.

An export license for defense articles being sent abroad by mail must be filed with the postmaster at the post office where the equipment is mailed. A Shipper's Export Declaration (U.S. Department of Commerce Form 7525–V) must be filed with and authenticated by the postmaster before the equipment is actually sent. The postmaster will endorse each license to show the shipments made. Every license must be returned by the postmaster to the Office of Munitions Control upon its date of expiration as stated thereon or upon completion of the mailings, whichever occurs first.

§ 123.35 Temporary exports.

(a) If unclassified defense articles are to be sent abroad for brief periods and returned to the United States in the same condition, a license for the temporary export of unclassified defense articles must be obtained from the Department of State (Form DSP–73).

(b) Defense articles authorized for temproary exports under a license for temporary export may be shipped only from a port in the United States where a district director of customs is available. The license for temproary export must be presented to the district director of customs who, upon verification, will endorse the exit column on the reverse side of the license. The endorsed license for temporary export is to be retained by the licensee. In the case of a military aircraft or vessel, the endorsed license must be carried on board such vessel or aircraft as evidence that it has been duly authorized by the Department of State to leave the United States temporarily.

(c) Upon the return to the United States of defense articles covered by a license for temporary export, the license will be endorsed in the entry column by the district director of customs. This procedure shall be followed for all exits and entries made during the period for which the license is valid. The licensee must transmit the used license immediately to the Department of State, Office of Munitions Control after the final return in the case of multiple exports under the same license.

(d) Licenses for temporary export must be returned to the Office of Munitions Control upon expiration.

(e) An owner of any defense article exported under license or other approval for temporary export is responsible for the acts of employees, agents, and all authorized persons to whom possession has been entrusted regarding the operation, use, possession, transportation, and handling of such article abroad. All persons abroad subject to U.S. jurisdiction who obtain temporary custody of a defense article exported from the United States, directly or indirectly, and irrespective of the number of intermediate transfers, are bound by the regulations of this subchapter in the same manner and to same extent as the original owner-transferor.

§ 123.36 Domestic aircraft shipments via a foreign country.

When an article is to be transported by air from one location in the United States to another location in the United States via a foreign country, the pilot of the aircraft must file a written statement with the district director of customs at the port of exit in the United States. The original statement must be filed at the time of exit with the district director of customs. A duplicate must be filed with the district director of customs at the port of reentry, who will duly endorse it and transmit it to the district director of customs at the port of exit. The statement will be as follows:

Statement

Domestic Shipment Via a Foreign Country of Articles on the U.S. Munitions List

Under the penalty according to Federal law, the undersigned certifies and warrants that all the information in this document is true and correct, and that the equipment listed below is being shippen from (U.S. port to exit) ———— via (foreign country) ———— to (U.S. port of entry) ————, which is the final destination in the United States.

Description of

Amount: ————
Equipment: ————
Value: ————
Signed: ————
Endorsement: Customs Inspector.
Port of Exit: ————
Date: ————
Endorsement: Customs Inspector.
Port of Entry: ————
Date: ————

§ 123.37

Advisory opinions.

A person desiring information as to whether the Department of State would be likely to approve a license for the export of particular defense articles or defense services to a particular country may use the Office of Munitions Control's informal "Advisory Opinions" procedure. These opinions are advisory only. They are not binding on the Department of State and are revocable. A request for an advisory opinion must be by letter. It must outline in detail the equipment and its usage and the country or countries involved. Five copies of the letter shall be provided. The letter must be accompanied by an original and five copies of suitable descriptive information concerning the equipment. If a request for an advisory opinion is to involve more than one country, the letter should address only those countries in the same geographic area.

PART 124—MANUFACTURING LICENSE AGREEMENTS, TECHNICAL ASSISTANCE AGREEMENTS, AND OTHER DEFENSE SERVICES

Sec.

124.1 Manufacturing license and technical assistance agreements.
124.2 Export of technical data in furtherance of an agreement.
124.3 Deposit of copies of signed agreements with the Department of State.
124.4 Termination of manufacturing license and technical assistance agreements.
124.5 Proposed agreements not concluded.
124.6 Approval of a proposal for technical assistance and manufacturing license agreements.

Procedures

124.10 Required information in agreements.
124.11 Required information in letters of transmittal.
124.12 Agreement disapproval and revocation, suspension or amendments of approval.

Exemptions

124.20 Offshore Procurement.

Authority: Section 38, Arms Export Control Act, 90 Stat. 744 (22 U.S.C. 2778); E.O. 11958, 42 FR 4311; 22 U.S.C. 2658.

§ 124.1 Manufacturing license and technical assistance agreements.

(a) The following categories of proposed agreements must be submitted for approval to the Office of Munitions Control:

(1) Proposed agreements for the manufacture abroad of defense articles (see § 121.39).

(2) Agreements for the furnishing of defense services abroad (see §§ 121.39 and 121.314); and

(3) Technical assistance agreements (see §121.314).

(b) Amendments to the agreements referred to in (a) or to agreements previously approved by the Office of Munitions Control also require the approval of the Office of Munitions Control.

(c) These agreements and amendments thereto shall not take effect until approved by the Office of Munitions Control. The approval of the Office of Munitions Control facilitates subsequent exports under the agreement (see §§ 124.2 and 125.25(4)). The approval of the Office of Munitions Control shall be based on the security and foreign policy of the United States and the interests of world peace.

(d) A sales representative agreement is not subject to Department of State approval. (See Part 130 for requirements on reporting fees, commissions, etc.)

(e) The agreements which must be submitted for approval under this chapter do not include those which involve a single export and which do not contemplate any continuing relation between the U.S. person and the foreign person.

(f) Exports pursuant to contracts between a foreign person and a U.S. person which provide for the export of defense articles or technical data developed or to be developed in the U.S. for a foreign person are subject to the export requirements of Part 123 and Part 125 of this chapter if the contracts are not manufacturing license agreements or technical assistance agreements (see §§ 121.39 and 121.314). The Office of Munitions Control may make such exports subject to the same conditions and requirements which are applicable to the latter agreements by this part.

§ 124.2 Export of technical data in furtherance of an agreement.

(a) District directors of customs or postal authorities may permit the export without a license of unclassified technical data if the export is in furtherance of a manufacturing license or technical assistance agreement. The agreement must have been approved in writing by the Department of State. The export will not be permitted if it exceeds the limitations in the relevant agreement. The U.S. party to the agreement must certify that the export complies with limitations imposed in or under this subsection. Department of State approval must be obtained for the export of any portion of the unclassified technical data which may exceed such limitations.

(b) The export of classified information in furtherance of an approved manufacturing license or a technical assistance agreement which provides for the transmittal of classified information does not require further Department of State approval when:

(1) The U.S. party certifies to the Department of Defense transmittal authority that the classified information does not exceed the technical or product limitations in the agreement approved by the Department of State; and

(2) The U.S. party complies with the requirements of the Department of Defense Industrial Security Manual concerning the transmission of the classified information, and any other requirements of cognizant U.S. departments or agencies.

§ 124.3 Deposit of copies of signed agreements with the Department of State.

The U.S. party to a manufacturing license or a technical assistance agreement must file one copy of such agreement with the Office of Munitions Control within 30 days after signature and entry into effect.

§ 124.4 Termination of manufacturing license and technical assistance agreements.

The United States party to a manufacturing license or a technical assistance agreement must inform the Office of Munitions Control of the impending termination of the agreement. The information must be in writing and submitted not less than 60 days prior to the expiration date of any such approved agreement.

§ 124.5 Proposed agreements not concluded.

A proposed agreement approved by the Department of State, with or without provisos, but for whatever reason not finally concluded, must be brought to the attention of the Office of Munitions Control within 60 days following a decision not to conclude the agreement.

§ 124.6 Approval of a proposal for technical assistance and manufacturing license agreements.

(a) The approval of the Department of State is required as a condition precedent to any proposal or presentation designed to constitute a basis for a decision to purchase, either through commercial or Foreign Military Sales procedures, made to any foreign government or foreign national if:

(1) The subject of the proposal or presentation is a technical assistance or manufacturing license agreement for the production or assembly of significant military equipment on the Munitions List; and

(2) The equipment is intended for use by the armed forces of a foreign country; and

(3) The technical assistance or manufacturing license agreement would involve the export form the United States of any defense articles or of technical data relating to a defense article.

(b) A "proposal or presentation designed to constitute a basis for a decision to purchase" means the communication of information is sufficient detail that the person communicating that information knew or should have known that it would permit an intended purchaser to decide to enter into the proposed technical assistance or manufacturing license agreement. For example, a presentation which describes the price and probable schedule for performance would require prior approval in any case where the three criteria specified in paragraph (a) of this section were met. By contrast, advertising or other reporting in a publication of general circulation; preliminary discussions to ascertain market potential; or merely calling attention to the fact that a company manufactures a particular article of significant military equipment would not require prior approval.

(c)(1) Every request for the approval of a technical assistance or manufacturing license agreement which meets the three criteria specified in paragraph (a) of this section must be accompanied by a statement from the applicant which either:

(i) Refers to a specific approval previously granted with respect to the transaction; or

(ii) Certifies that no proposal or presentation requiring prior approval has been made.

(2) The Department of State may require a similar statement from the foreign Military Sales contractor concerned in any case where the United States Government receives a request for a letter of offer for a sale which meets the three criteria specified in paragraph (a) of this section.

(d) The requirements of this section for prior approval are met by any of the following:

(1) A written statement from the Office of Munitions Control approving the proposed agreement or approving the making of a proposal or presentation relating to the proposed agreement.

(2) A license for the export of technical data to the country concerned issued under § 125.2 or § 125.3 and specifying its relation to a technical assistance or manufacturing license agreement.

(3) A temporary export license issued under § 123.4 relating to the proposed agreement which is for a demonstration to the armed forces of the country of export. It must specify its relation to a proposed technical assistance or manufacturing license agreement.

(e) In addition to other remedies and penalties prescribed by law or this subchapter, a failure to obtain the approval required by paragraph (a) of this section may be considered to be a reason for disapproval of a proposed technical assistance or manufacturing license agreement.

Procedures

§ 124.10 Required information in agreements.

A proposed manufacturing license or technical assistance agreement (and amendments thereto) must be submitted in eight copies to the Department of State for approval. In order to be approved the proposed agreement must contain, *inter alia,* all of the following information and statements, in terms as precise as possible, unless the Office of Munitions Control concludes that certain information and statements are not needed in a particular agreement.[1] The transmittal letter (see § 124.11) must state the reasons for any omission or variation of the required information or statements. The information and statements are as follows:

(a) The equipment and technology involved. It should be described by military nomenclature, contract number, Federal stock number, nameplate data, or other specific information.

(b) A detailed description of the assistance and information to be furnished and the manufacturing rights to be granted, if any.

(c) The duration of the proposed agreement.

(d) A statement that reads as follows: "This agreement shall not become effective without the prior approval of the Department of State of the U.S. Government."

(e) A statement that reads as follows: "This agreement is subject to all the laws and regulations, and other administrative acts, now or hereafter in effect, of the U.S. Government and its departments and agencies."

(f) A statement that reads as follows: "The parties to this agreement declare that the obligations contained in this agreement shall not affect the performance of any obligations created by prior contracts or subcontracts which the parties may have individually or collectively with the U.S. Government or its departments and agencies."

(g) A statement that reads as follows: "Any use of tooling and facilities which the U.S. Government owns or to which it has the right to acquire title must be authorized by the U.S. Government contracting officer."

(h) A statement that reads as follows: "No liability will be incurred by or attributed to the U.S. Government in connection with any possible infringements of privately owned patent or proprietary rights, either domestic or foreign, by reason of the U.S. Government's approval of this agreement."

(i) A statement which reads as follows: "The technical data exported from the United States in furtherance of this agreement and any defense article which may be produced or manufactured from such technical data may not be transferred to a person in a third country or to a national of a third country, except as specifically authorized in the agreement or unless the prior written approval of the Department of State has been obtained."

(j) A technical assistance agreement which involves the transfer abroad of technical data which is employable in the production or manufacture of significant military equipment must be accompanied by a "Nontransfer and Use Certificate" (Form DSP-83). It must be completed by the foreign party to the agreement and endorsed by the government of the foreign party. The Office of Munitions Control reserves the right to require that a "Nontransfer and Use Certificate" accompany any other technical assistance agreement as well.

(k) Specific identification of the countries or areas in which manufacturing, production, processing, sale or other form of transfer is to be licensed.

(l)(1) With respect to a manufacturing license agreement, a statement that reads as follows: "No export, sale, transfer, or other disposition of the licensed article is authorized to any country outside the territory wherein manufacture or sale is herein licensed without the prior written approval of the U.S. Government."

(2) With respect to a manufacturing license agreement for significant military equipment, the following provision must be included:

"Approval of the U.S. Government must be obtained prior to entering into a commitment for the transfer of the licensed article by sale or otherwise to another recipient in the same or any other country."

(3) At the option of the parties, the provision required by the preceding paragraph need not be made a part of the agreement if the licensee furnishes the Office of munitions Control with a completed "Nontransfer and Use Certificate" (DSP-83) dealing with the licensed article.

(4) The Office of Munitions Control may at its option require either a "Nontransfer and Use Certificate" (Form DSP-83) or a similar undertaking in the license agreement in connection with the foreign manufacture of any defense article.

(m) A statement that reads as follows:

"(1) It is agreed that sales by licensee or its sublicensees under contracts made through the U.S. Government will not include either charges for patent rights in which the U.S. Government holds a royalty-free license, or charges for data which the U.S. Government has a right to use and disclose to others, which are in the public domain, or which the U.S. Government has acquired or is entitled to acquire without restrictions upon their use and disclosure to others.

(2) If the U.S. Government is obligated or becomes obligated to pay to the licensor royalties, fees, or other charges for the use of technical data or patents which are involved in the manufacture, use, or sale of any licensed article, any royalties, fees or other charges in connection with purchases of such licensed article from licensee or its sublicensees with funds derived through the U.S. Government may not exceed the total amount the U.S. Government would have been obligated to pay the licensor directly.

(3) If the U.S. Government has made financial or other contributions to the design and development of any licensed article, any charges for technical assistance or know-how relating to the item in connection with purchases of such articles from licensee or sublicensees with funds derived through the U.S. Government must be proportionately reduced to reflect the U.S. Government contributions, and, subject to the provisions of paragraph (l)(2) of this secton, no other royalties, fees or other charges may be assessed against U.S. Government funded purchases of such article. However, charges may be made for reasonable reproduction, handling, mailing, or similar administrative costs incident to the furnishing of such data."

§ 124.11 Required information in letters of transmittal.

An application for Department of State approval of a manufacturing

[1] A manufacturing license agreement must contain all of the information and statements in § 124.10 (a) through (m)(3); a technical assistance agreement must contain all of the information and statements in § 124.10 (a) through (j). See § 124.1 to distinguish between types of agreements.

license or technical assistance agreement with a foreign person must be accompanied by an explanatory letter. An original and seven copies containing the following shall be submitted:

(a) A statement giving the applicant's Munitions Control registration number.

(b) A statement identifying any U.S. Government contract under which the equipment or technical data was generated, improved, or developed and supplied to the U.S. Government, and whether the equipment or technical data were derived from any bid or other proposal to the U.S. Government.

(c) A statement giving the military security classification of the equipment or technical data.

(d) A statement reading as follows:

"If the agreement is approved by the Department of State, such approval will not be construed by

(the applicant)

as passing on the legality of the agreement from the standpoint of antitrust laws or other applicable statutes, nor will

(the applicant)

construe the Department's approval as constituting either approval or disapproval of any of the business terms or conditions between the parties to the agreement."

(e) A statement identifying any patent application which discloses any of the subject matter of the equipment or technical data covered by secrecy orders issued by the U.S. Patent Office.

(f) A statement that reads as follows:

"The

(applicant)

will not permit the proposed agreement to enter into force until it has been approved by the Department of State."

(g) A statement reading as follows:

"Within 30 days the

(applicant)

will furnish the Department of State with one copy of the signed agreement (or amendment) as finally concluded; will inform the Department of its termination not less than 60 days prior to expiration, including information on the continuation of any rights or flow of technical data to the foreign party; and if a decision is made not to conclude the proposed agreement, will so inform the Department within 60 days."

§ 124.12 Agreement disapproval and revocation, suspension or amendments of approval.

(a) A manufacturing license or technical assistance agreement may be disapproved, and a previously granted approval of such an agreement may be revoked, suspended or amended by the Department of State without prior notice whenever the Department deems such action to be advisable in furtherance of:

(1) World peace, the security of the United States, or the foreign policy of the United States; or

(2) Whenever the Department of State believes that 22 U.S.C. 2778 or any regulation contained in this subchapter has been violated; or

(3) Whenever a party to the agreement has been debarred under 127.7 of this subchapter; or

(4) Whenever an order or debarment or suspension has been made applicable to such a party under § 127.9 of this subchapter; or

(5) Whenever a person who has been debarred or suspended has a significant interest in the transaction.

(b) Whenever an agreement is disapproved or a previously granted approval of an agreement is revoked, suspended, or amended, the U.S. party will be promptly advised in writing of the Department's decision. The reasons therefor will be stated as specifically as security and foreign policy considerations permit.

(c) If a written request for reconsideration is made within 30 days after service of an adverse decision by the Department of State, the U.S. party will be accorded an opportunity to present additional information. The case will then be reviewed by the Department of State.

Exemptions

§ 124.20 Offshore procurement.

Notwithstanding the other provisions in this Part 124, a person in the United States may conclude manufacturing arrangements for the manufacturing of defense articles in a foreign country without prior Department of State approval if:

(a) The foreign manufacture is pursuant to an agreement between the United States Government and a foreign government which specifically provides for the foreign manufacture of the defense article and the person in the U.S. is acting pursuant to a contract or other specific authorization from the U.S. Government and the defense article to be produced is for the exclusive use of either the U.S. Government or the military forces of the foreign government.

(b) The technical data of U.S. origin to be used in the foreign manufacture is unclassified, and has been licensed for export by the Department of State or is subject to one of the exemptions in §§ 125.10, 125.11, or § 125.12 of this subchapter; and

(c) The contract or purchase order between a person in the United States and a foreign person:

(1) Limits the use of the technical data to that required by the contract or purchase order;

(2) Prohibits the disclosure of the data to any other person except duly qualified subcontractors for the equipment within the same country;

(3) Prohibits the acquisition of any rights in the data by any foreign person without the approval of the Department of State; and

(4) Provides that any subcontracts between foreign persons in the approved country for manufacture of equipment for delivery pursuant to the contract or purchase order contain all the limitations of this paragraph (c); and

(d) The person in the United States provides the Office of Munitions Control, Department of State, with a copy of each subcontract (or Purchase Order) for offshore procurement at the time it is accepted by both persons. Each such subcontract or purchase order must clearly identify the article to be produced.

PART 125—LICENSES FOR THE EXPORT OF TECHNICAL DATA AND CLASSIFIED DATA AND CLASSIFIED EQUIPMENT

Sec.

125.1 Export of technical data.
125.2 Export of unclassified technical data.
125.3 Export of classified information (data and equipment).

Exemptions

125.10 Shipments by U.S. Government agencies.
125.11 General exemptions.
125.12 Data on nuclear materials.

Procedures

125.20 Export of unclassified technical data.
125.21 Export of classified information (data and equipment).
125.22 Certification requirements.
125.23 Filing of licenses for export of unclassified information (data and equipment).
125.24 Filing of licenses for export of classified information (data and equipment).
125.24 Specific Procedures on applying for an export license for unclassified technical data.

Authority: Section 38, Arms Export Control Act, 90 Stat. 744 (22 U.S.C. 2778); E.O. 11958, 42 FR 4311; 22 U.S.C. 2658.

§-125.1 Export of technical data.

(a) The export controls of this subchapter apply to the export of unclassified technical data and the export of classified equipment and classified information relating to defense articles (as defined in § 121.315).

(b) A license to export technical data may not be used for foreign production purposes, or for technical assistance in

such productions, without the specific approval of the Department of State (see Part 124 of this subchapter). Technical data licensed for export may not be diverted or transferred from the country of ultimate end-use (as designated in the license or approval for export) without the prior written approval of the Department of State.

(c) The export controls of this subchapter apply to the exports referred to in paragraph (a) of this section regardless of whether the person who intends to export the technical data produces or manufactures defense articles if the technical data is determined by the Office of Munitions Control to be subject to this subchapter.

§ 125.2 Export of unclassified technical data.

(a) *General.* A license issued by the Department of State is required for the export of unclassified technical data (as defined in § 121.315 of this subchapter) unless otherwise exempted in this subchapter (see §§ 125.10 and 125.11).

(b) *Patents.* A license issued by the Department of State is required for the export of unclassified technical data which exceed the data use to support a domestic or foreign filing of a patent application. The export of technical data supporting the filing and processing of patent applications in foreign countries is subject to regulations issued by the U.S. Patent Office under 35 U.S.C. 184.

(c) *Visits and other oral communications.* Unless otherwise expressly exempted in this subchapter (see § 125.11), a license for the export of unclassified technical data is required for the disclosure of unclassified technical data to foreign nationals in connection with visits by U.S. persons to foreign countries. A license is required if the technical data is transmitted in person, telephonically, or by other means (*e.g.*, electronic ones, telex, etc.). It is also required for such disclosures in connection with visits by U.S. persons to foreign diplomatic missions and consular offices in the United States or in connection with a visit by a foreign national to the United States. Licenses are required unless they otherwise are expressly exempted in this subchapter (see § 125.11).

§ 125.3 Export of classified information (data and equipment).

(a) A request for authority to export (as defined in § 121.34 of this subchapter) classified information (data or equipment) by a person other than the cognizant department or agency of the U.S. Government must be submitted to the Department of State for approval. (See §§ 125.10 and 125.11 for exemptions.) The application must contain all pertinent information with full details of the proposed transaction. (See § 125.21 for procedures.)

(b) Classified information (as defined in § 121.315(b) of this subchapter) which is approved by the Department of State either for export or reexport after a temporary import will be transferred or communicated only in accordance with the requirements relating to the transmission of classified information in the Department of Defense Industrial Security Manual. Any other requirements imposed by cognizant U.S. departments and agencies must also be complied with.

(c) The approval of the Department of State must be obtained for the export of classified information by a U.S. person to a foreign national in the U.S. or in a foreign country unless the proposed export is exempt under the provisions of this subchapter (see § 125.11).

(d) All communications relating to a patent application covered by a secrecy order are to be addressed to the U.S. Patent Office. (See 37 CFR 5.11).

Exemptions

§ 125.10 Shipments by U.S. Government agencies.

Section 126.4 of this subchapter exempts certain exports by U.S. Government agencies of technical data.

§ 125.11 General exemptions.

(a) Except as provided in § 126.1 of this subchapter, district directors of customs and postal authorities may permit the export without a license of unclassified technical data under the following circumstances.

(1) If the technical data are published or otherwise generally available to the public:

(i) Through sales at newsstands and bookstores;

(ii) Through subscription, unrestricted purchase, or without cost;

(iii) Through second class mailing privileges granted by the U.S. Government; or,

(iv) Are freely available at public libraries; or

(2) If it has been approved for public release by any U.S. Government department or agency having authority to classify information or material under Executive Order 12065, and other applicable Executive Orders, and does not disclose the details of design, production, or manufacture of any arms, ammunition, or implements of war on the U.S. Munitions List; or

(3) If an export is in furtherance of a manufacturing license or technical assistance agreement approved by the Department of State in accordance with Part 124 of this subchapter; or

(4) If the export is in furtherance of a contract between the exporter and an agency of the U.S. Government, and the contract provides for the export of relevant unclassified technical data, and such data does not disclose the details of design, production, or manufacture of any defense article; or

(5) If they consist of operations, maintenance, and training manuals, and aids relating to an article lawfully exported or authorized for export to the same recipient. This exemption applies only to export by the original Munitions Control licensee. It is not applicable to technical data relating to Category VI(e) and Category XVI; or

(6) If they consist of additional copies of technical data previously exported or authorized for export to the same recipient. Revised copies of such technial data are also exempt if they pertain to the identical defense article and the revisions are solely editorial and do not add to the content of technology previously exported to the same recipient; or

(7) If it related to firearms not in excess of caliber .50 and ammunition for such weapons, except technical data containing advanced designs, processes, and manufacturing techniques; or

(8) If they consist solely of technical data being returned to the original source of import; or

(9) If they are directly related to classified information which has been previously exported in accordance with this subchapter to the same recipient, and which does not disclose the details of a defense service or the design, production, or manufacture of any defense article.

(10) If the technical data (within the meaning of Sec 121.314) consists of information which is not designed or intended to be used, or which could not reasonably be expected to be used, in direct application in the design, production, manufacture, repair, overhaul, processing, engineering, development, operation, maintenance, or reconstruction of defense articles (for example, general mathematical, engineering, or statistical information not purporting to have or not reasonably expected to be given direct application to defense articles). An advisory opinion may be sought in case of doubt as to whether technical data is exempt under this category.

(b) *Plant visits.* Except as restricted by the provisions of § 126.1 of this subchapter:

(1) A license is not required for the oral and visual disclosure of unclassified technical data during the

course of an approved classified plant visit by a foreign person, or of a visit approved by a U.S. Government agency having authority for the classification of information of material under Executive Order 12065, or other applicable Executive Orders. The requirements of section V, paragraph 40(d) of the Defense Industrial Security Manual must also be met.

(2) A license is not required for the documentary disclosure to a foreign person of unclassified technical data during the course of an approved plant visit, provided the document does not contain technical data in excess of that released orally or visually during the visit. The disclosure must be within the terms of the approved visit request, and must not contain technical data which can be used, adapted for use, or disclosed to others for the purpose of manufacture or production of a defense article.

(3) Department of State approval is not required for the disclosure of oral and visual classified information during the course of a plant visit by a foreign person if the visit has been approved by the cognizant U.S. Defense Agency and if the requirements of section V, paragraph 40(d) of the Defense Industrial Security Manual are met.

§ 125.12 Data on nuclear materials.

The provisions of this subchapter do not apply to technical data related to articles in Category VI(e); Category XVI; and Category XVIII. The export of this data is controlled by the Department of Energy pursuant to the Atomic Energy Act of 1954, as amended, and the Nuclear Non-Proliferation Act of 1978.

Procedures

§ 125.20 Export of unclassified technical data.

(a) *General and visits.* Unless an export is exempted from the licensing requirements of the Office of Munitions Control (§ 125.10 and § 125.11) (see § 125.2), an application for the export of unclassified technical data by a person in the United States must be made to the Department of State on Form DSP-5, accompanied by five copies of the data. In the case of a visit, sufficient details of the proposed discussions must be transmitted in quintuplicate for an adequate appraisal of the data.

(b) *Patents.* A request for the filing of a patent application in a foreign country and a request for the filing of an amendment, modification or supplement thereto must be directed to the U.S. Patent Office in accordance with 37 CFR Part 5. If the applicant complies with the regulations of the Patent Office, Department of State approval is required only for the export of such technical data as exceeds that used to support a patent application in a foreign country. In such cases, an application must be submitted in accordance with the provisions of paragraph (a) of this section.

§ 125.21 Export of classified information (data and equipment).

Unless an export is exempt from the licensing requirements of the Office of Munitions Control (§ 125.10 or § 125.11(b)(3)), an application for approval to export classified information (data or equipment) or to reexport classified equipment after a temporary import must be submitted to the Department of State on Form DSP-85. Such applications will be accepted from a U.S. citizen only. An application for export of classified technical data must be accompanied by five copies of the data. An application for export of classified equipment must be accompanied by five copies of suitable descriptive information and a completed Form DSP-83. All classified materials accompanying an application must be transmitted in the form prescribed by section I, paragraph 5 of the Defense Industrial Security Manual.

§ 125.22 Certification requirements.

To claim an exemption for the export of technical data under the provisions of § 125.11, an exporter must certify that the proposed export is covered by a relevant paragraph of that section. Certification consists of marking the package or letter containing the technical data "22 CFR Part 125 * * * applicable", and identifying the specific paragraph(s) under which the exemption is claimed.

§ 125.23 Filing of licenses for export of unclassified information (data and equipment).

An approved license for the export of unclassified technical data must be deposited with the appropriate district director of customs or postmaster at the time of shipment or mailing. The district director of customs or postmaster will endorse and transmit the license in accordance with the instructions contained on the reverse side thereof to the Office of Munitions Control.

§ 125.24 Filing of licenses for export of classified information (data and equipment).

An approved license for the export of classified data or classified equipment will be forwarded by the Office of Munitions Control to the Defense Supply Agency of the Department of Defense in accordance with the Department of Defense Industrial Security Manual. The Office of Munitions Control will forward a copy of the issued license to the applicant for that applicant's information. Upon completion of the export, the Defense Supply Agency will return the appropriately endorsed license to the Office of Munitions Control.

§ 125.25 Specific procedures for applying for an export license for unclassified technical data.

The following specific procedures should be followed in applying for an export license for unclassified technical data.

(a) With the exception of an application from a foreign person duly accredited to the United States Government as a member of a foreign diplomatic mission, an application for a license to export unclassified technical data must originate with an American person. (See § 121.311 of this subchapter).

(b) An application for a license to export technical data (as defined in § 121.315 of this subchapter) should clearly identify "TECHNICAL DATA ONLY" when describing the commodity to which the data refer.

(c) Unclassified technical data that are not to be returned to the United States must be the subject of an application on Form DSP-5. Unclassified technical data that are to be returned to the United States must be the subject of an application on Form DSP-73.

(d) Technical data may not be licensed for export for use by a foreign person for any of the functions described in §§ 121.39 and 121.314 of this subchapter unless the Department of State first approves a manufacturing license or technical assistance agreement as provided in Part 124 of this subchapter.

(e) Each DSP-85 license application for the export of classified equipment (see Munitions List Category XVII) must be accompanied by a Form DSP-83, duly executed.

(f) When an approved license for the export of unclassified technical data is used but not endorsed by U.S. Customs or a postmaster, the person exporting the data must self-endorse the license and return it promptly to the Office of Munitions Control.

PART 126—GENERAL POLICIES AND PROVISIONS

Sec.

126.1 Prohibited shipments to or from certain countries.
126.2 Temporary suspension or modification of regulations of the subchapter.
126.3 Waivers.
126.4 Shipments by U.S. Government agencies.

126.5 Relation to other provisions of law.
126.6 Continuation in force.

Authority: Section 38, Arms Export Control Act, 90 Stat. 744 (22 U.S.C. 2778); 601, as amended, 47 Stat. 417 (31 U.S.C. 686); E.O. 11958 (42 FR 4311, January 18, 1977); E.O. 11322, 32 FR 119; 22 U.S.C. 2658.

§ 126.1 Prohibited shipments to or from certain countries.

(a) It is the policy of the United States to deny licenses and other approvals with respect to defense articles or services and technical data destined for or originating in certain countries or areas. This policy applies to countries or areas with respect to which the United States maintains an arms embargo. It also applies when an export would not be in furtherance of world peace and the security and foreign policy of the United States. The exemptions provided in the regulations in this subchapter, except § 125.11(a) (1) and (2) of this subchapter, do not apply with respect to exports to or originating in any of such proscribed countries or areas.

(b) The Director, Office of Munitions Control, maintains a current listing of the proscribed countries and areas referred to in paragraph (a) of this section. This listing is revised from time to time as circumstances warrant. Information on whether a country is included is available to the public upon request.

(c) A defense article licensed for export under this subchapter must not be shipped directly or indirectly to the country or area of ultimate end-use on a vessel, aircraft or other means of conveyance which is owned or operated by, or leased to or from, any of the proscribed countries or areas.

§ 126.2 Temporary suspension or modification of regulations of the subchapter.

The Director, Office of Munitions Control, may order the temporary suspension or modification of any or all of the regulations of this subchapter in the interest of furthering the objectives of world peace and the security and foreign policy of the United States.

§ 126.3 Waivers.

In a case of exceptional and undue hardship, or when it is in the interest of the United States Government, the Director, Office of Munitions Control, may make an exception to the regulations of this subchapter after a full review.

§ 126.4 Shipments by U.S. Government agencies.

(a) A license is not required for the export of any defense article or defense service or technical data by or for any agency of the U.S. Government (1) for official use by such an agency, or (2) for carrying out any foreign assistance or sales program authorized by law and subject to the control of the President by other means. This exemption applies only when all aspects of a transaction (export, carriage, and delivery abroad) are effected by a U.S. Government agency, or when the export is covered by a U.S. Government Bill of Lading. This exemption, however, does not apply when a U.S. Government agency acts as a transmittal agent on behalf of a private individual or firm, either as a convenience or in satisfaction of security requirements.

(b) This section does not authorize any department or agency of the U.S. Government to make any export which is subject to restriction by virtue of other statutory or administrative provisions.

§ 126.5 Relation to other provisions of law.

The provisions in this subchapter are in addition to, and are not in lieu of, any other provisions of law or regulations.

§ 126.6 Continuation in force.

All determinations, authorizations, licenses, approvals of contracts and agreements and other action issued, undertaken, or entered into by the Department of State pursuant to Section 414 of the Mutual Security Act of 1954, as amended, continue in force and effect until or unless modified, revoked or superseded by this subchapter.

PART 127—VIOLATIONS AND PENALTIES

Sec.
127.1 Violations in general.
127.2 Misrepresentation and omission of facts.
127.3 Penalties for violations.
127.4 (Reserved).
127.5 Authority of U.S. Customs Service Officers.
127.6 Seizure and forfeiture in attempts at illegal exports.
127.7 Debarment.
127.8 Interim suspension.
127.9 Applicability of orders.
127.10 Civil penalty.

Authority: Section 38, Arms Export Control Act, 90 Stat. 744 (22 U.S.C. 2778); 601, as amended, 47 Stat. 417 (31 U.S.C. 686); E.O. 11958, 42 FR 4311; 22 U.S.C. 401; 22 U.S.C. 2658.

§ 127.1 Violations in general.

(a) It is unlawful to export or attempt to export from the United States any defense article or defense service for which a license or written approval is required by this subchapter without first obtaining the required license or written approval from the Department of State.

(b) A person with knowledge that another person is then subject to an order of debarment, or interim suspension, may not, directly or indirectly, in any manner or capacity, without prior disclosure of the facts to, and written authorization of, the Office of Munitions Control:

(1) Apply for, obtain, or use any export control document as defined in § 127.2(b) for such debarred or suspended person; or

(2) Order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance, or otherwise service or participate in any transaction which may involve any defense article or defense service or technical data for which a license or approval is required by this subchapter for export from the United States, where such debarred or suspended person may obtain any benefit therefrom or have any direct or indirect interest therein.

(c) No person may willfully cause, or aid, abet, counsel, demand, induce, procure or permit the commission of any act prohibited by, or the omission of any act required by 22 U.S.C. 2778, 22 U.S.C. 2779, or any regulation, license, approval, or order issued thereunder.

§ 127.2 Misrepresentation and omission of facts.

(a) It is unlawful to use any export or intransit control document containing a false statement or misrepresenting or omitting a material fact for the purpose of exporting any defense article or defense service or technical data for which a license or approval is required by this subchapter. Any false statement, misrepresentation, or omission of material fact in an export or intransit control document will be considered as made in a matter within the jurisdiction of a department or agency of the United States for the purposes of 18 U.S.C. 1001, 22 U.S.C. 2778 and 22 U.S.C. 2779.

(b) For the purpose of this section, "export or intransit control documents" include the following:

(1) An application for an export or an intransit license and supporting documents.
(2) Shippers export declaration.
(3) Invoice.
(4) Declaration of destination.
(5) Delivery verification.
(6) Application for temporary export.
(7) Application for registration.
(8) Purchase order.
(9) Foreign import certificate.
(10) Bill-of-lading.
(11) Air waybill.
(12) Nontransfer and Use Certificate.
(13) Any other document used in the regulation or control of defense articles, defense services or technical data for which license or approval is required by this subchapter.

§ 127.3 Penalties for Violations.

Any person who willfully:

(a) Violates any provision of section 38 or section 39 of the Arms Export Control Act (22 U.S.C. 2778 and 2779), or any undertaking specifically required by § 124.10:

(b) In a registration, license application or report required by Section 38 or Section 39 of the Arms Export Control Act (22 U.S.C. 2778 and 2779) or by any rule or regulation issued under either Section, makes any untrue statement of a material fact or omits a material fact required to be stated therein or necessary to make the statements therein not misleading;

shall, upon conviction, be subject to fine or imprisonment, or both, as prescribed by 22 U.S.C. 2778(c).

§ 127.4 [Reserved]

§ 127.5 Authority of U.S. Customs Service officers.

(a) U.S. Customs Service officers may take appropriate action to ensure observance of this subchapter as to the export or the attempted export of any defense article, including the inspection of loading or unloading of carriers. This applies whether the export is authorized by license or by written approval issued under this subchapter.

(b) Upon the presentation to a customs officer of a license or written approval authorizing the export of any defense article, the customs officer may require the production of other relevant documents and information relating to the proposed export. This includes but is not limited to, an invoice, order, packing list, shipping document, correspondence, and instructions. The customs officer may in addition require the documents required by the U.S. Customs Service.

§ 127.6 Seizure and forfeiture in attempts at illegal exports.

(a) An attempt to export from the United States any defense articles in violation of the provisions of this subchapter constitutes an offense punishable under Section 401 of Title 22 of the United States Code. Whenever it is known or there is probable cause to believe that any defense article is intended to be or is being or has been exported or removed from the United States in violation of law, such article and any vessel, vehicle or aircraft involved in such attempt is subject to seizure, forfeiture and disposition as provided in Section 401 of Title 22 of the United States Code.

(b) Similarly, an attempt to violate any of the conditions under which a Temporary Export or Intransit License was issued pursuant to this subchapter also constitutes an offense punishable under Section 401 of Title 22 of the United States Code, and such article, together with any vessel, vehicle or aircraft involved in any such attempt is subject to seizure, forfeiture, and disposition as provided in Section 401 of Title 22 of the United States Code.

§ 127.7 Debarment.

(a) The Director, Bureau of Politico-Military Affairs, Department of State may debar (prohibit) any person from participating directly or indirectly in the export of defense articles or defense services for which a license or approval is required by this subchapter for any of the causes listed below. The following are causes for debarment:

(1) Conviction of a criminal offense as defined in § 127.3.

(2) Any violation of 22 U.S.C. 2778 or any rule or regulation issued thereunder when such a violation is of such character as to provide a reasonable basis to believe and determine that the violator cannot be relied upon to comply with the statute, rules, or regulations in the future, and when such a violation is established in accordance with §§ 128.2 through 128.16 of this chapter.

(3) A decision by the Office of Export Administration, Bureau of Trade Regulation of the Department of Commerce, to deny, suspend, or revoke export privileges to the person under 15 CFR 388.1 and the Export Administration Act of 1979, or to exclude the person from practice before the Bureau of Trade Regulation under 15 CFR 390.2 and under the Export Administration Act of 1969, as amended, where the Hearing Commissioner (see § 128.2 of this subchapter) makes a finding that the facts form a reasonable basis for concluding that the person cannot be relied upon to comply in the future with 22 U.S.C. 2778 or with the rules or regulations issued thereunder.

(b) A person who has been debarred for more than 12 months may petition the Hearing Commissioner to vacate or modify the order of debarment. The petition must be filed with the Hearing Commissioner, and a copy simultaneously filed with the Office of Munitions Control. At his or her discretion, the Hearing Commissioner may require the submission of evidence and arguments, oral or written or both. The Hearing Commissioner, after considering the petition any any evidence and arguments with respect thereto, shall at the earliest practicable date submit a report and recommendations to the Director, Bureau of Politico-Military Affairs, Department of State. The Director may issue an appropriate order disposing of the petition and the moving party will be informed.

§ 127.8 Interim suspension.

(a) The Director, Office of Munitions Control, is authorized to order the interim suspension of any person when the Director believes that grounds for debarment (as defined in § 127.7) exist and where and to the extent the Director finds that the interim suspension is reasonably necessary to protect world peace or the security or foreign policy of the United States, pending the final disposition of debarment proceedings. The interim suspension orders prohibit that person from participating directly or indirectly in the export of any defense article for which a license or approval is required by this subchapter. The suspended person shall be sent a charging letter as provided in § 128.3 of this subchapter. A copy of the interim suspension order will be served upon that person in the same manner as provided in § 128.3. The interim suspension order may be made effective immediately, without prior notice or hearing. The order will briefly recite the relevant facts, state the grounds for issuance of the order, and describe the nature and duration of the interim suspension. No person may be suspended for a period exceeding 60 days unless proceedings under §§ 128.2 through 128.16 of this subchapter or criminal proceedings are initiated before the expiration of that period.

(b) A motion or petition to vacate or modify an interim suspension order may be filed at any time with the Hearing Commissioner. A copy shall be filed with the Office of Munitions Control. An oral hearing, if requested, will be held before the Hearing Commissioner at the earliest practicable date. The Hearing Commissioner, after considering the assembled record, will submit a report and recommendations to the Director, Bureau of Politico-Military Affairs, Department of State. The Director will issue an appropriate order disposing of the motion or petition and will promptly inform the respondent accordingly.

(c) Except for the particular application or license which is itself the basis of any investigation or proceeding, no license application filed by any person may be returned without action, held without action, or rejected, solely because such person is under investigation, or because proceedings against that person are pending, other than in accordance with the terms of an interim suspension order issued under § 127.8(a).

127.9 Applicability of orders.

For the purpose of preventing evasion, orders of the Director, Bureau of Politico-Military Affairs, debarring a person under § 127.7, and orders of the Director, Office of Munitions Control, suspending a person under § 127.8, may be made applicable to any other person who may then or thereafter (during the term of the order) be related to the debarred person by affiliation, ownership, control, position of responsibility, or other commercial connection. Appropriate notice and opportunity to respond to charges will be given.

127.10 Civil penalty.

(a) The Director, Bureau of Politico-Military Affairs, Department of State is authorized to impose a civil penalty in an amount not to exceed that authorized by 50 U.S.C. Appendix 2405(c) for each violation of 22 U.S.C. 2778, or any regulation, order, license or approval issued thereunder. This civil penalty may be either in addition to, or in lieu of, any other liability or penalty which may be imposed.

(b) The Office of Munitions Control may make the payment of a civil penalty under this section a prior condition for the issuance, restoration, or continuing validity of any export license.

PART 128—ADMINISTRATIVE PROCEDURES

Sec.

128.1 Exclusion of functions from Administrative Procedure Act.
128.2 Hearing Commissioner.
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128.4 Default.
128.5 Answer and demand for oral hearing.
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128.13 Appeals.
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128.15 Orders containing probationary periods.
128.16 Extension of time.
128.17 Availability of orders.

Authority: Section 38, Arms Export Control Act, 90 Stat. 744 (22 U.S.C. 2778); 601, as amended, 47 Stat. 417 (31 U.S.C. 686); E.O. 11958, 42 FR 4311; 22 U.S.C. 2658.

128.1 Exclusion of functions from Administrative Procedure Act.

The functions conferred by Section 38 of the Arms Export Control Act are excluded from 5 U.S.C. 553 and 554.

128.2 Hearing Commissioner.

The Hearing Commissioner referred to herein is the Hearing Commissioner, Bureau of Trade Regulation, U.S. Department of Commerce, as provided in 15 CFR 388.2. The Hearing Commissioner is authorized to exercise the powers and perform the duties provided for in §§ 127.7, 127.8, and 128.3 through 128.16.

128.3 Institution of administrative proceedings.

(a) *Charging letters.* The Director, Office of Munitions Control, with the concurence of the Office of the Legal Adviser, Department of State, may initiate debarment proceedings in accordance with § 127.7 of this subchapter or civil penalties in accordance with § 127.10 of this subchapter. The charging letter will state the essential facts constituting the alleged violation and refer to the regulatory or other provisions involved. It will give notice that if the respondent is found to have committed the alleged violation, he or she may be prohibited from participating in the export of any defense article, defense service or technical data for which a license or approval is required by this subchapter, or that civil penalties may be imposed. The charging letter will require the respondent to answer the charges within 30 days, as provided in § 128.5(a), and indicate that a failure to answer will be taken as an admission of the truth of the charges. It will inform the respondent that he or she is entitled to an oral hearing if a written demand for one is filed with the answer or within 7 days after service of the answer. The respondent will also be informed that he or she may, if so desired, be represented by counsel of his or her choosing. Charging letters may be amended from time to time, upon reasonable notice.

(b) *Service.* A charging letter is served upon a respondent:

(1) If the respondent is a resident of the United States, when it is mailed postage pre-paid in a wrapper addressed to the respondent at his or her last known address; or when left with the respondent or the agent or employee of the respondent; or when left at the respondent's dwelling with some person of suitable age and discretion then residing herein; or

(2) If the respondent is a non-resident of the United States, when served upon the respondent by any of the foregoing means. If such methods of service are not practicable or appropriate, the charging letter may be tendered for service on the respondent to an official of the government of the country wherein the respondent resides, provided that there is an arrangement or understanding between the U.S. Government and the government of the country wherein the respondent resides permitting this action.

§ 128.4 Default.

(a) *Failure to answer.* If the respondent fails to answer the charging letter, the respondent may be held in default. The case shall then be referred to the Hearing Commissioner for consideration in a manner as the Commissioner may consider appropriate. Any order issued shall have the same effect as an order issued following the disposition of contested charges.

(b) *Petition to set aside defaults.* Upon showing good cause, any respondent against whom a default order has been issued may apply to set aside the default and vacate the order entered thereon. The petition shall be submitted in duplicate to the Director, Bureau of Politico-Military Affairs, U.S. Department of State, 2201 C Street NW., Washington, D.C. 20520. The Director will refer the petition to the Hearing Commissioner for consideration and a recommendation. The Hearing Commissioner will consider the application and may order a hearing and require the respondent to submit further evidence in support of his or her petition. The filing of a petition to set aside a default does not in any manner affect an order entered upon default and such order continues in full force and effect unless a further order is made modifying or terminating it.

§ 128.5 Answer and demand for oral hearing.

(a) *When to answer.* The respondent is required to answer the charging letter within 30 days after service.

(b) *Contents of answer.* An answer must be reponsive to the charging letter. It must fully set forth the nature of the respondent's defense or defenses. In the answer, the respondent must admit or deny specifically each separate allegation of the charging letter, unless the respondent is without knowledge, in which case the respondent's answer shall so state and the statement shall operate as a denial. Failure to deny or controvert any particular allegation will be deemed an admission thereof. The answer may set forth such additional or new matter as the respondent believes supports a defense or claim of mitigation. Any defense or partial defense not specifically set forth in an answer shall be deemed waived. Evidence offered thereon by the respondent at a hearing may be refused except upon good cause being shown. If

the respondent does not demand an oral hearing, he or she shall transmit, within 7 days after the service of his or her answer, original or photocopies of all correspondence, papers, records, affidavits, and other documentary or written evidence having any bearing upon or connection with the matters in issue. If any such materials are in a language other than English, translations into English shall be submitted at the same time.

(c) *Submission of answer.* The answer, written demand for oral hearing (if any) and supporting evidence required by § 128.5(b) shall be in duplicate and mailed or delivered to the Hearing Commissioner, Bureau of Trade Regulation, U.S. Department of Commerce, Washington, D.C. 20230. A copy shall be simultaneously mailed or delivered to the Director, Office of Munitions Control, Department of State, Washington, D.C. 20520.

§ 128.6 Discovery.

(a) *Discovery by the respondent.* The respondent, through the Hearing Commissioner, may request from the Office of Munitions Control any relevant information, not privileged, that may be necessary or helpful in preparing a defense. The Office of Munitions Control may supply summaries in place of original documents and may withhold information from discovery if the interests of national security so require, or if necessary to comply with any statute, executive order or regulation requiring that the information not be disclosed. The respondent may request the Hearing Commissioner to request any relevant information, books, records, or other evidence, from any other person or government agency so long as the request is reasonable in scope and not unduly burdensome.

(b) *Discovery by the Office of Munitions Control.* The Office of Munitions Control or the Hearing Commissioner may request from the respondent admissions of facts, answers to interrogatories, the production of books, records, or other relevant evidence, so long as the request is relevant and material, reasonable in scope, and not unduly burdensome.

(c) *Subpoenas.* At the request of any party, the Hearing Commissioner may issue subpoenas, returnable before him, requiring the attendance of witnesses and the production of books, records, and other documentary or physical evidence determined by the Hearing Commissioner to be relevant and material to the proceedings, reasonable in scope, and not unduly burdensome.

(d) *Enforcement of discovery rights.* If the Office of Munitions Control fails to provide the respondent with information in its possession which is not otherwise available and which is necessary to the respondent's defense, the Hearing Commissioner may dismiss the charges on her or his own motion or on a motion of the respondent. If the respondent fails to respond with reasonable diligence to the requests for discovery by the Office of Munitions Control or the Hearing Commissioner, the Commissioner, on her or his own motion or motion of the Office of Munitions Control, and upon such notice to the respondent as the Hearing Commissioner may direct, may strike respondent's answer and declare the respondent in default, or make any other ruling which the Commissioner deems necessary and just under the circumstances. If a third party fails to respond to the request for information, the Hearing Commissioner shall consider whether the evidence sought is necessary to a fair hearing, and if it is so necessary that a fair hearing may not be held without it, the Commissioner shall dismiss the charges.

§ 128.7 Prehearing conference.

(a) The Hearing Commissioner may, upon his own motion or upon motion of any party, request the parties or their counsel to a prehearing conference to consider (1) simplification of issues; (2) the necessity or desirability of amendments to pleadings; (3) obtaining stipulations of fact and of documents to avoid unnecessary proof; or (4) such other matter as may expedite the disposition of the proceeding. The Hearing Commissioner will prepare a summary of the action agreed upon or taken at the conference, and will incorporate therein any written stipulations or agreements made by the parties. The conference proceedings may be recorded magnetically or taken by a reporter and transcribed, and filed with the Hearing Commissioner.

(b) If a conference is impracticable, the Hearing Commissioner may request the parties to correspond with him or her to achieve the purposes of a conference. The Hearing Commissioner shall prepare a summary of action taken as in the case of a conference.

§ 128.8 Hearings.

(a) A respondent who had not filed a timely written answer is not entitled to a hearing, and the case may be considered by the Hearing Commissioner as provided in § 128.4(a). If an answer is filed, but no oral hearing demanded, the Hearing Commissioner may proceed to consider the case upon the written pleadings and evidence available. The Commissioner may provide for the making of the record in such manner as the Commissioner deems appropriate. If respondent answers and demands an oral hearing, the Hearing Commissioner, upon due notice, shall set the case for hearing, unless a respondent has raised in his answer no issues of material fact to be determined. If respondent fails to appear at a scheduled hearing, the hearing nevertheless may proceed in respondent's absence. The respondent's failure to appear will not affect the validity of the hearing or any proceedings or action thereafter.

(b) Hearings will be conducted by the Hearing Commissioner in a fair and impartial manner. The rules of evidence prevailing in courts of law do not apply, but all evidentiary material relevant and material to the inquiry will be received and given appropriate weight. Diligent effort shall be made to declassify or to secure unclassified summaries or extracts of classified materials, when not contrary to any statute or security regulation. The Hearing Commissioner will compare an unclassified summary or extract with the related classified materials. If he finds that the summary or extract is supported by the classified materials and omits only so much as remains classified, he may admit the unclassified summary or extract as part of the record, to the extent that such summary or extract is relevent and material. The respondent may submit evidence in explanation or contradiction thereof. The respondent is not entitled to inspect classified materials.

(c) The Hearing Commissioner may administer oaths and affirmations. Respondent may be respresented by counsel. Unless otherwise agreed by the parties and the Hearing Commissioner, the proceeding will be taken by a reporter or by magnetic recording, transcribed, and filed with the Hearing Commissioner. Respondent may examine the transcript and may obtain a copy upon payment of proper costs.

§ 128.9 Proceedings before and report of Hearing Commissioner.

(a) The Hearing Commissioner may conform any part of the proceedings before him or her to the Federal Rules of Civil Procedure. The record may be made available in any other proceeding involving the same respondent.

(b) The Hearing Commissioner, after considering the record, will prepare a written report. The report will include findings of fact, findings of law, a finding whether a law or regulation has been violated, and the Hearing Commissioner's recommendations. It shall be transmitted to the Director, Bureau of Politico-Military Affairs, Department of State.

§ 128.10 Disposition of proceedings.

Where the evidence is not sufficient to support the charges, the Director, Office of Munitions Control or the Hearing Commissioner will dismiss the charges. Where the Hearing Commissioner finds that a violation has been committed, the Commissioner's recommendation shall be advisory only. The Director, Bureau of Politico-Military Affairs will review the record, consider the report of the Hearing Commissioner, and make an appropriate disposition of the case. He may issue an order debarring the respondent from participating in the export of defense articles or defense services as provided in § 127.7 of this subchapter, impose a civil penalty as provided in § 127.10 of this chapter, or take such other action as the Commissioner deems appropriate. Any debarment order will be effective for the period of time specified therein and may contain such additional terms and conditions as are deemed appropriate. A copy of the order together with a copy of the Hearing Commissioner's report will be served upon the respondent.

§ 128.11 Consent orders.

The Office of Munitions Control and the respondent may, be agreement, submit to the Hearing Commissioner a proposal for the issuance of a consent order. The Hearing Commissioner will review the facts of the case and the proposal and may conduct conferences with the parties and may require the presentation of evidence in the case. If the Commissioner does not approve the proposal, the Commissioner will notify the parties and the case will proceed as though no consent proposal had been made. If the proposal is approved, the Commissioner will report the facts of the case along with recommendations to the Director, Bureau of Politico-Military Affairs. If the Director does not approve the proposal, the case will proceed as though no consent proposal had been made. If the Director approves the proposal, an appropriate order may be issued.

§ 128.12 Rehearings.

The Hearing Commissioner may grant a rehearing or reopen a proceeding at any time for the purpose of hearing any relevent and material evidence which was not known or obtainable at the time of the original hearing. A report for rehearing or reopening must contain a summary of such evidence, and must explain the reasons why it could not have been presented at the original hearing. The Hearing Commissioner will inform the parties of any further hearing, and will conduct such hearing and submit a report and recommendations in the same manner as provided for the original proceeding (described in § 128.10).

§ 128.13 Appeals.

(a) *Filing of appeals.* An appeal must be in writing, and be addressed to and filed with the Appeals Board, U.S. Department of Commerce, Washington, D.C. 20230. An appeal from a final order denying export privileges or imposing civil penalties must be filed within 30 days after receipt of a copy of the order.

(b) *Grounds and conditions for appeal.* The respondent may appeal from a debarment or from the imposition of a civil penalty upon the ground (1) that the findings of a violation are not supported by any substantial evidence; (2) that a prejudicial error of law was committed; or (3) that the provisions of the order are arbitrary, capricious, or an abuse of discretion. The appeal must specify upon which of these grounds the appeal is based and must indicate from which provisions of the order the appeal is taken. An appeal from an order issued upon default will not be entertained if the respondent has failed to seek relief as provided in § 128.4(b).

(c) *Matters considered on appeal.* An appeal will be considered upon the basis of the assembled record. This record consists of (but is not limited to) the charging letter, the respondent's answer, the transcript or magnetic recording of the hearing before the Hearing Commissioner, the report of the Hearing Commissioner, the order of the Director, Bureau of Politico-Military Affairs, and any other relevant documents involved in the proceedings before the Hearing Commissioner. The Appeals Board may direct a rehearing and reopening before the Hearing Commissioner if it finds that the record is insufficient or that new evidence is relevant and material to the issues and was not known and was not available to the respondent at the time of the original hearings. The Appeals Board may order oral argument before it, but shall not consider facts or arguments relating to the policy embodied in rules or regulations alleged to have been violated.

(d) *Effect of appeals.* The taking of an appeal will not stay the operation of any order.

(e) *Preparation of appeals*—(1) *General requirements.* An Appeal shall be clearly marked "Ref: Appeals Board, U.S. Department of Commerce, Washington, D.C. 20230," and shall be in letter form. The appeal and accompanying material should be filed in duplicate, unless otherwise indicated, and a copy simultaneously mailed or delivered to the Director, Office of Munitions Control, Department of State, Washington, D.C. 20520.

(2) *Oral presentation.* The Appeals Board may grant the appellant an opportunity for oral argument. The Appeals Board will set the time and place for oral argument and will notify the parties, ordinarily at least 10 days before the date set.

(3) *Records.* Records on appeal will be made available for inspection and copying by the appellant or duly authorized representative upon written application. The application should be made to the Appeals Board, U.S. Department of Commerce, Washington, D.C. 20230. It must identify the material or information to be inspected or copied, and the purposes for which it is sought.

(f) *Decisions.* All appeals will be considered and decided within a reasonable time after they are filed. An appeal may be granted or denied in whole or in part, or dismissed at the request of the appellant. The decision of the Appeals Board will be final.

§ 128.14 Proceedings confidential.

Proceedings under this Part are confidential, with the exception of any orders issued therein. Reports of the Hearing Commissioner and copies of transcripts or recordings of hearings will be available to parties and, to the extent of their own testimony, to witnesses. All records are available to any U.S. Government agency showing a proper interest therein.

§ 128.15 Orders containing probationary periods.

(a) *Revocation of probationary periods.* A debarment or interim suspension order may set a probationary period during which the order may be held in abeyance for all or part of the debarment or suspension period, subject to the conditions stated therein. The Director, Office of Munitions Control may apply, without notice to any person to be affected thereby to the Hearing Commissioner for an order revoking probation when it appears that the conditions of the probation have been breached. The facts in support of the application will be presented to the Hearing Commissioner who will report thereon and make a recommendation to the Director, Bureau of Politico-Military Affairs. The latter will make a determination whether to revoke probation and will issue an appropriate order.

(b) *Hearing*—(1) *Objections upon notice.* Any person affected by an application upon notice to revoke probation, within the time specified in

the notice, may file objections with the Hearing Commissioner.

(2) *Objections to order without notice.* Any person adversely affected by an order revoking probation without notice may request that the order be set aside by filing his objections thereto with the Hearing Commissioner. The request will not stay the effective date of the order or revocation.

(3) *Requirements for filing objection.* Objections filed with the Hearing Commissioner must be submitted in writing and in duplicate. A copy must be simultaneously submitted to the Office of Munitions Control. Denials and admissions, as well as any mitigating circumstances, which the person affected intends to present must be set forth in or accompany the letter of objection and must be supported by evidence. A request for an oral hearing may be made at the time of filing objections.

(4) *Determination.* The application and objections thereto will be referred to the Hearing Commissioner. An oral hearing, if requested, will be conducted at an early convenient date, unless the objections filed raise no issues of material fact to be determined. The Hearing Commissioner will report the facts and make a recommendation to the Director, Bureau of Politico-Military Affairs, who will determine whether the application should be granted or denied and will issue an appropriate order. A copy of the order and of the Hearing Commissioner's report will be furnished to any person affected thereby.

(c) *Effect of revocation on other actions.* The revocation of a probationary period will not preclude any other action concerning a further violation, even where revocation is based on the further violation.

§ 128.16 Extension of time.

The Hearing Commissioner, for good cause shown, may extend the time within which to prepare and submit an answer to a charging letter or to perform any other act required by Part 128 of this subchapter.

§ 128.17 Availability of orders.

All debarment orders, orders imposing civil penalties, probationary periods, and interim suspension orders are available for public inspection in the Public Reading Room of the Department of State.

PART 129—CONFIDENTIAL BUSINESS INFORMATION

Sec.

129.1 Confidential business information
129.2 Other reporting requirements
129.3 Utilization of and access to reports and records

Authority: Section 38(e) and section 39(d), Arms Export Control Act, 90 Stat. 744 (22 U.S.C. 2778); E.O. 11958, 42 FR 4311; section 12(c), Export Administration Act of 1979, 50 U.S.C. App. 2411(c); 5 U.S.C. 552(b) (3) and (4); 22 U.S.C. 2658.

§ 129.1 Confidential business information.

(a) Any person who is required to furnish information under this subchapter may identify any information furnished hereunder which the person considers to be confidential business information.

(b) For purposes of this subchapter, "confidential business information" means commercial or financial information which by law is entitled to protection from disclosure. (See, e.g., 5 U.S.C. 552(b) (3) and (4); 18 U.S.C. 1905; 22 U.S.C. 2778(e); Rule 26(c)(7), Federal Rules of Civil Procedure).

(c) Information which is deemed confidential by the Office of Munitions Control, or with reference to which a request for confidential treatment is made by the person making such information available, shall be protected from unauthorized disclosure. Such information which was received by the Office of Munitions Control prior to June 30, 1980, shall be exempt from public disclosure unless the Director, Office of Munitions Control, determines that the withholding of such information is contrary to the national interest in accordance with Section 38(e) of the Arms Export Control Act (22 U.S.C. 2778(e)). In accordance with the latter provision, information of this kind received after June 30, 1980 shall be withheld from public disclosure unless the Director, Office of Munitions Control, determines that the release of such information is in the national interest. Such information shall not be disclosed to the public prior to providing advance notice to the person who provided the information.

(d) Registration documents required by Part 122 of this subchapter are not deemed to constitute confidential business information. The unclassified reports on commercial and governmental military exports required by section 36 of the Arms Export Control Act (22 U.S.C. 2776) are also not deemed to constitute such information.

§ 129.2 Other reporting requirements.

The submission of reports under this subchapter does not relieve any person of any requirements to furnish information to any federal, state, or municipal agency, department or other instrumentality as required by law, regulation or contract.

§ 129.3 Utilization of and access to reports and records.

(a) All information reported and records maintained under this part will be made available, upon request, for utilization by standing committees of the Congress and subcommittees thereof, and by United States Government agencies, in accordance with Sections 38(e) and 39(d) of the Arms Export Control Act (22 U.S.C. 2778(e), 2779(d)), and reports based upon such information will be submitted to Congress in accordance with sections 36(a)(8) and 36(b)(1) of that Act (22 U.S.C. 2776(a)(8) and (b)(1)).

(b) Nothing in this section shall preclude the furnishing of information to foreign governments for law enforcement or regulatory purposes under international arrangements between the United States and any foreign government.

PART 130—POLITICAL CONTRIBUTIONS, FEES, AND COMMISSIONS

Sec.

130.1 Definitions.
130.2 [Reserved]
130.3 [Reserved]
130.4 Obligation to furnish information to the Office of Munitions Control, Department of State.
130.5 Information to be furnished by applicant or supplier to the Office of Munitions Control, Department of State.
130.6 Supplementary reports.
130.7 [Reserved]
130.8 [Reserved]
130.9 Information to be furnished by vendor to applicant or supplier.
130.10 Information to be furnished to applicant, supplier or vendor by a recipient of a fee or commission.
130.11 Recordkeeping.

Authority: Sections 38 and 39, Arms Export Control Act, 90 Stat. 744, 767 (22 U.S.C. 2778 and 2779), E.O. 10973, 25 FR 10469; 22 U.S.C. 2658.

§ 130.1 Definitions.

For the purposes of this part:

(a) "Applicant" means any person who applies to the Office of Munitions Control for any license or approval required under this subchapter for the export of defense articles or defense services valued in an amount of $100,000 or more which are being sold commercially to or for the use of the armed forces of a foreign country or international organization. This term also includes a persons to whom the required license or approval has been given.

(b) "Supplier" means any person who enters into a contract with the Department of Defense for the sale of defense articles or defense services valued in an amount of $100,000 or more

under section 22 of the Arms Export Control Act (22 U.S.C. 2762).

(c) "Vendor" means any distributor or manufacturer who, directly or indirectly, furnishes to an applicant or supplier defense articles valued in an amount of $100,000 or more which are end-items or major components as defined in § 121.26. It also means any person who, directly or indirectly, furnishes to an applicant or supplier defense articles or services valued in an amount of $100,000 or more when such articles or services are to be delivered (or incorporated in defense articles or defense services to be delivered) to or for the use of the armed forces of a foreign country or international organization under:

(1) A sale requiring a license or approval from the Office of Munitions Control under this subchapter; or

(2) A sale pursuant to a contract with the Department of Defense under section 22 of the Arms Export Control Act (22 U.S.C. 2762).

(d) "Defense articles" and "defense services" have the meaning given those terms in paragraphs (3), (4) and (7) of section 47 of the Arms Export Control Act (22 U.S.C. 2794 (3), (4), (7)). When used with reference to commercial sales, the definition in § 121.32 applies.

(e) "Political contribution" means any loan, gift, donation or other payment of $1,000 or more made, or offered or agreed to be made, directly or indirectly, whether in cash or in kind, which is:

(1) To or for the benefit of, or at the direction of, any foreign candidate, committee, political party, political faction, or government, or government subdivision, or any individual elected, appointed or otherwise designated as an employee or officer thereof; and

(2) For the solicitation or promotion or otherwise to secure the conclusion of a sale of defense articles or defense services to or for the use of the armed forces of a foreign country or international organization. Taxes, customs duties, license fees, and other charges required to be paid by applicable law or regulation are not regarded as political contributions.

(f)(1) "Fee or commission" means, except as provided in subparagraph (2) of this paragraph, any loan gift, donation or other payment of $1,000 or more made, or offered or agreed to be made, directly or indirectly, whether in cash or in kind, and whether or not pursuant to a written contract, which is:

(i) To or at the direction of any person, irrespective of nationality, whether or not employed by or affiliated with an applicant, a supplier or a vendor; and

(ii) For the solicitation or promotion or otherwise to secure the conclusion of a sale of defense articles or defense services to or for the use of the armed forces of a foreign country or international organization.

(2) The term "fee or commission" does not include:

(i) A political contribution or a payment excluded by paragraph (d) of this section from the definition of political contribution;

(ii) A normal salary (excluding contingent compensation) established at an annual rate and paid to a regular employee of an applicant, supplier or vendor;

(iii) General advertising or promotional expenses not directed to any particular sale or purchaser; or

(iv) Payments made, or offered or agreed to be made, solely for the purchase by an applicant, supplier or vendor of specific goods or technical, operational or advisory services, which payments are not disproportionate in amount with the value of the specific goods or services actually furnished.

(g) "Armed forces" means the army, navy, marine, air force and coast guard, as well as the national guard and national police, of a foreign country. This term also includes any military unit or military personnel organized under or assigned to an international organization.

§ 130.2 [Reserved]

§ 130.3 [Reserved]

§ 130.4 Obligation to furnish information to the Office of Munitions Control, Department of State.

(a)(1) Each applicant must inform the Office of Munitions Control, Department of State as to whether applicant or its vendors have paid, or offered or agreed to pay, in respect of any sale for which a license or approval is requested:

(i) Political contributions in an aggregate amount of $5,000 or more, or

(ii) Fees or commissions in an aggregate amount of $100,000 or more.

If so, applicant must furnish to the Office of Munitions Control the information specified in § 130.5. The furnishing of such information or an explanation satisfactory to the Director of the Office of Munitions Control as to why all the information cannot be furnished at that time is a condition precedent to the granting of the relevant license or approval.

(2) The requirements of this paragraph do not apply in the case of an application with respect to a sale for which all the information specified in § 130.5 which is required by this section to be reported shall already have been furnished.

(b) Each supplier must inform the Office of Munitions Control as to whether the supplier or its vendors have paid, or offered or agreed to pay, in respect of any sale:

(1) Political contributions in an aggregate amount of $5,000 or more, or

(2) Fees or commissions in an aggregate amount of $100,000 or more.

If so, supplier must furnish to the Office of Munitions Control the information specified in § 130.5. The information required to be furnished pursuant to this paragraph must be so furnished no later than 30 days after the contract award to such supplier, or such earlier date as may be specified by the Department of Defense. For purposes of this paragraph, a contract award includes a purchase order, exercise of an option, or other procurement action requiring a supplier to furnish defense articles or defense services to the Department of Defense for the purposes of section 22 of the Arms Export Control Act (22 U.S.C. 26772).

(c) In determining whether an applicant or its vendors, or a supplier or its vendors, as the case may be, have paid, or offered or agreed to pay, political contributions in an aggregate amount of $5,000 or more in respect of any sale so as to require a report under this section, there must be included in the computation of such aggregate amount any political contributions in respect of the sale which are paid by or on behalf of, or at the direction of, any person to whom the applicant, supplier or vendor has paid, or offered or agreed to pay, a fee or commission in respect of the sale. Any such political contributions are deemed for purposes of this part to be political contributions by the applicant, supplier or vendor who paid or offered or agreed to pay the fee or commission.

(d) Any applicant or supplier which has informed the Office of Munitions Control under this section that neither it nor its vendors have paid, or offered or agreed to pay, political contributions or fees or commissions in an aggregate amount requiring the information specified in § 130.5 to be furnished, must subsequently furnish such information within 30 days after learning that it or its vendors have paid, or offered or agreed to pay, political contributions or fees or commissions in respect of a sale in an aggregate amount which, if known to applicant or supplier at the time of its previous communication with the Office of Munitions Control, would have required the furnishing of information under § 130.4 at that time. Any report furnished under this paragraph must, in addition to the information specified in

§ 130.5, include a detailed statement of the reasons why applicant or supplier did not furnish the information at the time specified in paragraph (a) or paragraph (b) of this section, as applicable.

§ 130.5 Information to be furnished by applicant or supplier to the Office of Munitions Control, Department of State.

(a) Every person required under § 130.4 to furnish information specified in this section in respect to any sale must furnish to the Office of Munitions Control:

(1) The total contract price of the sale to the foreign purchaser;

(2) The name, nationality, address and principal place of business of the applicant or supplier, as the case may be, and, if applicable, the employer and title;

(3) The name, nationality, address and principal place of business, and, if applicable, employer and title of each foreign purchaser, including the ultimate end-user involved in the sale;

(4) Except as provided in paragraph (c) of this section, a statement setting forth with respect to such sale:

(i) The amount of each political contribution paid, or offered or agreed to be paid, and the amount of each fee or commission paid, or offered or agreed to be paid;

(ii) The date or dates on which each reported amount was paid, or offered or agreed to be paid;

(iii) The recipient of each such amount paid, or intended recipient if not yet paid;

(iv) The person who paid, or offered or agreed to pay such amount; and

(v) The aggregate amounts of political contributions and of fees or commission, respectively, which shall have been reported.

(b) In responding to paragraph (a)(4) of this section, the statement must:

(1) With respect to each payment reported, state whether such payment was in cash or in kind. If in kind, it must include a description and valuation thereof. Where precise amounts are not availble because a payment has not yet been made, an estimate of the amount offered or agreed to be paid must be provided;

(2) With respect to each recipient, state:

(i) Its name;

(ii) Its nationality;

(iii) Its address and principal place of business;

(iv) Its employer and title; and

(v) Its relationship, if any, to applicant, supplier, or vendor, and to any foreign purchaser or end-user.

(c) In submitting a report required by § 130.4, the detailed information specified in paragraphs (a)(4) and (b) of this section need not be included if the payments do not exceed:

(1) $2,500 in the case of political contributions; and,

(2) $50,000 in the case of fees or commissions.

In lieu of reporting detailed information with respect to such payments, the aggregate amount thereof must be reported, identified as miscellaneous political contributions or miscellaneous fees or commissions, as the case may be.

(d) Every person required to furnish the information specified in paragraphs (a) and (b) of this section must respond fully to each subdivision of those paragraphs and, where the correct response is "none" or "not applicable," must so state.

§ 130.6 Supplementary reports.

(a) Every applicant or supplier who is required under § 130.4 to furnish the information specified in § 130.5 must submit a supplementary report in connection with each sale in respect of which applicant or supplier has previously been required to furnish information if:

(1) Any political contributions aggregating $2,500 or more or fees or commission aggregating $50,000 or more not previously reported are paid, or offered or agreed to be paid by applicant or supplier or any vendor;

(2) Subsequent developments cause the information initially reported to be no longer accurate or complete (as in the case where a payment actually made is substantially different in amount from a previously reported estimate of an amount offered or agreed to be paid); or

(3) If additional details are requested by the Office of Munitions Control with respect to any miscellaneous payments reported under § 130.5(c).

(b) Supplementary reports must be sent to the Office of Munitions Control within 30 days after the payment, offer or agreement reported therein or, when requested by the Office of Munitions Control, within 30 days after such request, and must include:

(1) Any informatin specified in § 130.5 required of requested to be reported and which was not previously reported; and

(2) The Munitions Control license number, if any, and the Department of Defense contract number, if any, related to the sale.

§ 130.7 [Reserved]

§ 130.8 [Reserved]

§ 130.9 Information to be furnished by vendor to applicant or supplier.

(a) In order to determine whether it is obliged under § 130.4 to furnish the information specified in § 130.5 with respect to a sale, every applicant or supplier must obtain from each vendor, from or through whom the applicant acquired defense articles or defense services forming the whole or a part of the sale, a full disclosure by the vendor of all political contributions or fees or commission paid, by vendor with respect to such sale. Such disclosure must include responses to all the information pertaining to vendor required to enable applicant or supplier, as the case may be, to comply fully with §§ 130.4 and 130.5. If so required, they must include the information furnished by each vendor in providing the information specified.

(b) Any vendor which has been requested by an applicant or supplier to furnish an initial statement under paragraph (a) of this section must, except as provided in paragraph (c), furnish such statement in a timely manner and not later than 20 days after receipt of such request.

(c) If the vendor believes that furnishing information to an applicant or supplier in a requested statement would unreasonably risk injury to the vendor's commercial interests, the vendor may furnish in lieu of the statement an abbreviated statement disclosing only the aggregate amount of all political contributions and the aggregate amount of all fees or commissions which have been paid, or offered or agreed to be paid, by the vendor with respect to the sale. Any abbreviated statement furnished to an applicant or supplier under this paragraph must be accompanied by a certification that the requested information has been reported by the vendor directly to the Office of Munitions Control. The vendor must simultaneously report fully to the Office of Munitions Control all information which the vendor would otherwise have been required to report to the applicant or supplier under this section. Each such report must clearly identify the sale with respect to which the reported information pertains.

(d)(1) If upon the 25th day after the date of its request to vendor, an applicant or supplier has not received from the vendor the initial statement required by paragraph (a) of this section, the applicant or supplier must submit to the Office of Munitions Control a signed statement attesting to:

(i) The manner and extent of applicant's or supplier's attempt to obtain from the vendor the initial statement required under paragraph (a) of this section;

(ii) Vendor's failure to comply with this section; and

(iii) The amount of time which has elapsed between the date of applicant's or supplier's request and the date of the signed statement;

(2) The failure of a vendor to comply with this section does not relieve any applicant or supplier otherwise required by § 130.4 to submit a report to the Office of Munitions Control from submitting such a report.

§ 130.10 Information to be furnished to applicant, supplier or vendor by a recipient of a fee or commission.

(a) Every applicant or supplier, and each vendor thereof:

(1) In order to determine whether it is obliged under §§ 130.4 or 130.9 to furnish information specified in § 130.5 with respect to a sale; and

(2) Prior to furnishing such information, must obtain from each person, if any, to whom it has paid, or offered or agreed to pay, a fee or commission in respect of such sale, a timely statement containing a full disclosure by such a person of all political contributions paid, or offered or agreed to be paid, by it or on its behalf, or at its direction, in repect of such sale. Such disclosure must include responses to all the information required to enable the applicant, supplier or vendor, as the case may be, to comply fully with §§ 130.4, 130.5 and 130.9.

(b) In obtaining information under paragraph (a) of this section, the applicant, supplier or vendor, as the case may be, must also require each person to whom a fee or commission is paid, or offered or agreed to be paid, to furnish from time to time such reports of its political contributions as may be necessary to enable the applicant, supplier or vendor, as the case may be, to comply fully with §§ 130.4, 130.5, 130.6 and 130.9.

(c) The applicant, supplier or vendor, as the case may be, must include any political contributions paid, or offered or agreed to be paid, by or on behalf of, or at the direction of, any person to whom it has paid, or offered or agreed to pay a fee or commission in determining whether applicant, supplier or vendor is required by §§ 130.4, 130.6 or § 130.9 to furnish information specified in §130.5.

§ 130.11 Recordkeeping.

Each applicant, supplier and vendor must maintain a record of any information it was required to furnish or obtain under this part and all records upon which its reports are based for a period of not less than six years following the date of the report to which they pertain.

Dated: December 11, 1980.

For the Secretary of State.

Matthew Nimetz,

Under Secretary of State for Security Assistance, Science, and Technology.

[FR Doc. 80-39516 Filed 12-18-80; 8:45 am]

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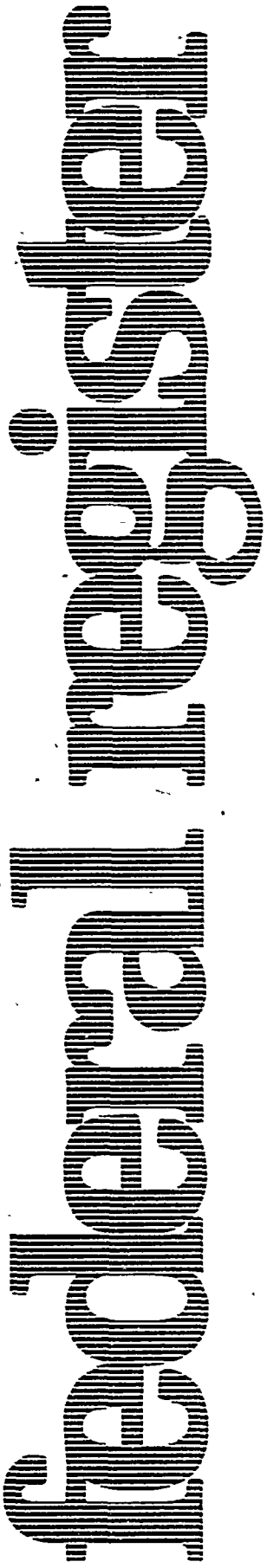

Friday
December 19, 1980

Part XII

Department of Labor

Implementation of Federal Management Circular 74-4; Allowability of Costs Incurred by State and Local Governments in Administering Federal Financial Assistance Programs

DEPARTMENT OF LABOR

41 CFR Part 29-15

Implementation of Federal Management Circular 74-4; Allowability of Costs Incurred by State and Local Governments in Administering Federal Financial Assistance Programs

AGENCY: Department of Labor.

ACTION: Proposed rule.

SUMMARY: The proposed regulation implements a Federal Management Circular which governs the allowability of costs incurred by State and local governments in administering Federal financial assistance programs

The principal impact of this regulation, at least initially, will be on employment security programs. The proposed regulation partially supplants employment security administration requirements, issued in the form of fiscal standards, which appear in Part IV of the Employment Security Manual, a publication of the Employment and Training Administration of the U.S. Department of Labor. Portions of Part IV of the Employment Security Manual related to fiscal standards will be revised.

EFFECTIVE DATE: Comments are invited from other Federal agencies, the various States, and the public. They must be received on or before January 19, 1981.

ADDRESS: Comments should be sent to the Assistant Secretary for Administration and Management, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210, Attention: Theodore Goldberg, Director, Office of Grants and Procurement Policy.

FOR FURTHER INFORMATION CONTACT: Theodore Goldberg, Director, Office of Grants and Procurement Policy, OASAM, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20210, (202) 523-9174.

SUPPLEMENTARY INFORMATION:

Background

Under section 302(a)(8) of the Social Security Act and section 5(b) of the Wagner-Peyser Act, payment is authorized to the States of such amounts as the Secretary of Labor finds necessary for the proper and efficient administration of the State's unemployment compensation laws and their public employment offices, respectively. Over the years, a body of "fiscal standards" has been developed to indicate what types of expenditures are considered necessary for proper and efficient administration. These standards appear in Part IV of the Employment Security Manual, a publication of the Employment and Training Administration issued to State employment security agencies to direct and assist them in administering their unemployment compensation laws and public employment offices.

The Department of Labor is in the process of discontinuing the use of manuals for communicating financial assistance program requirements to recipients and replacing them with regulations. DOL administrative requirements for financial assistance programs, which appear at 41 CFR 29-70, will become effective for employment security programs on the effective date of this Part 29-15. Part 29-70 is primarily concerned with the procedural aspects of administering financial assistance programs and includes requirements for cash management, bonding and insurance, program income, financial management and performance monitoring, financial and statistical reporting, property management, and procurement.

Government-wide cost principles have been issued by the Office of Management and Budget for grants and contracts with State and local governments as Federal Management Circular (FMC) 74-4. FMC 74-4 is codified as Subpart 1-15.7 of 41 CFR 1-15 and is incorporated by reference into 41 CFR 29-70.103, which establishes cost principles for grants and agreements with the Department of Labor. In general, these principles parallel the cost provisions of the fiscal standards. It is now proposed to restructure the system of administrative guidance provided State employment security agencies by (a) replacing manuals with regulations as the means of promulgating requirements and (b) aligning employment security allowable cost requirements with the structure of the Government-wide cost principles of Federal Management Circular (FMC) 74-4. Effective with the final issuance of these regulations any conflicting provisions of the Employment Security Manual or other issuances are rescinded.

Although this part deals primarily with the allowable costs of employment security programs, some sections apply to all DOL financial assistance programs. The following comparisons between the provisions of FMC 74-4 and those of this Part 29-15 are divided into two groups. DOL regulations included in the first group apply to all DOL financial assistance programs. DOL regulations in the second group apply only to employment security programs.

1. Comparison of FMC 74-4 and Proposed Sections of Part 29-15 Which Are Applicable to All DOL Financial Assistance Programs. Substantive differences between the provisions of FMC 74-4 and the proposed regulations together with the reasons for these differences are as follows:

§ 29-15.707 The requirements of FMC 74-4 which apply to costs incurred by agencies other than the grantee are clarified by indicating (a) that "agency" refers to another unit within the same government as the grantee, (b) that charges under other than cost-type arrangements with other governments are allowable if the related services are obtained in conformity with the procurement requirements of 41 CFR 29-70.216, and (c) that the use of "standard indirect rates" is limited to situations in which services are provided on a sporadic rather than a continuing basis.

2. Comparison of FMC 74-4 and Proposed Sections of Part 29-15 Which Are Only Applicable to Employment Security Programs. Substantive differences between the provisions of FMC 74-4 and the proposed regulations (designated by a "c" after the section number) together with the reasons for these differences are as follows:

§ 29-15.702c-3 Adds the requirement that costs incurred by SESAs be determined in accordance with the "State Accounting Manual" (ETA Handbook No. 362) in order to assure comparability in reported costs.

§ 29-15.703c-3 Specifies that payments received from Comprehensive Employment and Training Act (CETA) prime sponsors for services within the scope of employment security programs, such as counseling and placement, shall be treated as applicable credits pursuant to § 1-15.703-3(b).

§ 29-15.711c-2 Provides additional detail on allowable SESA advertising costs.

§ 29-15.711c-3 Provides additional detail on allowable SESA advisory council costs. Includes rules for States which compensate members of an employment security advisory council but not members of other advisory councils.

§ 29-15.711c-10 Adds requirements for documenting payrolls and allocating costs based on time distribution methodology in accordance with the "State Accounting Manual" (ETA Handbook No. 362) in order to assure comparability of reported costs.

§ 29-15.711c-12 Provides additional detail on allowability of costs of disbursing unemployment benefits.

§ 29-15.711c-13 Adds requirements for employee fringe benefit plans, including retirement pension plans,

which are only open to SESA employees. The regulation in effect limits membership in SESA retirement plans to those who were members by a certain date (after the effective date of the regulation). The provisions of the plans are generally patterned after the benefits provided under the U.S. Civil Service retirement system including cost of living provisions. These approved provisions in use on the effective date of these regulations will continue. The regulation also in effect limits the period during which other fringe benefits such as life, health, and disability insurance may be provided under plans open only to SESA employees. The purpose of the regulation is to achieve comparability between SESA employees' compensation and the compensation of others similarly employed by the State (in accordance with FMC 74-4) without reducing retirement benefits for current SESA employees.

§ 29-15.711c-14 Adds additional detail on the allowable cost of employee award programs. Limits are placed on cash awards made to SESA employees where no general State award system is in operation.

§ 29-15.711c-15 Clarifies the type of expenses which are allowable under FMC 74-4. Adds special provisions continuing the current allowability of certain legal costs incurred by unemployment compensation claimants who appeal decisions relating to their claims for benefits.

§ 29-15.711c-19 Provides additional detail on the types of membership costs which are allowable. Also, costs of attending meetings and conferences which are not allowed under the grantee's regular practice but are nevertheless SESA-related are made allowable when approved by ETA and State authority. The purpose of the regulation is to strike a balance between State prerogatives and the proper functioning of the Federal-State employment security system.

§ 29-15.711c-26 Clarifies circumstances requiring prior approval of out-of-service training by limiting the requirement of training involving absence from work for extended periods.

§ 29-15.711c-52 Adds requirements governing the use of penalty mail (Employment Security Mail) in lieu of grant funds for communications and transportation costs under § 1-15.711-9 and § 1-15.711-27 respectively. SESAs are given the choice of continuing their present usage of penalty mail or receiving grant funds instead. SESAs which use penalty mail may not use it for any matter which does not relate exclusively to activities under the Wagner-Peyser Act or Titles III and IX of the Social Security Act. Penalty mail also may not be used for "express mail" services. FMC 74-4 provisions govern SESAs which opt to discontinue their use of the penalty mail privilege.

§ 29-15.712c-2 Clarifies requirements for the acquisition, use, and disposition of property under rental-purchase and lease with option to purchase arrangements by specifying the applicability of requirements governing capital expenditures in general.

§ 29-15.712c-3 Clarifies requirements for allowable capital expenditure costs by: (a) explicitly linking equipment, which is discussed in FMC 74-4, with non-expendable personal property, which is discussed in 41 CFR 29-70.215; (b) specifying that DOL has an equity in property acquired under DOL-approved rental-purchase or lease with an option-to-purchase arrangements even where some of the payments are made after DOL financial assistance ceases; (c) by specifying that DOL has an equity in property acquired for activities other than employment security programs using purchase option credits or other purchase discounts included in a lease of the property to the extent that employment security funds were used to make lease payments; and (d) by specifying that payments under lease with option-to-purchase arrangements do not give rise to an equity until the option is exercised. The regulation also makes interest included in approved rental-purchase and similar arrangements an allowable cost if it can be demonstrated that the total cost would be less than any lease alternative. The purpose of this variance from FMC 74-4 is to continue to encourage SESAs to obtain the use of property by the least expensive means possible. The regulation also specifies that prior approval is only required for capital expenditures which exceed the SESA's approved non-personal services budget.

§ 29-15.712c-7 Provides additional detail on DOL prior approval requirements for professional services obtained by SESAs. The requirements have the dual aims of preserving the integrity of Federal grantee merit system requirements and of avoiding costly duplication of services available from other sources.

3. *Comparison of Fiscal Standards and Proposed Part 29-15.* Portions of the DOL Fiscal Standards (Section 0001-2999, Part IV, Employment Security Manual) which deal with allowable costs are not covered by either the proposed regulation or the related sections of Subpart 1-15.7. Identification of this material and the reasons for its removal are as follows:

0001—Material on scope, particularly as regards State practice, adequately covered by FMC 74-4 standards.

0680-0684—Material on non-Federal contributions deleted as unnecessary and inconsistent with current Federal funding procedures.

0712—Costing of State disability insurance programs administered jointly with unemployment compensation programs on an incremental or added cost basis is no longer permitted because it conflicts with FMC 74-4 standards.

1010-1020—Much of the material on allowable legal expense has been replaced by the related FMC 74-4 standard which is less detailed but adequate.

1030-1043—Much of the material on insurance and bonding costs has been replaced by the related FMC 74-4 standard which is less detailed but adequate. The self-insurance requirement for equipment losses has been eliminated as contrary to current DOL funding procedures.

1050-1068—Much of the material on employee fringe benefits costs, including group life, health, accident, and retirement plans, Old Age and Survivors Insurance (OASI), workers' compensation, unemployment compensation and severance pay has been replaced by the related FMC 74-4 standard which is less detailed but adequate. In addition, the regulation includes substantial improvements in the benefits provided under the six SESAs' independent retirement plans which were approved after the publication of this section of the fiscal standards.

1080-1084—Material on the allowability and allocability of costs incurred by other units of State government has been replaced by the related FMC 74-4 standard.

1090-1092—The numerous, detailed, documentary requirements for obtaining approval of professional services costs have been replaced by a general requirement to furnish sufficient information to support a finding that the procurement is consistent with State practice and Federal grantee merit system standards.

1100—Material on audit costs has been deleted because it conflicts with the FMC 74-4 standards.

1210—Prohibition on contracting out ministerial functions of a State agency deleted since this is not properly a cost question.

1220—Material on meal costs at official duty station replaced by the FMC 74-4 standard on allowable

meetings costs which is less detailed but adequate.

2000–2099—Material on premises costs has been replaced by the related FMC 74–4 standard. Major changes are: SESAs can buy office buildings outright if they obtain approval and funds from ETA; rental cost of space in privately owned buildings no longer requires ETA prior approval; States will no longer be required to provide rent-free space to SESAs required to vacate space acquired with grant funds; operation and maintenance costs no longer require ETA approval; prior approval will be required for rearrangements and alterations.

4. *Other Fiscal Standards Changed by Part 29–15.* As indicated earlier, 41 CFR 29–70 will begin to be applied to employment security programs on the effective date of this Part 29–15, replacing procedural administrative requirements in section 0001–2999, Part IV, Employment Security Manual. Two other changes to DOL fiscal and administrative requirements for SESAs will also go into effect at that time. Costs of presenting State views on Federal legislation to members of Congress will become unallowable as contrary to general Federal cost policy on lobbying costs. Allowable Reed Act amortization costs, i.e., the use of granted funds to repay State Reed funds used for administrative expenditures, will be liberalized. At present, such costs are only allowable where the Reed Act funds have been used to purchase or construct office buildings. This has been changed to also include major renovations of office buildings and purchases of automatic data processing installations having a net acquisition cost exceeding $250,000. These changes are consistent with current marketplace realities and long-standing DOL policy favoring the use of Reed Act funds for only those administrative expenditures for which granted funds were not available.

Accordingly, it is proposed to amend Title 41 of the Cost of Federal Regulations by adding the following Part 29–15:

PART 29–15—COST PRINCIPLES AND PROCEDURES FOR DOL GRANTS AND CONTRACTS

Sec.

29–15.000 Scope of part.
29–15.000–50 Purpose and scope.
29–15.000–51 Authority.
29–15.000–52 Applicability of CCPP.
29–15.000–53 Arrangement of regulations.

Subpart 29–15.7 Grants and other agreements with State and local governments

29–15.702 Definitions.
29–15.702–50 Grant agreement.
29–15.702–51 State employment security agency (SESA).
29–15.703c Basic guidelines—Employment Security Programs.
29–15.703–3 Applicable credits.
29–15.707 Cost incurred by agencies other than the grantee.
29–15.707–1 General.
29–15.707–2 Alternative methods of determining indirect cost.
29–15.707–50 Charges for services under other than cost-type arrangements.
29–15.711c Allowable costs—Employment Security Programs.
29–15.711c–2 Advertising.
29–15.711c–3 Advisory councils.
29–15.711c–10 Compensation for personal services.
29–15.711c–12 Disbursing service.
29–15.711c–13 Employee fringe benefits.
29–15.711c–14 Employee morale, health, and welfare costs.
29–15.711c–16 Legal expenses.
29–15.711c–19 Memberships, subscriptions, and professional activities.
29–15.711c–26 Training and education.
29–15.711c–50 Committees on employment of the handicapped.
29–15.711c–51 Employee moving expense.
29–15.711c–52 Postage.
29–15.712c Costs allowable with approval of grantor agency—Employment Security Programs.
29–15.712c–2 Building space and related facilities.
29–15.712c–3 Capital expenditures.
29–15.712c–7 Professional services.
29–15.712c–50 Reed Act amortization costs.
29–15.713c Unallowable costs—Employment Security Programs.
29–15.713c–50 Acquisitions at judicial sales.
29–15.713c–51 Legislative activity.

§ 29–15.000 Scope of part.

§ 29–15.000–50 Purpose and scope.

This part contains cost principles and procedures for the negotiation and administration of contracts, grants and other agreements with the Department of Labor (DOL). Costs incurred under awards of financial assistance by DOL will be determined in accordance with the applicable subpart of the Federal Procurement Regulations' Contract Cost Principles and Procedures (referred to in this part as CCPP) at 41 CFR Part 1–15 and Department of Labor Cost Principles and Procedures (referred to in this part as DOLCPP) as set forth in this part. The DOLCPP supplements (and contains some deviations from) the CCPP and should be read in conjunction with the parallel provisions of the CCPP.

§ 29–15.000–51 Authority.

The DOLCPP are authorized under 5 U.S.C. 301, Section 205(c) of the Federal Property and Administative Services Act of 1949 (40 U.S.C. 486(c)), and the following statues which authorize the award of financial assistance by the Department of Labor:

(a) The Wagner-Peyser Act, as amended, (29 U.S.C., 41 et seq.)

(b) Titles III and IX, Social Security Act, as amended, (42 U.S.C. 501 et seq., 1101 et seq.)

(c) The Comprehensive Employment and Training Act, as amended, (29 U.S.C. 801 et seq.)

(d) The Employment Opportunities for Handicapped Individuals Act (29 U.S.C. 795)

(e) The Federal Mine Safety and Health Act, as amended, (30 U.S.C. 801 et seq.)

(f) The Occupational Safety and Health Act, as amended, (29 U.S.C. 651 et seq.)

(g) Title V, Older Americans Act of 1965, as amended, (42 U.S.C. 3011 et seq.)

§ 29–15.000–52 Applicability of CCPP.

The provisions of 41 CFR 1–15 shall be applicable except where this Part 29–15 contains a differing provision dealing with the same subject matter.

§ 29–15.000–53 Arrangement of regulations.

Consistent with the numbering system used in Part 29–70 of this title which pertains to administrative requirements for DOL financial assistance programs, a letter added after a section number indicates a different requirement applicable to particular programs or classes of financial assistance recipients. A section with an "a" at the end of the section number contains special requirements applicable to non-profit organizations. A section with a "b" at the end of the section number contains special requirements applicable to Comprehensive Employment and Training Act (CETA) activities. A section with a "c" at the end of the section number contains special requirements applicable to employment security programs authorized under the Wagner-Peyser Act, as amended, and Titles 3 and 9 of the Social Security Act, as amended. Thus, § 29–70.202 contains generally applicable bonding and insurance requirements. Special bonding and insurance requirements appear at § 29–70.202a for non-profit organizations, at § 29–70.202b for CETA activities, and at § 29–70.202c for employment security activities.

Subpart 29-15.7 Grants and other agreements with State and local governments

§ 29-15.702 Definitions.

§ 29-15.702-50 Grant agreement.

"Grant agreement" means an instrument executed by DOL and a grantee setting out the terms and conditions applicable to grants (transfers of money or aid-in-kind) from DOL.

§ 29-15.702-51 State employment security agency (SESA).

"State employment security agency" or "SESA" means that unit of State government authorized to receive grants from DOL under Section 5b of the Wagner-Peyser Act, as amended, and Section 302 of the Social Security Act, as amended.

§ 29-15.703c Basic guidelines—Employment Security Programs.

§ 29-15.703c-3 Applicable credits.

Payments from Comprehensive Employment and Training Act (CETA) prime sponsors for services within the scope of employment security programs, such as counseling and placement of individuals referred to SESA offices, shall be treated as applicable credits pursuant to § 1-15.703-3(b) of this title.

§ 29-15.707 Cost incurred by agencies other than the grantee.

§ 29-15.707-1 General.

"Agency" means another organizational unit of the same State or local government as the grantee agency. However, the principles of this § 29-15.707 shall also be applicable to cost-type agreements between a grantee and a unit of another jurisdiction (also see § 29-15.707-50).

§ 29-15.707-2 Alternative methods of determining indirect cost.

(a) Standard indirect rate. An amount equal to 10 percent of direct labor cost in providing the service performed by another agency (excluding overtime, shift, or holiday premiums, and fringe benefits) may be allowed in lieu of actual allowable indirect cost for the service when the service is provided on a sporadic basis.

§ 29-15.707-50 Charges for services under other than cost-type arrangements.

Charges for services provided under othe than cost-type arrangements are allowable if in accordance with the procurement requirements of § 29-70.216 of this title.

§ 29-15.711c Allowable costs—Employment Security Programs.

§ 29-15.711c-2 Advertising

Costs of promotional and information activities describing services offered by employment security agencies, job openings, labor market information, and similar items are allowable.

§ 29-15.711c-3 Advisory councils.

Costs incurred in connection with the functioning of employment security advisory councils are allowable under the following conditions:

(a) Compensation may be paid to members of an advisory council under the same conditions and at the same rate(s) prescribed by State law for similar bodies of the State; or

If State law prescribes an amount or rate of compensation for employment security councils but not for similar bodies in the State, the amount or rate so prescribed, up to $100 per day, is allowable for periods of actual attendance at formal meetings of the council or of its committees.

(b) Travel and subsistence expenses of advisory council members may be paid only in connection with their attendance at formal meetings of the council or of its committees and only at the rates applicable to employees of the SESA; and

(c) Costs of other advisory councils and their committees are allowable only if approved in advance by the Regional Administrator (RA). These costs will be subject to the standards set forth in paragraphs (a) and (b) of this section.

§ 29-15.711c-10 Compensation for personal services.

(a) General. In order for compensation costs of employment security programs to be allowable, SEA's must comply with the Federal merit system standards found at Subpart F, Part 900 of Title 5 of the Code of Federal Regulations.

(b) Payroll and distribution of time. Amounts charged to employment security programs for personal services regardless of whether treated as direct or indirect costs, shall be based on payrolls documented and approved in accordance with generally accepted practice of the SESA and the "SESA Accounting System Accounting Manual." ETA Handbook No. 362.

§ 29-15.711c-12 Disbursing Service.

The cost of disbursing employment security administration funds and unemployment compensation benefit funds is allowable.

§ 29-15.711c-13 Employee fringe benefits.

(a) Fringe benefits costs identified under paragraph (b) of § 1-15.711-13 of this title are allowable to the extent that total compensation for employees meets the standards set forth at § 1-15.711-10 or specifically authorized in this section.

(b)(1) Costs of employer's contributions or expenses incurred under a retirement plan open only to SESA employees are allowable, subject to paragraph (b)(3) of this section, on behalf of individuals employed by affected SESAs before the effective date of this part. Such costs are allowable for the duration of SESA employment of such individuals.

(2) If State legislative action is required in order for SESA employees hired after the effective date of this part to be covered by retirement plans which also cover similarly employed State employees, the RA will grant a time extension to cover this interim period. During this extension, such SESA employees will be enrolled in the plan open to SESA employees only. No such extension may continue beyond the 60th day following the completion of the next full session of the State legislature which begins after the effective date of this part.

(3) Costs of employer contributions or expenses incurred on behalf of SESA employees under retirement plan are allowable under the following conditions:

(i) The plan is authorized by State law and approved in advance by the Regional Administrator.

(ii) The plan is insured by a private insurance carrier which is licensed by the State to operate this type of plan;

(iii) any dividends or similar credits due to participation in a plan are credited against the next premium falling due under the contract;

(c) Where fringe benefits other than retirement are provided under plans open to SESA employees only, costs of employer contributions or expenses incurred under such plans are allowable under the following conditions:

(1) State legislative action is required in order for SESA employees to be covered by plans which also cover similarly employed State employees. In such instances, the RA will grant a time extension for this purpose. No such extension may continue beyond the 60th day following the completion of the next full session of the State legislature which begins after the effective date of this part.

(2) After the extension indicated in paragraph (c)(1) of this section expires (or, if no extension is granted, after 60 days from the effective date of this part), fringe benefits other than retirement under plans open to SESA employees only shall not be allowable for any SESA employees.

(d) Requests for time extensions under paragraphs (b) and (c) of this section shall include a State Attorney General's opinion that legislative action is required in order to cover SESA employees in plans which also cover similarly employed State employees. Such requests shall be filed with the RA no later than 30 days after the effective date of this part. The RA will notify SESAs of the decision on the request within 45 days after the effective date of this part.

§ 29-15.711c-14 Employee morale, health, and welfare costs.

Costs of employee award programs, whether for pins, certificates, and similar items or for cash amounts are allowable in accordance with generally applicable practices of the State. If no generally applicable State award system exists, the cost of cash awards under a suggestion system is allowable if the system has been approved by the RA and awards are paid from savings resulting from the suggestions.

§ 29-15.711c-16 Legal expenses.

The following are allowable costs of employment security programs when necessary and reasonable:

(a) All costs associated with civil or criminal proceedings involving the SESA or, subject to paragraph (d) of this section, its employees, provided that such costs are in accordance with the Federal cost principles at 41 CFR Part 1-15, Subpart 1-15.7.

(b) Awards, judgments, settlements, court costs or other legally enforceable dispositions of legal proceedings involving the SESA or, subject to (d), its employees, provided that such costs are in accordance with the Federal cost principles at 41 CFR Part 1-15, Subpart 1-15.7.

(c) Court costs as fixed by a court and reasonable counsel fees incurred by unemployment compensation claimants and paid by the State pursuant to State law, in connection with appeals to the courts in each of the following situations:

(1) Any appeal as a result of which the claimant is awarded benefits;

(2) Any appeal from an administrative or judicial decision favorable in whole or in part to the claimant;

(3) Any appeal by a claimant from a decision which reverses a prior decision in the claimant's favor;

(4) Any appeal by a claimant from a decision denying or reducing benefits awarded under a prior administrative or judicial decision;

(5) Any other appeal by a claimant where the court finds that a reasonable basis exists for the appeal.

(d) Costs under (a) and (b) on behalf of the SESA's employees are only allowable if it can be reasonably claimed that the employees were acting in the course of their official duties.

§ 29-15.711c-19 Memberships, subscriptions, and professional activities.

(a) Memberships. Memberships which benefit employment security programs include agency memberships in community organizations for the advancement of health, welfare, commerce, or economic development, and in the Interstate Conference of Employment Security Agencies. Also included are allocable membership costs of State central service organizations which provide support services to SESAs such as those of State merit systems.

(b) Meetings and conferences. If attendance at a particular meeting is not consistent with the grantee's regular practices, followed for other activities but is nonetheless SESA-related, the costs are allowable when approved in advance by the RA and by the State authority responsible for such determinations.

§ 29-15.711c-26 Training and education.

Out-of-service training involving absence from work for extended periods of time is allowable only when specifically authorized by the RA.

§ 29-15.711c-50 Committees on employment of the handicapped.

Costs of activities undertaken in conjunction with committees on employment of the handicapped are allowable to the extent they are authorized under the Wagner-Peyser Act, as amended, and allocable to employment security programs in accordance with principles stated in this part.

§ 29-15.711c-51 Employee moving expense.

Costs incurred in moving employees from one official duty station to another are allowable in accordance with applicable State procedures provided that costs of moving employees for their own convenience or for disciplinary reasons are not allowable.

§ 29-15.711c-52 Postage.

(a) Postage charges are allowable communications costs or transportation costs provided in § 1-15.711-9 and § 1-15.711-27 respectively. Except as provided in paragraph (b) of this section, however, ETA will not provide funds to a SESA for postage costs incurred in employment security programs so long as the SESA is entitled to use penalty mail for its official mail, as authorized under 39 U.S.C. 3202.

(b) The penalty mail privilege for SESAs under 39 U.S.C. 3202 does not extend to "express mail" services offered by the U.S. Postal Service or to mailings which do not relate exclusively to employment security programs, such as general administrative material mailed by a unit of State government responsible for other activities in addition to employment security programs. SESAs may also elect to discontinue the use of penalty mail privilege and receive additional budget authority instead provided that they notify the RA at least six months in advance of the proposed effective date of discontinuance. In any of these situations, postage charges are allowable costs which may be paid from available resources.

(c) SESAs which use the penalty mail privilege are subject to regulations promulgated by the U.S. Postal Service in Title 39 of the Code of Federal Regulations which apply to Employment Security Mail and to Official Mail generally.

§ 29-15.712c Costs allowable with approval of grantor agency—Employment Security Programs.

§ 29-15.712c-3 Building space and related facilities.

When space is acquired under rental-purchase or lease with option arrangements, the requirements in § 29-15.712c-3 are applicable.

§ 29-15.712c-3 Capital expenditures.

(a) The cost of buildings and other facilities, equipment (non-expendable personal property as defined in § 29-70.102(a) of this title), other capital assets, and renovations or repairs which materially increase the value or useful life of capital assets is allowable when such procurement is specifically approved by the RA or when the source of funds used is the agency's approved annual budget for non-personal services expenditures. When assets are traded on new items, only the net cost of the newly acquired assets is allowable.

(b) When assets acquired with Federal grant funds are (1) sold, (2) no longer available for use in a federally sponsored program, or (3) used for purposes not authorized by the grantor agency, DOL's equity in the asset will be refunded in the same proportion as DOL's participation in its costs. The terms of the refund will be negotiated by the RA and the SESA. A refundable Federal equity is considered to exist in assets acquired under DOL-approved rental-purchase and lease with an option-to-purchase arrangements in

which some of the payments are made after Federal assistance ceases. A refundable Federal equity is also considered to exist in property purchased for activities other than employment security programs using purchase-option credits or similar purchase discounts included in a lease of the property, to the extent that granted funds were used for rental payments under the lease. No Federal equity is considered to exist in assets being acquired under lease with an option-to-purchase arrangements until the option is exercised.

(c) Procurements subject to the requirements of this § 29–15.712c–3 include those accomplished by outright purchase, rental-purchase or lease with an option-to-purchase agreement, or other method of purchase.

(d) Notwithstanding § 1–15.713–7 of this title, interest expense included as a stated or unstated cost element in approved rental-purchase or similar arrangements for acquiring capital assets is an allowable cost, provided that the total cost, including interest expense, does not exceed the lowest total cost which would be incurred to lease or otherwise obtain the use of comparable capital assets under competitive conditions.

§ 29–15.712c–7 Professional services.

The cost of professional services rendered by individuals or organizations not a part of the SESA is allowable, provided that such services are not available from DOL and prior approval is obtained from the RA. RA's authorization will be based upon a determination in each case, supported by appropriate findings, that the proposed acquisition of services is not contrary to State requirements and Federal grantee merit system standards set forth in Subpart F of Part 900 of Title 5, Code of Federal Regulations, and is consistent with the purpose of such requirements and standards.

§ 29–15.712c–50 Reed Act amortization costs.

Payments made into a State's account in the Unemployment Trust Fund for the purpose of reducing charges against Reed Act funds (Section 903(c), Social Security Act, as amended) are allowable costs, provided that:

(a) the charges against Reed Act funds were for amounts appropriated, obligated, and expended for the acquisition of automatic data processing installations having an allowable net acquisition cost exceeding $250,000, or for the acquisition or major renovation of office buildings.

(b) the payments are pursuant to an amortization schedule approved by the RA for applying employment security administration funds in reduction of charges against Reed Act funds, and

(c) With respect to each acquisition or improvement of property pursuant to paragraph (a) of this section, the payments are accounted for in the State's records as credits against equivalent amounts of Reed Act funds used for administrative expenditures.

§ 29–15.713c Unallowable costs—Employment Security Programs.

§ 29–15.713c–50 Acquisitions at judicial sales.

costs of acquiring property at judicial sales to secure the payment of uncollected unemployment insurance taxes are unallowable.

§ 29–15.713c–51 Legislative activity.

Costs of presenting State views on Federal legislation to members of Congress are unallowable

(5 U.S.C. 301; 29 U.S.C. 801 et seq.; 29 U.S.C. 795; 30 U.S.C. 801 et seq.; 29 U.S.C. 651 et seq.; 42 U.S.C. 3011 et seq.; 42 U.S.C. 501 et seq., 1101 et seq., 1321 et seq.; 29 U.S.C. 49 et seq., Federal Management Circular 74–4, 41 U.S.C. 252 et seq.)

Signed at Washington, D.C., on this 12th day of December, 1980.

Alfred M. Zuck,

Assistant Secretary for Administration and Management.

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