7-29-83
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federal register

Friday
July 29, 1983

Selected Subjects

Administrative Practice and Procedure
Interstate Commerce Commission

Animal Drugs
Food and Drug Administration

Animal Welfare
Animal and Plant Health Inspection Service

Blood
Food and Drug Administration

Color Additives
Food and Drug Administration

Endangered and Threatened Wildlife
Fish and Wildlife Service

Fisheries
National Oceanic and Atmospheric Administration

Flood Insurance
Federal Emergency Management Agency

Food Stamps
Food and Nutrition Service

Grant Programs—Education
Education Department

Hazardous Waste
Environmental Protection Agency

Marine Mammals
Fish and Wildlife Service

CONTINUED INSIDE

Selected Subjects

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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.

Marketing Agreements
Agricultural Marketing Service

Medical Devices
Food and Drug Administration

Natural Gas
Federal Energy Regulatory Commission

Nuclear Power Plants and Reactors
Nuclear Regulatory Commission

Organization and Functions (Government Agencies)
Economic Development Administration

Price Support Programs
Commodity Credit Corporation

Reporting and Recordkeeping Requirements
Federal Trade Commission
Interstate Commerce Commission

Securities
Securities and Exchange Commission

Trade Practices
Federal Trade Commission

Veterans
Veterans Administration

Contents

Federal Register
Vol. 48, No. 147
Friday, July 29, 1983

The President
PROCLAMATIONS
34413 Animal Agriculture Week, National (Proclamation 5077)

Executive Agencies

Agency for International Development
NOTICES
Meetings:
34529 International Food and Agricultural Development Board

Agricultural Marketing Service
RULES
34415 Lemons grown in Ariz. and Calif.

Agriculture Department
See Agricultural Marketing Service; Animal and Plant Health Inspection Service; Commodity Credit Corporation; Food and Nutrition Service; Forest Service; Rural Electrification Administration; Soil Conservation Service.

Animal and Plant Health Inspection Service
PROPOSED RULES
34710 Animal welfare standards; marine mammals; handling, care, treatment, and transportation

Arts and Humanities, National Foundation
NOTICES
Meetings:
34545 Humanities Advisory Panel
34546 Humanities Advisory Panel; agenda change (2 documents)

Civil Aeronautics Board
NOTICES
34489 Certificates of public convenience and necessity and foreign air carrier permits; weekly applications
Hearings, etc.:
34490 South Seas Airlines

Commerce Department
See Economic Development Administration; International Trade Administration; National Bureau of Standards; National Oceanic and Atmospheric Administration.

Commodity Credit Corporation
RULES
Price support rates:
34415 Honey
NOTICES
Organization, functions, and authority delegations:
34488 Agricultural Stabilization and Conservation Service officials (2 documents)

Consumer Product Safety Commission
NOTICES
34571 Meetings; Sunshine Act

Customs Service
RULES
Organization and functions; field organization; ports of entry; etc.:
34463 Puget Sound, Wash.; correction

Defense Department
NOTICES
Meetings:
34497 Science Board task forces

Economic Development Administration
RULES
34416 Organization and functions

Economic Regulatory Administration
NOTICES
34501 Natural gas, authorizing imports; review of government policy
Natural gas; fuel oil displacement certification applications:
34499 Georgia-Pacific Corp. et al.
34499 Moore Business Forms, Inc., et al.
Remedial orders:
34500 International Petroleum Refining & Supply
34501 Lone Star Oil & Chemical Co. et al.
34500 Petroex Energy Corp.

Education Department
RULES
Elementary and secondary education:
34644 Migrant education activities; interstate and intrastate coordination
NOTICES
Grants; availability, etc.:
34498 Strengthening research library resources program

Employment and Training Administration
NOTICES
Adjustment assistance:
34543 Armco, Inc., et al.
34544 Mushroom Distribution Center et al.; correction
34542 Print Fashions, Inc., et al.
Federal Unemployment Tax Act:
34634, 34640 Unemployment insurance program letters (2 documents)
Unemployment compensation; extended benefit periods:
34542 Mississippi

Employment Standards Administration
NOTICES
34674 Minimum wages for Federal and federally-assisted construction; general wage determination decisions, modifications and supersedeas decisions (Ala., Ark., Del., Fla., Ill., Minn., Mo., Nebr., N.J., N.Y., N. Mex., N.C., Ohio, Pa., Tex., and Wis.); republication
34594 Minimum wages for Federal and federally-assisted construction; general wage determination decisions, modifications, and supersedeas decisions (Ariz., Ark., Colo., D.C., Ga., Ill., Ind., Iowa, Minn., Nebr., N.J., N.Y., Okla., Pa., P.R., V.I., Wyo., and Wash.)

Energy Department
See also Economic Regulatory Administration; Federal Energy Regulatory Commission; Hearings and Appeals Office, Energy Department.
NOTICES
Nuclear waste:
34498 Monitored retrievable storage proposal research and development report, etc.; availability

Environmental Protection Agency
RULES
Hazardous waste programs; interim authorizations; State programs:
34473 Montana, North Dakota, and Utah; application extension
PROPOSED RULES
Toxic substances:
34481 Chemical substances testing requirements; ethyltoluenes and trimethylbenzenes; extension of time
NOTICES
Environmental statements; availability, etc.:
34506 Agency statements; weekly receipts
34506 Agency statements; weekly receipts; correction
Toxic and hazardous substances control:
34506 Premanufacture notices receipts
34506 Premanufacture notices receipts; correction
34508 Premanufacture notification requirements; test marketing exemption applications

Federal Emergency Management Agency
PROPOSED RULES
34482 Flood insurance coverage, rates, sale and adjustment of claims; assistance to private sector property insurers
NOTICES
34509 Agency information collection activities under OMB review (2 documents)
Radiological emergency; State plans:
34509 Louisiana and Mississippi

Federal Energy Regulatory Commission
RULES
Natural gas companies (Natural Gas Act):
34442 Alaska natural gas transportation system charges; shippers cost-recovery mechanism
NOTICES
Hearings, etc.:
34503 ANR Production Co.
34503 Midvale Irrigation District
34503, 34504 Mississippi Fuel Co. (2 documents)
34503 Springer, Michael, et al.
34504 Texas-New Mexico Power Co. (2 documents)
34504 Transcontinental Gas Pipe Line Corp. et al.

Federal Maritime Commission
NOTICES
Energy and environmental statements; availability, etc.:
34510 Cameroon Shipping Lines S.A. et al.

Federal Reserve System
NOTICES
34510 Agency information collection activities under OMB review
Applications, etc.:
34510 First Burlington Corp. et al.
34511 Mercantile Bancorporation, Inc.
Bank holding companies; proposed de novo nonbank activities:
34511 Barclays Bank PLC et al.

Federal Trade Commission
RULES
Premerger notification
34427 Reporting and waiting period requirements
Prohibited trade practices:
34419 Bristol-Myers Co. et al.
34424 Sterling Drug Inc. et al.

Fish and Wildlife Service
PROPOSED RULES
Endangered and threatened species:
34483 Key tree-cactus
34486 Marine mammals; implementation of Marine Mammal Protection Act Amendments of 1981
NOTICES
34526 Endangered and threatened species permit applications
34526 Marine mammal permit aplications

Food and Drug Administration
RULES
Animal drugs, feeds, and related products:
34469 Trimethoprim and sulfadiazine oral paste
Color additives:
34468 D&C Orange No. 17; provisional listing; closing date postponed
34463 D&C Red Nos. 6 and 7; permanent listing; termination of stay and effective date confirmed
34467 D&C Red No. 33; provisional listing; closing date postponed
Medical devices:
34470 Investigational in vitro diagnostic products for human use; shipment notification requirement revocation
PROPOSED RULES
Animal drugs, feeds, and related products:
34574 Medicated feed application procedures; tentative final rule
Biological products:
34480 Blood and blood products; normal serum albumin (human) and plasma protein fraction (human); labeling change
Human drugs:
34479 Insulin drugs; advance notice; extension of time
NOTICES
Animal drugs, feeds, and related products:
34512 Bulk new animal substances, task force report; availability
34513 Vita-Treet Bolus (chlortetracycline); approval withdrawn
Food additive petitions:
34513 Ciba-Geigy Corp.
34513 Shell Oil Co.
Food for human consumption:
34513, 34514 Bread, enriched; identity standard deviation; temporary permit for market testing (2 documents)
Human drugs:
34514 Cough, cold, or allergy prescription products; Clistin R-A containing carbinoxamine maleate, etc.; approval withdrawn

34521 Nandrolone decanoate; drug efficacy study implementation; exemption revoked, etc.; correction
34515 Parafon Tablets containing chlorzoxazone and acetaminophen; drug efficacy study implementation; approval withdrawn
34516 Sulfamethoxazole and phenazopyridine hydrochloride containing drug products; drug efficacy study implementation; approval and marketing conditions
Medical devices; premarket approval:
34519 Barnes-Hind Hydrocurve, Inc.
Radiological health:
34520 Diagnostic radiology examinations, radiation exposure evaluation; draft recommendations; availability and inquiry

Food and Nutrition Service
PROPOSED RULES
Food stamp program:
34650 Performance reporting system for State agencies; quality control review process
NOTICES
Food stamp program:
34700 Thrifty food plan; proposed revision

Forest Service
PROPOSED RULES
34481 Landownership; conveyance of small tracts; extension of time

Health and Human Services Department
See also Food and Drug Administration; National Institutes of Health.
NOTICES
34512 Agency information collection activities under OMB review

Hearings and Appeals Office, Energy Department
NOTICES
Remedial orders:
34505 Objections filed (2 documents)

Interior Department
See Fish and Wildlife Service; Land Management Bureau; Minerals Management Service; National Park Service.

Internal Revenue Service
NOTICES
34569 Tax projects; solicitation for draft regulations

International Development Cooperation Agency
See Agency for International Development.

International Trade Administration
NOTICES
Antidumping:
34490 Acrylic sheet from Japan
34491 Electric motors from Japan
Countervailing duties:
34493 Ferroalloys from Spain
Scientific articles; duty free entry:
34493 Midwest Center for Mass Spectrometry et al.

Interstate Commerce Commission
RULES
Practice and procedure:
34474 Pleading and applications, filing
Reports:
34476 Railroads, incentive per diem items; removed
NOTICES
Motor carriers:
34538 Compensated intercorporate hauling operations; intent to engage in
34530 Finance applications
34530, 34533 Permanent authority applications (2 documents)
Motor carriers; control, purchase, and tariff filing exemptions, etc.:
34538 Carolina Freight Corp. et al.
Railroad services abandonment:
34539, 34540 Burlington Northern Railroad Co. (2 documents)
34540 Maine Central Railroad Co.
34540 Missouri Pacific Railroad Co.

Justice Department
See also Parole Commission.
NOTICES
34540 Privacy Act; systems of records

Labor Department
See also Employment and Training Administration; Employment Standards Administration; Workers' Compensation Programs Office.
NOTICES
34541 Agency information collection activities under OMB review

Land Management Bureau
PROPOSED RULES
Forest management:
34482 Sales of forestry products; timber, advertised sales without legal access; extension of time
NOTICES
34522 Agency information collection activities under OMB review (3 documents)
Alaska native claims selection; applications, etc.:
34521 Doyon, Ltd.
Classification of public lands:
34524 Nevada
Environmental statements; availability, etc.:
34521 Livestock grazing; Caliente Resource Area, Coast Valley, Bakersfield District, Calif., et al.
Sale of public lands:
34523 Arizona and New Mexico
34522 California
34523 Oregon
Wilderness study areas:
34525 Montana

Minerals Management Service
NOTICES
34527 Agency information collection activities under OMB review

National Bureau of Standards
NOTICES
Information processing standards, Federal:
34495 I/O channel level interface standard; revision

National Institutes of Health
NOTICES
Meetings:
34521 Radioepidemiological Tables Development Ad Hoc Working Group

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
34476 Northern anchovy
NOTICES
34497 Meetings: Land Remote Sensing Satellite Advisory Committee

National Park Service
NOTICES
National historic or scenic trail routes; trail markers registration:
34527 Lewis and Clark National Historic Trail

National Transportation Safety Board
NOTICES
34571 Meetings; Sunshine Act

Nuclear Regulatory Commission
RULES
Byproduct, source, and special nuclear material; domestic licensing:
34416 Licensee responsibility and specific licenses termination procedures; correction
NOTICES
34546 Agency information collection activities under OMB review (2 documents)
Applications, etc.:
34549 Florida Power & Light Co. et al.
34546, 34548 Pennsylvania Power & Light Co. et al. (2 documents)
34571 Meetings; Sunshine Act

Occupational Safety and Health Review Commission
NOTICES
34571 Meetings; Sunshine Act (2 documents)

Parole Commission
NOTICES
34572 Meetings; Sunshine Act

Personnel Management Office
NOTICES
Meetings:
34551 Federal Prevailing Rate Advisory Committee

Railroad Retirement Board
NOTICES
34572 Meetings; Sunshine Act

Rural Electrification Administration
NOTICES
Environmental statements; availability, etc.:
34488 Old Dominion Electric Cooperative
Loan guarantees, proposed:
34489 Northeast Texas Electric Cooperative, Inc.

Securities and Exchange Commission
PROPOSED RULES
Securities:
34478 Uniformity of securities laws; hearings, etc.
NOTICES
34551 Consolidated quotation plan; amendments
34552 Consolidated Tape Association plan; amendments
Hearings, etc.:
34560 Aggressive Growth Shares, Inc., et al.
34561 Coldwell Banker Real Estate Advisory Services, Inc.
34563 Guaranty Savings' Tax-Free Money Market Fund
34566 Washington National Insurance Co. et al.
Self-regulatory organizations; proposed rule changes:
34553 Cincinnati Stock Exchange
34559 Midwest Securities Trust Co.
34554 Options Clearing Corp.
34557 Philadelphia Depository Trust Co. (2 documents)
34558, 34559 Stock Clearing Corp. of Philadelphia (2 documents)

Small Business Administration
NOTICES
Meetings; regional advisory councils:
34567 Louisiana
Small business investment companies:
34567 Maximum annual cost of money; Federal Financing Bank rate

Soil Conservation Service
NOTICES
Environmental statements; availability, etc.:
34488 Port Norris Recreation Development RC&D Measure, N.J.

State Department
NOTICES
34568 Agency information collection activities under OMB review
Meetings:
34567, 34568 International Telegraph and Telephone Consultative Committee (3 documents)
34568 Shipping Coordinating Committee
Organization, functions, and authority delegations:
34567 African Affairs, Assistant Secretary

Treasury Department
See also Customs Service; Internal Revenue Service.
NOTICES
34569 Agency information collection activities under OMB review (2 documents)

Veterans Administration
RULES
Adjudication; pensions, compensation, dependency, etc.:
34471 Award reduction or termination, periodic rate of payment, etc.

Workers' Compensation Programs Office
NOTICES
34544 Federal Employees' Compensation Act; computer matching project report involving beneficiaries

---

Separate Parts in This Issue

Part II
34574 Department of Health and Human Services, Food and Drug Administration

Part III
34594 Department of Labor, Employment Standards Administration, Wage and Hour Division

Part IV
34634 Department of Labor, Employment and Training Administration

Part V
34640 Department of Labor, Employment and Training Administration

Part VI
34644 Department of Education

Part VII
34650 Department of Agriculture, Food and Nutrition Service

Part VIII
34674 Department of Labor, Employment Standards Administration, Wage and Hour Division

Part IX
34700 Department of Agriculture, Food and Nutrition Service

Part X
34710 Department of Agriculture, Animal and Plant Health Inspection Service

CFR PARTS AFFECTED IN THIS ISSUE

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

3 CFR
Proclamations:
5077 34413

7 CFR
910 34415
1434 34415
Proposed Rules:
271 34650
272 34650
273 34650
275 34650

9 CFR
Proposed Rules:
3 34710

10 CFR
40 34416
70 34416

13 CFR
301 34316

16 CFR
13 (2 documents) 34419, 34424
801 34427
802 34427
803 34427

17 CFR
Proposed Rules:
229 34478
230 34478
240 34478
249 34478

18 CFR
154 34442

19 CFR
101 34463

21 CFR
74 34463
81 (3 documents) 34463–34468
82 34463
520 34469
809 34470
Proposed Rules:
201 34479
207 34574
210 34574
225 34574
226 34574
429 34479
501 34574
510 34574
514 34574
558 34574
640 34480

34 CFR
205 34644

36 CFR
Proposed Rules:
254 34481

38 CFR
3 34471

40 CFR
271 34473
Proposed Rules:
799 34481

43 CFR
Proposed Rules:
5400 34482

44 CFR
Proposed Rules:
61 34482
62 34482

49 CFR
1104 34474
1105 34474
1151 34474
1152 34474
1155 34474
1160 34474
1241 34476

50 CFR
662 34476
Proposed Rules:
17 34483
18 34486

Federal Register
Vol. 48, No. 147
Friday, July 29, 1983

Presidential Documents

Title 3—

The President

Proclamation 5077 of July 27, 1983

National Animal Agriculture Week, 1983

By the President of the United States of America

A Proclamation

Foods from animal origin supply 70 percent of the protein, 35 percent of the energy, 80 percent of the calcium, 60 percent of the phosphorous, and important quantities of the "B" vitamins and trace minerals in the average American's diet. The application of scientific methods has markedly improved the efficiency of meat production in recent years and enhanced the desirability of these foods to consumers.

During July 1983, the American Society of Animal Science is celebrating its seventy-fifth anniversary. Its 7,500 members provide research, extension and educational services to all segments of animal agriculture in both the United States and other countries.

In recognition of the great progress which has been made in the past seventy-five years in applying scientific principles to animal agriculture production and the role of animal products in our daily life, the Congress of the United States, by Senate Joint Resolution 77, has authorized and requested the President to designate the week of July 24 to July 31, 1983, as "National Animal Agriculture Week."

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby designate the week beginning July 24, 1983, as National Animal Agriculture Week. I call upon the people of the United States and interested organizations to mark this week with appropriate observances to honor the contributions made by animal agriculture production to our economy.

IN WITNESS WHEREOF, I have hereunto set my hand this 27th day of July, in the year of our Lord nineteen hundred and eighty-three, and of the Independence of the United States of America the two hundred and eighth.

Ronald Reagan

[FR Doc. 83-20778
Filed 7-27-83; 4:44 pm]
Billing code 3195-01-M

Rules and Regulations

Federal Register
Vol. 48, No. 147
Friday, July 29, 1983

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 910

[Lemon Reg. 422]

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 July 31–August 6, 1983. Such action is needed to provide for orderly marketing of fresh lemons for the period due to the marketing situation confronting the lemon industry.

EFFECTIVE DATE: July 31, 1983.

FOR FURTHER INFORMATION CONTACT: William J. Doyle, Chief, Fruit Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone 202–447–5975.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Secretary's Memorandum 1512–1 and Executive Order 12291, and has been designated a "non-major" rule. William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities. This action is designed to promote orderly marketing of the California-Arizona lemon crop for the benefit of producers, and will not substantially affect costs for the directly regulated handlers.

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

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the **Federal Register** (5 U.S.C. 553), because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared purposes of the act.

Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. It is necessary to effectuate the declared purposes of the act to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

List of Subjects in 7 CFR Part 910

Marketing agreements and orders, California, Arizona, Lemons.

PART 910—[AMENDED]

Section 910.722 is added as follows:

§ 910.722 Lemon Regulation 422.

The quantity of lemons grown in California and Arizona which may be handled during the period July 31, 1983, through August 6, 1983, is established at 275,000 cartons.

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

Dated: July 27, 1983.

D.S. Kuryloski,

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

[FR Doc. 83–20816 Filed 7–28–83; 11:42 am]
BILLING CODE 3410–02–M

Commodity Credit Corporation

7 CFR Part 1434

[Amdt. 1]

Honey Price Support Regulations Governing 1982 and Subsequent Crops

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: Except for the change in the tare weight requirement for steel drums and the deletion of the requirement that farm stored honey be sampled for moisture content, the interim rule published in the **Federal Register** on April 7, 1983 (48 FR 15120) is adopted as a final rule. The interim rule revised the Honey Price Support Regulations Governing 1982 and Subsequent Crops to: (1) Provide that steel drums which are used for the storage of honey pledged as collateral for a CCC loan or covered by a CCC purchase agreement, may be filled no closer than 2 inches from the top of the drum; (2) add two ineligible floral sources to the list of ineligible floral sources; (3) provide that honey which has been scorched, burned, or subjected to excessive heat is ineligible for price support; (4) provide that honey stored in a steel drum that has a tare weight of less than 42 pounds is ineligible for price support regardless of whether it meets other eligibility requirements; and (5) provide for the assessment of interest charges for unsettled loans.

EFFECTIVE DATE: July 29, 1983.

FOR FURTHER INFORMATION CONTACT: Carolyn E. Cozart, (202) 447–7987. A copy of the Final Regulatory Impact Analysis is available upon request.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed in conformance with Executive Order 12291 and Secretary's Memorandum No. 1512–1 and has been classified "not major." The provisions of this rule will not result in: (1) An annual effect on the economy of $100 million or more; (2) major increases in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions; (3)

significant adverse effects on competition, employment, investment, productivity innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The title and number of the Federal Assistance Program to which this interim rule applies are: Commodity Loans and Purchases; 10.051, as found in the Catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is not applicable to this rule since the CCC is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this final rule.

On April 7, 1983, an interim rule was published in the **Federal Register** (48 FR 15120) revising the regulations at 7 CFR Part 1434. The public was afforded 60 days to comment on the interim rule. Thirteen comments were received. All comments expressed concern about the change CCC had made which provided that 1983 and subsequent crops honey stored in steel drums having a tare weight of less than 42 pounds is ineligible for price support. No comments were made concerning other changes published in the interim rule.

Of the 13 comments received, 7 were from business entities, 5 were from beekeeper associations, and 1 was from a beekeeper. Six of the commentators recommended moving the minimum tare weight for steel containers from 42 pounds to 38 pounds. One commentator recommended a minimum tare weight of 35 pounds. One commentator recommended a minimum tare weight of 39 pounds. Two commentators recommended a minimum tare ranging from 36 to 38 pounds. One commentator recommended that the 42 pound minimum tare weight be delayed until 1984-crop. One commentator recommended removal of the minimum 42 pound tare.

All commentators stated that the change in the minimum tare weight of steel drums for storing honey was published too late to allow adequate time for beekeepers to meet the requirement for 1983-crop price support eligibility. They further stated that many beekeepers would be severely penalized financially if CCC did not allow them to use containers already purchased for the 1983 honey crop. Also, disregarding the financial loss, it appears that merely finding other containers that meet CCC's requirement for a minimum 42 pound tare in sufficient quantities would be difficult if not impossible for some beekeepers.

Accordingly, because of: (1) The financial hardship to beekeepers that could result from the 42 pound minimum requirement, (2) the inability to purchase adequate supplies of containers that meet eligiblity requirements, and (3) the general acceptance of lighter weight drums by the honey industry, CCC has determined that the minimum tare weight for steel drums used to store honey for price support should be reduced to 38 pounds. Reducing the minimum tare weight for steel container below 38 pounds was not acceptable because the honey would not be adequately protected in such light weight containers.

A requirement that farm-stored honey be sampled for moisture content was inadverently published in the interim rule. The requirement was not addressed in the summary or the supplementary information. The requirement has been eliminated in this final rule.

Therefore, the interim rule published on April 7, 1983, is adopted as a final rule, except subsection 1434.8(c) is amended to reduce the minimum tare weight for steel drums to 38 pounds and subsection 1434.17(a) is amended to remove the requirement that farm-stored honey be sampled for moisture content before loans are disbursed.

List of Subjects in 7 CFR Part 1434

Honey price support programs.

Final Rule

Accordingly, 7 CFR Part 1434 is amended to read as follows:

1. The authority citations for Part 1434 read as follows:

Authority: Sec. 4, 62 Stat. 1070, as amended (15 U.S.C. 714b); sec. 5, 62 Stat. 1072 (15 U.S.C. 714c); secs. 201, 401, 63 Stat. 1052, 1054 (7 U.S.C. 1446, 1421).

* * * * *

2. Section 1434.8 is amended by revising paragraph (c) to read as follows:

§ 1434.8 Ineligible honey.

* * * * *

(c) *Containers.* Honey which is stored: (1) In steel drums having a tare weight less that 38 pounds or having removable liners of polyethylene or other materials, (2) in bung-type drums, or (3) in bulk tanks, is not eligible for price support regardless of whether it meets other eligibility requirements.

* * * * *

3. Section 1434.17 is amended by revising paragraph (a)(1) to read as follows:

§ 1434.17 Determination of quality.

(a) *Quality for Loan*—(1) *Farm Storage.* Loans on farm-stored honey will be made on the basis of the floral source, color, and class (table or nontable) of the honey as declared and certified by the producer on the Farm Storage Worksheet at the time the honey is placed under loan.

* * * * *

Signed at Washington, D.C., on July 20, 1983.

C. Hoke Leggett,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 83-20109 Filed 7-27-83; 3:28 pm]

BILLING CODE 3410-05-M

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 40 and 70

Amendments Specifying Licensee Responsibility for Nuclear Materials and Procedures for Termination of Specific Licenses

Correction

In FR Doc. 83-19169 beginning on page 32324 in the issue of Friday, July 15, 1983, make the following corrections:

1. On page 32328, the third column, in § 40.42(b), the tenth line, "(b)" should read "(v)".

2. On page 32329, the middle column, in the authority citation for Part 70, the second paragraph, the third line, "sec. 12," should read "sec. 122,".

BILLING CODE 1505-01-M

DEPARTMENT OF COMMERCE

Economic Development Administration

13 CFR Part 301

Establishment and Organization, Subpart C, Description of Organization

AGENCY: Economic Development Administration (EDA), Commerce.

ACTION: Final rule.

SUMMARY: This rule publishes in final form, EDA's Establishment and Organization regulation to reflect organizational changes in the Agency. It describes changes in titles and duties of EDA Officials/Offices. These rules were originally published in interim form.

DATES: Effective July 29, 1983.

FOR FURTHER INFORMATION CONTACT: Henry C. Kramer, Acting Director, Office of Management and Administration, U.S. Department of Commerce, Economic Development Administration, Room 7816, Washington, D.C. 20230; (202) 377-2194.

SUPPLEMENTARY INFORMATION: EDA published an interim rule regarding establishment and organization at 13 CFR Part 301, Subpart C—Description of Organization on December 23, 1982 (47 FR 57256). This interim rule is now published as a final rule. A detailed explanation of the changes made by the interim rule may be found in 47 FR 57256, dated December 23, 1982.

EDA published the amendment in interim form and allowed interested persons 60 days to comment. EDA received no comments. In accordance with Section 3(c)(3) of Executive Order No. 12291, this rulemaking was submitted to the Director of the Office of Management and Budget. Since this is not a "major rule," a Regulatory Impact Analysis was not required. In addition, there are no reporting or recordkeeping requirements under the Paperwork Reduction Act of 1980 (Pub. L. 96-551).

It has been determined by the General Counsel of the Department of Commerce that this rulemaking will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 13 CFR Part 301

Organization and functions (government agencies), Freedom of Information.

Accordingly, EDA amends 13 CFR Part 301 as follows:

PART 301—ESTABLISHMENT AND ORGANIZATION

1. Section 301.32 is revised to read as follows:

§ 301.32 Assistant Secretary.

The Assistant Secretary for Economic Development directs the programs and is responsible for the conduct of all activities, including overall direction and coordination of the Regional Offices of EDA, subject to the policies and directives prescribed by the Secretary of Commerce. The Assistant Secretary also directs the Executive Secretariat.

(a) The Executive Secretariat receives all correspondence addressed to the Office of Assistant Secretary, and assigns it to the appropriate office for action; records controlled and non-controlled correspondence; maintains prompt follow-up of replies to ensure that deadlines are met; maintains correspondence and policy files; and provides a selective reference service to files as requested by EDA Officials.

2. Section 301.33 is revised to read as follows:

§ 301.33 Deputy Assistant Secretary.

The Deputy Assistant Secretary assists the Assistant Secretary in all matters affecting EDA; and performs the duties of the Assistant Secretary during the latter's absence. The Deputy Assistant Secretary also directs the Office of Compliance. Regional Directors report directly to the Deputy Assistant Secretary.

(a) The Office of Compliance conducts Section 702 studies, where appropriate; recommends areas for designation, as requested; coordinates all of EDA's environmental activities; develops, as appropriate, agency procedures for complying with environmental legislation, regulations, and executive orders; serves as EDA's Official under the provisions of the National Environmental Policy Act of 1969 (NEPA); establishes effective systems throughout EDA to obtain and monitor reports concerning the program of equality of opportunity and ensures compliance with Civil Rights Guidelines, Department and EDA Regulations; establishes report requirements to ensure equality of opportunity by participants in economic development programs, conducts on-site inspections, and receives, investigates, and adjusts complaints; evaluates EDA experience relating to the equal opportunity programs; and establishes uniform equal opportunity standards and procedures to be followed in reviewing EDA projects.

(b) The Regional Directors (along with the appropriate Deputy Assistant Secretary (DAS)) have review and clearance responsibilities concerning certain types of amendments; approve disbursements and close out grant project audits; approve deferments of certain payments concerning loans and leases; and have certain powers and duties concerning Economic Development Districts, Indian organizations and other Areas. Regional Directors also approve Overall Economic Development Programs (OEDP). Regional Directors have the authority to approve and administer project funding authorized under Section 304 of the Act, except for new funds for Sec. 304 Supplementary grants (which authority is reserved by the Assistant Secretary).

3. Section 301.34 is revised to read as follows:

§ 301.34 Deputy Assistant Secretary for Operations.

The Deputy Assistant Secretary for Operations reports to the Deputy Assistant Secretary; and provides coordinated direction of headquarters activities related to financial and technical assistance projects, which will improve local economies, and integrate EDA's investment and planning activities. He/she also develops, in conjunction with the Office of the Inspector General, criteria for audits, including adherence to EDA policy and programmatic requirements. In addition, he/she develops policies and procedures for the implementation of the following program authorities: Public Works; Technical Assistance; Title IX Special Adjustment Assistance; Title IX Long-Term Economic Deterioration; and Local Public Works. The Deputy Assistant Secretary for Operations oversees and coordinates the Section 304 program of the Act; and monitors and services projects developed under: The Comprehensive Employment Training Act of 1973, as amended (29 U.S.C. 801 *et seq.*); Section 217 of Pub. L. 89-298 (42 U.S.C. 3142a) relating to river and harbor projects; 41 CFR Part 101-43, Public Contracts and Property Management, for the acquisition, use and eventual disposition of excess personal property obtained by the Administration and furnished to the Administration's projects grantees and cost reimbursement type contractors; The Local Public Works Capital Development and Investment Act of 1976, which is Title I of the Public Works Employment Act of 1976 (Pub. L. 94-369, 42 U.S.C. 6701 *et seq.*), as amended by Pub. L. 95-28; Pub. L. 94-427, 90 Stat. 1336-1339, relating to the XIII International Olympic Winter Games; and the Community Emergency Drought Relief Act of 1977, Pub. L. 95-31. In addition, the Deputy Assistant Secretary for Operations directs and supervises the activities of the Office of Economic Adjustment, the Office of Public Works, and the Office of Planning, Technical Assistance, Research, and Evaluation.

(a) The Office of Economic Adjustment coordinates and oversees the operation of the Title IX economic dislocation program; develops policies and procedures for implementation of the program; and provides post-approval assistance, taking into account program and policy compliance and appropriate measures to correct non-compliance.

(b) The Office of Public Works is responsible for the implementation of Public Works grants and loans under the Act (Titles I, II, and IV); and the Long-Term Deterioration (Title IX) program. The Office of Public Works is also responsible for the implementation of Title I of the Public Works Employment Act of 1976 (LPW) as amended; Pub. L. 94-427, relating to the XIII International Olympic Winter Games; and the Community Emergency Drought Relief Act of 1977. In addition, the Office of Public Works develops policies and procedures for the implementation of public investment programs; directs and

oversees the specific program authorities, and oversees post-approval management of all public investments, including special adjustment assistance, construction, and revolving loan projects.

(c) The Office of Planning, Technical Assistance, Research, and Evaluation oversees the monitoring of planning grants to states, cities, districts, counties, neighborhoods, metropolitan organizations, and Indian tribes; oversees and monitors technical assistance activities; conducts evaluations of EDA policies, programs, and projects to determine their effectiveness in terms of goals and objectives; and develops cost-benefit studies to aid the Assistant Secretary in making choices and decisions between alternative programs, projects, or activities for economic development; and reviews, evaluates, integrates, and disseminates the results of EDA sponsored research as well as other research findings that are relevant to EDA's objectives.

4. Section 301.35 is added to read as follows:

§ 301.35 Deputy Assistant Secretary for Finance.

The Deputy Assistant Secretary for Finance reports to the Deputy Assistant Secretary; and provides coordinated direction of headquarters and regional activities related to EDA's direct loan and loan guaranty programs. The Deputy Assistant Secretary for Finance also develops policies and procedures for the administration of Section 202 of the Public Works and Economic Development Act of 1965, as amended; and monitors and services projects developed under Chapters 3 and 4 of Title II of the Trade Act of 1974 as amended (19 U.S.C. 234 *et seq.*, 2371 *et seq.*), and predecessor statutes, as they pertain to providing monitoring and servicing for those adjustment assistance projects to firms which were certified eligible to apply and were approved prior to the transfer of functions to the Under Secretary for International Trade. The Deputy Assistant Secretary for Finance directs and supervises the activities of the Office of Loan Management, the Office of Special Servicing, and the Office of Liquidation.

(a) The Office of Loan Management oversees and monitors the servicing activities of the Regional Offices; conducts the loan administration of EDA loans/guarantees requiring servicing, so as to sustain or restore EDA projects as viable operations, including modifications of existing loan/guaranty terms and conditions; analyzes and recommends for approval or denial, modification actions to existing EDA loan/guaranty terms and conditions as requested by the Regional Offices; and coordinates and oversees the management information system relating to Regional Office portfolio administration and administration of the Office of Loan Management portfolio.

(b) The Office of Special Servicing develops, implements, and evaluates the policies, standards and procedures for the operation of the direct loan and loan guaranty programs in headquarters and the Regional Offices; performs the final financial and programmatic reviews of any application for new loan/guaranty assistance received in EDA; recommends the expenditure of current funds for new projects or for the injection of current funds for previously approved projects, and conducts the post approval administration of all EDA loans/guarantees within the headquarters portfolio that are determined to have the highest risk, greatest exposure, greatest programmatic sensitivity; and performs appropriate workout actions, such as restructuring, refinancing, obtaining new capital, or arranging for takeover by another organization, when it is determined to be in the best interest of the government.

(c) The Office of Liquidation conducts the orderly liquidation of EDA projects incapable of continuing viable operations; so as to dispose of the project assets, acquired at foreclosure or otherwise, to the best advantage of the government; directs all activities in connection with the care and preservation of EDA's collateral and security position in EDA loans/guarantees; and requests the assistance of, and works with, EDA's Office of Chief Counsel and other Federal agencies toward the orderly liquidation of EDA loans/guarantees.

5. Section 301.36 is revised to read as follows:

§ 301.36 Management and Administration Directorate.

The Management and Administration Directorate is headed by a Director who reports to the Deputy Assistant Secretary. The Director is responsible for providing the full range of administrative services and for management and organization analysis and evaluation functions. These functions are carried out through the Affirmative Action Officer, the Budget Division, the Management Analysis and Services Division, the Accounting Division, the Information Systems and Services Division, and the Personnel Management Division.

(a) The Affirmative Action Officer resolves discrimination complaints in accordance with the provisions of Title VII of the Civil Rights Act, and administers EDA's Affirmative Action Program.

(b) The Budget Division develops and prepares the annual budget for EDA; is responsible for the total financial program of EDA, and for the fiscal aspects of EDA programs entrusted to other Federal agencies; and reviews and monitors a fiscal control system for both program and administrative expenses consistent with the requirements of the Anti-Deficiency Act, which shall include, but not be restricted to allotment of funds, operating budgets, employment limitations, and analyses of reports and proposed actions relating thereto.

(c) The Management Analysis and Services Division conducts organizational and management studies and surveys; plans and conducts a program for achieving operational maximum economy, effectiveness, and efficiency and for obtaining optimum personnel utilization; develops and conducts a program for the efficient management of all official records, including an issuance system for administrative and program orders, and the design and control of official forms; and develops and administers a report control system for all administrative and operational reports. The Management Analysis and Services Division also provides, or arranges for administrative services for EDA headquarters and, as required, for the Regional Offices, including the procurement of administrative supplies, vehicle hire, furniture, equipment, and the distribution of printed and bound materials; evaluates, reports on, and makes recommendations on the utilization of space, supplies, equipment, communications, and related services within EDA; and serves as liaison with the Office of the Secretary on administrative matters. In addition, the Management Analysis and Services Division, in conjunction with the Office of General Counsel, prepares or arranges for an appropriate response to all inquiries for Privacy Act or Freedom of Information requests.

(d) The Accounting Division develops and maintains accounting systems and prepares financial reports for internal and external use, according to the needs of management, the requirements of laws or regulations, and established policies; provides accounting support for effective control of all funds administered, to present accurately the status of the appropriated funds within

the requirements of the Anti-Deficiency Act, and as required for good management by the program officials; analyzes financial and operating data to assure that financial and management policies are being followed; and serves as the liaison with the Office of the Secretary and other Federal Agencies in all accounting matters.

(e) The Information Systems and Services Division plans, develops, acquires, and coordinates the use of automatic data processing systems and equipment for EDA; provides data processing services, including the conduct of feasibility studies and the development of systems and programs for the application of automatic data processing techniques; develops and maintains a comprehensive information and data base system to meet specified requirements for administrative, planning, operational, program management and program evaluation purposes; and provides periodic and special summary reports on current optional and performance comparisons to planned goals.

(f) The Personnel Management Division plans, organizes, and administers staffing services such as recruitment and placement, appointment, promotion, and separation; manages other personnel programs including employee relations, employee training and development, employee recognition and incentives, labor-management relations, position management and classification, and various employee services and benefits programs; maintains a processing and filing system for all personnel actions; and provides planning and administrative support to EDA's Equal Employment Opportunity programs.

6. Section 301.37 is revised to read as follows:

§ 301.37 Office of the Chief Counsel.

The Office of the Chief Counsel renders all necessary legal services, subject to the provisions of Department Organization Order 10-6; has primary responsibility for the preparation, coordination, and clearance of all legislation, regulations, and external orders subject to the provisions of applicable Departmental Orders; and provides the legal services review required to administer all EDA projects.

§§ 301.38 through 301.43 [Removed]

7. Sections 301.38 through 301.43 are removed.

(Sec. 701, Pub. L. 89-136, 79 Stat. 570) (42 U.S.C. 3211). Sec. 1-105, E.O. 12185, DOC Organization Order 10-4, as amended (40 FR 56702, as amended))

Dated: July 19, 1983.

Carlos C. Campbell,

Assistant Secretary for Economic Development.

[FR Doc. 83-20175 Filed 7-28-83; 8:45 am]

BILLING CODE 3510-24-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[Docket 8917]

Bristol-Myers Co., et al.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Final order.

SUMMARY: This order requires a New York City manufacturer of nonprescription drug products, among other things, to cease advertising that "Bufferin," "Excedrin," "Excedrin PM" or any other nonprescription internal analgesic has been proven to be safer and more effective than other pain relieving products, unless such claim has been substantiated by two well-controlled clinical tests. The manufacturer must have a reasonable basis to support claims of freedom from side effects, or any claim which represents that its pain relievers are therapeutically superior to others. The order prohibits respondents from advertising that its products contain any unusual or special ingredient, when in fact such ingredient is commonly used in similar products; or from making any claim which misrepresents the identity of a product's analgesic ingredient. The manufacturer and the Ted Bates ad agency are further barred from claiming that doctors recommend Bufferin more often than any other pain reliever, or from otherwise falsely claiming any endorsement or recommendation for their products.

DATES: Complaint issued Feb. 23, 1973. Final Order issued July 5, 1983.[1]

FOR FURTHER INFORMATION CONTACT: FTC/PA James H. Skiles, Washington, D.C. 20580. (202) 724-1507.

SUPPLEMENTARY INFORMATION: In the Matter of Bristol-Myers Company, a corporation, Ted Bates & Company, Inc., a corporation, and Young & Rubicam, Inc., a corporation. The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows: Subpart—Advertising Falsely or Misleadingly: § 13.10 Advertising falsely or misleadingly; § 13.20 Comparative data or merits; § 13.110 Endorsements, approval and testimonials; § 13.170 Qualities or properties of product or service; § 13.175 Quality of product or service; § 13.205 Scientific or other relevant facts; § 13.280 Unique nature or advantages. Subpart—Claiming or Using Endorsements or Testimonials Falsely or Misleadingly: § 13.330 Claiming or using endorsements or testimonials falsely or misleadingly; 13.330-33 Doctors or medical profession. Subpart—Corrective Actions and/or Requirements: § 13.533 Corrective actions and/or requirements. Subpart—Misrepresenting Oneself and Goods—Goods: § 13.1575 Comparative data or merits; §13.1715 Quality; §13.1740 Scientific or other relevant facts; § 13.1770 Unique nature or advantages. Subpart—Neglecting, Unfairly or Deceptively, To Make Material Disclosure: § 13.1855 Identity; § 13.1895 Scientific or other relevant facts.

List of Subjects in 16 CFR Part 13

Advertising, Analgesics, Trade practices.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45, 52)

The Final Order, including further order requiring report of compliance therewith, is as follows:

In the Matter of Bristol-Myers Company, a corporation, Ted Bates & Company, Inc., a corporation and Young & Rubicam, Inc., a corporation, Docket No. 8917.

Final Order

This matter has been heard by the Commission upon the appeal of counsel for respondents and complaint counsel and upon briefs and oral argument in support of and in opposition to the appeals. The Commission, for the reasons stated in the accompanying Opinion, has granted each appeal in part, and denied each in part. Therefore,

It is ordered that the initial decision of the administrative law judge be adopted as the Findings of Fact and Conclusions of Law of the Commission except as is otherwise inconsistent with the attached opinion.

Other Findings of Fact and Conclusions of Law of the Commission are contained in the accompanying Opinion.

It is further ordered that the following Order to Cease and Desist be entered:

Order

I

It is ordered that Bristol-Myers Company, its successors and assigns,

[1] Copies of the Complaint, Initial Decision and the Opinion of the Commission filed with the original documents.

and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of "Bufferin," "Execedrin," "Excedrin P.M.," or any other nonprescription internal analgesic product, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

Making any representation, directly or by implication, that a claim concerning the superior effectiveness or superior freedom from side effects of such product has been established or proven unless such representation has been established by two or more adequate and well-controlled clinical investigations, conducted by independent experts qualified by training and experience to evaluate the comparative effectiveness or comparative freedom from side effects of the drugs involved, on the basis of which it could fairly and responsibly be concluded by such experts: (1) That the drug will have the comparative effectiveness or freedom from side effects that it is represented to have, and (2) that such comparative effectiveness or freedom from side effects is demonstrated by methods of statistical analysis, and with levels of confidence, that are generally recognized by such experts. The investigations shall be conducted in accordance with the procedures set forth below.

At least one of the adequate and well-controlled clinical investigations to evaluate the comparative effectiveness of the drug shall be conducted on any disease or condition referred to, directly or by implication, or, if no specific disease or condition is referred to, then the adequate and well-controlled clinical investigations shall be conducted on a least to conditions or diseases for which the drug is effective. The clinical investigations shall be conducted as follows:

A. The subjects must be selected by a method that:

1. Provides adequate assurance that they are suitable for the purposes of the investigation, and the diagnostic criteria of the condition to be treated (if any);

2. Assigns the subjects to the test groups in such a way as to minimize bias; and

3. Assures comparability in test and control groups of pertinent variables, such as age, sex, severity or duration of disease or condition (if any), and use of drugs other than test drugs.

B. The investigations must be conducted double-blind, and methods of double-blinding must be documented. In addition, the investigations shall contain a placebo control to permit comparison of the results of use of the test drugs with an inactive preparation designed to resemble the test drugs as far as possible.

C. The plan or protocol for the investigations and the report of the results shall include the following:

1. A clear statement of the objective of the investigation;

2. An explanation of the methods of observation and recording of results, including the variables measured, quantitation, assessment of any subject's response and steps taken to minimize bias on the part of the subject and observer;

3. A comparison of the results of treatments or diagnosis with a control in such a fashion as to permit quantitative evaluation. The precise nature of the control must be stated and an explanation given of the methods used to minimize bias on the part of the observers and the analysts of the data;

4. A summary of the methods of analysis and an evaluation of data derived from the study, including any appropriate statistical methods.

D. A test or investigation which is not conducted in accordance with these procedures may be used to establish a claim only if respondent can show that, notwithstanding the failure to satisfy these procedures, the test or investigation would still be generally accepted by the relevant scientific community as sufficient to establish the truth of the claim.

II

It is further ordered that respondent Bristol-Myers Company, its successors and assigns, and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of "Bufferin," "Excedrin," or any other nonprescription internal analgesic, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from making any therapeutic performance or freedom from side effects claim for such product unless respondent possesses a reasonable basis for making that claim. A reasonable basis for such a claim shall consist of competent and reliable scientific evidence supporting that claim. Well-controlled clinical tests conducted in accordance with the criteria set forth in Order Paragraph I shall be deemed to constitute a reasonable basis for a claim.

III

It is further ordered that respondent Bristol-Myers Company, its successors and assigns, and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of "Bufferin," "Excedrin," "Excedrin P.M.," or any other nonprescription drug product, in or affecting commerce, as "commerce" and "drug" are defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Making any representations, directly or by implication, that such product contains any unusual or special ingredient when such ingredient is commonly used in other nonprescription drug products intended for the same use or uses as the product advertised by respondent.

B. Representing that any group, body, or orgainzation endorses or recommends such product unless at the time such statement or representation is made, respondent has a reasonable basis for such statement or representation.

IV

It is furthered order that respondent Bristol-Myers Company, its successors and assigns, and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device in connection with the advertising, offering for sale, sale or distribution of "Bufferin," or Excedrin," or any other nonprescription internal analgesic in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from falsely representing that the analgesic ingredient in an aspirin-containing product is different from aspirin or otherwise misrepresenting the identity of any analgesic ingredient. It shall be a violation of this paragraph to contrast the analgesic ingredient of a product which contains aspirin with the analgesic ingredient of another product if that product also contains aspirin, unless respondent discloses clearly and conspicuously that the analgesic ingredient in its product is aspirin.

V

It is further ordered that respondent Ted Bates & Company, Inc., a corporation, its successors and assigns, and its officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device in connection with the advertising, offering for sale, sale or distribution of "Bufferin" or any other

nonprescription internal analgesic product, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Making any representation, directly or by implication that such product contains any unusual or special ingredient when such ingredient is commonly used in other nonprescription drug products intended for the same use or uses as the product advertised by respondent.

B. Falsely representing that the analgesic ingredient in an aspirin-containing product is different from aspirin or otherwise misrepresenting the identity of any analgesic ingredient. It shall be a violation of this paragraph to contrast the analgesic ingredient of a product which contains aspirin with the analgesic ingredient of another product if that product also contains aspirin, unless respondent discloses clearly and conspicuously that the analgesic ingredient in its product is aspirin.

C. Representing that any group, body, or organization endorses or recommends such product unless at the time such statement or representation is made respondent has a reasonable basis for such statement or representation.

VI

It is further ordered that respondent Young & Rubicam, Inc., a corporation, its successors and assigns, and its officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device in connection with the advertising, offering for sale, sale, or distribution of "Excedrin," "Excedrin P.M.," or any other nonprescription internal analgesic product, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Making any representation, directly or by implication, that such product contains any unusual or special ingredient when such ingredient is commonly used in other nonprescription drug products intended for the same use or uses as the product advertised by respondent.

B. Falsely representing that the analgesic ingredient in an aspirin-containing product is different from aspirin or otherwise misrepresenting the identity of any analgesic ingredient. It shall be a violation of this paragraph to contrast the analgesic ingredient of a product which contains aspirin with the analgesic ingredient of another product if that product also contains aspirin, unless respondent discloses clearly and conspicuously that the analgesic ingredient in its product is aspirin.

VII

It is further ordered that respondents Bristol-Myers Company, Ted Bates & Company, Inc., and Young & Rubicam, Inc., shall notify the Commission at least thirty (30) days prior to any proposed change in their respective corporate respondent such as a dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in their respective corporation which may affect compliance obligations under this Order.

VIII

It is further ordered that the respondent herein shall within sixty (60) days after service of this Order upon them, and at such other times as the Commission may require, file with the Commission a written report setting forth in detail the manner and form in which they have complied or intend to comply with this Order.

Paragraphs Seven A.3, Seven A.4, Seven B.3, Seven B.4, Seven B.5, Seven B.8, Seven B.9, Seven B.10, Nine, Ten, Eleven, Twelve C, Fourteen, Fifteen, Sixteen, Twenty-Three, and Twenty-Four of the Complaint are hereby dismissed.

Issued: July 5, 1983.

By the Commission.

Emily H. Rock,

Secretary.

Concurring Statement of Chairman Miller [1]

I concur with the decisions reached by the majority in these two cases and wish to compliment Commissioner Clanton for his thorough review of the records and for his insightful commentary. But while joining in the majority decisions, I wish to note three caveats.

First, although I agree with the outcomes of these cases, including the individual charges of liability, I do not necessarily agree with each and every argument that is advanced. This is, of course, an occupational hazard. Majority decisions are inherently "consensus documents" and should be read with that in mind.

Second, in a particular application of the point just made, I take issue with the majority's differentiating between an "establishment claim theory" and a "reasonable basis theory." To me, the overarching goal of our law enforcement efforts in this area is to encourage truthful advertising; specifically, to eliminate unfairness and deception. The Commission's celebrated, and controversial, reasonable basis standard, first enunciated in *Pfizer* over a decade ago, is a useful tool for the Commission in achieving that end. I am troubled by any communication, such as that implicit in these opinions, that the Commission will apply one standard (i.e., reasonable basis) in cases generally, and another standard (e.g., establishment claim) in specific situations. Rather, I would encourage the Commission to consider whether the reasonable basis test, or some variant of it, were not the appropriate standard for universal application, thus reducing uncertainty in the private sector and, possibly, avoiding double jeopardy.

Third, because of the importance of these cases it would have been desirable to have the benefits of the Commission's review of its ad substantiation program, as well as the staff's efforts to develop a protocol defining deception, before these cases were made final. However, I am well aware that both cases are over a decade old and agree with the adage, "Justice delayed is justice denied." Thus, I believe that expeditious treatment of these opinions wins out in any weighing of the equities. This is not to say, of course, that in the future the Commission should not articulate a somewhat different, more comprehensive, standard for claims of these types.

Issued: July 5, 1983.

Separate Statement of Commissioner Pertschuk Concurring in Part and Dissenting in Part

I concur with most of the Commission's Opinion and Order. For the reasons discussed below, however, I cannot join with the majority's decision to reverse the "substantial question" doctrine announces so recently in *American Home Products Corporation*, 98 F.T.C. 136 (1981), *aff'd*, 695 F.2d 681 (3d Cir. 1982). Accordingly, I dissent from the Commission's decision to dismiss paragraphs 9 through 11 and 14 through 16 of the complaint.

Together with our opinion in *Sterling Drug, Inc.* (D. 8919), also announced today, these three cases represent the culmination of a decade-long attempt to curb allegedly deceptive advertising in the multi-million dollar over-the-counter ("OTC") aspirin-based pain reliever market. That deception, now documented by three lengthy adjudicative records, has stemmed from a marketing strategy, adopted by each of the major makers of pain relievers named in these cases, to portray *their* particular pain reliever as being

[1] Chairman Miller's Statement also applies to the Commission's Final Order in Sterling Drug Inc., et al. (Dkt. 8919), published in this issue immediately following this document.

different and more effective than any other, including plain aspirin. Unfortunately, such a strategy is at its heart deceptive, since the most assiduous efforts of company counsel in each of these three cases have failed to unearth conclusive evidence that any one aspirin-based product is in fact any better than any other in doing what people buy analgesics for—relieving pain. As a result, the claims made by these leading makers that there are differences in effectiveness among aspirin-based pain relievers have largely been a fraud on the American public.

In *American Home Products*, the Commission found unequivocal claims of analgesic superiority made by American Home Products ("AHP") for Anacin to be deceptive. There, we required AHP to refrain from such claims unless it either proved through two well-controlled clinical tests that in fact Anacin was more effective in relieving pain, or else disclosed that there was a "substantial question" about the claim.

The analysis used to reach that decision was straightforward. First, the Commission considered the context in which consumers are exposed to claims for OTC pain relievers. Taking notice of the public's concern with the special health risks associated with therapeutic drug products, the inability of the public to verify objectively the consequences of therapeutic drug use, and the reasonable consumer expectation that the marketing of drug products claims is carefully regulated by the government, the Commission held that:

When an advertiser has made unequivocal, unqualified claims about a drug product's effects . . . consumers may be led to expect, quite reasonably, that the claims are supported by meaningful evidence, of the sort that would be likely to satisfy the relevant scientific community. *American Home Products, supra*, at 386.

The Commission then determined that the scientific community considers one analgesic drug to be more effective than another only when its superiority is demonstrated by two well-controlled clinical tests. *Id.* at 373–381. In the absence of such supporting evidence, the scientific community would view any such claim as being open to doubt. Since AHP had no such tests to support its claims, and therefore did not possess the level of proof consumers reasonably would expect, the Commission held that it was deceptive for AHP to claim that Anacin was more effective than othert OTC internal analgesic drug products, without qualifying the claim by disclosing that there was a substantial question about its validity. The Commission's findings, analysis, and order addressing this problem were affirmed by the Third Circuit in a well-reasoned and scholarly opinion. *American Home Products* v. *FTC*, 695 F.2d 681 (3d Cir. 1982).[1]

The majority in today's opinion retreats from the "substantial question" principle established in *American Home Products*. In doing so, the majority argues that the substantial question analysis eliminates any difference between "establishment claims" (claims which refer to scientific proof), and "superior efficacy claims" (claims which do not refer to any type or quality of proof). The majority rejects the assumption made by the Commission in *American Home Products* that an unequivocal superior efficacy claim could reasonably lead consumers to believe that it was supported by scientific proof. In the majority's view, the difficutly with that assumption is that "there has never been any evidence to confirm this somewhat counterintuitive reading of consumer expectations." Slip op. at 40.

The absence of extrinsic evidence about consumer expectations has never barred the Commission from making informed, considered judgments about what consumers could reasonably be expected to believe about a given claim. As the courts have recognized, "[d]etermining whether an advertisement is deceptive draws upon the FTC's familiarity with the public's expectations." *Litton Indus., Inc.* v. *FTC*, 676 F.2d 364, 369 (9th Cir. 1982). Indeed, underlying the "reasonable basis" doctrine itself is the fundamental proposition that "consumers are likely to assume that when a product claim is advanced which is in theory subject to objective verification, the party making it possesses a reasonable basis for so doing, and that the assertion does not constitute mere surmise or wishful thinking on the advertiser's part." *Nat'l Commission on Egg Nutrution*, 88 F.T.C. 89, 193 (1976), *modified*, 570 F.2d 157 (7th Cir. 1977), *cert. denied*, 439 U.S. 821 (1978). Absent any reference in a claim to the evidence on which the claim is based, the Commission routinely assumes that consumers expect advetisers to possess and rely upon whatever type of evidence is appropriate to substantiate the claim. It does not require extrinsic evidence of those expectations, although such evidence, if produced, will be considered. *See, e.g., Fedders Corp.*, 85 F.T.C. 38 (1975), *aff'd*, 529 F.2d 1398 (2d Cir.), *cert. denied*, 429 U.S. 818 (1976); *Sears, Roebuck & Co.*, 95 F.T.C. 406 (1980), *aff'd*, 676 F.2d 385 (9th Cir. 1982); *Jay Norris*, 91 F.T.C. 751 (1978), *modified*, 598 F.2d 1244 (2d Cir.), *cert. denied*, 444 U.S. 980 (1979).

If it is reasonable to find without extrinsic evidence proof that consumers expect claims to be supported by evidence sufficient to substantiate the claim, it seems hardly "counterintuitive" to find similarly that consumers expect claims comparing the medical benefits of various drugs to be supported by appropriate scientific evidence. In affirming the Commission's decision in *American Home Products*, the Third Circuit upheld that assumption, noting:

Of course the Commission is not committed to the unrealistic notion that consumers understand the clinical details of comparative drug testing or the exact mechanisms of government regulation. It merely asserts that consumers reasonably assume that the proper governmental authorities will take steps to ensure that unqualified claims of a drug's superiority are supported by whatever proof the appropriate medical or scientific experts consider sufficient. *American Home Products* v. *FTC*, 695 F.2d 681, 698 (footnotes omitted).

Indeed, the Commission's analysis of the "establishment" claims in the instant case rests on an assumption about consumer expectations scarcely distinguishable from that made by the Commission in *American Home Products*. No proof was offered in these cases that consumers understand a mere reference to a scientific test or a computer print-out to mean the claim has been established as scientific fact to the satisfaction of the relevant scientific community. Nevertheless, the Commission today assumes that consumers could reasonably be led to believe from direct and indirect references to a scientific study in ads for Bufferin and Excedrin that "the scientific community regards Bufferin and Excedrin to be superior." Slip op. at 19. The only justification for this assumption is the observation that "[w]here scientific evidence is cited in support of a claim, absent some explicit qualification it is unlikely that consumers would interpret such evidence narrowly to provide proof for only a limited portion of the claim." *Sterling Drug, supra*, slip op. at 13, note.

It appears, then, that the Commission is willing to make assumptions about consumer expectations which are certainly as reasonable as the assumption that consumers expect therapeutic efficacy claims for drugs to

[1] The Third Circuit reversed one subparagraph portion of the Commission's Order which is not relevant here.

be scientifically supported. The majority's concern about *American Home Products* therefore seems to stem not so much from the "unreasonableness" of the assumption made there as from a concern about the scope of that theory. In the majority's view, the same factors cited by the Commission in *American Home Products* in support of the assumption that consumers reasonably expect superior therapeutic efficacy claims to be backed by scientific proof would exist with respect to *any* drug performance claim. As a result, application of that assumption, according to the majority, would necessarily lead the Commission to require all drug performance claims to be backed by two well-controlled clinical tests.

While the Commission's opinion in *American Home Products* was carefully limited to the facts in that case,[2] I believe it is entirely appropriate for the Commission to assume consumers generally expect therapeutic efficacy claims for drugs to be supported by scientific fact. In an age when consumers are told that drugs are constantly monitored by the government and industry through careful scientific tests for safety and efficacy, consumers quite reasonably expect drug products to provide the therapeutic benefits claimed for them. This belief is particularly justified because consumers are frequently unable to determine the therapeutic value of a drug for themselves by simply using it. They do not expect such claims to be based on hunches, or on informed guesses, or on untested scientific theories, but on accepted scientific fact.

While the Commission's rationale for adopting the substantial question doctrine in *American Home Products* is, at least in my view, applicable generally to any therapeutic efficacy claim for an OTC drug, it does *not* follow—as the majority implies—that all such claims must be supported by the strict two well-controlled clinical test standard which the Commission adopted in *American Home Products*. As the majority recognizes, the Commission does not depend on consumer expectations to determine precisely what type of evidence is necessary to substantiate a given claim. Slip op. at 41. Determining the appropriate level of evidence is essentially a factual inquiry, one which must weigh a number of considerations and which can only be determined on a case-by-case basis.

[2] *See, American Home Products* v. *FTC, supra,* 695 F.2d at 701.

Pfizer, Inc., 81 F.T.C. 23, 64 (1972). Consequently, we might find from the facts in a different case that a level of proof less than the two well-controlled clinical test standard would be appropriate for other types of drug product therapeutic efficacy claims.

The majority's decision, unfortunately, may leave unsolved the central problem that our trilogy of analgesics case was designed to address—the profusion of mutually inconsistent claims by analgesic makers that each produces the most effective pain reliever. By refusing to extend the "substantial question" doctrine to these cases, the Commission creates unnecessary uncertainty about what evidence each maker has to possess to claim that its product is the best pain reliever. Under today's order, the makers must substantiate such claims with "competent and reliable scientific evidence." While the opinion makes clear that two well-controlled clinical tests suffice to meet that standard, and suggests further that such tests may well be the *only* data which could meet such a standard, the opinion expressly leaves open the question whether evidence short of such tests would be sufficient. (Slip op. at 71–72) That uncertainty creates a potential for Bristol-Myers to claim that Excedrin is more effective than Anacin or Bayer aspirin, and for Sterling Drug to claim that Bayer aspirin is more effective than Excedrin or Anacin. And American Home Products, should the substantial question provisions of the order against it be modified, in fairness, to conform to the Commission's order here, may be able to claim that Anacin is more effective than Bayer aspirin or Excedrin. Purely as a matter of logic, only one of these advertisers can possibly be telling the truth. And the chances are that *none* is—because the evidence in these three cases suggests that there is probably no clinically significant difference among any of these products.

Issued: July 5, 1983.

Separate Statement of Commissioner Patricia P. Bailey Concurring in Part and Dissenting in Part [1]

Bristol Myers, Docket No. 8917 and Sterling Drug, Docket No. 8919

The Commission today has issued the last two opinions in a three-part series of cases challenging the national advertising of several major over-the-counter (OTC) analgesics products. In both cases, I concur in the majority's findings of liability, as far as they go.

[1] Commissioner Bailey's Statement also applies to the Commission's Final Order in Sterling Drug Inc., et al. (Dkt. 8919), published in this issue immediately following this document.

However, because portions of the Commission's *American Home Products* [2] decision are overturned by the decisions issued today, I must register my dissent from those aspects of *Bristol Myers* and *Sterling* which are inconsistent with the holdings in *American Home Products.*

In that earlier opinion, the Commission concluded that any claim that Anacin was more effective than any other OTC analgesic implied that such a claim was "established" by evidence generally acceptable to the scientific community. Therefore, we decided, it was deceptive to make such a claim unless the advertiser possessed adequate substantiation for it. Having ruled in that opinion (and in these) that an "establishment" claim requires substantiation by two competent and reliable clinical tests, the same substantiation level was required in *American Home Products* when comparative performance claims were made. Absent possessing such substantiation, the advertiser would have to disclose the existence of a "substantial question" as to the comparative effectiveness claim.

In these two opinions today, the Commission reaffirms its decision in *American Home Products* that an "establishment" claim requires substantiation by two competent and reliable clinical tests. But the majority here decides that this two-test substantiation requirement will not be triggered by "establishment" implications inherent in a comparative performance claim. Instead, these opinions hold that the two-test requirement will only be triggered when the advertiser makes affirmative express or implied claims that its product's effectiveness has been "established".

I disagree with the majority's limitation of the establishment theory in this way and dissent from its decision to dismiss those portions of the complaint in these two cases which depend on the original theory articulated in *American Home Products.* As the Third Circuit stated in upholding the Commission's decision in *American Home Products:*

Pervasive government regulation of drugs, and consumer expectations about such regulation, lend drug claims all the more power to mislead. The Commission's reasoning on this point. . . . is similar to that approved in *Simeon Management Corp.* v. *FTC.* . . . The Commission in these proceedings reasonably extended the ideas approved

[2] American Home Products Corporation, 98 F.T.C. 136 (1981), *aff'd* 695 F. 2d 681 (3rd Cir. 1982).

in *Simeon* from prescription to non-prescription drugs, and from absolute representations about safety and effectiveness to comparative representations. Non-prescription as well as prescription drugs are subject to the FDA's requirements that absolute safety and efficacy be demonstrated by well-controlled clinical tests. And the Commission concluded that many consumers could reasonably believe that the federal government demanded similarly high standards for claims of comparative effectiveness and safety as are imposed on absolute claims.

Of course the Commission is not committed to the unrealistic notion that consumers understand the clinical details of comparative drug testing or the exact mechanisms of government regulation. It merely asserts that consumers reasonably assume that the proper governmental authorities will take steps to ensure that unqualified claims of a drug's superiority are supported by whatever proof the appropriate medical or scientific experts consider sufficient.

Another consideration in favor of holding comparative effectiveness and safety claims for analgesics to high standards of substantiation is the difficulty for the average consumer to evaluate such claims through personal experience, and the consequent tenacity of advertising-induced beliefs about superiority. (emphasis in original) 695 F. 2d at 697–698.

I would also note that the revised theory of liability adopted by the majority depends on the identification of express or implied establishment claims in an advertisement. The lines drawn by the majority providing guidance as to when such claims are present are exceedingly fine. Thus, the advertising industry is told that the depiction of a computer typewriter, by itself, does not constitute an establishment claim, but that the same visual, coupled with a certain kind of text, does (*Bristol Myers* Slip Op. at pgs. 10–11); that a mortar and pestle or glass figures of people with tablets crumbling in their stomachs do not communicate an establishment claim (*Sterling* Slip Op. at pg. 20, *Bristol Myers* Slip Op. at pg. 11), and that a pause between sentences of an otherwise questionable establishment claim may be enough to cure it of its establishment implication (*Bristol Myers* Slip Op. at pg. 12). At the same time, use of a visual depicting the product's chemical formula can convert the claim into an establishment claim. (*Bristol Myers* Slip Op. at pg. 18). All of this delicate line-drawing may well pose confusing problems of interpretation for those who must comply with the standards enunicated in these opinions and I hope the Commission will be able to provide necessary guidance to those who are perplexed.

Finally, I would hope some of the Commission's interpretations of particular advertisements are not carried too far and misinterpreted. In particular, while I do not disagree with Commissioner Clanton's analysis of the specific advertisements touting the superiority of the process used by Sterling in the manufacture of various Bayer aspirin products, I believe these interpretations must be carefully confined to the entire context of the advertisements in question. (See *Sterling* Slip Op. at pgs. 15 and 16.) Certainly, claims that an advertiser utilizes a special manufacturing process can often amount to a claim of superior efficacy and it would be most unfortunate if advertisers misinterpreted the opinion to permit such deceptive representations.

Issued: July 5, 1983.

Concurring Statement of Commissioner Douglas [1]

I concur in the Commission's finding of liability and its choice of remedies in these two matters. Commissioner Clanton's majority opinions have carefully analyzed the numerous specific claims addressed at trial. In my view, the majority opinions make a commendable effort to draw upon available evidence of consumer views in interpreting specific advertising claims. For the future, I hope the Commission will rely increasingly upon such extrinsic evidence in determining the meaning of advertisements when implied claims are at issue. The soundness of the interpretations the Commission ultimately adopts can be enhanced substantially by resort to evidence, beyond our individual and collective judgments, which suggests how consumers themselves interpret the advertisements in question.

Our experience with these cases also underscores the desirability of pleading future advertising cases more narrowly. The abundance and variety of claims raised by the complaints here appear to have hindered the expeditious adjudication of the relevant issues and encumbered the Commission's efforts to analyze the disputed claims. I expect that the Commission's ongoing examination of both its advertising substantiation program and the standards by which it identifies deception will produce important refinements in the way in which the agency pleads and decides advertising cases. This process of review and analysis may yield useful adjustments in the standards the Commission employs to evaluate advertising claims. While I support the result achieved in these decisions, I do not endorse all elements of the reasoning in the majority opinions, nor do I foreclose the possibility of doctrinal changes as the Commission completes its review of its advertising enforcement program.

Issued: July 5, 1983.

[FR Doc. 83-20595 Filed 7-28-83; 8:45 am]

BILLING CODE 6750-01-M

[1] Commissioner Douglas' Statement also applies to the Commission's Final Order in Sterling Drug Inc., et al. (Dkt. 8919), published in this issue immediately following this document.

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16 CFR Part 13

[Docket 8919]

Sterling Drug Inc., et al.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Final order.

SUMMARY: This order requires a New York City manufacturer of nonprescription drug products, among other things, to cease advertising that "Bayer Aspirin," "Bayer Children's Aspirin," "Vanquish," "Cope," "Midol" or any other nonprescription internal analgesic has been proven to be superior to other pain relieving products, unless such claim has been substantiated by two well-controlled clinical tests. The company must have reasonable basis to support any claim that its pain relievers are therapeutically superior to others, as well as competent and reliable scientific evidence for representations that the comparative pharmaceutical qualities of its analgesics have been proven or established. The order further prohibits the manufacturer from advertising that its products contain any unusual or special ingredient, when in fact such ingredient is commonly used in similar products; or from making any claim which misrepresents the product's analgesic ingredient.

DATES: Complaint issued Feb. 23, 1973. Final Order issued July 5, 1983.[1]

FOR FURTHER INFORMATION CONTACT: FTC/PC, Joel Brewer, Washington, D.C. 20580. (202) 633-6947.

[1] Copies of the Complaint, Initial Decision and the Opinion of the Commission filed with the original documents.

SUPPLEMENTARY INFORMATION: In the Matter of Sterling Drug Inc., a corporation, Dancer-Fitzgerald-Sample, Inc., a corporation, and Lois Holland Callaway, Inc., a corporation. The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows: Subpart—Advertising Falsely or Misleadingly: § 13.10 Advertising Falsely or misleadingly; § 13.20 Comparative data or merits; § 13.170 Qualities or properties of product or service; § 13.175 Quality of product or service; § 13.205 Scientific or other relevant facts; § 13.280 Unique nature or advantages. Subpart—Corrective Actions and/or Requirements: § 13.533 Corrective actions and/or requirements. Subpart—Misrepresenting Oneself and Goods—Goods: § 13.1575 Comparative data or merits; § 13.1715 Quality; § 13.1740 Scientific or other relevant facts; § 13.1770 Unique nature or advantages. Subpart—Neglecting, Unfairly or Deceptively, To Make Material Disclosure: § 13.1855 Identity; § 13.1895 Scientific or other relevant facts.

List of Subjects in 16 CFR Part 13

Advertising, Analgesics, Trade practices.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45, 52)

The Final Order, including further order requiring report of compliance therewith, is as follows:

In the Matter of Sterling Drug Inc., a corporation, Dancer-Fitzgerald-Sample, Inc., a corporation, and Lois Holland Callaway, Inc., a corporation; Docket No. 8919.

Final Order

The matter has been heard by the Commission upon the appeal of counsel for respondent Sterling Drug, Inc., and complaint counsel and upon briefs and oral argument in support of and in opposition to the appeals. The Commission, for reasons stated in the accompanying Opinion, has granted a portion of respondent's appeal and denied that of complaint counsel. Therefore

It is ordered that the initial decision of the administrative law judge be adopted as the Findings of Fact and Conclusions of Law of the Commission except as is otherwise inconsistent with the attached opinion.

Other Findings of Fact and Conclusions of Law of the Commission are contained in the accompanying Opinion.

It is further ordered that the following Order to Cease and Desist be entered.

Order

I

It is ordered that Sterling Drug, Inc., its successors and assigns, and its officers, agents, representatives and employees, directly or through any corporation, subsidiary division or other device, in connection with the advertising, offering for sale, sale or distribution of "Bayer Aspirin," "Bayer Children's Aspirin," "Vanquish," "Cope," "Midol," or other nonprescription internal analgesic product, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

Making any representation, directly or by implication, that a claim concerning the superior effectiveness of such product has been established or proven unless such representation has been established by two or more adequate and well controlled clinical investigations, conducted by independent experts qualified by training and experience to evaluate the comparative effectiveness of the drugs involved, on the basis of which it could fairly and responsibly be concluded by such experts (1) that the drug will have the comparative effectiveness that it is represented to have, and (2) that such comparative effectiveness is demonstrated by methods of statistical analysis, and with levels of confidence, that are generally recognized by such experts. The investigations shall be conducted in accordance with the procedures set forth below.

At least one of the adequate and well-controlled clinical investigations to evaluate the comparative effectiveness of the drug shall be conducted on any disease or condition referred to, directly or by implication, or if no specific disease or condition is referred to, then the adequate and well-controlled clinical investigations shall be conducted on at least two conditions or diseases for which the drug is effective. The clinical investigations shall be conducted as follows:

A. The subjects must be selected by a method that:

1. Provides adequate assurance that they are suitable for the purposes of the investigation, and the diagnostic criteria of the condition to be treated (if any);

2. Assigns the subjects to the test groups in such a way as to minimize bias; and

3. Assures comparability in test and control groups of pertinent variables, such as age, sex, severity or duration of disease or condition (if any), and use of drugs other than test drugs.

B. The investigations must be conducted double-blind, and methods of double-blinding must be documented. In addition, the investigations shall contain a placebo control to permit comparison of the results of use of the test drugs with an inactive preparation designed to resemble the test drugs as far as possible.

C. The plan or protocol for the investigations and the report of the results shall include the following:

1. A clear statement of the objective of the investigation;

2. An explanation of the methods of observation and recording of results, including the variables measured, quantitation, assessment of any subject's response and steps taken to minimize bias on the part of the subject and observer;

3. A comparison of the results of treatments or diagnosis with a control in such a fashion as to permit quantitative evaluation. The precise nature of the control must be stated and an explanation given of the methods used to minimize bias on the part of the observers and the analysts of the data;

4. A summary of the methods of analysis and an evaluation of data derived from the study, including any appropriate statistical methods.

D. A test or investigation which is not conducted in accordance with these procedures may be used to establish a claim only if respondent can show that, notwithstanding the failure to satisfy these procedures, the test or investigation would still be generally accepted by the relevant scientific community as sufficient to establish the truth of the claim.

II

It is further ordered that respondent Sterling Drug, Inc., a corporation, its successors and assigns, and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of "Bayer Aspirin," "Bayer Children's Aspirin," "Vanquish," "Cope," "Midol," or any other nonprescription internal analgesic product, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from making any representation, directly or by implication, that the superior freshness, purity, stability, or speed of disintegration of such product has been established, demonstrated, or proven unless at the time such representation is made, respondent possesses and relies upon competent and reliable scientific

evidence which would permit qualified experts to conclude that the product has the comparative pharmaceutical qualities it is represented to have.

III

It is further ordered that respondent Sterling Drug, Inc., its successors and assigns, and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of "Bayer Aspirin," "Bayer Children's Aspirin," "Vanquish," "Cope," "Midol" or any other nonprescription internal analgesic, in or affecting Commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from making any therapeutic performance claim for such product unless respondent possesses a reasonable basis for making that claim. A reasonable basis for such a claim shall consist of competent and reliable scientific evidence supporting that claim. Well-controlled clinical tests conducted in accordance with the criteria set forth in Order Paragraph I shall be deemed to constitute a reasonable basis for a claim.

IV

It is further ordered that respondent Sterling Drug, Inc., its successors and assigns, and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of "Bayer Aspirin," "Bayer Children's Aspirin," "Vanquish," "Cope," "Midol," or any other nonprescription drug product in or affecting commerce, as "commerce" and "drug" are defined in the Federal Trade Commission Act, do forthwith cease and desist from making any representation, directly or by implication that such product contains any unusual, special or unique ingredients or ingredient when such ingredient or ingredients are commonly used in other nonprescription drug products intended for the same use or uses as the product advertised by respondent.

V

It is further ordered that respondent Sterling Drug, Inc., its successors and assigns, and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of "Bayer Aspirin," "Bayer Children's Aspirin," "Vanquish," "Cope," "Midol," or any other nonprescription internal analgesic in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from falsely representing that the analgesic ingredient in an aspirin-containing product is different from aspirin or otherwise misrepresenting the identity of any analgesic ingredient. It shall be a violation of this paragraph to contrast the analgesic ingredient of a product which contains aspirin with the analgesic ingredient of another product if that product also contains aspirin, unless resondent discloses clearly and conspicuously that the analgesic ingredient in its product is aspirin.

VI

It is further ordered that respondent Sterling Drug, Inc., shall notify the Commission at least thirty (30) days prior to any proposed change in the corporation such as a dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in its corporation which may affect compliance obligations under this Order.

VII

It is further ordered that the respondent herein shall within sixty (60) days after service of this Order upon it and at such other times as the Commission may require, file with the Commission a written report setting forth in detail the manner and form in which it has complied or intends to comply with this Order.

Complaint paragraphs Eight A.2, Eight B, Eight C, Ten B, Twelve, Thirteen, Fourteen, Fifteen A, Seventeen, Twenty-Three, Twenty-Four, and that portion of Twenty-Nine which refers to Seventeen are hereby dismissed.

Issued July 5, 1983.

By the Commission.

Emily H. Rock,

Secretary.

Separate Statement of Commissioner Pertschuk Concurring in Part and Dissenting in Part [1]

For the reasons stated in my separate opinion in *Bristol-Myers* (D. 8917), announced today, I dissent from that portion of the Commission's opinion which reverses the "substantial question" doctrine developed in *American Home Products,* 98 F.T.C. 136 (1981), *aff'd,* 695 F. 2d 681 (3d Cir. 1982). Therefore, I dissent from the Commission's decision to dismiss paragraphs 12 through 14 of the complaint.

I also dissent from the portion of the Commission's opinion which dismisses complaint paragraphs 17 and 29, which allege that Sterling violated Section 5 by making contemporaneous inconsistent claims for its OTC internal analgesic drug products. The Commission dismisses these charges, not because Sterling did not make such claims, but because it sees the basis of the charge as a "new theory of advertising substantiation which would shortcut and be contrary to principles of law set forth in *Pfizer* and its progeny." Slip op. at 50.

I disagree. The inconsistent contemporaneous claims allegation stems directly from the reasonable basis doctrine set out in *Pfizer.* In my view, application of the reasonable basis doctrine to an examination of the claims made by Sterling in this case leads inexorably to the conclusion that Sterling has made unsubstantiated claims in violation of Section 5.

The Commission agrees that Sterling represented that Vanquish was better than aspirin in relieving pain and in avoiding stomach upset (slip op. at 16, 18), and that Cope was superior to any OTC analgesic for the relief of nervous tension headache (slip op. at 20). At the same time it was making those claims, however, Sterling was *also* claiming that Bayer aspirin was just as good as *any* internal analgesic in relieving pain and nervous tension headaches, and avoiding stomach upset. (F. 398–402)

There is simply no way those statements can be reconciled. Sterling's claims that Vanquish and Cope were more effective than aspirin plainly conflict with Sterling's contemporaneous claim that Bayer aspirin was just as effective as any OTC internal analgesic—presumably, including Vanquish and Cope. Both statements can not be true at the same time.

Nevertheless, the Commission declines to find a violation on the ground that a reasonable basis analysis does not determine whether a claim is true, and that therefore it is "theoretically possible that two inconsistent claims can both be substantiated with a reasonable basis." Slip op. at 51.

While it might be theoretically possible for two inconsistent claims to be adequately substantiated, the problem with the Commission's rationale is that it fails to consider whether it is even theoretically possible for each claim made by Sterling in *this*

[1] Statements by Chairman James C. Miller III and Commissioners Patricia P. Bailey and George W. Douglas concerning this order are published in this issue with the Final Order in Bristol-Myers Co., et al. (Dkt. 8917)

case to be adequately substantiated. It appears obvious to me that they cannot. If Sterling has a reasonable basis for a claim that Vanquish provides superior pain relief to aspirin, it cannot have a reasonable basis for a claim that Bayer aspirin relieves pain just as well as all OTC internal analgesics. Conversely, if Sterling has reasonable basis for a claim that aspirin relieves pain just as effectively as all OTC internal analgesics, it cannot have a reasonable basis for a claim that Vanquish relieves pain better than aspirin. Where as advertiser makes an objective and verifiable claim that its product performs better than any other product, adequate substantiation for that claim necessarily precludes the advertiser from having a reasonable basis for a claim that another product works better than, or as well as, the one advertised.

The Commission seems troubled, however, by the application of an "inconsistent contemporaneous claims" theory. It notes the apparent discrepancy between the case where a single advertiser is held liable for making inconsistent claims, and the case where the same claims are made separately by two different advertisers and the Commission finds each adequately substantiated. In fact, such a result would not be anomalous. Indeed, it would be perfectly consistent with the reasonable basis doctrine, which takes into account not only the sufficiency of the evidence on which an advertiser relies but also "the reasonableness of the advertiser's action and his good faith." *National Dynamics Corp.*, 82 F.T.C. 488, 553 (1973). In considering an advertiser's reasonableness, the Commission routinely considers information in the advertiser's possession which might give the advertiser reason to question the evidence relied upon to substantiate a claim. Clearly, an advertiser possessing data which directly contradicts a claim cannot have a reasonable belief in the truth of that claim. On the other hand, if the contradictory evidence exists but the advertiser is unaware of it and would have no reason to know about it, the advertiser would not be precluded from making the claim. In other words, whether or not there is liability depends, at least in part, on the advertiser's knowledge. The application of the inconsistent contemporaneous claims theory simply is one example of the effect of this standard, and accordingly reflects no deviation from the established reasonable basis doctrine.

It is true, as the majority notes, that we could have proceeded to determine which of Sterling's claims was the one that lacked a reasonable basis. But where the conclusion is inescapable, as it is here, that one claim or the other lacked a reasonable basis, it seems like a waste of resources to require both sides to go through the full panoply of evidentiary exchanges just to find out which claim was the one to violate Section 5. Accordingly, I would have sustained the allegations of the complaint with respect to the making of contemporaneous inconsistent claims.

Issued July 5, 1983.

[FR Doc. 83-20596 Filed 7-28-83; 8:45 am]
BILLING CODE 6750-01-M

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16 CFR Parts 801, 802, and 803

Premerger Notification; Reporting and Waiting Period Requirements

AGENCY: Federal Trade Commission.

ACTION: Final rules.

SUMMARY: These rules amend the premerger notification rules, which require the parties to certain mergers or acquisitions to file reports with the Federal Trade Commission and the Department of Justice and to wait a specified period of time before consummating such transactions. These reporting and waiting period requirements enable the antitrust enforcement agencies to determine whether a proposed merger or acquisition might violate the antitrust laws and, if necessary, to seek a preliminary injunction in federal court before the transaction is consummated. On the basis of its experience with the premerger notification rules issued in 1978, the Commission is promulgating these amendments to increase the clarity, reduce the burden and improve the effectiveness of the rules and the Notification and Report Form.

EFFECTIVE DATE: August 29, 1983.

FOR FURTHER INFORMATION CONTACT: John M. Sipple, Jr., Senior Attorney, Premerger Notification Office, or Roberta S. Baruch, Deputy Assistant Director for Evaluation, Bureau of Competition, Room 303, Federal Trade Commission, Washington, D.C. 20580. Telephone: (202) 523-3894.

SUPPLEMENTARY INFORMATION:

Regulatory Flexibility Act

These amendments to the Hart-Scott-Rodino premerger notification rules are largely technical, designed to resolve confusion and reduce unnecessary reporting. They do not materially expand the coverage of the premerger notification rules, nor do they have any significant economic impact upon any entities affected by the rules. Therefore, pursuant to section 605(b) of the Administrative Procedure Act, 5 U.S.C. 605(b), as added by the Regulatory Flexibility Act, Pub. L. 96-354 (September 19, 1980) the Federal Trade Commission has certified that these rules will not have a significant economic impact on a substantial number of small entities. Section 603 of the Administrative Procedure Act, 5 U.S.C. 603, requiring a final regulatory flexibility analysis of these rules, is therefore inapplicable.

Background

Section 7A of the Clayton Act ("the Act"), 15 U.S.C. 18a, as added by sections 201 and 202 of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain acquisitions of assets or voting securities to give advance notice to the Federal Trade Commission (hereafter referred to as "the Commission") and the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice (hereafter referred to as "the Assistant Attorney General") and to wait certain designated periods before the consummation of such acquisitions. The transactions to which the advance notice requirement is applicable and the length of the waiting period required are set out respectively in subsections (a) and (b) of section 7A. The Hart-Scott-Rodino amendment to the Clayton Act does not change the standards used in determining the legality of mergers and acquisitions under the antitrust laws.

The legislative history suggests several purposes underlying the Act. First, Congress clearly intended to eliminate the large "midnight merger," which is negotiated in secret and announced just before, or sometimes only after, the closing takes place. Second, Congress wanted to assure that large acquisitions were subjected to meaningful scrutiny under the antitrust laws prior to consummation. Third, Congress provided an opportunity for the enforcement agencies to seek a court order enjoining the completion of those transactions which the agencies deemed to present significant antitrust problems. Finally, Congress sought to facilitate an effective remedy where a challenge by one of the enforcement agencies proved successful. Thus the Act requires that the agencies received prior notification of significant acquisitions, provides certain tools to facilitate a prompt, thorough investigation, and assures an opportunity to seek a preliminary injunction before the parties are legally free to complete the transaction, eliminating the problem of unscrambling

the assets after the transaction has taken place.

Subsection 7A(d)(1) of the Act, 15 U.S.C. 18a(d)(1), directs the Commission, with the concurrence of the Assistant Attorney General and by rule in accordance with 5 U.S.C. 553, to require that the notification be in such form and contain such information and documentary material as may be necessary and appropriate to determine whether the proposed transaction may, if consummated, violate the antitrust laws. Subsection 7A(d)(2) of the Act, 15 U.S.C. 18a(d)(2), grants the Commission, with the concurrence of the Assistant Attorney General and by rule in accordance with 5 U.S.C. 553, the authority (A) to define the terms used in the Act, (B) to exempt additional persons or transactions from the Act's notification and waiting period requirements, and (C) to prescribe such other rules as may be necessary and appropriate to carry out the purposes of Section 7A.

On December 15, 1976, the Commission issued proposed rules and a proposed Notification and Report Form to implement the Act. This proposed rulemaking was published in the **Federal Register** of December 20, 1976, 41 FR 55488. Because of the volume of public comment, it became clear to the Commission that some substantial revisions would have to be made in the original rules. On July 25, 1977, the Commission determined that additional public comment on the rules would be desirable and approved revised proposed rules and a revised proposed Notification and Report Form. The revised rules and Form were published in the **Federal Register** of August 1, 1977, 42 FR 39040. Additional changes in the revised rules and Form were made after the close of the comment period. The Commission formally promulgated the final rules and Form and issued an accompanying Statement of Basis and Purpose on July 10, 1978. The Assistant Attorney General gave his formal concurrence on July 18, 1978. The final rules and Form and the Statement of Basis and Purpose were published in the **Federal Register** of July 31, 1978, 43 FR 33451, and became effective on September 5, 1978.

The rules are divided into three parts which appear at 16 CFR Parts 801, 802, and 803. Part 801 defines a number of the terms used in the Act and rules, and explains which acquisitions are subject to the reporting and waiting period requirements. Part 802 contains a number of exemptions from these requirements. Part 803 explains the procedures for complying with the Act. The Notification and Report Form, which is completed by persons required to file notification, is an appendix to Part 803 of the rules.

Two changes have been made in the premerger notification rules since they were first promulgated. The first was an increase in the minimum dollar value exemption contained in § 802.20 of the rules. This amendment was proposed in the **Federal Register** of August 10, 1979, 44 FR 47099, and was published in final form in the **Federal Register** of November 21, 1979, 44 FR 60781. The second amendment replaced the requirement that certain revenue data for the year 1972 be provided in the Notification and Report Form with a requirement that comparable data be provided for the year 1977. This change was made because total revenues for the year 1977 broken down by Standard Industrial Classification (SIC) codes became available from the Bureau of the Census. The amendment appeared in the **Federal Register** of March 5, 1980, 45 FR 14205, and was effective May 3, 1980.

In addition, the Notification and Report Form has been revised twice. The new versions were approved by the Office of Management and Budget on December 29, 1981, and February 23, 1983, respectively.

Comments

These rules were proposed for comment in the **Federal Register** of July 29, 1981, 46 FR 38710, and the comment period ended September 28, 1981. The following comments were received in response to this proposal:

No.	Date of letter	Organization
1.	9-24-81	Atlantic Richfield Company.
2.	9-25-81	Shearman & Sterling.
3.	9-28-81	Sullivan & Cromwell.
4.	9-28-81	Howrey & Simon (William J. Boyd, Esq.).
5.	9-28-81	Covington & Burling (Edwin M. Zimmerman, Esq.).
6.	9-28-81	Skadden, Arps, Slate, Meahger & Flom (Stephen M. Axinn, Esq.).

List of Subjects

16 CFR Parts 801 and 802

Antitrust.

16 CFR Part 803

Antitrust, Reporting and recordkeeping requirements.

Statement of Basis and Purpose for the Commission's Revised Premerger Notification Rules

Authority: The Federal Trade Commission promulgates these amendments to the premerger notification rules pursuant to section 7A(d) of the Clayton Act, 15 U.S.C. 18a(d), as added by section 201 of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, Pub. L. 94-435, 90 Stat. 1390.

Note:—The orginal premerger notification rules affected by these changes were promulgated on July 31, 1978. Those rules or sections thereof will be referred to as "the 1978 rules," "1978 § " and so forth.

1. Section 801.1(a)(2): Deletion of "Other Group Organized for Any Purpose" from the Definition of the Term "Entity"; Insertion of "Estate of a Deceased Natural Person"

Section 801.1(a) of the rules defines a "person" as an ultimate parent entity and all entities which it controls. The term "entity," which does not appear in the Act, is used throughout the rules and in the Notification and Report Form to refer to the component parts of the person to which the provisions of the Act and rules apply.

Section 801.1(a)(2) defines "entity" by setting forth a list of the types of organizational units which are included within that term. Section 801.1(a)(2) has been amended in two respects. First, the phrase "or other group organized for any purpose" has been deleted. The phrase was included in the definition to capture organizational units other than those specifically mentioned which might participate in acquisitions subject to the Act. Informal contacts between the Commission staff and persons wishing to determine the reportability of particular transactions indicate that the concept of "group" is a source of considerable uncertainty and concern. This concern is caused in part by the fact that the Securities and Exchange Commission ("SEC") also requires reporting by entities called groups. The SEC's definition of "group," however, which is geared to securities regulation, is too broad for purposes of the rules. Yet the presence of the term "group" in the rules has led to uncertainty whether the SEC's definition was intended to be applied. Moreover, experience with the rules and the Act has demonstrated that the concept of "group" is unnecessary for applying the rules; the other organizational units named in the definition have adequately covered situations raising antitrust concerns.

Second, the Commission has added "estate of a deceased natural person" to the list of organizational units which may be entities. This change will eliminate any confusion that may have existed previously over whether an estate can be a person under the Act.

The Commission has also changed §§ 801.11(d) and 803.6(a) to specify how

the estate of a deceased natural person will be treated in the rules. Section 801.11 explains the method for determining the assets of a person for purposes of the size-of-person test. New paragraph 801.11 (d) provides that, as in the case of a natural person, no assets other than investment assets, voting securities, and other income-producing property shall be included in determining the size of an estate of a deceased natural person. Section 803.6(a) lists, for various categories of reporting persons, who may certify the Notification and Report Form on behalf of the person filing notification. New subparagraph (5) stipulates that any duly authorized legal representative may certify the filing where the person filing notification is the estate of a deceased natural person. The scope of the term "duly authorized legal representative" includes such commonly used designations as "administrator," "administratrix," "executor," and "executrix," as well as any less commonly used terms for individuals who may serve the same function.

PARTS 801 AND 803—[AMENDED]

Section 801.1 is amended by revising paragraph (a)(2), § 801.11 is amended by revising paragraph (d), and § 803.6 is amended by adding paragraph (a)(5) to read as follows:

§ 801.1 Definitions.

* * * * *

(a) * * *

(2) *Entity.* The term "entity" means any natural person, corporation, company, partnership, joint venture, association, joint-stock company, trust, estate of a deceased natural person, foundation, fund, institution, society, union, or club, whether incorporated or not, wherever located and of whatever citizenship, or any receiver, trustee in bankruptcy or similar official or any liquidating agent for any of the foregoing, in his or her capacity as such; or any joint venture or other corporation which has not been formed but the acquisition of the voting securities or other interest in which, if already formed, would require notification under the act and these rules: *Provided, however,* that the term "entity" shall not include any foreign state, foreign government, or agency thereof (other than a corporation engaged in commerce), nor the United States, any of the States thereof, or any political subdivision or agency of either (other than a corporation engaged in commerce).

* * * * *

§ 801.11 Annual net sales and total assets.

* * * * *

(d) No assets of any natural person or of any estate of a deceased natural person, other than investment assets, voting securities and other income-producing property, shall be included in determining the total assets of a person.

§ 803.6 Certification.

(a) * * *

(5) In the case of the estate of a deceased natural person, by any duly authorized legal representative of such estate.

* * * * *

2. Section 801.1(f): Conversion

The definition of "conversion" in § 801.1(f)(3) of the rules has been broadened. The 1978 § 801.1(f)(3) defined conversion as the exchange, without the payment of additional consideration, of voting securities, as defined in § 801.1(f)(1), which do not presently give the owner or holder the right to vote for directors of the issuer, for securities which entitle the owner or holder to vote.

This definition proved to be too narrow in that it covered only exchanges of voting securities which do not give the owner or holder a present right to vote for directors, for voting securities which do carry a present right to vote. Occasionally, voting securities are created which entitle the owner or holder to vote for directors but which are also convertible into other securities with different voting rights. Under the original definition, an exchange of this type of security was not a conversion, because before the exchange the securities to be exchanged had voting rights. As a result, such exchanges did not fall within § 801.30 and its special provisions. Section 801.30 applies to certain transactions, including conversions, in which the acquired person may be hostile or indifferent to the acquisition. To prevent the acquired person from blocking the transaction by refusing to comply with the Act's filing requirements, this section provides that the waiting period begins when the acquiring person files.

The amended definition makes no reference to the voting rights of the securities before the exchange takes place. Whether a transaction is a conversion turns on whether it is the exercise of a right inherent in the ownership of any securities to exchange them for other securities which have present voting rights. The use of the word "exercise" in the definition is intended to distinguish conversion from the automatic maturation of an inchoate right, such as, for example, if preferred shares become entitled to vote because dividends are not paid. The new definition also eliminates as unnecessary all references to the "payment of additional consideration."

Conversions under the amended definition which do not increase directly or indirectly the acquiring persons per centum share of outstanding voting securities of the issuer are, of course, exempt from the notification and waiting period requirements under section 7A(c)(10) of the Act.

Comment 6 criticizes the amended definition because it does not apply to exchanges of securities issued by one person which are convertible into voting securities of an issuer included within a different person. For example, suppose A (included in person "A") wishes to dispose of its minority interest in the voting securities of B (included in person "B") and A issues non-voting debentures which may be exchanged for the underlying B shares. The comment asserts that since such an exchange is not a conversion (because B is not an entity included within A) it would not be covered by § 801.30, and B could block the transfer by refusing to file. The comment proposes that "conversion" be defined as the exercise of a right to exchange securities for other securities which give the holder the right to vote for directors of any issuer.

The Commission has determined that the suggested modification is unnecessary. In the example above, the holder of the non-voting debentures issued by A may make a reportable acquisition of B's voting securities when it exchanges the debentures for the voting securities of B held by A. Such an exchange is covered by § 801.30(a)(5) because it is an acquisition of voting securities from a holder other than the issuer. A hostile issuer in such a transaction will therefore be in no better position to interfere with such an exchange than if the transaction was considered a conversion. It should be noted also that if the A debentures give the owner or holder the right to vote the underlying B shares prior to conversion, any person proposing to acquire these debentures may be required to observe the filing and waiting period requirements of the Act before doing so. See the staff formal interpretation, June 2, 1981.

Section 801.1 is amended by revising paragraph (f)(3) and examples 1 and 2 which follow paragraph (f)(3) and by adding example 3 to read as follows:

§ 801.1 Definitions.

* * * * *

(f) * * *

(3) *Conversion.* The term "conversion" means the exercise of a right inherent in the ownership or holding of particular voting securities to exchange such securities for securities which presently entitle the owner or holder to vote for directors of the issuer or of any entity included within the same person as the issuer.

Examples: 1. The acquisition of convertible debentures which are convertible into common stock is an acquisition of "voting securities." However, § 802.31 exempts the acquisition of such securities from the requirements of the act, provided that they have no present voting rights.

2. Options and warrants are also "voting securities" for purposes of the act, because they can be exchanged for securities with present voting rights. Section 802.31 exempts the acquisition of options and warrants as well, since they do not themselves have present voting rights and hence are convertible voting securities. Notification may be required prior to exercising options and warrants, however.

3. Assume that X has issued preferred shares which presently entitle the holder to vote for directors of X, and that these shares are convertible into common shares of X. Because the preferred shares confer a present right to vote for dirctors of X, they are "voting securities." (See § 801.1(f)(1).) They are not "convertible voting securities," however, because the definition of that term excludes securities which confer a present right to vote for directors of any entity. (See § 801.1(f)(2).) Thus, an acquisition of these preferred shares issued by X would not be exempt as an acquisition of "convertible voting securities." (See § 802.31.) If the criteria in § 7A(a) are met, an acquisition of X's preferred shares would be subject to the reporting and waiting period requirements of the Act. Moreover, the conversion of these preferred shares into common shares of X would also be potentially reportable, since the holder would be exercising a right to exchange particular voting securities for different voting securities having a present right to vote for directors of the issuer. Because this exchange would be a "conversion," § 801.30 would apply. (See § 801.30(a)(6).)

* * * * *

3. Section 801.2: Acquiring and Acquired Persons in Mergers and Consolidations

Two of the most basic concepts in the Act and the rules are those of acquiring and acquired person. For example, the size-of-transaction test in section 7A(a)(3) of the Act, which determines whether a transaction is of a reportable size, provides that an acquisition will be reportable if the acquiring person will hold (a) 15% or more of the voting securities or assets of the acquired person, or (b) an aggregate total amount of the voting securities and assets of the acquired person in excess of $15 million. Similarly, many of the rules depend for their application on whether the filing party is an acquiring or acquired person. In order to apply the provisions of the Act and of the rules and to complete the Notification and Report Form properly, therefore, a filing party must determine whether it is an acquiring or an acquired person, or both.

The terms acquiring and acquired person are defined, respectively, in paragraphs (a) and (b) of § 801.2. An acquiring person is "[any] person which, as a result of an acquisition, will hold voting securities or assets, either directly or indirectly. . . ." and, for most purposes, an acquired person is the one "within which the entity whose assets or voting securities are being acquired is included. . . . " Paragraphs (c), (d), and (e) of § 801.2 concern the application of these concepts in specific circumstances.

Amended paragraph 801.2(c) provides that a person may be both an acquiring and an acquired person in a single transaction. The amendment makes clear that a person is both an acquiring and an acquired person in a transaction when it occupies both roles in separate parts of the transaction. The example following the paragraph illustrates such a situation: "Corporation A (an entity within the person "A") plans to transfer certain of its assets to corporation B (an entity within person "B") in return for voting securities of B." With respect to the transfer of assets, "B" is an acquiring person and "A" is an acquired person; with respect to the transfer of voting securities, "A" is an acquiring person and "B" is an acquired person. In the transaction as a whole, therefore, "A" and "B" are both acquiring and acquired persons.

It should be noted that for purposes of this section new § 801.2(c) distinguishes between an acquisition and a transaction. An acquisition is characterized by the presence of only one acquiring and one acquired person. A transaction, as the word is used in this section, is a set of one or more related acquisitions which are considered together for reporting purposes. This distinction clarifies paragraph (c) and its relationship to paragraphs (a) and (b) of § 801.2.

New § 801.2(d) changes and clarifies the treatment of mergers and consolidations under the rules. The amended paragraph is also more consistent with other provisions of the rules. The 1978 § 801.2(d) designated the parties to all mergers and consolidations as both acquiring and acquired persons. This provision proved to be a significant source of confusion since it called for quite different treatment for similar transactions. It also caused some unnecessary reporting.

New paragraph (d)(1)(i) of § 801.2 states that mergers and consolidations are subject to the Act and are to be treated as acquisitions of voting securities. Mergers and consolidations have aspects of both acquisitions of assets and acquisitions of voting securities. The new rule eliminates the ambiguity in the present treatment of mergers and consolidations by opting to treat mergers and consolidations in all cases as involving an acquisition of voting securities.

New paragraph (d)(1)(ii) sets up a mechanism for determining the acquiring party in mergers. Mergers are governed by state corporate law. One feature common to most, if not all, state statutes is that documents which must be filed with state authorities to effectuate a merger will specify, among other things, the participating corporation which will survive the transaction. This is the basis for determining the acquiring party. In a merger, the acquiring party is the person, as defined by § 801.1(a), which after consummation will include the corporation designated the survivor in filings made in accordance with state law. Paragraph (d)(1)(ii) also provides that the party so identified will be deemed to have made an acquisition of voting securities.

Paragraph (d)(2) completes the analysis of mergers and consolidations by enabling the parties to all such transactions to determine whether they are acquiring or acquired persons, or both. A party is an acquiring person under paragraph (d)(2)(i) if, as a result of the transaction, it will hold assets or voting securities it did not hold previously. The acquiring party in a merger, determined in accordance with paragraph (d)(1)(ii) of this section, is therefore the acquiring person in an acquisition of voting securities. All other parties to that acquisition are acquired persons under paragraph (d)(2)(ii) because, as a result of the acquisition, the assets or voting securities of entities included within them will be held by another person.

The transfer of the consideration in the acquisition just described is analyzed separately and may itself constitute a reportable acquisition. In this acquisition, the acquiring and acquired persons exchange roles. Depending on the nature and amount of this consideration, its acquisition may or may not be reportable and may be an acquisition of assets or of voting securities. The analysis of the reporting obligations of the parties with respect to the acquisition of voting securities, and the analysis of their obligation with

respect to the acquisition involved in the transfer of the consideration will determine for the transaction taken as a whole whether the parties must report as acquiring persons, acquired persons, or both. The analysis of mergers under new § 801.2(d) will thus have the same result as that of any other transaction under § 801.2(c).

In a consolidation, the participants all lose their preacquisition identities and the resulting entity is new. Since acquiring and acquired persons cannot readily be identified in such transactions, new § 801.2(d)(2)(iii) designates all parties both acquiring and acquired persons and new § 801.2(d)(1) makes clear that such transactions shall be treated as acquisitions of voting securities. Under revised § 801.2(d), then, a party is designated both an acquiring and an acquired person only if it occupies both roles in reportable acquisitions involved in a merger or if it is a party to a consolidation.

The examples following revised § 801.2(d) illustrate its application. Example 1 illustrates a "triangular" merger in which corporation A proposes to acquire Y, a subsidiary of corporation B, by merging Y into A's own subsidiary, X, which will survive. The consideration for the acquired corporation is cash and the voting securities of an unrelated issuer, C. Since "A" (the person of which A is the ultimate parent entity) will include the surviving corporation, X, after the consummation of the transaction, it is the acquiring person in an acquisition of voting securities. Since "B" is the person whose assets or voting securities will be acquired, it is an acquired person. But, since cash and the securities of another person are not considered assets of the person from which they are acquired (see § 801.21), the acquisition by B of the consideration for Y from A is not separately reportable. In the transaction as a whole, therefore, "A" is an acquiring person only and "B" an acquired person only. "B" may have a separate reporting obligation with respect to its acquisition of the voting securities of C, however.

Example 2 illustrates the analysis of similar transaction in which the consideration for Y includes the voting securities of the acquiring party, A. For the same reasons, "A" is an acquiring person and "B" is an acquired person. In addition, "A" is an acquired person, because its voting securities will be held by another person as a result of the transaction, and "B" is an acquiring person with respect to those voting securities. Since these voting securities are less than 15% of the outstanding voting securities of A and are worth less than $15 million, however, the acquisition of them is not reportable. "A" therefore still reports as an acquiring person only and "B" as an acquired person only. Example 3 shows that the result is the same when B's acquisition of the consideration for Y is exempt. Example 4 shows a case in which the consideration for Y is assets the receipt of which is also a reportable acquisition. In this transaction, "A" is an acquiring and "B" an acquired person in an acquisition of voting securities, and "B" is an acquiring and "A" an acquired person in an acquisition of assets. Both will therefore report in both capacities. Finally, example 5 illustrates a consolidation in which all parties will lose their separate legal identities as a result of the transaction. In these circumstances, all persons party to the transaction report as both acquiring and acquired persons.

Comment 3 points out that some State corporate statutes permit a merger to be effectuated by the filing of a certificate of merger. See *e.g., Del. Code Ann. tit.* 8, § 251(c). The comment suggests that the words "or certificate" be inserted in § 801.2(d)(1)(ii). Comment 6 suggests that example 1 make clear that "B" may have a separate reporting obligation with respect to the voting securities of C, which form part of the consideration for A's acquisition of Y. The Commission has adopted both suggestions.

Amended § 801.2(e) makes clear that when the shareholder of an acquired person acquires assets or voting securities in exchange for its shares in an acquired issuer, the acquisition is separately subject to the Act.

Section 801.2 is amended by revising paragraphs (c), (d), and (e) and by adding examples 1–5 which follow paragraph (d) to read as follows:

§ 801.2 Acquiring and acquired persons.

* * * * *

(c) For purposes of the act and these rules, a person may be an acquiring person and an acquired person with respect to separate acquisitions which comprise a single transaction.

(d)(1)(i) Mergers and consolidations are transactions subject to the act and shall be treated as acquisitions of voting securities.

(ii) In a merger, the person which, after consummation, will include the corporation in existence prior to consummation which is designated as the surviving corporation in the plan, agreement, or certificate of merger required to be filed with state authorities to effectuate the transaction shall be deemed to have made an acquisition of voting securities.

(2)(i) Any person party to a merger or consolidation is an acquiring person if, as a result of the transaction, such person will hold any assets or voting securities which it did not hold prior to the transaction.

(ii) Any person party to a merger or consolidation is an acquired person if, as a result of the transaction, the assets or voting securities of any entity included within such person will be held by any other person.

(iii) All persons party to a transaction as a result of which all parties will lose their separate pre-acquisition identities shall be both acquiring and acquired persons.

Examples: 1. Corporation A (the ultimate parent entity included within person "A") proposes to acquire Y, a wholly-owned subsidiary of B (the ultimate parent entity included within person "B"). The transaction is to be carried out by merging Y into X, a wholly-owned subsidiary of A, with X surviving, and by distributing the assets of X to B, the only shareholder of Y. The assets of X consist solely of cash and the voting securities of C, an entity unrelated to "A" or "B". Since X is designated the surviving corporation in the plan or agreement of merger or consolidation and since X will be included in "A" after consummation of the transaction, "A" will be deemed to have made an acquisition of voting securities. In this acquisition, "A" is an acquiring person because it will hold assets or voting securities it did not hold prior to the transaction, and "B" is an acquired person because the assets or the voting securities of an entity previously included within it will be held by A as a result of the acquisition. B will hold the cash and voting securities of C as a result of the transaction, but since § 801.21 applies, this acquisition is not reportable. "A" is therefore an acquiring person only, and "B" is an acquired person only. "B" may, however, have a separate reporting obligation as an acquiring person in a separate transaction involving the voting securities of C.

2. In the above example, suppose the consideration for Y consists of $8 million worth of the voting securities of A, constituting less than 15% of A's outstanding voting securities. With regard to the transfer of this consideration, "B" is an acquiring person because it will hold voting securities it did not previously hold, and "A" is an acquired person because its voting securities will be held by B. Since these voting securities are worth less than $15 million and constitute less than 15% of the outstanding voting securities of A, however, the acquisition of these securities is not reportable. "A" will therefore report as an acquiring person only and "B" as an acquired person only.

3. In the above example, suppose the consideration for Y is 50% of the voting securities of Z, a wholly-owned subsidiary of A which, together with all entities it controls,

has annual net sales and total assets of less then $25 million. Suppose also that the value of these securities is less than $15 million. Since the acquisition of the voting securities of Z is exempt under the minimum dollar value exemption in § 802.20, "A" will report in this transaction as an acquiring person only and "B" as an acquired person only.

4. In the above example, suppose that, as consideration for Y, A transfers to B a manufacturing plant valued at $16 million. "B" is thus an acquiring person and "A" an acquired person in a reportable acquisition of assets."A" and "B" will each report as both an acquiring and an acquired person in this transaction because each occupies each role in a reportable acquisition.

5. Corporations A (the ultimate parent entity in person "A") and B (the ultimate parent entity in person "B") propose to consolidate into C, a newly formed corporation. All shareholders of A and B will receive shares of C, and both A and B will lose their separate pre-acquisition identities. "A" and "B" are both acquiring and acquired persons because they are parties to a transaction in which all parties lose their separate pre-acquisition identities.

(e) Whenever voting securities or assets are to be acquired from an acquiring person in connection with an acquisition, the acquisition of voting securities or assets shall be separately subject to the act.

* * * * *

4. Section 801.4: Secondary Acquisitions in Tender Offers and in Mergers and Consolidations

The term "secondary acquisition" is defined in § 801.4(a) of the rules as an acquisition in which the acquiring person, by obtaining control of an issuer holding voting securities of another issuer which it does not control, becomes the holder of the latter issuer's voting securities.

The 1978 § 801.4 did not make special provisions for cases where the primary acquisition is a tender offer. Since such transactions have different waiting period requirements under the Act and rules, the presence of a secondary acquisition could interfere with the consummation of the primary transaction under the old rule where the latter was a tender offer. New § 801.4(c) provides that when a tender offer results in a reportable secondary acquisition, the same waiting period requirements applicable to the primary acquisition shall also be applicable to the secondary acquisition. For example, if the primary acquisition is a cash tender offer which has a 15-day waiting period, the waiting period for a secondary acquisition will also be 15 days. If second requests are issued in connection with the secondary acquisition when the primary acquisition is a cash tender offer, the waiting period for the secondary acquisition will expire 10 days after the response of the acquiring person has been received, the same as if requests had been issued in connection with the cash tender offer. Thus, when the primary acquisition is a tender offer and one or more requests for additional information are made in connection with the resulting secondary acquisition, a response by the acquiring person will cause the waiting period for the secondary acquisition to begin running again. A second request directed to the acquired person in such a secondary acquisition will not affect the running of the waiting period in that transaction.

In many instances, this change will eliminate the possibility that a reportable secondary acquisition will interfere with the consummation of the primary transaction. In some cases, however, interference could still occur. Under new § 801.4(c), the end of the waiting period for a secondary acquisition will coincide with that of the primary acquisition only if the acquiring person files for both at the same time. The presence of a secondary acquisition can thus still affect consummation of the primary acquisition if, for example, the acquiring person only learns that it will be making a reportable secondary acquisition after it has filed for the primary transaction.

Because of this possibility, the acquired firm in a hostile takeover may be able to exercise favoritism among potential suitors. The hostile target may be able to confer an advantage on one acquiror by informing it of all potential secondary acquisitions while withholding the information from other suitors.

Comment 4 suggests two ways of dealing with these problems. First, the comment recommends that acquired persons in acquisitions covered by § 801.30, *i.e.*, those in which the target may be hostile, be required to disclose potential secondary acquisitions to each acquiring person. Alternatively, the comment suggests that if the acquiring person discovers unknown, reportable secondary acquisitions it be allowed to consummate the primary acquisition, provided that the acquiring person exercises no control over the stock involved in the secondary acquisition and immediately puts it into escrow until all waiting periods relating to the secondary acquisition have expired.

Although these proposals may have merit, the Commission cannot endorse them without further analysis and comment. The notice by the acquired person of potential secondary acquisitions, for example, may in practice be burdensome on acquired persons and may not always be workable. The structure of any escrow provision will also have to be worked out very carefully. In addition, it would be desirable to subject any additional change in this sensitive area to public comment. For these reasons, the Commission has decided to promulgate the original change at this time, while it continues to consider the appropriateness of further revisions.

Since the application of the rule covering secondary acquisitions in the area of mergers and consolidations is somewhat complex, the Commission has added examples 4, 5, and 6 to § 801.4 to illustrate the treatment of secondary acquisitions in these contexts. Example 4 shows that when the acquiring person in a merger is an acquiring person only, it may have to report minority holdings of the acquired issuer as secondary acquisitions. Even when both parties to a merger are both acquiring and acquired persons, example 5 illustrates that each acquiring person must consider only the minority holdings of issuers it will control as a result of the transaction as potential secondary acquisitions. Finally, example 6 indicates that in a consolidation each party must regard minority holdings of all other parties as potential secondary acquisitions.

Section 801.4 is amended by adding examples 4, 5, and 6 following paragraph (b) and by adding paragraph (c) to read as follows:

§ 801.4 Secondary acquisitions.

* * * * *

(b) * * *

Examples: * * *

4. In the previous examples, assume A's acquisition of B is accomplished by merging B into A's subsidiary, S, and S is designated the surviving corporation. B's voting securities are cancelled, and B's shareholders are to receive cash in return. Since S is designated the surviving corporation and A will control S and also hold assets or voting securities it did not hold previously, "A" is an acquiring person in an acquisition of voting securities by virtue of §§ 801.2 (d)(1)(ii) and (d)(2)(i). A will be deemed to have acquired control of B, and A's resulting acquisition of the voting securities of X is a secondary acquisition. Since cash, the only consideration paid for the voting securities of B, is not considered an asset of the person from which it is acquired, by virtue of § 801.2(d)(2) "A" is an acquiring person only. The acquisition of the minority holding of B in X is therefore a secondary acquisition by "A," but since "B" is an acquired person only, "B" is not deemed to make any secondary acquisition in this transaction.

5. In example 4 above, suppose the consideration paid by A for the acquisition of B is $20 million worth of the voting securities of A. By virtue of § 801.2(d)(2), "A" and "B"

are each both acquiring and acquired persons. A will still be deemed to have acquired control of B, and therefore the resulting acquisition of the voting securities of X is a secondary acquisition. Although "B" is now also an acquiring person, unless B gains control of A in the transaction, B still makes no secondary acquisitions of stock held by A. If the consideration paid by A is the voting securities of one of A's subsidiaries and B thereby gains control of that subsidiary, B will make secondary acquisitions of any minority holdings of that subsidiary.

6. Assume that A and B propose through consolidation to create a new corporation, C, and that both A and B will lose their corporate identities as a result. Since no participating corporation in existence prior to consummation is the designated surviving corporation, "A" and "B" are each both acquiring and acquired persons by virtue of § 801.2(d)(2)(iii). The acquisition of the minority holdings of entities within each are therefore potential secondary acquisitions by the other.

(c) Where the primary acquisition is—

(1) a cash tender offer, the waiting period procedures established for cash tender offers pursuant to sections 7A(a) and 7A(e) of the act shall be applicable to both the primary acquisition and the secondary acquisition; (2) a non-cash tender offer, the waiting period procedures established for tender offers pursuant to section 7A(e)(2) of the act shall be applicable to both the primary acquisition and the secondary acquisition.

5. Section 801.33: Acceptance for Payment Is the Consummation of an Acquisition

New § 801.33 states that the acceptance for payment of voting securities tendered in a tender offer is the consummation of an acquisition under the Act. The term "acceptance for payment" denotes the final stage in a tender offer. At this point, the offeror decides whether to accept any, some, or all of the tendered shares and obtains an unconditional right to the accepted shares while becoming legally committed to pay the tendering shareholders for them. When a tender offer is of a reportable size and the offer ends during the waiting period, it might appear that the offeror could accept some or all tendered shares for payment without violating the Act on the premise that the acquisition would not be consummated if the shares were left in the depository until the waiting period ends or is terminated. By stating that acceptance for payment is the consummation of an acquisition, the new rule makes clear that the offeror cannot, either during or after expiration of the offer, accept for payment shares which will trigger the requirements of the Act unless the reporting and waiting period requirements have already been complied with.

The offeror may, of course, accept any tendered shares for payment, without complying with the Act, so long as these shares, when added to its prior holdings, do not reach or exceed a new reporting threshold. (See § 801.1(h).) As pointed out by comment 6, the offeror may also accept shares for payment, the acquisition of which is exempt under the Act or these rules.

Section 801.33 is added to read as follows:

§ 801.33 Consummation of an acquisition by acceptance of tendered shares of payment.

The acceptance for payment of any shares tendered in a tender offer is the consummation of an acquisition of those shares within the meaning of the act.

6. Section 801.40: Determination of the Assets of a Joint Venture or Other Corporation for the Purpose of Applying Certain Exemptions

Amended § 801.40(c) clarifies the application of certain exemptions to the formation of a joint venture or other new corporation. Section 801.40 establishes the manner in which the reporting requirements of the Act will be applied to the formation of a joint venture or other corporation. This section analyzes the transaction by which a joint venture or other corporation is formed as acquisitions of the voting securities of the new corporation by two or more contributors. To be reportable, the acquisition by a particular contributor must meet the size criteria of the Act. The assets of the joint venture or other corporation (the acquired person) for purposes of the size of person test are determined in accordance with a special assets test set out in § 801.40(c). This test requires the inclusion of not only those assets which would appear on a balance sheet but also assets which any person contributing to the formation of the joint venture corporation has agreed to transfer or for which agreements have been obtained by the joint venture to acquire at any time. The assets of the joint venture corporation at the time of its formation also include any amount of credit which any contributor has agreed to extend and any obligation of the joint venture corporation which any contributor has agreed to guarantee.

Three exemptions, §§ 802.20(b), 802.50(b)(1), and 802.51(b), depend for their application on a test which is similar to the size-of-person test. Section 802.20(b) exempts certain transactions in which the acquiring person would not acquire control of an issuer with annual net sales or total assets of $25 million or more. Section 802.50(b)(1) exempts an acquisition of voting securities of a foreign issuer if the issuer does not hold assets located in the United States valued at $15 million or more. Section 802.51(b) exempts an acquisition of voting securities by a foreign person if the acquisition will not confer control of an issuer with United States assets valued at $15 million or more or a United States issuer with annual net sales or total assets of $25 million or more. Amended § 801.40(c) makes explicit that its provisions are to be used in determining the assets of a joint venture or other corporation for purposes of determining whether these exemptions apply to its formation. This proposed change incorporates into the language of the rule the position already taken by the Commission in the Statement of Basis and Purpose to 1978 § 802.20, which says that § 801.40(c) is used to apply the minimum dollar value exemption in these contexts. See 43 FR 33491.

Comment 5 suggests that the language of the proposed change is too broad and, as a result, could produce undesirable consequences. In particular, Section 802.50(b)(1) exempts acquisitions by a United States person of voting securities of a foreign issuer which does not hold assets located in the United States (exclusive of investment assets and the voting and non-voting securities of a person) valued at $15 million or more. The comment points out that § 801.40(c) as amended could lead to the conclusion that the formation of a foreign joint venture corporation is reportable if it has a loan guarantee by a United States contributor and this is its only contact with United States commerce. This result follows because the loan guarantee is an asset of the joint venture corporation according to § 801.40(c) and is arguably located in the United States.

This problem arises because commitments of credit and loan guarantees are counted as assets only in the special circumstances of the formation of a new joint venture corporation. They would not ordinarily appear as assets on a person's balance sheet, and so would not affect the applicability of the exemptions in §§ 802.50 and 802.51. While loan commitments and loan guarantees are important for determining the size of the newly formed corporation, they are not relevant to that corporation's nexus with United States commerce, which is a significant element of the exemptions provided in §§ 802.50 and 802.51. The Commission has therefore amended §§ 802.50 and 802.51 to eliminate loan

commitments and loan guarantees from the assets to be included in applying those exemptions. These changes are set forth in item 10 below, with other changes in §§ 802.50 and 802.51.

Section 801.40 is amended by revising paragraph (c) to read as follows:

§ 801.40 Formation of a joint venture or other corporation.

* * * * *

(c) For purposes of paragraph (b) of this section and determining whether any exemptions provided by the act and these rules apply to its formation, the assets of the joint venture or other corporation shall include:

(1) All assets which any person contributing to the formation of the joint venture or other corporation has agreed to transfer or for which agreements have been secured for the joint venture or other corporation to obtain at any time, whether or not such person is subject to the requirements of the act; and

(2) Any amount of credit or any obligations of the joint venture or other corporation which any person contributing to the formation has agreed to extend or guarantee, at any time.

* * * * *

7. Section 802.6: Exemption for Transactions Requiring Approval by the Civil Aeronautics Board

Certain transactions involving the acquisition or consolidation of control of air carriers or persons substantially engaged in the business of aeronuatics require approval by the Civil Aeronautics Board ("CAB") prior to consummation. 49 U.S.C. 1378. New § 802.6(b) would provide a partial exemption for these acquisitions, since the enforcement agencies can evaluate the aeronautical aspects of these transactions in proceedings before the CAB. The Justice Department has authority to intervene in cases before the CAB and may also take other legal action independent of the proceedings before the Board. While the Commission does not have independent jurisdiction over regulated air carriers, it is also authorized to intervene before the Board. As intervenors, both agencies can avail themselves of the discovery procedures provided by the Board's rules of practice to obtain the information necessary to perform an antitrust analysis of the aeronautical aspects of an acquisition. With respect to these aspects, therefore, the agencies do not need the waiting periods or the full reporting requirements of the Act.

New § 802.6(b) exempts those portions of CAB approved transactions involving the businesses of aeronautics or air transportation so long as the parties provide the Federal Trade Commission and the Department of Justice with copies of all information and documentary materials submitted to the CAB. In the original proposal, notice to the Commission was not required because the Commission lacks jurisdiction over regulated air carriers. However, the Commission can intervene before the CAB and present its views on the competitive significance of the proposed merger. Further, the Commission has a statutory obligation to administer the premerger notification program and to monitor compliance with the Act. These responsibilities cannot be carried out adequately unless the Commission receives filings for all transactions required to be reported under the Act. Since the burden of supplying the Commission with a duplicate filing is small, the rule has been changed to require filings with both the Assistant Attorney General and the Commission, as is required for all other filings.

Where the acquired person is involved in both aeronautic and non-aeronautic businesses the entire transaction may not be exempt if the value of the non-aeronautic business which is acquired meets the size of transaction test and the acquisition is not otherwise exempt. In particular, under new § 802.6(b)(2), if the transaction is an acquisition of assets, the non-aeronautic portion of the transaction must be reported if that portion is not exempt under the other provisions of the Act and rules. Similarly, if the transaction is an acquisition of voting securities, or is treated as such under the rules, the non-aeronautic portion of the transaction must be reported if the value of the voting securities exceeds $15 million and if the non-aeronautic portion of the transaction is not exempt under the other provisions of the Act and rules. These limitations are necessary because the CAB has jurisdiction over only that part of the transaction involving air transportation or aeronautics. The antitrust agencies must still review the non-aeronautic part of the transaction if it is not otherwise exempt.

As originally porposed, new § 802.6(b) provided no exemption at all for transactions involving both aeronautic and non-aeronautic businesses if both parties to the transaction had non-aeronautic sales or revenues greater than $10 million. Comment 3 suggests that the $10 million threshold for non-aeronautic businesses is too low, since, according to the comment, a competitive overlap this small is insignificant for substantive antitrust purposes. The comment recommends that the proposed rule simply follow the approach taken in the other exemptions in the rules. While the Commission does not believe that a competitive overlap of this size is generally insignificant, the Commission agrees this exemption should parallel the other exemptions in the rules. Accordingly, the Commission has restyled the rule so that the non-aeronautic part of the transaction will essentially be treated as a separate acquisition, with all existing exemptions applicable to that part of the transaction.

To accomplish this, the rule has been divided into two subsections—(b)(1) and (b)(2)—and subsection (b)(1) has been added to the exemptions listed in § 801.15(a)(2).

Subsection (b)(1) generally retains the language of the original proposal. Thus, subject to the provisions of subsection (b)(2), if a merger is subject to CAB approval it is exempt if copies of all information and documentary material filed with the CAB are contemporaneously filed with both agencies.

Subsection (b)(2) treats mergers involving air carriers with one or more non-aeronautics businesses differently than the original proposal. Under new subsection (b)(2), the acquired person's non-aeronautics business or businesses are treated as assets to be purchased by the acquiring person. If the purchase of these assets is not exempt under some other provision of the rules it must be reported. Where the transaction is structured as a merger, consolidation or acquisition of voting securities the parties must still treat the acquisition of the acquired person's non-aeronautic business or businesses as an acquisition of assets. To determine the value of the assets to be acquired see § 801.10(b). Since all acquisitions of non-aeronautic businesses are deemed acquisitions of assets, the aggregation rule set forth in §801.13(b) will apply to successive acquisitions between the same acquiring and acquired persons. For the same reason, the rule for aggregating acquisitions of voting securities and acquisitions of assets set forth in § 801.14 would not apply.

Where a transaction requiring CAB approval is an acquisition of voting securities, or is treated as such under the rules, new § 802.6(b)(2)(ii) eliminates any reporting obligation with respect to the non-aeronautic part of the transaction if the value of the voting securities acquired is less than $15 million. Conversely, if the acquiring person will hold voting securities of the acquired person valued at $15 million or more, § 802.6(b)(2)(ii) requires the

acquiring person to treat the entire non-aeronautic business or businesses of the acquired issuer (and all entities it controls) as assets held as a result of the acquisition. The acquisition will then be reportable (assuming no other exemption applies) if the non-aeronautic business or businesses acquired are valued at $15 million or more.

Comment 6 states that the CAB has no jurisdiction over acquisitions of less than 10% of the voting securities of a person engaged in aeronautics and air-transportation. It is thus possible for an acquisition of less than 10% to be subject to the reporting and waiting period requirements of the Act, while a larger acquisition would be exempt. The comment finds this result anomalous and proposes an exemption for acquisitions of less than 10% of such a person. The Commission believes that such an exemption would be inappropriate. The new exemption in § 802.6(b) for CAB-reviewed acquisitions is justified by the fact that both the CAB and the antitrust agencies can review the antitrust implications of such acquisitions without premerger filings. To exempt acquisitions not so reviewed and not covered by any other exemptions would be contrary to the purposes of the Act.

Transactions subject to new § 802.6(b) should be reported to the antitrust agencies as follows. If some or all of the transaction is exempt under § 802.6(b)(1), and no part of the transaction is reportable because of § 802.6(b)(2), then to secure the exemption under §802.6(b)(1), all copies of the materials filed with the CAB must be contemporaneously filed with both antitrust agencies. If part of the transaction is exempt under § 802.6(b)(1), but part must be reported because of § 802.6(b)(2), then parties must still provide copies of all information and documentary material filed with the CAB. In addition, however, under §803.2(c)(2) they may respond to certain parts of the Form (items 5, 7, 8 and 9 and the appendix) by providing information only with respect to their non-aeronautic business or businesses.

Existing § 802.6 has been redesignated as §802.6(a) and new § 802.6(b) and an example following paragraph (b) have been added as follows. In addition, in § 802.53 the reference to "§ 802.6" is changed to read "§ 802.6(a) and § 801.15 is amended by revising paragraph (a)(2) to read as follows:

§ 802.6 Federal agency approval.

* * * * *

(b) (1) Except as provided in § 802.6(b)(2), any transaction which requires approval by the Civil Aeronautics Board prior to consummation, pursuant to section 408 of the Federal Aviation Act, 49 U.S.C. 1378, shall be exempt from the requirements of the act if copies of all information and documentary material filed with the Civil Aeronautics Board are contemporaneously filed with the Federal Trade Commission and the Assistant Attorney General.

(2) The following will be considered assets held as a result of an acquisition requiring approval by the Civil Aeronautics Board pursuant to section 408 of the Federal Aviation Act, and such assets will not be exempt under § 802.6(b)(1):

(i) if the transaction is an acquisition of assets, the assets which are engaged in a business or businesses other than aeronautics or air transportation as defined in section 101 of the Federal Aviation Act, 49 U.S.C. 1301;

(ii) if the transaction is an acquisition of voting securities, or is treated under the rules as an acquisition of voting securities, and the acquiring person will, as a result of the acquisition, hold voting securities of the acquired person valued in excess of $15 million, the business or businesses of the acquired issuer (and all entities which it controls) which are not engaged in aeronautics or air transportation as defined in section 101 of the Federal Aviation Act, 49 U.S.C. 1301.

Example: Assume that A (an entity included within person "A") proposes to acquire voting securities of B (an entity included within person "B") for $100 million. A and B are both air carriers who meet the size-of-person test, but B also owns a commercial data processing business located in the United States with a value of $30 million. Assume that this transaction requires CAB approval under 49 U.S.C. 1378. Since the acquired person has a business other than aeronautics or air transportation, the parties must report under § 802.6(b)(2) because the parties meet the size-of-person test, no other exemption applies to the acquisition of the data processing business, and the acquisition of the non-aeronautic business is deemed to be an acquisition of assets valued at $30 million.

§ 801.15 Aggregation of voting securities and assets the acquisition of which was exempt.

* * * * *

(a) * * *

(2) Sections 802.6(b)(1), 802.8, 802.31, 802.50(a)(1), 802.51(a), 802.52, 802.53, 802.63, and 802.70;

* * * * *

8. Section 802.8: Exemption for Acquisitions Involving Insured Banks or Other Financial Institutions

New § 802.8(b) exempts acquisitions subject to the approval of federal regulatory agencies pursuant to the Change in Bank Control Act and the Change in Savings and Loan Control Act if copies of all information and documentary material filed with the regulatory agency are filed with the Federal Trade Commission and the Assistant Attorney General at least 30 days prior to consummation of the transaction.

Section 7A(c)(7) of the Act completely exempts from reporting and waiting period requirements "transactions which require agency approval under section 18(c) of the Federal Deposit Insurance Act (12 U.S.C. 1828(c)), or section 3 of the Bank Holding Company Act of 1956 (12 U.S.C. 1842)." Subsequent to passage of the Act and the promulgation of the original rules, Congress passed the Financial Institutions Regulatory and Interest Rate Control Act of 1978, Pub. L. 95–630, 92 Stat. 3683, Titles VI and VII, which are known respectively as the Change in Bank Control Act and the Change in Savings and Loan Control Act. These Acts apply to other transactions involving regulated financial institutions and thus broaden the approval requirements imposed on banks and savings and loan holding companies by the statutes cited in section 7A(c)(7). Under these Acts, *all persons* contemplating acquisitions of banks or savings and loans must now notify the appropriate regulatory agency 60 days prior to consummation and provide it with specified information. *See* 12 U.S.C. 1817(j)(6); 12 U.S.C. 1730(q)(6).

The exemption provided for this broader category of transactions by § 802.8(b) is a qualified one, however, patterned after the exemption provided in section 7A(c)(8). As originally proposed, it would have allowed the submission of an index of documents in lieu of copies of all documents, as permitted by § 802.6. Experience with procedures under the new regulatory statutes covered by § 802.8(b), however, has shown that the appropriate regulatory agency cannot always forward the material submitted quickly enough to the Department of Justice to allow adequate opportunity for review. Therefore, the new rule does not permit an index to be submitted in lieu of copies. In addition, the rule as proposed would have required parties to file copies of documents with the Department of Justice only. No notice to

the Commission was required because the Commission lacks jurisdiction over banks and savings and loan associations. The Commission, however, has a statutory obligation to administer the premerger notification program and to monitor compliance with the Act. These responsibilities cannot be carried out adequately unless the Commission receives filings for all transactions required to be reported under the Act. Since the burden of supplying a duplicate filing to the Commission is small, the rule has been changed to require filings with both the Assistant Attorney General and the Commission, as is required for all other filings.

New § 802.8(b)(2) exempts a covered acquisition from all requirements of the Act, including the filing requirements, if the appropriate regulatory agency finds that its approval is necessary to prevent the failure of one of the financial institutions involved. This provision is designed to cover situations in which the approving agency must act quickly to prevent the collapse of a bank or other institution, and mirrors a provision in 1978 § 802.8 (redesignated § 802.8(a)).

Section 802.8 is redesignated § 802.8 (a) and paragraph (b) is added to read as follows:

§ 802.8 Certain supervisory acquisitions.

* * * * *

(b)(1) A merger, consolidation, purchase of assets, or acquisition which requires agency approval under 12 U.S.C. 1817(j) or 12 U.S.C. 1730(q) shall be exempt from the requirements of the act if copies of all information and documentary materials filed with any such agency are contemporaneously filed with the Federal Trade Commission and the Assistant Attorney General at least 30 days prior to consummation of the proposed acquisition.

(2) A transaction described in paragraph (b)(1) of this section shall be exempt from the requirements of the act, including specifically the filing requirement, if the agency whose approval is required finds that approval of such transaction is necessary to prevent the probable failure of one of the institutions involved.

9. Section 802.42: Partial Exemption for Acquisitions in Connection With the Formation of Certain Joint Ventures or Other Corporations

New § 802.42 partially exempts contributors to the formation of joint venture corporations in cases where other contributors are entirely exempt under section 7A(c)(8) of the Act. Under § 801.40 of the rules, the formation of a joint venture or other corporation is analyzed as an acquisition of the voting securities of the newly-formed corporation by each contributor, and each contributor must determine whether its acquistion is reportable under the Act. In the case of the formation of a joint venture corporation in which one participant is exempt under section 7A(c)(8) but another participant is not, the non-exempt participant was required to file under the 1978 rules if its acquisition of the voting securities of the joint venture corporation met the size criteria of the Act and was not otherwise exempt. Since contributors exempted by section 7A(c)(8) submit information and documents relating to the formation of a joint venture corporation to the enforcement agencies, the Commission has determined that other participants need not be required to make an initial premerger notification filing.

This exemption is limited to the filing of a Notification and Report Form. In addition, in lieu of the Form, § 802.42(a) requires the party to submit an affidavit claiming this exemption and attesting to a good faith intention of going forward with the transaction. Section 802.42(b) states that the party remains subject to all other provisions of the Act and the rules. The submission of the affidavit thus initiates a 30-day waiting period. During this period, the Commission or the Assistant Attorney General may issue a request for additional information or documentary material to any non-exempt party to the acquisition, and such a request will extend the waiting period until 20 days after a response is received.

Comment 2 expresses a concern that the exemption from filing created by § 802.42 may negate the exemption in § 802.41 for the joint venture or other corporation at the time of its formation. If the exemption in § 802.41 were conditioned on filing being made by one or more contributors to the formation of the joint venture corporation, an exemption for contributors might imply a filing obligation for the joint venture corporation. The exemption for the joint venture or other corporation at the time of its formation is not so conditioned, however, and is unaffected by whether or not any of the contributors are subject to a filing requirement.

Section 802.42 is added to read as follows:

§ 802.42 Partial exemption for acquisitions in connection with the formation of certain joint ventures or other corporations.

(a) Whenever one or more of the contributors in the formation of a joint venture or other corporation which otherwise would be subject to the requirements of the act by reason of § 801.40 are exempt from these requirements under section 7A(c)(8), any other contributor in the formation which is subject to the act and not exempt under section 7A(c)(8) need not file a Notification and Report Form, provided that no less than 30 days prior to the date of consummation any such contributor claiming this exemption has submitted an affidavit to the Federal Trade Commission and to the Assistant Attorney General stating its good faith intention to make the proposed acquisition and asserting the applicability of this exemption.

(b) Persons relieved of the requirement to file a Notification and Report Form pursuant to paragraph (a) of this section remain subject to all other provisions of the act and these rules.

10. Sections 802.50 and 802.51: Acquisitions of and by Foreign Persons

Two changes have been made in §§ 802.50 and 802.51 which exempt, respectively, certain acquisitions of and by foreign persons. First, the minimum amount of contact with United States commerce necessary for a transaction to be reportable has been raised. These amounts now coincide with those in amended § 802.20. See 44 FR 60781 (November 21, 1979). Specifically, § 802.50(a) now exempts acquisitions by a United States person of foreign assets unless sales in or into the United States of $25 million or more are attributable to such assets. New § 802.50(b) exempts acquisitions by a United States person of a foreign issuer unless the foreign issuer (or an entity controlled by it) holds assets located in the United States with an aggregate book value of $15 million or more, or had sales in or into the United States of $25 million or more in its most recent fiscal year. Amended § 802.51(b) exempts an acquisition by a foreign person of a foreign issuer which does not confer control of an issuer with assets located in the United States with an aggregate book value of $15 million or more, or confer control of a United States issuer with annual net sales or total assets of $25 million or more. Finally, new § 802.51(c) exempts acquisitions by a foreign person of assets located in the United States valued at less than $15 million. Three of the examples to §§ 802.50 and 802.51 have been changed to reflect these new levels.

The second change has been to amend §§ 802.51 (b)(1) and (d) to exclude from the determination of the dollar amount of assets located in the United States, in addition to "investment assets," the

value of any voting or nonvoting securities of another person held by the acquired person. The 1978 § 802.50(b) excluded from the value of assets located in the United States the value of "investment assets and voting or nonvoting securities of another person" but 1978 § 802.51 referred only to investment assets. Investment assets are defined in § 801.1(i)(2) of the rules as "cash, deposits in financial institutions, other money market instruments, and instruments evidencing government obligations." The Statement of Basis and Purpose to § 802.50 states that the purpose of disregarding these assets is "[t]o exclude assets that do not reflect a substantial business presence in the United States and generally have little competitive significance." 43 FR 33497 (July 31, 1978). Since this rationale applies equally to acquisitions by foreign persons, the provisions of § 802.51 have been made to coincide with those of § 802.50.

In determining whether an acquisition is exempt under § 802.51(c), one need not include the value of any voting or nonvoting securities of another person which are to be acquired because § 801.21(b) must be applied in the determination of the value of such assets. That section excludes such securities from the determination of the value of assets when acquired. Section 802.51(c) has not, therefore, been amended, since it is already consistent with § 802.50(b)(1).

Loan commitments and loan guarantees counted among the assets of a newly-formed joint venture corporation pursuant to § 801.40(c)(2), like investment assets and securities of another person, do not reflect a substantial business presence or competitive significance in the United States. The changes to § 801.40(c) make clear that the assets of a joint venture corporation as determined in accordance with that section are to be used for purposes of applying exemptions provided by the rules including §§ 802.50 and 802.51. Comment 5 points out that the formation of a foreign joint venture with no assets in the United States other than a loan guarantee by a United States corporation would not be exempt under the proposed language of §§ 801.40(c) and 802.51(b), although this result is clearly unintended and undesirable. The Commission has therefore added to the kinds of assets to be excluded when applying §§ 802.50(b)(1), 802.51(b)(2), and 802.51(d), "assets included pursuant to § 801.40(c)(2)."

Two comments address the raising of the reporting floor in §§ 802.50 and 802.51. Comment 3 asserts that the increases are far too small. The comment argues that considerations of comity are particularly important and that foreign governments are especially resentful of the intrusion of United States antitrust law into predominantly foreign transactions. The comment suggests that the minimum threshold be at least $75 million. The Commission does not agree with this suggestion. The present changes in §§ 802.50 and 802.51 are designed to make the reporting floor for transactions involving foreign persons coincide with those for transactions between United States persons as formulated in the minimum dollar value exemption of § 802.20. This change is justified by the Commission's determination when § 802.20 was amended that transactions with less impact on United States commerce are unlikely to violate the antitrust laws. If additional experience shows that transactions with still greater effects on commerce are unlikely to violate the antitrust laws, these thresholds can be raised again.

Comment 6 contends that these changes have introduced a contradiction into § 802.51(b). The comment cites the example of an acquisition by a foreign person of another foreign person having one United States subsidiary all of whose assets are located in the United States and are valued at $20 million and which had $20 million in sales. The acquiring person is acquiring control of an issuer which holds assets located in the United States valued at more than $15 million, and the comment contends that according to § 802.51(b)(1) the transaction is reportable. But, since the acquiring person is gaining control of a United States issuer with less than $25 million in annual net sales and total assets, § 802.51(b)(2) makes it exempt. This comment does not take into consideration the precise wording of §§ 802.50 and 802.51. The provisions of these sections are stated in the alternative. If any one (or more) of the paragraphs is satisfied, the transaction is exempt. See Statement of Basis and Purpose to § 802.51, 43 FR 33498 (July 31, 1978). There is thus no contradiction in new § 802.51(b); since § 802.51(b)(2) is satisfied, the transaction is exempt.

Section 802.50 is amended by revising paragraphs (a)(2), (b)(1), and (b)(2, example 2 which follows paragraph (a), and the example which follows paragraph (b) and § 802.51 is amended by revising paragraphs (b)(1), (b)(2), (c), and (d) and example 2 which follows paragraph (d) to read as follows:

§ 802.50 Acquisitions of foreign assets or of voting securities of a foreign issuer by United States persons.

(a) *Assets.* * * *

* * * * *

(2) The acquisition of assets located outside the United States, to which sales in or into the United States are attributable, shall be exempt from the requirements of the act unless as a result of the acquisition the acquiring person would hold assets of the acquired person to which such sales aggregating $25 million or more during the acquired person's most recent fiscal year were attributable.

Examples: * * *

2. Sixty days after the transaction in example 1, "A" proposes to sell to "B" a second manufacturing plant located abroad; sales in or into the United States attributable to this plant totaled $20 million in the most recent fiscal year. Since "B" would be acquiring the second plant within 180 days of the first plant, both plants would be considered assets of "A" now held by "B". See § 801.13(b)(2). Since the total annual sales in or into the United States exceed $215 million, the acquisition of the second plant would not be exempt under this paragraph.

(b) *Voting Securities.* * * *

(1) Holds assets located in the United States (other than investment assets, voting or nonvoting securities of another person, and assets included pursuant to § 801.40(c)(2)) having an aggregate book value of $15 million or more; or

(2) Made aggregate sales in or into the United States of $25 million or more in its most recent fiscal year.

Example: "A," a U.S. person, is to acquire the voting securities of C, a foreign issuer. C has no assets in the United States, but made aggregate sales into the United States of $27 million in the most recent fiscal year. The transaction is not exempt under this section.

§ 802.51 Acquisitions by foreign persons.

* * * * *

(b) * * *

(1) An issuer which holds assets located in the United States (other than investment assets, voting or nonvoting securities of another person, and assets included pursuant to § 801.40(c)(2)) having an aggregate book value of $15 million or more, or

(2) A U.S. issuer with annual net sales or total assets of $25 million or more;

(c) The acquisition is of less than $15 million of assets located in the United States (other than investment assets); or

(d) The acquired person is also a foreign person, the aggregate annual sales of the acquiring and acquired persons in or into the United States are less than $110 million, and the aggregate total assets of the acquiring and

acquired persons located in the United States (other than investment assets, voting or nonvoting securities of another person, and assets included pursuant to § 801.40(c)(2)) are less than $110 million.

Examples: * * *

2. In example 1, assume that "A" is acquiring "B's" stock and that included within "B" is issuer C, a U.S. issuer whose total assets are valued at $27 million. Since C's voting securities will be acquired indirectly, and since "A" thus will be acquiring control of a U.S. issuer with total assets of more than $25 million, the acquisition cannot be exempt under this section.

* * * * *

11. Section 802.70: Acquisitions Requiring the Approval of a Federal Court in a Bankruptcy Proceeding

Paragraph (b) of § 802.70 has been amended to make clear that acquisitions exempted thereunder are limited to those subject to an order and requiring prior approval in connection with actions initiated by the Commission or the Department of Justice. The Commission has made this change specifically to exclude from this exemption acquisitions subject to prior approval of a federal court because they are of, by, or from a corporation in bankruptcy. In bankruptcy proceedings, the court will generally not consider antitrust issues in deciding whether to approve an acquisition. Therefore, such acquisitions should not generally be exempted from the requirements of the Act.

No comments addressed this rule.

Section 802.70 is amended by revising paragraph (b) to read as follows:

§ 802.70 Acquisitions subject to order.

* * * * *

(b) The acquiring person or entity is subject to an order of the Federal Trade Commission or of any Federal court in an action brought by the Federal Trade Commission or the Department of Justice, requiring prior approval of such acquisition by the Federal Trade Commission, such court, or the Department of Justice, and such approval has been obtained.

12. Section 803.2: Incorporation by Reference

This new provision incorporates into the rules the circumstances under which incorporation by reference has been permitted by the staff in formal interpretations issued on April 7, 1981, and April 10, 1979. New paragraph (e) permits a person filing notification to incorporate by reference in item 4(a) of the Notification and Report Form any SEC documents submitted by that person with an earlier filing which remain current and are called for in a later filing. Of course, the person would still be required to submit any documents called for by item 4(a) that were not previously submitted. A reporting person may thus incorporate by reference a Form 10-K from a filing made six months earlier (provided that no Form 10-K has been filed more recently with the SEC) but will be required to submit any more recent Forms 10-Q or 8-K not submitted with an earlier filing. In addition, when the same parties file for a higher notification threshold, (see § 801.1(b)) no more than 90 days after having filed for a lower threshold, they may incorporate by reference any documents or information submitted with the earlier filing provided that the documents and information are the most recent available.

Comment 6 suggests that incorporation by reference also be permitted for documents called for by item 4(b) of the Notification and Report Form; that is, annual reports, annual audit reports, and regularly prepared balance sheets. The Commission has decided to adopt part of this suggestion. New paragraph (e) has been expanded to permit a person filing notification to incorporate by reference in item 4(b) of the Notification and Report Form any annual reports submitted with an earlier filing which remain current and are called for in the later filing. This expansion is feasible because the Commission has recently enlarged its record-keeping system to include annual reports. This change was made in large part because the Securities and Exchange Commission now permits companies to attach annual reports to their Form 10-K's and incorporate by reference into their Form 10-K's information contained in their annual report. As a result, many of the Form 10-K's in the Commission's files already included copies of the annual report.

Since the Commission's record-keeping system does not now include other documents called for by item 4(b), such an annual audit reports and regularly prepared balance sheets, the Commission cannot permit further incorporation by reference at this time. However, the Commission is currently exploring how additional incorporation by reference could be allowed without significantly increasing the cost or reducing the effectiveness of the premerger notification program.

Section 803.2 is amended by adding paragraph (e) to read as follows:

§ 803.2 Instructions applicable to notification and report form.

* * * * *

(e) A person filing notification may incorporate by reference only documentary materials required to be filed in response to item 4(a) of the Notification and Report Form and annual reports required to be filed in response to item 4(b), which were previously submitted with a filing by the same person and which are the most recent versions available; except that when the same parties file for a higher notification threshold no more than 90 days after having made filings with respect to a lower threshold, each party may incorporate by reference in the subsequent filing any documents or information in its earlier filing provided that the documents and information are the most recent available.

13. Section 803.3: Statement of Reasons for Noncompliance

Section 803.3, which sets forth the information which must be contained in a statement of reasons for noncompliance, has been revised to require a more detailed explanation of the filing person's noncompliance. This greater detail is necessary because past statements of noncompliance have not always provided the enforcement agencies with sufficient information to determine whether substantial compliance has been achieved. Section 7A(b)(1)(A) of the Act provides that the waiting period shall begin on the date of receipt by the Commission and the Assistant Attorney General of completed notification or, if such notification is not completed, on the date of receipt of the notification to the extent completed and a statement of the reasons for noncompliance. Section 7A(e)(2) of the Act similarly provides, with respect to a response to a request for additional information, that the waiting period shall begin to run again on the date of receipt of either a completed response or the response to the extent completed accompanied by a statement of reasons for noncompliance.

In the new rule, the introductory paragraph has been revised to emphasize that a statement of reasons for noncompliance must contain all the information relied upon to explain the noncompliance, since the information specifically requested in the rule may not provide an adequate explanation in all cases. Paragraph (a), which is unchanged from the 1978 rule, calls for an explanation of why the person is unable to respond completely. Paragraph (b) calls for an explanation of the information which would have been

necessary for a complete response. In the new rule, persons are required to specify which documents or classes of documents would have provided the requested information. Paragraph (c) is intended to enable the enforcement agencies to evaluate the adequacy of the search for responsive information or documents. The reporting person is required to identify persons having the required information, to describe efforts to obtain it and list the names of persons who searched for such information and, if no effort was made, to explain why. Finally, paragraph (d) specifies the information which must be provided where noncompliance is based on a claim of privilege.

Comment 1 objects to the requirement in revised § 803.3(c) that the identity of persons who searched for responsive documents be disclosed on the grounds that such persons would often be legal counsel and disclosure of their names would violate the "work product" exemption from discovery. The Commission believes that this provision of the rule is necessary to allow the investigative staff to evaluate the adequacy of a search for documents. Since the rule does not require the disclosure of any information relating to an attorney's legal analysis or strategy in pending litigation, this requirement presents no threat to the rights the "work product" exemption is intended to protect.

Section 803.3 is revised to read as follows:

§ 803.3 Statement of reasons for noncompliance.

A complete response shall be supplied to each item on the Notification and Report Form and to any request for additional information pursuant to section 7A(e) and § 803.20. Whenever the person filing notification is unable to supply a complete response, that person shall provide, for each item for which less than a complete response has been supplied, a statement of reasons for noncompliance. The statement of reasons for noncompliance shall contain all information upon which a person relies in explanation of its noncompliance and shall include at least the following:

(a) Why the person is unable to supply a complete response;

(b) What information, and what specific documents or categories of documents, would have been required for a complete response;

(c) Who, if anyone, has the required information, and specific documents or categories of documents; and a description of all efforts made to obtain such information and documents, including the names of persons who searched for required information and documents, and where the search was conducted. If no such efforts were made, provide an explanation of the reasons why, and a description of all efforts necessary to obtain required information and documents;

(d) Where noncompliance is based on a claim of privilege, a statement of the claim of privilege and all facts relied on in support thereof, including the identity of each document, its author, addressee, date, subject matter, all recipients of the original and of any copies, its present location, and who has control of it.

14. Section 803.5: Affidavits Submitted With the Notification and Report Form

Two revisions have been made in § 803.5 which sets forth the requirements for the affidavits that must be submitted with the Notification and Report Form. First, new paragraph (3) has been added to § 803.5(a) requiring acquiring persons in transactions covered by § 801.30 to include in their premerger notification filing a copy of the notice served on the acquired person pursuant to § 803.5(a)(1).

Second, a requirement that the parties attest to a good faith intention to consummate the transaction has been included in paragraph (b) of § 805.5, which applies to transactions not covered by § 801.30. Such a requirement already appears in paragraph (a) and has been inserted here to increase the enforcement agencies' assurance that the intention to complete the transaction is current as of the time of filing.

Comment 3 asserts that the new requirement that a copy of the notice transmitted to the acquired person be attached to the acquiring person's affidavit will not solve the problem of assuring that the acquired person receives actual notice of the proposed acquisition. The comment suggests instead that the acquiring person be charged with the responsibility of delivering the notice to the chief executive officer of the acquired person. While the proposal may have merit, the Commission has not had any indications that acquired persons are not actually receiving the notice required. The suggestion was therefore not pursued. The purpose of requiring that a copy of the notice be submitted with the acquiring person's filing is not to assure that the acquired person has received the notice but to enable the enforcement agencies to determine whether the substance of the notice is adequate under the rules.

Comment 3 also argues that it is unnecessary to require the parties to a consensual transaction to attest to a good faith intention to consummate the transaction, since a lack of good faith is never the reason for the failure of such a transaction to be completed. The Commission believes, however, that the additional assurance that at the time of filing the parties intend to go through with the transaction justifies the minimal additional effort to comply with this requirement.

Section 803.5 is amended by adding paragraph (a)(3) and by revising paragraph (b) to read as follows:

§ 803.5 Affidavits required.

(a) * * *

(3) The affidavit required by this paragraph must have attached to it a copy of the written notice received by the acquired person pursuant to paragraph (a)(1) of this section.

(b) *Non-section 801.30 acquisitions.* For acquisitions to which § 801.30 does not apply, the notification required by the act shall contain an affidavit, attached to the front of the notification, attesting that a contract, agreement in principle or letter of intent to merge or acquire has been executed, and further attesting to the good faith intention of the person filing notification to complete the transaction.

15. Section 803.8: English Versions of Foreign Language Documents

New § 803.8 sets out the circumstances in which persons submitting foreign language documents are required to provide the same information in English as well. Paragraph 803.8(a) requires that, whenever an "English language version" of any foreign language information or documentary material exists at the time of submission of the Notification and Report Form both the foreign and English language versions shall be submitted. An English language version is an English language outline, summary, extract, or verbatim translation of a foreign language document. Paragraph § 803.8(b) requires that persons submitting foreign language documents or information in response to a request for additional information or documentary material provide verbatim English translations or existing English language versions or both to the extent specified in the request.

Four comments (1, 2, 3, and 6) addressed the new rule. None criticized the requirement that existing English versions of foreign-language documents be submitted with the initial filing. All objected to the requirement that verbatim translations be submitted as required by a request for additional

information. Comments 1, 2, and 6 suggest that the provision conflicts with the intent of Congress and gives the enforcement agencies what amounts to an "automatic stay" of acquisitions involving foreign persons. Several comments expressed concern that the enforcement agencies would automatically require translation of all documents requested from a foreign person, unduly delaying consummation. In addition, three comments asserted that the power to impose such a burden is beyond the agencies' authority and will have a detrimental effect on foreign investment in this country.

Two comments suggest alternatives. Comment 1 proposes that the agencies be able to require translations only of documents which would be called for by item 4(c) of the Form, that is, documents analyzing the proposed acquisition in terms of markets and competition. Comment 3 suggests two approaches. One is to allow the recipient of the request to translate selected documents after foreign language versions have been submitted and the waiting period has resumed. Alternatively, the comment proposes that the filing of English summaries should start the waiting period, but that it would be suspended after ten days unless translations of selected documents were submitted.

The Commission does not agree that a request for translations of foreign language documents is beyond the scope of the information-gathering authority granted by Congress when it created the premerger review program. The enforcement agencies are not limited to requesting existing documents and previously compiled information, but are authorized to "require the submission of additional information or documentary material relevant to the proposed acquisition . . . ." 15 U.S.C. 18a(e)(1). Congress could have exempted transactions involving foreign firms from the requirements of the Act or placed limitations on the enforcement agencies' powers to investigate them. That Congress did not do so is a clear indication that it intended the agencies to scrutinize these transactions as thoroughly as any others. This obligation to investigate acquisitions with foreign participants requires that the agencies have access to the same information about the foreign person as they have about a United States person. While the Commission recognizes the delay and expense that may be imposed by a request for English language translations, the tight statutory time limits during which the enforcement agencies must assess the competitive effects of a transaction and take any necessary enforcement action do not include any special extensions for translating essential documents. The only way to assure that the agencies will have the full time period mandated by Congress to analyze the antitrust significance of a transaction is to require that the information necessary be provided in a form that is immediately usable.

The alternatives proposed in the comments appear unsatisfactory for several reasons. First, the suggestion that authority to require translations be limited to particular categories of documents or information could often deprive the enforcement agencies of the information necessary to evaluate the competitive effects of a particular acquisition. The suggestion that the waiting period resume when the foreign language documents are received, with the parties submitting selected translations while the time is running, would prevent the enforcement agencies from using the full, mandated time period to review the information and make a decision about the need for enforcement action. Finally, the proposal to suspend the waiting period a second time until selected verbatim translations are provided would still significantly shorten the agencies' time to review necessary information. In addition, this proposal is inconsistent with the time schedules provided by the Act, and may be beyond the Commission's authority.

While it does not appear possible to limit translations to a specific category of documents or information in all transactions, or to create a special waiting period based on the submission of English language summaries and descriptions of documents, the enforcement agencies have often found it possible to limit requests for translations in particular cases. Two approaches are available. First, representatives of the parties are encouraged to meet with investigating attorneys at the Department of Justice or the Commission before a request for additional information is prepared. Such meetings often provide information helpful in narrowing the scope of a request, limiting the categories of documents for which verbatim translations are required, and identifying categories of documents for which English language summaries are adequate. Even after a request for additional information has been delivered, the investigating attorneys at both enforcement agencies have authority to reduce or modify specifications or requirements for translation in particular cases. Particularly where a person preparing a response to a request believes that a large number of documents are responsive but appear unrelated to the antitrust analysis, the parties should contact the requesting agency to discuss the actual nature of the responsive documents, what points the investigating attorneys anticipated would be elucidated by the documents requested, and whether some or all of the responsive documents should be exempted entirely or not translated.

The enforcement agencies remain aware of the burden placed on recipients of requests for additional information by the requirement that they provide verbatim translations, and will continue to be sensitive to minimizing this burden when such requests are issued. Translations of foreign language documents will be required to the least extent consistent with the agencies' fulfilling their law enforcement obligations. The determination of when translations are necessary must be made on a case-by-case basis, however, and any general limitation on when translation can be required would be inconsistent with the goals of the Act.

Section 803.8 is added to read as follows:

§ 803.8 Foreign language documents.

(a) Whenever at the time of filing a Notification and Report Form there is an English language outline, summary, extract or verbatim translation of any information or of all or portions of any documentary materials in a foreign language required to be submitted by the act or these rules, all such English language versions shall be filed along with the foreign language information or materials.

(b) Documentary materials or information in a foreign language required to be submitted in responses to a request for additional information or documentary material shall be submitted with verbatim English language translations, or all existing English language versions, or both, as specified in such request.

16. Section 803.20(a): Response to Second Requests: Where Submitted

Section 803.20 establishes procedures governing requests for additional information or documentary material ("second requests") by the antitrust enforcement agencies. These requests have the effect of extending the waiting period. Consummation of the proposed acquisition normally cannot occur until 20 days (10 days in the case of a cash tender offer) after completed responses

to the request(s) are received by the requesting agency. Section 803.20(a)(2) originally provided that responses to second requests were returnable "at the office designated in § 803.10(c)"—that is, at the headquarters offices of the antitrust enforcement agencies in Washington, D.C. To make procedures for return of responses more flexible, this provision has been revised to make responses to second requests returnable at the location designated in the request or, if no location is designated, at the offices designated in § 803.10(c).

No comments addressed this revision.

Section 803.20 is amended by revising paragraph (a)(2) to read as follows:

§ 803.20 Requests for additional information or documentary material.

(a) * * *

(2) All the information and documentary material required to be submitted pursuant to a request under paragraph (a)(1) of this section shall be supplied to the Commission or to the Assistant Attorney General, whichever made such request, at such location as may be designated in the request, or, if no such location is designated, at the office designated in § 803.10(c). If such request is not fully complied with, a statement of reasons for noncompliance pursuant to § 803.3 shall be provided for each item or portion of such request which is not full complied with.

* * * * *

17. Section 803.20(b): Additional Notification Procedures Regarding Issuance of Second Requests

Section 803.20(b)(2) of the rules specifies when a second request shall be effective. Previously, a second request in writing was effective upon receipt or upon communication (*i.e.*, reading the full text) either in person or by telephone, where such communication was followed by written confirmation mailed within the waiting period. The Commission's experience has been that parties receiving second requests usually prefer to waive communication by telephone and to send an agent to obtain a written copy of it. To provide for this procedure in the rules, the Commission has amended § 803.20(b)(2)(ii).

The amended subsection specifies that a request is effective when notice of its issuance is given to the person to whom the request is issued, provided that written confirmation (*i.e.*, a copy) of the request is mailed to that person before the expiration of the initial waiting period. Such notice may be given by telephone or in person. To assure that a party to whom a second request is issued learns of the contents of the request as soon as possible, the rule also provides that, upon request of the individual receiving notice, the entire contents of the second request will be read.

Section 803.20(b)(2)(ii) requires that persons filing notification keep a designated individual available during normal business hours for purposes of receiving requests for clarification or amplification, requests for additional information or documentary material, or notice of the issuance of such requests. New subsection (iii) has been added to address a particular problem which arises when the individual so designated is not located in this country. The new subsection requires that when a reporting person designates an individual located outside the United States pursuant to subsection (ii), at least one individual located within the United States and accessible by telephone also be designated for the limited purpose of receiving notice of the issuance of a request for additional information or documentary material. This change is designed to facilitate communications between the requesting agency and the receipient of the request.

Comment 6 urges the Commission to make two additional changes in the procedures governing the issuance of second requests. First, to give the recipient knowledge of the contents of the request as soon as possible, the comment suggests requiring the issuing agency to have a written copy of the request available at its Washington, D.C., office on the day the request is issued to be picked up by the recipient. Second, when the last day of the waiting period falls on a holiday or weekend the comment proposes that notice of a request be required to be given by close of business (*i.e.*, 5:00 p.m. Washington, D.C., time) on the last business day prior to the expiration of the waiting period.

The Commission has decided not to adopt these suggestions. In practice, the staffs of the enforcement agencies when issuing second requests normally employ the procedures which Comment 6 recommends. A written copy of the request is always made available to the recipient at the Washington, D.C., office of the requesting agency so that the recipient may obtain it as quickly and conveniently as possible. Regarding the second suggestion, the requirement to give notice of the issuance of a second request usually means that notice is given during the regular business hours of the recipient. However, the circumstances in which a second request is issued sometimes vary from this pattern. Requiring by rule that these procedures be observed could, in unusual cases, hamper the enforcement agencies in carrying out their responsibilities under the Act. Moreover, the comment gives no reason why incorporating these procedures in the rules is unnecessary.

Section 803.20 is amended by revising paragraph (b)(2)(ii) and adding paragraph (b)(2)(iii). The introductory text of paragraph (b)(2) is republished for the information of the reader.

§ 803.20 Requests for additional information or documentary material.

* * * * *

(b) * * *

(2) *When request effective.* A request for additional information or documentary material shall be effective—

* * * * *

(ii) In the case of a written request, upon notice of the issuance of such request to the person to which it is directed within the original 30-day (or, in the case of a cash tender offer, 15-day) waiting period (or, if § 802.23 applies, such other period as that section provides), provided that written confirmation of the request is mailed to the person to which the request is directed within the original 30-day (or, in the case of a cash tender offer, 15-day) waiting period (or, if § 802.23 applies, such other period as that section provides). Notice to the person to which the request is directed may be given by telephone or in person. The person filing notification shall keep a designated individual reasonably available during normal business hours throughout the waiting period through the telephone number supplied on the certification page of the Notification and Report Form. Notice of a request for additional information or documentary material need be given by telephone only to that individual or to the individual designated in accordance with subparagraph (iii) below. Upon the request of the individual receiving notice of the issuance of such a request, the full text of the request will be read. The written confirmation of the request shall be mailed to the ultimate parent entity of the person filing notification, or if another entity within the person filed notification pursuant to § 803.2(a), then to such entity.

(iii) When the individual designated in accordance with paragraph (b)(2)(ii) above is not located in the United States, the person filing notification shall designate an additional individual located within the United States to be reasonably available during normal business hours throughout the waiting

period through a telephone number supplied on the certification page of the Notification and Report Form. This individual shall be designated for the limited purpose of receiving notification of the issuance of requests for additional information or documentary material in accordance with the procedure described in paragraph (b)(2)(ii) above.

* * * * *

In addition to the comments addressed above, the Commission received comments which were outside the scope of the notice of proposed rulemaking. Some of these comments proposed additional changes in the premerger notification rules. The Commission will retain these comments and consider them as it explores additional changes in the rules.

By direction of the Commission.

Emily H. Rock,

Secretary.

[FR Doc. 83-20641 Filed 7-28-83; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 154

[Docket No. RM81-21-000; Order No. 320]

Recovery of Alaska Natural Gas Transportation System Charges

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: Federal Energy Regulatory Commission (Commission) is amending its rules by adding provisions establishing a cost-recovery mechanism for the shippers of Alaska natural gas through the Alaska Natural Gas Transportation System (ANGTS). The final rule establishes the conditions for a permanent tariff provision by which a shipper may flow through to its jurisdictional customers ("track") the jurisdictional portion of changes in its ANGTS charges by means of periodic rate adjustment filings less comprehensive than general rate change filings under section 4(e) of the Natural Gas Act. A shipper may also recover the jurisdictional portion of these charges through a cost-of-service tariff approved by the Commission. The rule also establishes the mechanism for shipper tracking of any charges the sponsors are permitted to impose prior to the flow of gas through the ANGTS ("pre-delivery charges").

DATES: Notice of the effective date of this rule will be published later in the **Federal Register.** This rule will be effective on the latest of the following dates: (1) If rehearing is granted, on the date on which a Commission order on rehearing becomes effective, (2) if rehearing is requested but deemed denied in accordance with 18 CFR 385.713, on the date on which it is deemed denied, (3) if rehearing is not requested, by August 29, 1983, or (4) the date on which the Commission publishes in the **Federal Register** OMB's approval under the Paperwork Reduction Act and the OMB control number.

FOR FURTHER INFORMATION CONTACT: Jan Macpherson, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington 20426; (202) 357-8033)

Issued: July 25, 1983.

I. Introduction

The Federal Energy Regulatory Commission (Commission) is amending its regulations by establishing procedures under which a shipper of Alaska natural gas may recover from its jurisdictional customers charges incurred by the shipper for the use of the Alaska Natural Gas Transportation System (ANGTS). These sections (sections 154.201 through 154.213) establish the terms and conditions for a permanent tariff provision that a shipper may propose in order to adjust its rates semiannually to "track" or flow through to its jurisdictional customers the jurisdictional portion of changes in its ANGTS charges. Alternatively, a shipper may recover the jurisdictional portion of these charges through a cost-of-service tariff approved by the Commission. Without this rule, a shipper would be required to make a general rate change filing under section 4(e) of the Natural Gas Act (NGA) every time the shipper wanted to adjust its rates to reflect any changes in its ANGTS charges; in addition, the Commission would have to institute a proceeding under section 5 of the NGA to reduce the shipper's rates to reflect decreases in the shipper's ANGTS charges. Tracking such changes through a permanent tariff provision will enable a shipper to adjust its rates by means of filings less comprehensive than section 4(e) general rate change filings. In these tracking filings, the Commission's review will extend only to the matters essential to permit a finding that the adjusted rates are "just and reasonable." The rule is designed to assure matching of a shipper's ANGTS charges and amounts collected over time to prevent over- or under-collection by the shipper.

As a prerequisite to tracking, a shipper must file a section 4(e) general rate change to establish a Base Tariff Rate, which is subject to periodic review and to which the tracking adjustments will be made. It must also file an ANGTS Charges Recovery Clause (ACR Clause) in its tariff containing provisions to implement the tracking mechanism set forth in this rule. As an alternative, the shipper may seek approval of a cost-of-service tariff. A shipper must decide every three years whether to continue to use the tracking mechanism or a cost-of-service tariff or to recover such charges through general rate change filings. A decision to discontinue tracking or a cost-of-service tariff is subject to Commission approval.

This rulemaking also establishes the procedures by which a shipper may adjust its rates to recover ANGTS charges incurred before the actual delivery of Alaska natural gas (predelivery charges), if any, to the extent that such charges are approved by the Commission or the National Energy Board of Canada (NEB) and to the extent that recovery of Canadian ANGTS charges is consistent with the President's *Findings and Proposed Waiver of Law* (October 15, 1981) (*Waiver*), approved by Joint Resoultion of Congress, S.J. Res. 115, Pub. L. 97-93, 95 Stat. 1204 (1981).

After considering the comments submitted in response to the proposed rule, the Commission finds that the availability of this tracking mechanism is in the public interest because it will facilitate financing and progress on the ANGTS and thereby assist in making available in the contiguous 48 states the large reserves of Alaskan natural gas. The tracking mechanism set forth in this rule will provide incentives for shippers to use the ANGTS and may improve the availability and terms of financing for the ANGTS while assuring a timely flow-through from a shipper to its customers of decreases in ANGTS charges as the initial investment in the ANGTS is depreciated. The Canadian Government also has found that tracking is essential for the financing of the Canadian segment. Accordingly, the Commission finds that issuance of this rule is necessary and related to the construction and intitial operation of the ANGTS within the operation of the ANGTS within the meaning of section 9 of the Alaska Natural Gas Transportation System Act (ANGTA), 15 U.S.C. 719-7190.

II. Background

The ANGTS is an international project designed to transport natural gas from the North Slope of Alaska, through Canada, to the contiguous 48 states of the United States. Congress found in enacting the ANGTA that construction of the ANGTS was in the public interest because of the large reserves of natural gas in Alaska. The American portion of the ANGTS will ultimately consist of four components: (1) the gas conditioning plant at Prudhoe Bay on the North Slope of Alaska, (2) the Alaskan pipeline, running from Prudhoe Bay to the Alaska/Yukon Territory border, (3) the Western Leg, running from the British Columbia/Idaho border to California, and (4) the Eastern Leg, running from the Saskatchewan/Montana border to Illinois. The Canadian portion of the ANGTS will ultimately run from the Alaska/Yukon Territory border through the Yukon Territory into British Columbia and Alberta where it will bifurcate, with one leg extending to the British Columbia/Idaho border and the other leg extending to the Saskatchewan/Montana border.

The ANGTS is different from most pipelines in that the project sponsors will not necessarily be the buyers and sellers of the gas transported through it. Shippers will buy the gas at the Prudhoe Bay field from producers, have gas conditioned for transportation at the project sponsors' gas conditioning plant at Prudhoe Bay, ship the gas through the project sponsors' pipeline, and sell the gas at the other end.

This arrangement involves two categories of tariffs. The project sponsors will have tariffs authorizing charges to the shippers for the conditioning and transportation of the gas through the pipeline. The shippers in turn will have tariffs authorizing rates for gas sales to their customers. These rates will, among other things, reimburse the shippers for the gas conditioning and transportation charges paid by the shippers to the project sponsors, as well as reimbursing the shippers for their payments to the producers for the gas itself.[1]

The tracking mechanism set forth in this rule is an exception to the Commission's general policy, which has been, and continues to be, not to allow long-term authority to flow through third-party transportation charges.[2] In the past, the Commission has authorized tracking of transportation charges only on a temporary basis, specifically through settlement of general rate change proceedings, by which tracking has been limited to the time the rates established in those proceedings remain in effect. However, the unprecedented scale and cost of the ANGTS and its unique international character and legal framework combine to pose unique problems requiring unique solutions. The Commission has concluded that the considerations supporting tracking, as described in the "Report of the Alaskan Delegate to the Commission on Shipper Tracking of Alaska Natural Gas Transportation System Charges"[3] and summarized in the proposed rule, justify permitting shippers to track ANGTS charges through a permanent tariff provision. The Commission stresses, however, that the rule is not intended to serve as a precedent in any other proceeding.

The Commission proposed a mechanism for tracking ANGTS charges on October 13, 1982, 47 FR 45,021–36, and solicited both initial comments (due December 3, 1982) and reply comments (due January 17, 1983). Comments were received from eight entities: The Calaska Energy Company; the Commission's trial staff; Foothills Pipe Lines (Yukon) Ltd. (the sponsor of the Canadian segment of the ANGTS); the Iowa State Commerce Commission; the shippers commenting jointly; the Alaskan Northwest Natural Gas Transportation Company (sponsor of the U.S. Alaskan segment of the ANGTS); the Pacific Interstate Transmission Company; and the Consumer Advocate Division of the Public Service Commission of West Virginia. After considering these public comments, as well as the "Report of the Alaskan Delegate to the Commission on Shipper Tracking of Alaska Natural Gas Transportation System Charges," the Commission is issuing this rule. A discussion of the comments and a summary of the rule are presented below.

This rule is issued under the authority of the NGA, as amended, 15 U.S.C. 717–717w, as supplemented by the ANGTA and the President's *Decision and Report to Congress on the Alaska Natural Gas Transportation System (Decision)* (Executive Office of the President, Energy Policy and Planning, September 1977) approved by Joint Resolution of Congress, H.R.J. Res. 621, Pub. L. 95–158, 91 Stat. 1268 (1977), and as modified by the President's *Waiver, supra.*[4]

III. Discussion

A. General

Generally, the rule allows a shipper to recover, through a permanent tariff provision, the jurisdictional portion of its ANGTS charges, including those billed by the sponsors of the Canadian segment. The rule permits adjustment only to rates previously determined to be just and reasonable, and these rates (known as Base Tariff Rates) are subject to periodic review. The rule requires four types of rate filings that: (1) Adjust the shipper's rates to recover any pre-delivery charges (2) establish the shipper's Base Tariff Rate to recover ANGTS charges associated with the actual delivery of Alaska natural gas, (3) adjust periodically the shipper's rates to track charges in ANGTS charges following the establishment of a Base Traiff Rate, and (4) restate periodically the shipper's Base Tariff Rate.

Although four types of rate filings are involved, once a shipper has established its Base Tariff Rate to reflect all costs, volumes and revenues associated with the ANGTS, the shipper will tract changes in its ANGTS charges semiannually by means of rate adjustment filings, as opposed to more comprehensive, general rate change filings. This will assure a timely flow of revenue to the shipper and to the ANGTS, while ensuring a matching of costs and revenues to guard aganist under-recovery or over-recovery of ANGTS charges incurred by a shipper.

In their comments on the proposed rule, the Iowa State Commerce Commission (Iowa) contended that adoption of a shipper tracking rule for the ANGTS is premature. They questioned the marketability of Alaskan gas under current market conditions, pointing out that the sponsors have already announced a two-year construction delay and that alternative delivery systems have been proposed. Iowa stressed that "regulation at this point should remain neutral and should not artificially encourage a venture whose original economic rationale is seriously questionable." (Iowa reply comments at page 3.) In contrast, the shippers commenting jointly (the Shipper Group), Alaskan Northwest Natural Gas Transportation Company

[1] For a more detailed discussion of the background of the ANGTS, see the preamble to the proposed rule, 47 FR 45,022–26 (October 13, 1982).

[2] *See United Gas Pipe Line Co. v. Federal Energy Regulatory Comm'n*, No. 82–1833 (D.C. Cir. May 17, 1983); *Tennessee Gas Pipeline Company*, Order Denying Application for Rehearing, Docket No. RP83–47–001 (issued April 21, 1983).

[3] This report is available in the Commission's public files in this docket. The Commission noted in the preamble to the proposed rule that it was considering this report. 47 FR at 45,022 (October 13, 1982).

[4] For a detailed discussion of the Commission's legal authority to issue this tracking rule, *see* the preamble to the proposed rule, 47 FR at 45,024–26 (October 13, 1982).

(Alaskan Northwest) (the sponsor of the Alaskan segment), and Foothills Pipe Lines (Yukon) Ltd. (Foothills) (the sponsor of the Canadian segment), argued that a shipper tracking rule is needed now in order to allow formulation of a financing plan.

The Commission believes that it should not delay this shipper tracking rule. the President's *Decision*, approved by Congress pursuant to the ANGTA, selected the route and project sponsors for the ANGTS, and section 9 of the ANGTA mandates expedition in the consideration, processing and issuance of all federal regulatory authorizations related to the construction and initial operation of the system. That legal mandate is binding on the Commission. Moreover, the Commission recognizes that a shipper tracking rule is an important factor in the financial viability of the ANGTS; thus, the Commission has a statutory obligation to expedite consideration and adoption of such a rule.

The Commission stresses, however, that adoption of a shipper tracking rule in no way prejudices the Commission's consideration and ultimate resolution of the issue of whether the ANGTS should be built. The project sponsors cannot proceed with construction of the Alaskan segment of the ANGTS unless they receive a final certificate from the Commission. Such a certificate will not be granted unless the project sponsors establish in proceedings before the Commission that Alaskan gas can be marketed and that construction and operation of the Alaskan segment would be in the public interest. This determination will be made based upon a complete evidentiary record, including the project sponsors' financing plan, gas sales contracts, and gas marketability studies,[5] and all interested parties will have an opportunity to participate in these proceedings.[6] Adoption of this rule does not foreclose further consideration of these issues, nor does it affect the Commission's neutrality in considering them if the project sponsors make the requisite filing to initiate such consideration.

B. Section by Section Summary and Response to Comments

1. Applicability (§ 154.201)

Section 154.201 describes the applicability of the rule. The rule applies primarily to shippers seeking to recover charges incurred for the conditioning and transportation of Alaska natural gas through the ANGTS for sale in the contiguous 48 States of the United States. The rule also applies to shippers seeking to recover charges for the conditioning and transportation of Alaska natural gas through the ANGTS for sale within the State of Alaska, to the extent that such sales are within the Commission's jurisdiction.

2. Definitions (§ 154.202)

Section 154.202 defines terms relevant to the application of the proposed rule. These terms are: Alaska natural gas, Alaska Natural Gas Transportation System (ANGTS), ANGTS charges, ANGTS Charges Recovery Clause (ACR Clause), Base Tariff Rate, cost-of-service tariff, Federal Inspector, National Energy Board, jurisdictional portion, project sponsor, shipper, and track.

(a) *ANGTS charges.* "ANGTS charges" are defined as "amounts billed by the project sponsors that are properly attributable to the construction and operation of the ANGTS for the conditioning and transportation of Alaska natural gas." The reference to "construction" means that if the project sponsors are permitted to bill the shippers for ANGTS charges prior to the actual delivery of Alaska natural gas (pre-delivery charges), the shippers will be able to flow through these charges to their customers using the tracking mechanism. Pre-delivery tracking is discussed below under "Filing to Recover Pre-Delivery ANGTS Charges (§ 154.206)."

The references in the definition of "ANGTS charges" to "properly attributable" charges and "conditioning" limit a shipper's recovery of charges from the Alaska gas conditioning plant segment to those charges properly attributable to natural gas service. In their comments on this provision, the Shipper Group expressed concern that under this language shippers might not be allowed to track in their jurisdictional rates certain conditioning costs they might have to pay but which the Commission might not consider to be "properly attributable to conditioning." They contended that shippers must be allowed to track all conditioning costs they are required to pay and requested that the rule define "properly attributable" conditioning costs to include all such costs.

However, the Shipper Group, Alaskan Northwest, and the Commission's trial staff all agreed that the Commission cannot define, quantify or apportion the conditioning costs until it can review the gas purchase contracts, the conditioning plant cost estimates, and the conditioning plant tariffs. The gas purchase contracts have not yet been filed with the Commission, and the conditioning plant *pro forma* tariff has not been filed with the Commission. Thus, the Commission agrees that it would be premature to attempt in this rulemaking to define the costs that are "properly attributable" to conditioning. As a general matter, the rule is intended to permit the shippers to track any costs they are obligated to pay pursuant to Commission orders and project sponsors' tariffs approved by the Commission. Nevertheless, shippers should not be permitted to track conditioning costs they obligate themselves to pay if those costs are not "properly attributable" to conditioning the gas for entry into the ANGTS.

(b) *Base Tariff Rate.* "Base Tariff Rate" is defined in § 154.202(e) as the effective rate on file with the Commission, excluding adjustments, under a shipper's ACR Clause. Base Tariff Rate is intended in this rule to have the same meaning as it has in the Commission's Purchased Gas Adjustment (PGA) regulations, 18 CFR 154.38(d)(4).

(c) *Cost-of-Service Tariff.* "Cost-of-service tariff" is defined in § 154.202(f) as a tariff under which a shipper's charges to its customers are computed in accordance with a formula set forth in the shipper's tariff. The essential effect of this arrangement is that the shipper recovers its costs substantially as they are incurred. This definition was added because of changes made in § 154.204 which are discussed below under that heading.

(d) *Federal Inspector.* "Federal Inspector" is defined in § 154.202(g) as the office responsible for monitoring the construction of the ANGTS and for coordinating the issuance of permits and certificates for the ANGTS by all federal agencies. The position was created to report directly to the President by Reorganization Plan No. 1 of 1979, which the President submitted to Congress and which Congress did not disapprove.

(e) *Shipper.* Section 154.202(k) defines "shipper" as a person with an executed service agreement with a project sponsor for the conditioning and transportation of Alaska natural gas

[5] Finance Condition No. IV.2., at page 36 of the President's *Decision*, provides that "[i]f the direct capital cost estimates excluding interest during construction for the overall project in 1975 constant dollars filed with the [Commission] immediately prior to certification, adjusted to reflect design changes to increase capacity that result from the [Agreement on Principles], materially and unreasonably exceed the comparable capital cost estimates filed by Alcan with the Federal Power Commission on March 8, 1977 . . ., the [Commission] may not issue a certificate for the project."

[6] *See* the Procedural Order issued by the Commission on April 30, 1982, in Docket Nos. CP78-123-000 and CP80-435-000, establishing procedures and defining issues to be considered in the final certification proceedings.

through the ANGTS.[7] By not requiring that a shipper be a "natural gas company," this definition takes into account the President's *Waiver*, which set aside sections 1(b)[8] and 2(6)[9] of the NGA to the extent necessary to permit a shipper to be deemed a "natural gas company" within the meaning of the NGA. As explained by Congress, this part of the *Waiver* "is required if a tariff permitting billing commencement prior to completion of the entire system, made possible elsewhere in the waiver, is to be legal with regard to the Natural Gas Act." [10] Therefore, the broader definition of "shipper" is necessary to be consistent with the purpose and intent of the President's *Waiver*.

In its comments on the definition of "shipper," the Commission's trial staff expressed concern that shippers may establish limited purpose subsidiaries to buy, ship and resell Alaskan gas to their parent companies, citing a certificate application in the Northern Border prebuild certificate hearings.[11] The trial staff noted that such a subsidiary could be a shipper within the scope of the rule, and contended that such subsidiaries should not be certificated unless they can demonstrate that they will serve a useful purpose.

In its reply comments, the Calaska Energy Company (Calaska) contended that there are situations, including its own, which justify use of limited purpose subsidiaries. The Pacific Interstate Transmission Company (PIT) posited hypothetical situations which, in its view, would justify use of such subsidiaries, and contended that this matter should be considered in the context of individual certificate and tariff proceedings rather than in the context of the shipper tracking regulations.

The Commission has not decided in this rulemaking whether limited purpose subsidiaries should be certificated. No such application for certificate authority has been filed, and as the trial staff itself pointed out, the rule does not address that subject. The trial staff's contentions may be raised if such an application is filed and a decision will then be reached on the basis of a full factual record developed by the parties.

3. Recoverable ANGTS charges: The prudence standard (§ 154.203).

Section 154.203(a) describes the ANGTS charges that a shipper's rates may reflect, that is, a shipper's recoverable ANGTS charges. A shipper's recoverable ANGTS charges will be the jurisdictional portion of those charges that are "prudently incurred." Prudence is the standard which the Commission has previously established to determine whether costs may be reflected in a jurisdictional company's rates.[12] What is prudent, however, may vary according to circumstances.[13] Consequently, section 154.203(a) establishes the criteria or conditions that a shipper's ANGTS charges must satisfy in order for the Commission to deem them prudently incurred and therefore recoverable from the shipper's customers.

(a) *Charges must be properly computed under approved tariffs.* In order for ANGTS charges to be prudently incurred, they must be properly computed pursuant to Commission-approved tariffs [14] for the U.S. project sponsors and pursuant to NEB-approved tariffs for the Canadian project sponsors.[15] Satisfaction of this condition means that a shipper's ANGTS charges are derived from rates that the Commission and the NEB, as appropriate, have determined to be just and reasonable. As discussed in detail in the preamble to the proposed rule, 47 FR 45,025 (October 13, 1982), the NEB applies a "just and reasonable" standard substantially the same as that used by the Commission in approving rates. Therefore, for the reasons set forth in the preamble to the proposed rule, 47 FR 45,025, 45,027–29, the Commission will deem a shipper's ANGTS charges to be prudently incurred if those charges are properly computed pursuant to Commission-approved or NEB-approved tariffs.

In determining whether a shipper's ANGTS charges satisfy this condition, the Commission will need to review the project sponsors' tariffs. Of course, the U.S. project sponsors' tariffs will be on file with the Commission. The Canadian project sponsors' tariffs, however, will be on file with the NEB. Therefore, to assist the Commission in determining whether a shipper's rates reflect Canadian ANGTS charges properly computed pursuant to an NEB-approved tariff, § 154.203(b) requires the shipper to provide the Commission with a certified copy of any tariff or modifications or changes to any tariff approved by the NEB relating to the shipper's Canadian ANGTS charges. A shipper must provide the Commission with a copy of the entire tariff the first time the shipper proposes rates reflecting Canadian ANGTS charges. Thereafter, the shipper will provide the Commission with any modifications or changes to an NEB-approved tariff when the shipper makes subsequent rate filings involving Canadian ANGTS charges.

(b) *Canadian ANGTS charges must be consistent with international agreements.* The second condition in § 154.203(a) which a shipper's ANGTS charges must satisfy to be deemed prudently incurred by the Commission applies only to the shipper's Canadian ANGTS charges. This condition is that the shipper's Canadian ANGTS charges must be consistent with the Transit Pipeline Treaty and the Agreement on Principles.[16] Satisfaction of this condition means that such charges do not reflect any discriminatory items of cost, because the Transit Pipeline Treaty mandates that the NEB regulate the Canadian pipeline segment in the same manner as it regulates other Canadian gas pipelines. The Agreement on Principles implements the Treaty with respect to the ANGTS, confirming the requirement for non-discriminatory treatment. Satisfaction of this condition also means that such charges are derived from rates that have been

[7] Section 154.12 of the Commission's regulations includes an executed service agreement in its definition of "contract." Contract is defined as "any agreement which in any manner affects or relates to rates, charges, classifications, practices, rules, regulations or services for any transportation or sale of natural gas subject to the jurisdiction of the Commission." 18 CFR 154.12.

[8] 15 U.S.C. 717(b).

[9] 15 U.S.C. 717a(6).

[10] H.R. Rep. No. 350 (Part 2), 97th Cong., 1st Sess. 23 (1981).

[11] The certificate was not granted. *Findings and Order Issuing Certificates of Public Convenience and Necessity*, Docket Nos. CP78–123, *et al.* (issued April 28, 1980), 11 FERC ¶ 61,088; *see also Order Granting Applications for Rehearing in Part*, issued in the same dockets on June 20, 1980, 11 FERC ¶ 61,302. These two orders are referred to as the "Northern Border" orders.

[12] *See, e.g., Pacific Indonesia LNG Company, et al.*, 55 FPC 1601 (1976).

[13] For example, in *Pacific Indonesia* the Commission indicated that non-jurisdictional costs that were reasonable in the context of the customs and practices of the shipping industry would be considered prudently incurred. *Id.* at 1604.

[14] In its initial Northern Border order, the Commission also indicated that transportation costs to be recovered by the shippers of Canadian natural gas through the prebuild portion of the Eastern Leg could be considered prudently incurred if computed pursuant to Commission-approved project sponsor tariffs. *See* April 28, 1980 Northern Border order, *supra* note 11, at 61,181.

[15] To date, the only tariff approved by the NEB for the Canadian segment is one for Foothills Pipelines (Yukon) Ltd.

[16] The "Transit Pipeline Treaty" is the "Agreement Between the Government of the United States of America and the Government of Canada Concerning Transit Pipelines," 28 U.S.T. 7449, T.I.A.S. No. 8720. The "Agreement on Principles" is the "Agreement Between the United States of America and Canada on Principles Applicable to a Northern Natural Gas Pipeline," which was signed by representatives of the two governments on September 20, 1977. It is an executive agreement which was made part of the President's *Decision*. Since the *Decision* was approved by Congress pursuant to ANGTS and the *Treaty* was ratified by the Senate, they have the legal status of statutes.

determined to be just and reasonable, because Article IV, paragraph 2 of the Transit Pipeline Treaty specifically articulates and imposes a "just and reasonable" standard; this standard is also mandated by the applicable domestic legislation of both the United States and Canada.

The Commission recognizes, however, that consistency of a shipper's Canadian ANGTS charges with the Transit Pipeline Treaty and the Agreement on Principles is in the first instance a matter within the purview of the NEB, which will consider the matter initially at the time it approves the Canadian project sponsors' tariffs and whenever it approves amounts to be billed to the shippers pursuant to such tariffs. It is the Commission's understanding that U.S. parties with affected economic interests (such as a shipper's customers) will have the opportunity to participate in NEB proceedings on the Canadian project sponsors' tariffs and charges, and thus will be able to raise the issue of consistency of Canadian ANGTS charges with the Treaty and the Agreement in those proceedings. 47 FR 45,029 (October 13, 1982).

Therefore, § 154.203(c) establishes a rebuttable presumption that if a shipper's Canadian ANGTS charges were properly computed pursuant to an NEB-approved tariff, such charges are also consistent with the Treaty and the Agreement. The presumption is rebuttable if those charges, or more precisely the reflection of those charges in a shipper's rates, are challenged as being inconsistent with the Transit Pipeline Treaty or the Agreement on Principles.

Section 154.203(c) provides that any challenge to a shipper's rates on the basis that those rates reflect charges inconsistent with the Transit Pipeline Treaty or the Agreement on Principles will have to be made in a timely manner in accordance with the Commission's Revised Rules of Practice and Procedure.[17] For example, pursuant to rule 211,[18] any person may file a protest to object to any tariff or rate filing. Pursuant to Rule 214,[19] any State Commission may become a party to a rate proceeding by filing a notice of intervention in that proceeding, and any person seeking to become a party in such a proceeding may file a motion to intervene.

Section 154.203(d) establishes the means by which the Commission will determine whether the challenged rates of a shipper reflect ANGTS charges that are improperly computed pursuant to NEB-approved tariffs or are inconsistent with the Transit Pipeline Treaty or the Agreement on Principles. The means for any such determination are the bilateral mechanisms provided by the Transit Pipeline Treaty and the Agreement on Principles. Paragraph 9 of the Agreement provides for resolution of disagreements through consultation between the regulatory authorities of the two countries. Regulatory consultation would involve discussion between the NEB and the Commission; such consultation pursuant to the Agreement has occurred with some frequency. Article IX of the Treaty provides for diplomatic negotiation between the governments of the two countries, and for arbitration if a dispute is not settled by negotiation.

More specifically, § 154.203(d) provides that the Commission will not disallow any ANGTS charges in a shipper's rates, or order any refund of charges, on the basis that such charges are improperly computed pursuant to NEB-approved tariffs or are inconsistent with the Treaty or the Agreement, unless the matter is resolved through the bilateral mechanisms described above.[20] The legal authorities for using these bilateral mechanisms to resolve tariff issues are the Agreement and the Treaty, as discussed in detail in the preamble to the proposed rule, 47 FR 45,028–29 (October 13, 1982).

Both the Shipper Group and Foothills expressed concern that § 153.203 might be construed as an assertion by the Commission of a "unilateral" right to review the Foothills tariff computations. Foothills commented that although the Commission should be able to review Foothills' NEB-approved tariff to verify that its computations of its ANGTS charges are correct, any questions should be referred to the NEB for resolution. Foothills and the Shipper Group also expressed concern about the possible effect of this alleged ambiguity upon refunds. The issue of refunds is discussed below under "Filing to Restate Base Tariff Rate (§ 154.209)."

The commenters misconstrue the rule. The NEB has exclusive jurisdiction to determine the propriety of computations under the Foothills tariff. The Commission will review those computations in the same manner as it will review the computations under the U.S. project sponsors' tariffs. To make this review possible, § 154.203(b) requires the shippers to file a copy of Foothills' tariffs, and any modifications of those tariffs, with the Commission; the U.S. project sponsors' tariffs will already be on file here. In the event that a question arises as to the propriety of a Foothills tariff computation, § 154.203 provides a mechanism for the Commission to consult the NEB. If the computation question does not involve an issue of consistency with the Transit Pipeline Treaty or the Agreement on Principles, then the NEB's determination will be conclusive. In any event, § 154.203(d) clearly precludes *any* unilateral Commission disallowance of *any* Foothills charges in a shipper's rates, including disallowance based on the propriety of tariff computations.

The Commission's trial staff commented that negotiations between the U.S. and Canadian governments and the opportunity for U.S. consumers to participate in proceedings before the NEB will not provide U.S. consumers with the protection intended by the NGA, arguing that it will not be feasible for U.S. consumers to participate in international negotiations or to appear before the NEB. The Consumer Advocate Division of the West Virginia Public Service Commission (West Virginia) also stated that residential and commercial consumer advocates will be financially unable to participate in proceedings in Canada.

In response, Foothills contended that the NEB has exclusive jurisdiction to determine the justness and reasonableness of Foothills' rates and tariffs, and that:

> [A]ny attempt by the Commission to usurp this jurisdiction would obviously contravene well-established principles of international comity, and would be manifestly inconsistent with the Agreement on Principles, the Transit Hydrocarbon Pipeline Treaty, and the spirit of cooperation that has characterized the ANGTS since its inception. (Foothills reply comments at pages 6–7).

The Commission's reasons for proposing adoption of this portion of the rule, including the legal authority in support thereof, were discussed in detail in the preamble to the proposed rule, 47 FR 45025, 45027–29 (October 13, 1982), and were also discussed in detail in the Alaskan Delegate's report. The commenters have not raised any new aspects of the matter that were not previously considered and fully discussed. While the concern expressed

[17] The Commission's Revised Rules of Practice and Procedure became effective on August 26, 1982. They are codified in Part 385 of the *Code of Federal Regulations*.

[18] Rule 211 is codified at 18 CFR 385.211.

[19] Rule 214 is codified at 18 CFR 385.214.

[20] Of course, if the Commission itself determines that a challenge is without merit, it may dispose of the challenge by rejecting it without activating the bilateral mechanisms of regulatory consultation, diplomatic negotiation and arbitration: these mechanisms would serve no useful purpose, because there would be no disagreement between the regulatory authorities of the two countries.

by West Virginia is not without merit, it is outweighed by the considerations of comity and sovereignty discussed in the preamble of the proposed rule.

West Virginia also contended that the rule should contain greater safeguards to ensure that imprudently incurred costs are not recovered by setting forth more precise and stringent guidelines as to what constitutes prudently incurred costs. In response, the Shipper Group and Foothills argued that 154.203 sets forth an unusually clear and precise definition of prudence in the context of costs incurred by the shippers. The Shipper Group, Alaskan Northwest and Foothills pointed out that prudence of costs incurred by the project sponsors will be determined by the Office of the Federal Inspector, pursuant to Delegation Order No. ANGTS–2, 45 FR 85511 (Dec. 29, 1980), and that the Federal Inspector has published a "Statement of Policy on General Standards and Procedures for Rate Base Audit and Approval for the Alaska Natural Gas Transportation System," 46 FR 51726 (Oct. 22, 1981).

The Commission believes that § 154.203(a) sets forth a very precise definition of prudence, for the reasons set forth by the Shipper Group, Alaskan Northwest and Foothills. That definition, of course, applies only to the prudence of ANGTS charges incurred by the shippers. If West Virginia's concern is really directed at the prudence of ANGTS costs incurred by the project sponsors, that matter is beyond the scope of this rulemaking.

4. General Rule (§ 154.204)

Section 154.204 is a general statement of the sequence and nature of the filings that a shipper must make with the Commission in order to recover ANGTS pre-delivery charges and to track changes in ANGTS charges after delivery of Alaska natural gas commences. The actual terms and conditions for these filings are specified in the remaining sections of the rule.

The rule also provides that once a shipper elects to use the tracking mechanism or a cost-of-service tariff approved by the Commission, it cannot discontinue their use without the Commission's approval. This enables the Commission to limit a shipper's ability to opt out of tracking in circumstances where tracking assures that the shipper's customers will quickly realize any decreases in ANGTS charges.

The proposed rule provided only two options for flowing through ANGTS charges: the tracking mechanism (ACR Clause) or general rate change filings under section 4 of the NGA. The Pacific Interstate Transmission Company (PIT) and the Calaska Energy Company (Calaska) contended that although these procedures may be appropriate for a shipper with a "fixed-rate" form of rate structure, the same procedures are not necessarily appropriate for a shipper with a cost-of-service form of tariff. They requested that the rule be modified to provide that the Commission may permit, on a case-by-case basis, the flow-through of ANGTS charges under a cost-of-service form of tariff. PIT and Calaska stated that they or their affiliated companies currently operate under a cost-of-service form of tariff for services under the Commission's jurisdiction. They did not request that this rule declare that they may use a cost-of-service tariff for ANGTS costs. Rather, they requested that the rule allow a determination on this issue to be made by the Commission when shippers file their tariffs for approval.

A brief description of some of the principle differences between a "fixed-rate" form of rate structure and a cost-of-service tariff will assist in understanding this issue. A "fixed-rate" form of rate structure is usually used for a pipeline which has a large number of customers spread over an extensive geographical area and where the pipeline provides a variety of types of services. The particular rate structure (*i.e.*, number and types of rate schedules) of such a pipeline generally reflects differences in distance of transportation to various customers and differences in the types of services (such as firm versus interruptible) provided by that pipeline. Under this form of rate structure, the pipeline's various base rates to its customers are "fixed" for a given period of time. The pipeline's rates are usually changed every one to three years to reflect changes in the pipeline's own cost-of-service.[21] A greater frequency in rate changes is usually impractical because of the administrative burden and cost of pursuing and participating in general rate change proceedings before the Commission. These burdens are usually caused by controversies brought about by the variety and complexity of such a pipeline's operations and by the diverse interests and service requirements of that pipeline's customers.

In contrast to a "fixed-rate" form of rate structure, a cost-of-service tariff is frequently used when affiliated companies are involved or where the types of services provided by a pipeline are limited. Usually, only one customer or one type of service is involved in such a situation. A cost-of-service form of tariff permits the pipeline to adjust the charges to its customer or customers on an essentially coincidental basis (usually monthly) as the pipeline's costs change. The charges to the pipeline's customers are computed in accordance with a cost-of-service formula set forth in the pipeline's tariff. Certain elements of the pipeline's cost of service, such as rate of return and depreciation accrual rate, are subject to periodic review by the Commission. Other elements of the pipeline's cost of service, such as operation and maintenance expenses and direct taxes, are passed along to its customer as they are incurred by the pipeline. In this situation a cost-of-service tariff normally works satisfactorily and efficiently for both the pipeline and its customer or customers.

PIT's and Calaska's comments are understood to be based on the premise that they or some other intra-corporate entity would transport Alaska gas to California exclusively for resale to their "parent" distribution companies (Southern California Gas Company (SoCal) and Pacific Gas and Electric Company (PG&E) respectively). Both PG&E and SoCal are regulated by the California Public Utilities Commission (CPUC). Because of these facts, and because PIT and Calaska (or other affiliates) provide service to a parent distribution company or affiliated distribution company, the proposal of PIT and Calaska for flexibility in the form of an ANGTS charge recovery mechanism appears reasonable.

The Commission's trial staff opposed allowing the Commission to approve the use of a cost-of-service tariff to flow through ANGTS charges. They argued that:

> The initial rate design, whether or not set now, should provide completion incentives for the Alaskan segments of the ANGTS, provide assurance of debt service for project lenders, and provide appropriate rates in consideration of the marketability of North Slope gas. [Trial] Staff does not believe that a Cost of Service Tariff would accomplish these three objectives. [Trial] Staff therefore recommends that all ANGTS shippers should be exposed to equivalent risks by the application of a uniform rate design methodology. Reply Comments of Commission's Trial Staff at 2.

The trial staff merely stated that the initial rate design should accomplish certain objectives and then concluded without expanation that a cost-of-service tariff would not accomplish those objectives. It is not clear whether the trial staff focused on the intra-

[21] The exception is that a pipeline with a "fixed-rate" form of rate structure typically is permitted to adjust its overall sales rates semi-annually to account for changes in its costs of providing services for items such as purchased gas costs, even though its "base rates" are changed less frequently.

corporate relationships between PIT and Calaska and their respective services to a single affiliated distribution company. Furthermore, the trial staff did not appear to recognize that the rates of each respective distribution company will be under the exclusive jurisdiction of the CPUC. Thus, the trial staff's position is not sufficiently defined to permit detailed evaluation. In any event, the trial staff and any affected parties will be free to comment on any proposed tariffs or tariff provisions that may be filed under the procedures proposed by PIT and Calaska.

Accordingly, the final rule in §§ 154.204 and 154.205 provides as a third option in addition to the tracking mechanism and general rate change filings that the Commission may approve recovery of a shipper's ANGTS charges pursuant to a cost-of-service tariff, where the Commission finds its appropriate to do so.[22]

5. ACR Clause Requirement (§ 154.205).

Section 154.205 requires that a shipper have a Commission-approved ANGTS Charges Recovery Clause (ACR Clause) or a cost-of-service tariff approved pursuant to this rule before recovering the jurisdictional portion of its ANGTS charges and changes in those charges. An ACR Clause is a clause incorporated in a shipper's FERC Gas Tariff [23] which sets forth, among other things, the terms and conditions of its recovery of ANGTS charges. No ANGTS charges can be recovered under the tracking mechanism until the Commission approves a shipper's ACR Clause. The Commission will consider approving a proposed ACR Clause only if the ACR Clause sets forth provisions for implementing the requirements and procedures specified in the remaining sections of the proposed rule. Section 154.205 also requires that a shipper have a Commission-approved ACR Clause or cost-of-service tariff to recover pre-delivery ANGTS charges. The rule does not specify a particular time when a shipper must file a proposed ACR Clause or cost-of-service tariff; rather, it permits the shipper to make these filings at any time following the effective date of this rule. Of, course, the ACR clause or cost-of-service tariff will have to be filed with and approved by the Commission prior to the recovery of any ANGTS charges using the tracking mechanism provided in the rule.

6. Filing to Recover Pre-Delivery ANGTS Charges (§ 154.206).

Section 154.206 sets forth the requirements for the recovery of ANGTS charges incurred prior to delivery of gas. Section 154.206(a) provides as a general rule that "in the event and of the extent" the Commission and the NEB allow the project sponsors to bill pre-delivery charges to a shipper, the shipper may flow these charges through to its customers through filings under § 154.206 and the shipper's approved ACR clause, provided that recovery of pre-delivery charges from the Canadian segment may begin only when it is "proved capable of operation" and "not before a date certain" which is determined by the Commission in issuing a final certificate for the ANGTS to be the "most likely date for the ANGTS to begin operation, within the meaning of the *President's Waiver*."

In its comments, the West Virginia contended that adoption of a rule authorizing the tracking by shippers of pre-delivery charges could be construed as a predisposition toward allowing such charges. Iowa expressed fear that adoption of these provisions in the rule will foreclose meaningful opportunities for interested persons to raise the issue of pre-delivery billing at a later date or to challenge pre-delivery charges in the project sponsors' tariffs. The Shipper Group, Alaskan Northwest and Foothills stated that this rulemaking does not commit the Commission on these issues.

With respect to pre-delivery billing by the U.S. project sponsors, the Commission stated in the preamble to the proposed rule, 47 FR at 45030–31 (October 13, 1982):

> [T]he Commission stresses that it is not deciding, under proposed § 154.206, whether, and the extent to which, the Commission may exercise its authority under the President's *Waiver* to approve precommencement billing by the project sponsors of the Alaska Segments.

The rule establishes a procedural mechanism whereby the shippers may track whatever charges are lawfully billed to them, but it does *not* authorize the U.S. project sponsors to include any such charges in *their* bills to the shippers. That issue has not been decided, and will not be ripe for decision unless the U.S. project sponsors file such tariff provisions with the Commission. If this happens, the Commission will give full and fair consideration to all points of view on the propriety of including such provisions in the U.S. project sponsor tariffs.[24]

As was noted in the preamble to the proposed rule, the Canadian sponsor's tariff may be inconsistent with the *Waiver* in that it allows billing to begin once the NEB grants "leave to open" to the Canadian segment. This might be before the date certain and before completion and testing prove it is capable of operation. 47 FR 45030 n.69 (October 13, 1982). The Commission's trial staff expressed concern that if this happens, it could cause problems in the calculation and tracking of Canadian pre-delivery charges. However, Foothills stated in its comments and reiterated in its reply comments that it is currently revising its tariff to conform the billing commencement language to the provisions in the *Waiver*. As Foothills suggested, that revision will moot the trial staff's concern.

Section 154.206(b) of the rule sets forth the terms and conditions for filings to recover pre-delivery ANGTS charges. It requires in paragraph (1) that shippers make these filings either at the same time as they file rate adjustments to reflect changes in their purchased gas costs ("PGA filings"), which is generally done every six months, or on any other semiannual dates approved by the Commission.

Under § 154.206(b)(2), at a shipper's first scheduled PGA filing after any pre-delivery charges begin, or on the first date set forth in the shipper's ACR clause and approved by the Commission, the shipper will adjust its rates to include a current adjustment to recover its projected pre-delivery charges. It will also impose a surcharge to recover any amount in the Unrecovered Pre-delivery ANGTS Charges Account, which is discussed below.

The proposed rule would have required synchronization of filings to recover pre-delivery ANGTS charges with PGA filings; it also would have required the first filing for pre-delivery

[22] The Commission agrees with PIT that under a cost-of-service tariff, because there is no fixed rate form, the question of proper classification of costs between demand and commodity does not arise. Since the CPUC, rather than the Commission, has jurisidiction over the cost classification of PG&E's and SoCal's rates, there is no guarantee that any rate form that the Commission might require for PIT and Calaska would be reflected in the rates of their affiliated distribution companies. More importantly, because a single distribution company will be served by each of these shippers, the usual concerns of cost classification as affected by features such as load factor variance among a pipeline's customers are not involved.

[23] "FERC Gas Tariff" is defined in § 154.14 of the Commission's regulations as "a compilation, in book form, of all of the effective rate schedules of a particular natural-gas company, and a copy of each form of service agreement."

[24] With respect to pre-delivery billing by the Canadian project sponsors, the Commission noted in the preamble to the proposed rule that their tariff is under the NEB's jurisdiction, and that deferral to the NEB is consistent with the President's *Waiver*. Pursuant to the rule, pre-delivery charges must be consistent with the limits imposed by the President's *Waiver* as well as the Transit Pipeline Treaty and the Agreement on Principles. 47 FR 45030 (October 13, 1982).

ANGTS charges to be on the date of the first scheduled PGA filing after pre-delivery charges begin. The Shipper Group and Alaskan Northwest objected to this proposed requirement. They argued that because PGA filings are made every six months, this mechanism does not allow recovery of ANGTS charges as soon as they are incurred. They were particularly concerned about the provision that rate adjustment for pre-delivery charges must take place in a shipper's first scheduled PGA filing after the charges are incurred, arguing that this might allow six months or more of pre-delivery charges to accumulate before they are flowed through to customers. They argued that this could lead to a financial burden on the shippers and high carrying costs for consumers. Thus, they asked that the proposed rule be changed to allow immediate cost flow-through and to allow them to make rate filings effective as of the dates they begin receiving ANGTS bills from the project sponsors.

For the same reasons discussed under section 154.208 ("Timing of Tracking Filings"), below, the Commission agrees that the rule should be flexible enough to allow shippers to flow through their pre-delivery ANGTS charges as they are incurred, with as little delay as possible. The final rule provides that the Commission may approve the use of any other initial and semi-annual dates.

Under § 154.206(b)(3), at each succeeding PGA filing or on other approved semiannual dates the shipper will adjust its rates to recover projected pre-delivery charges and a surcharge to recover or return any amount in the Unrecovered Pre-delivery ANGTS Charges Account. Section 154.206(b)(4) sets forth the standards for calculating these current adjustments and surcharges. Moreover, these pre-delivery charges and unrecovered pre-delivery charges would be reflected in subaccounts that the shipper is required to establish under § 154.206(b)(5). It sets forth the procedures for debiting and crediting the Pre-delivery ANGTS Charges Account and the Unrecovered Pre-delivery ANGTS Charges Account. Section 154.206(b)(6) governs computation of carrying charges on amounts in the unrecovered pre-delivery ANGTS charges Account. Section 154.206(b)(7) requires shippers to follow the same posting, service, and verification charges as those applicable to tracking filings once gas delivery begins. Under § 154.206(b)(8), once gas delivery and accounting begin, shippers must transfer any balances in the Unrecovered Pre-delivery ANGTS Charges Account to the Unrecovered ANGTS Charges Account (§ 154.208(e)).

A new § 154.206(b)(9) provides that rate adjustment for the pre-delivery phase will not be suspended for more than one day. Under § 154.208(h) of the rule, once deliveries begin, filed rate adjustments will be suspended for no more than one day. The Shipper Group commented that it is not clear whether this one-day suspension was intended to apply to pre-delivery charges. The Shipper Group, Alaskan Northwest and Foothills requested that the final rule provide for rate adjustments for the pre-delivery period to be suspended for no more than one day. Alaskan Northwest argued that changes in the pre-delivery charges, like changes in post-delivery charges, will be computed based on tariffs which have been approved by the Commission or the NEB. They said that suspension for more than one day would produce harsh and inequitable results. Foothills also stated that this change is important in order to secure private financing on the best possible terms.

The Commission agrees that the considerations which justify limiting the suspension of rates for changes in the post-delivery period (see discussion of § 154.208(h), below) also apply to the pre-delivery period, and accordingly has added the new provision (§ 154.206(b)(9)).

7. Filing to Recover ANGTS Charges (§154.207)

(a) *General (Establishment of Base Tariff Rate).* Section 154.207 governs the initial filing to recover ANGTS charges once delivery of gas begins—that is, the filing to establish a Base Tariff Rate. Section 154.207(a) provides that when gas deliveries begin, a shipper must bill its customers pursuant to rates which fully and properly reflect all ANGTS charges, volumes and revenues. The mechanism by which a shipper will initially reflect these charges, volumes and revenues is a general rate change filing made under section 4(e) of the NGA and § 154.63 of the Commission's regulations. This filing will establish a Base Tariff Rate to which subsequent adjustments will be made to track changes in the shipper's ANGTS charges.

Section 154.63 of the Commission's regulations requires, among other things, that a company submit a cost and revenue study as part of a general rate change filing. By referring to this section, § 154.207(a) requires such a study. Section 154.38(d)(4)(i) of the Commission's PGA regulations also refers to § 154.63 and requires such a study before a pipeline company can be authorized to track changes in its purchased gas costs. However, unlike the PGA regulation, §154.207(a) does not allow a shipper to use a study on file in another proceeding in lieu of the cost and revenue study required by § 154.63. This requirement is necessary because of the anticipated impact of the ANGTS volumes; the Commission does not believe it will unduly burden shippers.

Section 154.207(a) also requires that the section 4(e) general rate change filing to include ANGTS charges be made no sooner than six months prior to the time that the shipper could reasonably anticipate the incurrence of ANGTS charges associated with the actual delivery of Alaska natural gas. This requirement is based on several considerations.

First, a six-month lead time is desirable because under section 4(e) of the NGA, the Commission may suspend any proposed rate for up to five months pending a hearing following the proposed effective date of the rate.[25] If a shipper's proposed rates are suspended, its prior approved tariffs and rates remain in effect during the period of suspension. The proposed rates take effect after the suspension period but are subject to refund (with interest) depending on the outcome of the hearing process on contested issues or other disposition by the Commission. Second, the Commission believes that once the construction of the ANGTS nears completion, commencement of gas deliveries will be predictable, and that the project sponsors will be in a position to provide the shippers with sufficient data to prepare the studies required in a section 4(e) general rate change filing. Third, financing of the entire project will be enhanced if a shipper is assured of its cost recovery as close in time as possible to when it actually incurs ANGTS charges.

Section 154.207(b) provides that if the sole basis for suspending a shipper's proposed rate is a challenge based on the Canadian charges, so that absent the challenge the rate would not be suspended, the Commission will not suspend the rate for more than one day. If the Commission suspends the effectiveness of a proposed rate, the rate goes into effect subject to refund (with interest).

(b) *Cost Classification (§ 154.207(c)).* Section 154.207(c) addresses the classification of the shippers' ANGTS charges between the demand and

[25] A shipper will also have to provide 30-day notice of any proposed rate change. The notice period and the statutory suspension period equals six months.

commodity components of their rates.[26] A shipper may classify up to 100 percent of its ANGTS charges as demand. This approach to cost classification applies to any pre-delivery charges as well as to charges after the gas deliveries through the ANGTS begin.

The proposed rule (in § 154.207(b)) would have divided ANGTS charges between demand and commodity as follows. It would have required that the total cost-of-service of the initial investment in the Canadian segment be classified as demand. With respect to gas produced from the Prudhoe Bay field unit, the proposed rule would have required the minimum bill portion of the charges from the conditioning plant, the Alaskan pipeline segment, and the Eastern Leg to be classified as demand. All other charges (including all pre-delivery charges) for the Canadian, Alaskan, and Eastern Leg segments and for the conditioning plant were to be classified as commodity, and those for the Western Leg were to be classified in accordance with procedures approved by the Commission. The Commission noted in the preamble to the proposed rule that this cost classification formula was not the only approach to balancing the considerations involved.

No commenter supported the formula in section 154.207(c) of the proposed rule. The Commission's trial staff suggested that the requirements governing the shippers' rate design should allow maximum flexibility, arguing that because of the "regulatory estoppel provision" in the ANGTS, the rule will be "set in concrete." They stated that built-in flexibility is important because of possible marketability problems. Foothills objected to this approach in its reply comments, arguing that it would invite delay and create regulatory uncertainty, thus endangering the financing for the project.

Iowa advocated that all costs be classified as commodity, stressing its concern that residential, small commercial, and low load factor customers not bear disproportionately greater risks. Iowa contended that if the shippers and project sponsors choose to go forward with the project despite concern that Alaskan gas might not be marketable, the shippers and the project sponsors ought to bear the risk that the gas is unmarketable; that risk should not be shifted to the consumers by classifying ANGTS charges as demand charges. In short, Iowa characterized the project sponsors' and shippers' insistence on the use of 100 percent demand classification as indicating that the project is of questionable economic viability.

West Virginia advocated classifying all costs as demand, but apportioning them among jurisdictional customers on the basis of customer class annual sales volumes rather than customer class peak usage.

The Shipper Group, Alaskan Northwest and Foothills advocated classifying all ANGTS charges as demand charges in the shipper's rates. The Shipper Group contended that there is a long-standing Commission policy which should be applied here that pipelines must classify charges in their rates in the same manner as those charges are classified when billed to them by another jurisdictional pipeline. This is known as the "as billed" principle. Thus, the shippers would retain and pass on to their customers the cost classification in the project sponsors' bills to the shippers.

The Shipper Group and Alaskan Northwest also argued that the ANGTS project sponsors' charges are by nature demand charges. They pointed out that under the project sponsors' tariffs, the shippers must pay their allocable share of the project sponsors' cost-of-service whether or not they tender gas for shipment. In other words, each shipper will have reserved a level of capacity in the various ANGTS segments, which it is entitled to demand, and will be required to pay its respective share of the cost for that reserved level of capacity whether or not it actually uses it. In their view, this is a classic example of a demand charge.

In support of their position, the Shipper Group cited the Commission's orders issuing certificate authority for the Northern Border "prebuild."[27] In that case, the Commission determined, among other things, that shippers through Northern Border should classify Northern Border charges to those shippers "as billed" to them, and that Northern Border's charges are in fact demand charges.

The Shipper Group and Alaskan Northwest also contended that commodity classification of ANGTS charges could result in underrecovery of these costs by the shippers. Alaskan Northwest argued that classification of ANGTS charges as commodity would thus lead to a situation in which shippers would be unwilling to sign service agreements with the project sponsors. The Shipper Group argued that no incentives are needed to stimulate early commencement of gas deliveries and that use of a commodity classification as an incentive would be "grossly unfair" to non-sponsor shippers. The Shipper Group and Alaskan Northwest stressed the importance of revenue stability and asserted that classifying ANGTS charges as commodity risks the loss of price sensitive loads. In their view, classification of ANGTS costs as commodity could increase the cost of financing for the project. Alaskan Northwest argued that this would be contrary to the purpose of the President's *Waiver*. The Shipper Group stated that the potential predelivery period poses the greatest risks to shippers, with the greatest need for assurance of cash flow.

Foothills also advocated classifying all ANGTS charges as demand in order to ensure full and timely recovery of all charges without regard to seasonal fluctuations in sales. It expressed concern that under a commodity classification, if gas sales drop shippers might be unable to pay their bills promptly or might have to borrow money at exorbitant interest rates, thus increasing costs to consumers. Foothills also expressed concern over the effect a commodity classification might have on the marketability of the gas. With respect to pre-delivery charges, Foothills commented that it should not have to bear the risk of non-completion of U.S. segments of the system.

The final rule allows the shippers to classify all their ANGTS charges as demand.[28] The Commission believes that permitting the shippers to classify their ANGTS charges as demand will assure a steady revenue flow necessary to facilitate the financing of the ANGTS. The Commission further believes that facilitating the financing of the ANGTS is consistent with the President's *Decision*, which mandated that the ANGTS be privately financed. Conversely, the Commission believes that commodity classification would impede the financing of the ANGTS, because it would increase the risk to the shippers, and through them to the project sponsors. Such risk and the concomitant uncertainty would undermine potential lenders' confidence in the project.

Furthermore, as noted above, the shipppers and the project sponsors argue that classifying ANGTS charges as demand would result in the lowest possible financing costs. Not commenter argues otherwise. Since consumers would ultimately pay these financing

[26] Cost classification is explained in detail in the preamble to the proposed rule. 47 FR 45032 n. 78 (October 13, 1982).

[27] *Supra*, note 11.

[28] A shipper may also propose another cost classification formula in its ACR Clause.

costs, the Commission believes that it is important to keep the financing costs as low as possible. The Commission recognizes that there are many uncertainties that are beyond its control to eliminate pursuant to its regulatory authority under ANGTA. However, cost classification provides a means for the Commission to facilitate financing and keep financing costs at a minimum.

The final rule is designed to implement Congress' intention that the Commission facilitate construction of the ANGTS. Congress has expressed its support for the ANGTS on several occasions. In section 2(3) of the Alaska Natural Gas Transportation Act (ANGTA), Congress found that construction of a viable natural gas transportation system for deliverying Alaskan gas to the contiguous states is in the national interest. This support was reiterated in Senate Concurrent Resolution 104, 96th Cong., 2d Sess. (1980) which stated that the ANGTS is an "essential part of securing this Nation's energy future . . ." The President expressed his support for the ANGTS in the *Waiver*.

In response to Iowa's comment that the shippers' customers ought not to bear the risk that the gas flowing through the ANGTS will be unmarketable, the Commission points out that it will not certificate the ANGTS if the gas is not marketable. That determination will be made at the time of a final certificate proceeding before the Commission. If a convincing showing is not made at that time that the gas will be marketable over the economic life of the project, no certificate will be issued and there will be nothing to track.

The Commission recognizes that there are regulatory responses to the question of marketability other than a one-time administrative determination. For example, the Commission could require classifying some portion of the costs as commodity, so that full costs would not be recovered if sales fall below a specified level. As noted above, that classification approach would result in increased financing costs, since it would place additional risk on the shippers and it is to the shippers' revenues that the lenders look for repayment of their loans to the sponsors. One would anticipate some increased financing costs from any regulatory approach which requires the shippers to bear some portion of the risk that the gas may not be fully marketable. The benefits of such a classification would be that once the pipeline is constructed and operating, it is the shippers who would have the greater ability to manage—and minimize—the marketing risks. Similarly, they would have the greater influence on the extent to which the pipeline is utilized. Requiring the shippers to bear some portion of these marketing risks would thus provide an incentive for shippers to minimize the total costs which must be paid for the ANGTS gas.

On balance, however, the Commission believes that its fundamental responsibility in view of the Congressional and Presidential support for the ANGTS is to create a regulatory structure which permits the private financing of the ANGTS. The costs of financing the project are a major aspect of the question of whether private financing is indeed feasible. The Commission believes that classifying costs to the commodity component, thereby placing their recovery at risk, would increase the risks and financing costs of the system and may undermine its private financeability. In order to minimize these costs, the Commission has decided to allow the classification of all ANGTS charges as demand.

Moreover, the Commission recognizes that there would be in place other risk-sharing measures which would affect the cost and thereby the marketability of gas delivered by the ANGTS. These measures directly affect the project sponsors; however, the risk would be substantially transferred to the shippers because a substantial number of the shippers would also be project sponsors. For example, the Incentive Rate of Return (IROR) mechanism would discourage cost overruns. Stated simply, the IROR shifts to the project sponsors the risk of cost overrun, because their return on equity would be affected by the level of construction costs. This risk to earnings should be a substantial incentive for controlling ANGTS construction costs so that the gas delivered by it will be marketable. Furthermore, as already noted, a convincing showing of marketability over the project's economic life will be required for certification. Such a test normally would encompass substantial projections and estimations regarding the nature and cost of the gas supply available to the project. However, the ANGTS is supported by quantified *proved* gas reserves with a defined deliverability rate. Also, the gas supply would be available to ANGTS shippers at a known statutorily prescribed first-sale price. All of these features permit the Commission to prescribe for the ANGTS a cost classification method designed to obtain the lowest financing costs, without setting a precedent for any other project or proceeding.

The Commission rejects West Virginia's proposal that this rule require that ANGTS charges be apportioned between jurisdictional and non-jurisdictional services and among jurisdictional services on the basis of customer class annual volumes rather than peak usage (the three peak day method). The Commission believes that volumetric apportionment could undermine the assurance of a steady flow of revenue from the customers, through the shippers, to the project sponsors. In regard to this apportionment question, as with the question of cost classification, the Commission notes that the resulting uncertainty could not only impede financing but also increase the cost financing and thus increase the ultimate burden on consumers.

As was discussed at length in the Notice of Proposed Rulemaking, 47 FR 45024 (October 13, 1982), the ANGTS is *sui generis*. Its unique scope and magnitude justify departure from any approach to cost classification applicable to other pipelines. Past orders, including the Northern Border "prebuild" orders, do not require a particular result here, nor is this rule intended to have precedential effect for any other project, pipeline company, or proceeding. This is especially appropriate given the anticipated costs of the ANGTS, the need to provide assurances for private investment in the ANGTS, the need to provide safeguards for ANGTS customers, and the Commission's obligation to protect the public interest.

(c) *Cost Allocation (§ 154.207(d))*. Section 154.207(d) requires that a shipper allocate its ANGTS charges between its jurisdictional and non-jurisdictional customers on the basis of the jurisdictional allocation factors approved by the Commission in the required section 4(e) general rate change proceeding. A shipper must use these allocation factors in any subsequent proceeding to adjust rates to track changes in its ANGTS charges, until the Commission approves new allocation factors, at the shipper's request (as, for instance, when a shipper establishes a new Base Tariff Rate). Without this provision, a shipper would be required to establish the appropriate distribution of its ANGTS charges between its jurisdictional and non-jurisdictional services and among its jurisdictional customers each time it filed to adjust its rates to track changes in its ANGTS charges. Therefore, the rule simplifies a shipper's rate adjustment proceeding to track changes in ANGTS charges.

8. Filing to Track Changes in ANGTS Charges (§ 154.208).

(a) *General Rule.* Section 154.208(a) requires that once a shipper has established a Base Tariff Rate reflecting all ANGTS charges, volumes and revenues, it may thereafter adjust its rates positively, and must adjust its rates negatively, to track changes in the jurisdictional portion of its ANGTS charges by means of rate adjustment filings. Such filings are similar to purchased gas rate adjustment filings,[29] and, as such, will be less comprehensive than a section 4(e) general rate change filing. In requiring that rates be adjusted negatively, the Commission anticipates that a shipper's ANGTS charges may decrease (as investment costs are recovered and rate base decreases) and intends to ensure that a shipper's customers, and the ultimate consumers, realize any such decreases in a timely manner.

Section 154.208(a) also prescribes a surcharge, negative or positive, that a shipper must include in its rates proposed to track changes in its ANGTS charges. By this surcharge, a shipper will recover undercollected amounts from, or return overcollected amounts to, its jurisdictional customers. These amounts will have accumulated in a subaccount of Account 186, Miscellaneous Deferred Debits, designated as the "Unrecovered ANGTS Charges Account" [30] in which the shipper will have recorded the difference between its charges and revenues during the preceding six-month accounting period. Section 154–208(a) also requires a shipper to use the cost classification methodology described in § 154.207 in determining its rates to track changes in its ANGTS charges.

(b) *Timing of Tracking Filings.* Section 154.208(b) of the proposed rule required that rate adjustment filings to track changes in a shipper's ANGTS charges be filed at the same time as the shipper's semiannual purchased gas adjustment (PGA) filings. Under that proposed provision, those shippers who made PGA filings annually or who did not make them would have proposed semiannual tracking filing dates in their ACR clauses.

In the preamble to the proposed rule, the Commission explained that synchronization of ANGTS tracking filings with PGA filings was intended to avoid the possibility of four separate filings (two PGA and two ANGTS) every year, reasoning that this could disrupt the shippers' and customers' billing procedures and cause an administrative burden. 47 FR 45–034–45, 035 (October 13, 1982).

Several commenters objected to the proposed requirement that ANGTS tracking filings be synchronized with PGA filings. The Shipper Group asked that the rule be more flexible to allow shippers to select their tracking filing dates. Along with Foothills and Alaskan Northwest, they pointed out that a shipper might wish to synchronize its ANGTS tracking filings with the sponsors' semiannual billing adjustment dates. They argued that allowing shippers to flow through any changes in their ANGTS charges immediately would minimize under- or over-collections and thus minimize the need for carrying charges.

Alaskan Northwest and Foothills also noted that delays in tracking would increase the shippers' risk, arguing that even a few months' delay could create significant cash flow problems for shippers. This, in turn, would allegedly affect financing. They stated that the administrative burden of allowing ANGTS tracking filings to coincide with the sponsors' billing adjustment dates would not be any greater than if the tracking filings were synchronized with PGA filings; Foothills argued that the disruption and administrative burdens caused by the complicated deferred accounting process would be more severe. They also argued that the financial benefits of their proposal would outweigh any concomitant administrative burden.

The Commission agrees that the rule should be more flexible. In some circumstances, allowing a shipper to coincide its ANGTS tracking filings with the project sponsors' billing adjustment dates may be preferable. Accordingly, the final rule provides (for both the pre-delivery and delivery phases in §§ 154.206 and 154.208 respectively) that the Commission may, on a case-by-case basis, allow such synchronization. A shipper may propose in its ACR clause filings whatever semiannual dates it wishes, and the Commission will examine each particular case to determine whether to allow the shipper's tracking filings not to coincide with its PGA filings.[31] The final rule contemplates this case-by-case determination, rather than granting an absolute right to all shippers to synchronize with the project sponsors' billing adjustment dates, in order to allow the Commission to take into account the administrative burden and other problems raised by four annual filings as well as the individual shipper's need for immediate flow-through of changes in its ANGTS charges.

(c) *Separate Computation.* Section 154.208(c) requires that a shipper compute its rate adjustments separately for each of the project segments and use the net sum of these separately computed rate adjustments to track changes in its ANGTS charges. This requirement will assist the Commission and its staff in verifying the accuracy of the total rate adjustment by comparing the separately computed rate adustments with the corresponding project sponsors' cost-of-service and tariff provisions.

(d) *Threshold Amount.* Section 154.208(d) requires that a shipper adjust its rates to track changes in the jurisdictional portion of its ANGTS charges only if the rate adjustment would equal or exceed a level (either a stated dollar amount or a rate-adjustment amount) specified in the shipper's approved ACR Clause. This requirement allows a shipper to avoid adjusting its rates if the dollar amount or the resulting rate adjustment would be insignificant.

(e) *Accounting Procedures.* Section 154.208(e) sets forth certain requirements for the maintenance and use of designated subaccounts in which a shipper will record its ANGTS charges ("ANGTS Charges Account") and defer any differences, positive or negative, between its charges and revenues ("Unrecovered ANGTS Charges Account"). The deferred accounting procedures prescribed in the rule, which are similar to the accounting procedures prescribed for tracking changes in purchased gas costs, are designed to ensure, as coincidentally as is practical, a matching of costs and revenues and to prevent any over- or under-collection of costs by a shipper over time.

The Commission recognizes that the deferral of ANGTS charges for book purposes may create a difference between the period during which ANGTS charges enter into the determination of taxable income and the period during which the charges enter into the determination of pretax book income. Accordingly, the rule requires that a shipper adopt the principles of interperiod income tax allocation in connection with amounts recorded in the "Unrecovered ANGTS Charges Account," with the resulting tax effects recorded in Account 283, Accumulated Deferred Income Taxes—Other, or Account 190, Accumulated Deferred Income Taxes, as applicable, in

[29] *See* 18 CFR 154.38(d)(4)(iv).

[30] The description in the rule of these accounts refers to the Commission's Uniform System of Accounts, 18 CFR Part 201.

[31] As noted above, the ACR clause may be submitted for Commission approval at any time after the effective date of this rule.

accordance with the provisions of those accounts.[32]

(f) *Carrying Charges.* Section 154.208(f) requires a shipper to compute carrying charges on amounts accumulated in its "Unrecovered ANGTS Charges Account." The effect of this requirement is twofold: First, it will protect a shipper's customers in the event that a shipper collects more than its charges in a given period, because the customers will realize the carrying charges in the surcharge calculated to return the over-recovered amounts in the "Unrecovered ANGTS Charges Account." Second, the requirement will benefit a shipper in the event the shipper does not collect all of its charges in a timely fashion, because the shipper will realize the carrying charges in the surcharge calculated to recover under-recovered amounts in the "Unrecovered ANGTS Charges Account."

Specifically, § 154.208(f) prescribes a procedure for a shipper to impute carrying charges which is similar to the procedure used to impute carrying charges to Unrecovered purchased gas costs.[33] One difference, however, is that carrying charges will be computed monthly based on the "average daily balances", as opposed to the ending balance, recorded in the "Unrecovered ANGTS Charges Account".

The Shipper Group commented that this provision is ambiguous in that it does not explain what is meant by "daily average balances." They also requested that the rule provide the option of computing carrying charges based on monthly ending balances, as in the PGA regulations.

The Commission is promulgating the rule as proposed. The rule uses the clear phrase "average daily balance," not "daily average balance," as stated by the Shipper Group. Computations based upon average daily balances will result in a more precise calculation of the carrying costs of over- or under-collection of ANGTS charges and will better account for the time value of the amounts involved. The PGA regulations, for the sake of simplicity, use the monthly balance in lieu of this more precise method. The PGA regulations anticipate a large number of purchase transactions each month, which leads to a multitude of minor balance fluctuations in the PGA account during the month. As a practical matter, the balance at any given time is roughly represenative of the whole period. In the ANGTS shipper tracking situation, however, a shipper will be billed only once a month. The resulting fluctuations during the month between the ANGTS charges billed to a shipper and the portion of these charges recovered by that shipper from its customers may be large enough that the balance at any point during the month may not be close to the actual amount of money "carried" by the shipper. The use of the average daily balance will produce more accurate and equitable results.

Section 154.208(f) also prescribes the rate for the computation of carrying charges. The rate is the rate used to compute the interest on pipeline refunds,[34] which is the same as the rate used to compute carrying charges on unrecovered purchased gas costs. Basically, this rate is the average prime interest rate current at the time these carrying charges are computed.

(g) *Posting, Verification and Service Requirements.* Section 154.208(g) prescribes posting, service and verification requirements for filing to track changes in ANGTS charges. At least 30 days before the proposed effective date of any rate adjustment to track such changes, a shipper must post [35] a tariff sheet showing the current rate adjustment, cumulative rate adjustment, and current surcharge for ANGTS charges.[36] At the same time, a shipper must file with the Commission a report containing detailed computations clearly showing the derivation of the shipper's current adjustment and the surcharge to be applied to its existing rates and must furnish this report to its jurisdictional customers and interested state and local regulatory agencies. These requirements are similar to those for PGA filings to track changes in purchased gas costs.[37]

Unlike the PGA regulations, § 154.208(g) does not specify by way of an exhibit the detailed information necessary to verify the accuracy of the proposed rate adjustment. The rule need not do this because a shipper's rate adjustment will result from the charges billed by the project sponsors pursuant to tariffs approved by the Commission or the NEB. In other words, the main task of verification will be to determine whether the shipper's proposed rate adjustments are accurately derived from previously approved project sponsor tariffs and are computed pursuant to the shipper's approved ACR Clause.

(h) *Suspension Period.* Section 154.208(h) states that rate adjustment filings will be suspended for no more than one day. Longer suspension is unnecessary, primarily because the charges to be tracked will have been computed in accordance with tariffs approved by the Commission or the NEB. Major components of the charges computed pursuant to these approved tariffs will have been scrutinized prior to the charges being billed to a shipper. Also, these charges will be flowed through by a shipper to its customers pursuant to procedures set forth in that shipper's ACR Clause, which will have had prior Commission approval. Furthermore, these charges to a shipper and the "tracking" by that shipper of these charges would not be subjected to the usual (and often extensive) "out-of-period" adjustments and "projected test-period" adjustments as is typically the case involved in general rate change filings made with the Commission. In the case of general rate change filings, the Commission usually defers (suspends) the effectiveness of the pipeline's rate-change for the full five-month statutory suspension period. This is done so that the Commission staff and the affected parties can have time to assess the propriety of the rate change proposed by the pipeline. If this assessment is not completed within the five-month suspension period, the changed rates become effective at the end of the suspension period, subject to the pipeline refunding, together with interest, any amounts not ultimately found to be appropriate after a hearing before the Commission and, in some cases, after judicial review.

Given the formulistic nature of the ANGTS charges and their tracking by the shippers, adequate time should be available during the 30-day notice period to permit a determination of whether any "refund condition" should be attached to a shipper's tracking of ANGTS charges. A one-day suspension period permits the legal imposition of any needed refund obligation. For these reasons, the rule provides that filings made by a shipper pursuant to that shipper's ACR Clause approved by the

[32] This part of the rule is consistent with the Commission's policy on tax normalization as expressed in Order No. 144, FERC Statutes and Regulations, Regulations Preambles ¶ 30,254 (1981) and Order No. 144-A, FERC Statutes and Regulations, Regulations Preambles ¶ 30,340 (1982), which were recently upheld in court. *Public Systems, Inc.* v. *Federal Energy Regulatory Commission*, Nos. 82-1183 and 82-1214 (D.C. Cir. May 31, 1983).

[33] *See* 18 CFR 154.38(d)(4)(iv)(c).

[34] *See* 18 CFR 154.67(d)(2)(iii)(A).

[35] Section 154.16 of the Commission's regulations defines "posting" as "(a) making a copy of a natural-gas company's tariff and contracts available during regular business hours for public inspection in a convenient form and place at the natural-gas company's offices where business is conducted with affected customers and (b) mailing to each customer affected a copy of such tariff or part thereof at the time it is sent to the Commission for filing."

[36] A sample tariff sheet that a shipper could use in its filings to track changes in its ANGTS charges, as well as in its other ANGTS rate filings, is provided in the appendix to the rule.

[37] *See* 18 CFR 154.38(d)(2)(iv)(c).

Commission will not be suspended for more than one day.

9. Filing to Restate Base Tariff Rate (§ 154.209)

Section 154.209 governs filings to restate the Base Tariff Rate. Section 154.209(a)(i) requires a shipper to make a filing to restate its Base Tariff Rate 36 months after it establishes a Base Tariff Rate which reflects ANGTS charges, volumes and revenues ("36-month anniversary date"). In other words, the Base Tariff Rate which the rule requires a shipper to establish before it can recover its ANGTS charges and track changes in its ANGTS charges is subject to subsequent periodic review by the Commission at the end of the first 36-month anniversary date and at the end of succeeding 36-month periods (§ 154.209(a)(2)). This requirement ensures that a reasonable cost-revenue balance is maintained in a shipper's rates.

The filing to restate a Base Tariff Rate, or the 36-month review filing, is similar to the 36-month review filing required for tracking changes in purchased gas costs.[38] The rule requires a cost and revenue study based on actual costs for the twelve months of most recently available experience, provided that the 12-month period ends not more than 4 months prior to the expiration of the 36-month period. It also permits annualization of changes that actually occurred during the 12 months.

In the interim between the filings to establish and to restate a Base Tariff Rate, one of the following three actions could occur. First, a shipper might make a general rate change filing under section 4(e) of the NGA. Second, the Commission might institute a proceeding under section 5(a) of the NGA.[39] Third, a shipper could establish a new Base Tariff Rate pursuant to the PGA regulations. Consequently, § 154.209(a)(2) provides for a new 36-month period to commence when the Base Tariff Rate established in any one of these proceedings would become effective.

Section 154.209(b) provides that if a shipper has a pending section 4(e) filing or section 5(a) case, the shipper may use a cost and revenue study prepared for either proceeding in its filing to restate its Base Tariff Rate if the study has a test period ending less than 12 months prior to a shipper's 36-month anniversary date and includes or is adjusted to include the effects of volumes and revenues attributable to the ANGTS as well as ANGTS charges.

Section 154.209(c) provides that when shippers are filing to restate their Base Tariff Rate, they must serve the cost-of-service studies supporting these restatements on their jurisdictional customers and state and local regulatory agencies. The proposed rule would not have required posting the tariffs because unlike tracking filings, filings to restate Base Tariff Rates "do not necessarily entail" a rate adjustment. 47 FR 45036 (October 13, 1982). West Virginia suggested that this provision be changed to require posting the tariff if the restatement involves tariff changes. This suggested change is appropriate, and the final rule accordingly requires posting the tariff under § 154.16 where a rate change is involved.

Section 154.209(d) provides that when a shipper files to restate its Base Tariff Rate, if the Commission finds that the shipper's jurisdictional cost-of-service was less than its jurisdictional revenues, the shipper must refund to its jurisdictional customers the difference between its jurisdictional costs and revenues, with interest. Any refund is limited, however, to amounts collected in excess of the previously established Base Tariff Rate. Any rate reduction below the old Base Tariff Rate will be prospective from the date the new restated Base Tariff Rate became effective pursuant to a final Commission order. A similar refund obligation is required of a pipeline when its Base Tariff Rate is reviewed by the Commission for continued authorization to track changes in its purchased gas costs through PGA filings.[40]

Section 154.209(d)(1) requires that a shipper agree in its ACR Clause that its restated Base Tariff Rate will be subject to refund from the date the rates proposed in that filing are permitted by the Commission to become effective until the date of the Commission's final order approving an agreement in regard to or determining a new Base Tariff Rate.

The Shipper Group expressed concern that a shipper may be required to make refunds or reduce its rates based on an excessive charge from the Canadian project sponsor without a concomitant refund or reduction from that sponsor. They noted that the Commission has no authority to compel the Canadian project sponsor to make refunds to the shippers. The Shipper Group also cited the reference to "restitution" in footnote 60 in the Notice of Proposed Rulemaking, 47 FR 45029 (October 13, 1982), suggesting that it reflects an intent to impose "retroactive ratemaking" in violation of the NGA. They requested that the Commission clarify the rule to "exclude restitution liability" and to limit refund liability by requiring shipper refunds only to the extent that the shippers have received matching refunds from the Canadian project sponsor.

Footnote 60 in the Notice of Proposed Rulemaking stated that "upon receipt of an allegation of noncompliance, the Commission could suspend a shipper's next proposed ANGTS Rate Adjustment, and require that amounts at issue with respect to compliance be subject to refunds." The footnote went on to indicate that "[a]mounts collected prior to that time might also be subject to restitution."

Neither Footnote 60, nor the proposed rule itself, were intended to establish new or greater liability than that already applicable in the absence of a tracking mechanism. To whatever extent the Commission lacks statutory authority under the NGA to require restitution in the context of other rates, the Commission could not and would not seek restitution with respect to ANGTS shipper rates adopted through a tracking mechanism.

This issue can be put in context by positing two hypothetical situations.[41] One possibility assumes enactment by a state of an arguably discriminatory tax applicable to a U.S. segment of the ANGTS in a manner inconsistent with the U.S. Constitution. In such a situation, the Commission would expect the project sponsors affected by the tax to bring it to the attention of the Commission. If the project sponsors were required to pay the tax, and if they in turn sought to include it in their charges to the shippers, the Commission would expect the shippers to so advise the Commission. Other persons could also bring it to the attention of the Commission.

The Commission would make no unilateral determination as to the constitutionality of the tax. Instead, the Commission would suspend that part of the respective rate filings of the affected project sponsors and shippers which reflected inclusion of the apparently discriminatory tax. This part of the respective rate filings would be

[38] *See* 18 CFR 154.38(d)(4)(vi).

[39] Section 5(a) of the NGA authorizes the Commission to institute a proceeding on its own initiative to consider the justness and reasonableness of a shipper's rates and tariffs and to determine new rates or tariff provisions if the existing ones are determined to be "unjust, unreasonable, unduly discriminatory, or preferential." Such changes can only be prospective; in a section 5 proceeding the Commission cannot suspend rates or order refunds.

[40] *See* 18 CFR 154.3(d)(4)(vi)(c).

[41] The Commission stresses that these two hypothetical possibilities are posed purely for illustrative purposes. It does not anticipate that either will arise.

permitted to be collected subject to refund pending the ultimate resolution of the issue. All other parts of the rate filings would be collected on a firm (non-refundable) basis. The Commission would defer resolution of the issue pending determination of the constitutionality of the tax in the U.S. courts. Thereafter, if a court decision invalidated the tax as unconstitutional, the Commission would order both the sponsors and the shippers to fully refund all amounts collected pursuant to the tax. The shippers would be protected because the sponsors would be required to make refunds to them. The sponsors would also be protected because a court would have invalidated the tax.

An analogous hypothetical with respect to Canadian sponsor charges would be if a Canadian Province enacted an arguably discriminatory tax applicable to the Canadian segment of the ANGTS in a manner inconsistent with the *Transit Pipeline Treaty* or the *Agreement on Principles.* In such a situation, the Commission would expect the Canadian project sponsor to bring the tax to the attention of the NEB and the shippers. If the Canadian project sponsor were required to pay the tax, and if it in turn sought to include it in its charges to the shippers, the Commission would expect the shippers to so advise the Commission. Other persons could also bring the matter to the Commission's attention.

The Commission would not make any unilateral determination as to the consistency of the tax with the *Treaty* or the *Agreement.* Instead, the Commission would suspend the respective rate filings of the affected shippers to the extent that such rates reflected inclusion of the apparently discriminatory tax and would defer resolution of the issue pending final determination of the consistency of the tax with the *Treaty* and the *Agreement* under the bilateral mechanism of consultation, negotiation and arbitration set forth in § 154.203(d) of the rule. Thereafter, if through that bilateral mechanism the tax were determined to be inconsistent with the *Treaty* or *Agreement*, the Commission would order the shippers to fully refund all amounts collected pursuant to the tax. Also, as noted in the first hypothetical, all amounts other than those related to the tax would have been collected on a firm basis and would not be subject to refund.

As the Shipper Group points out, the Commission would not be able to order the Canadian sponsor to make commensurate refunds to the shippers, because the Commission has no jurisdiction over the Canadian sponsor. The shippers, however, may protect their interests in advance by including in their service agreements with the Canadian project sponsor provisions under which the Canadian project sponsor would be required to make refunds to the shippers if the Commission ordered the shippers to make refunds to their customers arising out of determinations reached pursuant to the bilateral mechanism in § 154.203(d).

In short, the rule is designed to provide for refunds and "restitution" by ANGTS shippers in the same manner and to the same extent as the Commission requires those remedies of all other pipelines and shippers under its jurisdiction. The Commission sees no basis for relieving ANGTS shippers of such responsibility to their customers, nor does it perceive any justification for subjecting those customers to greater risks than they would normally face with respect to such charges absent a tracking mechanism. The Commission is unwilling to disavow in advance any possibility of seeking to impose "restitution" in the very unlikely event that illegality of such a nature is demonstrated to have occurred. The risk of Commission imposition of such a remedy is sufficiently remote (and sufficiently controllable by the shippers themselves) that reservation of the Commission's right to impose such a remedy (to whatever extent the NGA allows) should not constitute an impediment to financing.

Section 154.209(d)(3) requires a shipper to make refunds to its customers according to the manner, timing, reporting requirements and threshold amounts specified in its ACR Clause. By this requirement, the Commission recognizes that the particular procedure for making a refund might depend on the amounts and the types of customers involved and the contractual arrangements between a shipper and its customers. A shipper might make a refund in a variety of ways, such as by a direct separate payment to its customers or by an adjustment to subsequent billings to its customers. Therefore, rather than specifying the procedure to be followed for every possible combination of factors, the rule requires that a shipper specify in its ACR Clause the procedures it would use for particular situations and then follow those procedures if it must make a refund.

Section 154.209(d)(4) requires that a shipper compute interest on refunds in the same manner and at the same rate prescribed in § 154.208(f) for computing carrying charges on amounts accumulated in its Unrecovered ANGTS Charges Account.

10. Refunds from Project Sponsors (§ 154.210)

Section 154.210 governs refunds from the project sponsors. Section 154.210(a) sets forth the general rule that a shipper must flow through any such refunds to its customers. Section 154.210(b) requires a shipper to flow through refunds received from the project sponsors according to the manner, timing, reporting requirements and threshold amounts specified in its ACR Clause. The nature, magnitude and timing of these refunds are too unpredictable for the rule to specify a procedure. Under § 154.210(c), the shipper must compute interest on these refunds in the same manner and at the same rate prescribed for computing carrying charges accumulated in the Unrecovered ANGTS Charges Account. These sections are similar to § 154.209(d) (3) and (4).

Under § 154.210(b), where the refund is attributable to a total cessation of service, the procedure for flowing it through is to be determined by order of the Commission. West Virginia opposed any provision that would allow recovery of ANGTS costs during service interruptions. They contended that the proposed rule makes no distinction between interruptions due to imprudence and those due to *force majeure,* thus insulating project sponsors and forcing ratepayers to bear the costs of imprudent management.

In response, Foothills contended that the question of how the treat service interruptions is related to the project sponsors' tariffs and thus is not at issue in this rulemaking. Alaskan Northwest pointed out that the service interruption issue was addressed in Order No. 31, which approved, with modifications, Alaskan Northwest's *pro forma* tariff provisions. Order No. 31, 7 FERC ¶ 61,237 (issued June 8, 1979) at 61,468–61,470; Order No. 31–B on Rehearing, 8 FERC ¶ 61,250 (issued September 6, 1979) at 61,777–61,778.

West Virginia apparently misunderstood the scope of § 154.210. That section does not address what a shipper can *recover from* its customers, but rather what a shipper must *return to* its customers. The reference in § 154.210 to service interruptions simply addresses the procedure for flowing through associated refunds to a shipper's customers.

In the event of service interruptions, the Commission will determine the amount of the recoverable *and* refundable charges for the project

sponsors in accordance with its determinations in Orders No. 31 and 31-B in Docket No. RM78-12. The issue of whether ANGTS costs should be recoverable in the event of service interruptions was fully litigated and resolved in Docket No. RM78-12 in the context of the project sponsors' tariffs. This rule merely authorizes the shippers to recover from their customers whatever ANGTS charges the project sponsors are authorized to bill to the shippers. The Commission sees no basis for precluding the shippers from tracking those charges. Conversely, this rule also requires the shippers to flow through to their customers whatever amounts the project sponsors are required to refund to the shippers.

11. Line Pack Gas Costs (§ 154.211)

Section 154.211 provides that in filings to establish or restate its Base Tariff Rate, a shipper must demonstrate that its line pack costs "are properly accounted for and properly reflected in its rate(s)." When the shipper's volume of line pack has decreased, it must demonstrate that it has provided "appropriate restitution" for any excess revenue collected from its jurisdictional customers.

The Commission recognizes that shippers will incur substantial costs in providing natural gas to pack the pipeline segments of the ANGTS so that their gas can be transported, and it is important that the shippers be able to recover the costs actually incurred. The Commission also recognizes that as new shippers begin to use the ANGTS, the ownership of the line pack gas will change, causing line pack gas costs to be reflected inaccurately in the original shippers' rates. Therefore, the shipper tracking mechanism should provide for an adjustment when a shipper's line pack obligation either increases or decreases.

The Shipper Group commented that it was unclear in § 154.211 of the proposed rule whether line pack costs are to be treated in the traditional manner (which includes expensing or capitalizing) or tracked in the same manner as transportation charges. They stated that either the traditional method or tracking would be acceptable, but that if line pack costs are to be tracked the rule should specify the procedures to be followed and the Commission should provide a further opportunity to comment. They recommended that such a tracking mechanism, if adopted, provide for both increases and decreases in line pack to be tracked. The Commission's trial staff commented that when a reallocation of line pack occurs, thus changing a shipper's line pack costs, and the change is large enough to affect the rates being collected, the shipper should have to implement the rate change from the date of the reallocation.

The Commission is promulgating the rule as proposed. As with other aspects of their filings to establish or restate their Base Tariff Rates, shippers will have the flexibility to treat line pack costs in any appropriate manner. The rule is deliberately worded broadly to allow this flexibility. Of course, the burden rests on the shipper to demonstrate that its line pack costs are reflected appropriately in its rates. The Base Tariff Rate filings are thus treated the same as any other filing under section 4 of the NGA; the shipper has considerable flexibility and a concomitant burden of showing that its treatment of line pack costs is reasonable. The Commission will decide whether the treatment of line pack costs is reasonable in individual cases based on the specific facts of each case; this rule cannot adequately deal with the wide and unforeseeable variety of possible factual situations, and it is impossible for the Commission now to set forth precisely what treatment of line pack costs is appropriate in all possible situations.

The Commission's trial staff suggested that once the Base Tariff Rate, including line pack costs, is established, the level of ANGTS charges actually incurred for any ensuing six month period should be adjusted for any change in line pack costs due to a reallocation of line pack, as when a new shipper begins to use the ANGTS. The Commission agrees, but does not believe any change in the language of the rule is necessary to obtain this result. The rule already states that when a shipper's line pack costs decrease (as when a new shipper joins the system), the first shipper must demonstrate that its rates appropriately account for any excess revenue collected from its customers.

The Commission's trial staff also recommended that when a shipper elects not to use the ACR Clause option, the Commission require the shipper to set out its line pack costs in its filing for a rate change under section 4 of the NGA. The Commission agrees that shippers who elect not to use the tracking mechanism must include line pack costs in their filings under section 4 of the NGA. No rule change is necessary to obtain this result, however; the existing rule already addresses the issue by referring to § 154.63 of the Commission's regulations, which sets forth the section 4 filing requirements.

12. Separate Tracking of ANGTS Charges and Purchased Gas Costs (§ 154.212)

Section 154.212 requires that a shipper maintain separate tariff provisions for tracking changes in its ANGTS charges and for tracking changes in its purchased gas costs attributable to Alaska natural gas. This requirement is consistent with the Commission's regulations which preclude the inclusion of costs in PGA adjustments other than costs of purchased natural gas.[42] The Commission prescribed a similar provision for shippers of the "pre-build" portion of the ANGTS.[43]

13. Election of an ACR Clause (§ 154.213)

Section 154.213(a) requires a shipper to elect once every three years whether to recover changes in its ANGTS charges through tracking filings, through section 4 general rate change filings, or through a cost-of-service tariff approved by the Commission. This is similar to the election that a natural gas pipeline company must make triennially as to whether to recover charges for its purchased gas costs through a PGA clause.[44] This rule is different from the PGA regulations, however, inasmuch as § 154.213(a) makes the election to opt out of tracking subject to Commission approval, whereas the PGA rules do not so provide.

The opportunity to opt out of tracking will benefit shippers because interminable tracking may impose unnecessary rate filing requirements on a shipper after the early years of ANGTS operation. At that time, the changes in a shipper's ANGTS charges may be such that tracking would no longer be necessary to provide certainty of revenue flow to the shipper, who consequently may prefer to make less frequent rate change filings. Also, for example, if the ANGTS charges to a shipper remain essentially constant because of some form of "levelized tariff," there is no need for tracking from the perspective of either the shipper or its customers.

In addition, the rule will enable the Commission to limit a shipper's ability to opt out of tracking in the event tracking would provide greater assurance to a shipper's customers that they would realize any decreases in ANGTS charges in a timely fashion. The rule does not make the shipper's desire to continue tracking subject to Commission approval, because such a provision might impair the assured flow of timely payments provided by tracking

[42] 18 CFR 154.38(d)(4).

[43] April 28, 1980 *Northern Border* order, *supra* note 11, at 61,187 and *mimeo.* at 129.

[44] 18 CFR 154.38(d)(4)(ix).

and thereby complicate financing of the ANGTS.

Section 154.213(b) sets forth the procedures that a shipper must follow in electing among tracking filings (ACR Clause option), general rate change filings (non-ACR Clause option), or an approved cost-of-service tariff. The option elected by the shipper will be effective for an entire election period. An election period is a three year calendar period which begins coincidentally with the approved effective date of the shipper's first semi-annual tracking rate adjustment of every third year. In other words, if a shipper's approved effective dates for its tracking adjustments are February 1 and August 1, an election period will commence on February 1. The first election period will begin on the approved effective date of a shipper's first semiannual tracking rate adjustment of the fourth year following the year in which a shipper first tracks changes in its ANGTS charges. A shipper is required to make its election on or before the first day of the month preceding a new election period by filing revised tariff sheets. In the event a shipper is operating under the ACR Clause option and does not file revised tariff sheets, it will be considered to have renewed its ACR Clause option for the next election period.

Section 154.213(c) describes the effect of a shipper's election among the three methods of recovering its costs. If a shipper elects the ACR Clause option, it must recover changes in its ANGTS charges through tracking filings for the following election period. A shipper will also be so limited if the shipper elects the non-ACR Clause option and the Commission does not approve such election. If a shipper elects the non-ACR clause option and the Commission approves this election, or if the Commission approves the shipper's use of a cost-of-service tariff, the shipper will be limited to recovering changes in its ANGTS charges through these means for the following election period.

IV. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 15 U.S.C. 601–612, requires agencies to perform analyses of proposed rules that would, if promulgated, have a "significant economic impact on a substantial number of small entities." However, section 605(b) of the RFA provides that the requirements to prepare initial and final regulatory flexibility analyses do not apply when the head of the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

The Commission finds that this rule will not have a significant economic impact on a substantial number of small entities. The provisions of this rule apply to ANGTS shippers, the smallest of which is expected to purchase and transport 21.9 billion cubic feet of gas annually.[45] Such shippers are not small entities under section 601 of the RFA.[46] The RFA does not require the Commission to consider the impact of its rules on non-jurisdictional small entities.

However, the Commission did request comments on the possible impact of the cost classification requirements in the proposed rule on the shippers' low-load-factor customers, 47 FR 45038 (October 13, 1982), and it did consider this impact in promulgating the final rule. The Commission believes that the possible impact on low load factor customers of allowing all ANGTS charges to be classified as demand is out-weighted by the benefits of such a classification.[47]

V. Paperwork Reduction Act

The information collection provisions in this final rule are being submitted to the Office of Management and Budget (OMB) for its approval under the Paperwork Reduction Act, 44 U.S.C. 3501–3502 (Supp. IV 1980), and OMB's regulations, 48 FR 13666, 13694 (1983) (to be codified at 5 CFR Part 1320). OMB has 60 days, which it can extend to 90 days by notifying the Commission, to approve, modify, or disapprove these information collection provisions. Inquiries relating to the information collection provisions in this rule can be made to:

Jan Macpherson, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426; (202) 357–8033

Comments on these information collection provisions should be sent to the Office of Information and Regulatory Affairs of OMB (Attention: Desk Officer for the Federal Energy Regulatory Commission).

VI. Rehearing and Effective Date

Rehearing may be requested by filing a petition for rehearing within 30 days of the date of issuance of this order pursuant to the procedures set forth in the Commission's Rules of Practice and Procedures, 18 CFR 385.713.

This rule is effective on the later of the following dates: (1) If rehearing is granted, on the date on which a Commission order on rehearing becomes effective, (2) if rehearing is requested but deemed denied in accordance with 18 CFR 385.713, on the date on which it is deemed denied, (3) if rehearing is not requested, 30 days after publication of this rule in the **Federal Register**, or (4) the date on which the Commission publishes in the **Federal Register** OMB's approval under the Paperwork Reduction Act and the OMB control number. This rule does not constitute a final order of the Commission within the meaning of the President's *Waiver* until it becomes effective.

(Natural Gas Act, as amended, 16 U.S.C. 717–717w; Alaska Natural Gas Transportation Act, 15 U.S.C. 719–719o); Pub. L. 95–158, 91 Stat. 1268 (1977); Pub. L. 97–93, 95 Stat. 1204 (1981); Department of Energy Organization Act, 42 U.S.C. 7107–7352; E.O. 12009, 3 CFR 142 (1978))

List of Subjects in 18 CFR Part 154

Natural gas.

In consideration of the foregoing, the Commission amends Chapter I, Title 18, Code of Federal Regulations, as set forth below.

By the Commission.

Kenneth F. Plumb,

Secretary.

1. Part 154 is amended in its table of contents by adding in the appropriate numerical order a new heading and new sections to read as follows:

PART 154—RATE SCHEDULES AND TARIFFS

* * * * *

Recovery of Alaska Natural Gas Transportation System Charges

Sec.
154.201 Applicability.
154.202 Definitions.
154.203 Recoverable ANGTS charges.
154.204 General rule.
154.205 ACR clause requirement.
154.206 Filing to recover ANGTS charges incurred prior to delivery of Alaska natural gas.
154.207 Initial filing to recover ANGTS charges associated with the delivery of Alaska natural gas.
154.208 Filing to track changes in ANGTS charges.
154.209 Filing to restate base tariff rates.
154.210 Refunds from project sponsors.
154.211 Line pack gas costs.
154.212 Separate tracking of ANGTS charges and purchased gas costs.
154.213 Election of an ACR clause.

[45] Alaskan Delegate's Report at I–12.

[46] 15 U.S.C. 601(3), *citing* to section 3 of the Small Business Act (SBA), 15 U.S.C. 632 (Supp. IV, 1980). Section 3 of the SBA defines "small-business concern" as a business which is independently owned and operated and which is not dominant in its field of operation. *See also* SBA's Small Business Size Standards, 13 CFR Part 121 (1982).

[47] This balancing of consideration is discussed in more detail under the heading "Cost Classification (§ 154.207(c))," above.

2. Part 154 is amended by adding a new heading and new sections to read as follows:

Recovery of Alaska Natural Gas Transportation System Charges

§ 154.201 Applicability.

Sections 154.202 through 154.213 apply to a shipper seeking to recover charges incurred for the conditioning and transportation of Alaska natural gas through the Alaska Natural Gas Transportation System for sale in the contiguous 48 states of the United States. These sections also supply to a shipper seeking to recover charges incurred for the conditioning and transportation of Alaska natural gas through the Alaska Natural Gas Transportation System for sale in Alaska, to the extent that such sale is within the Commission's jurisdiction.

§ 154.202 Definitions.

For purposes of §§ 154.203 through 154.213:

(a) *Alaska natural gas* has the same meaning as in section 4(1) of the Alaska Natural Gas Transportation Act, 15 U.S.C. 719(4)(1): Natural gas derived from the area of the State of Alsaka generally known as the North Slope of Alaska, including the Continental Shelf of the North Slope of Alaska.

(b) *Alaska Natural Gas Transportation System (ANGTS)* means the gas conditioning facility at Prudhoe Bay, Alaska, for the conditioning of Alaska natural gas ("Gas Conditioning Plant Segment") and the pipeline system for the transportation of Alaska natural gas from the Prudhoe Bay area of Northern Alaska through Alaska ("Alaskan Pipeline Segment") and Canada ("Canadian Pipeline Segment") into the Midwestern ("Eastern Leg") and Western ("Western Leg") sections of the contiguous 48 states of the United States,

(1) As designated for approval in the *Decision and Report to Congress on the Alaska Natural Gas Transportation System* (Executive Office of the President, Energy Policy and Planning, September 1977) ("President's *Decision*"), approved by Joint Resolution of Congress, H.J. Res. 621, Pub. L. 95-158, 91 Stat. 1268 (1977), and

(2) As further designated in the *President's Findings and Proposed Waiver of Law* (October 15, 1981) ("President's *Waiver*"), approved by Joint Resolution of Congress, S.J. Res. 115, Pub. L. 97-93, 95 Stat. 1204 (1981).

(c) *ANGTS charges* means amounts billed by the project sponsors to a shipper that are properly attributable to the construction and operation of the ANGTS for the conditioning and transportation of Alaska natural gas.

(d) *ANGTS Charges Recovery Clause* ("ACR Clause") means a clause incorporated in a shipper's FERC Gas Tariff that sets forth the terms and conditions for recovering ANGTS charges.

(e) *Base Tarriff Rate* means the effective rate on file with the Commission, excluding adjustments, pursuant to a shipper's ACR clause.

(f) *Cost-of-service tariff* means a tariff under which a shipper's ANGTS charges to its customers are based on a formula set forth in that shipper's tariff by which the shipper recovers its ANGTS costs substantially concurrently as they are incurred.

(g) *Federal Inspector* means the Office of the Federal Inspector, which is responsible for monitoring the construction of the ANGTS and for coordinating the issuance of permits and certification for the ANGTS by all federal agencies.

(h) *Jurisdictional portion* means that portion of the ANGTS charges that are properly attributable to a shipper's jurisdictional services, as determined pursuant to the shipper's ACR Clause and approved by the Commission.

(i) *National Energy Board (NEB)* means the National Energy Board of Canada established by the National Energy Board Act, Can. Rev. Stat. c. N-6 (1970).

(j) *Project sponsors* means the owners and operators of the ANGTS, or their successors, as designated for the Gas Conditioning Plant Segment, the Alaskan Pipeline Segment, the Western Leg and the Eastern Leg in the President's *Decision*, as modified by the President's *Waiver*, and as designated for the Canadian Pipeline Segment in the Northern Pipeline Act of 1978, 26-27 Eliz. II, c. 20.

(k) *Shipper* means a person who has an executed service agreement with one or a combination of the project sponsors for the conditioning and transportation of Alaska natural gas through the ANGTS.

(l) *Track* means to flow through to a shipper's jurisdictional customers the jurisdictional portion of ANGTS charges incurred by the shipper.

§ 154.203 Recoverable ANGTS charges.

(a) A shipper's rates shall reflect only the jurisdictional portion of the shipper's ANGTS charges that are prudently incurred. The Commission will deem ANGTS charges prudently incurred if:

(1) Such charges from the Gas Conditioning Plant Segment, the Alaska Pipeline Segment, the Eastern Leg and the Western Leg are properly computed pursuant to tariffs approved by the Commission; and

(2) Such charges from the Canadian Pipeline Segment are:

(i) Properly computed pursuant to tariffs approved by the NEB, and

(ii) Consistent with the provisions of the Agreement between the Government of the United States and the Government of Canada Concerning Transit Pipelines, 28 U.S.T. 7449, T.I.A.S. No. 8720 (Transit Pipeline Treaty) and the Agreement between the United States of America and Canada on Principles Applicable to a Northern Natural Gas Pipeline (Agreement on Principles), incorporated in the President's *Decision*.

(b) A shipper shall provide the Commission with a certified copy of any tariff or any modifications or changes to any tariff approved by the NEB relating to any ANGTS charges from the Canadian Pipeline Segment that are reflected in the shipper's rates. A shipper shall provide the certified copy of any such NEB-approved tariff the first time that the shipper proposes rates reflecting ANGTS charges from the Canadian Pipeline Segment, and thereafter shall provide the certified copy of any modifications or changes to such tariff when the shipper makes any rate filings with the Commission involving ANGTS charges from the Canadian Pipeline Segment.

(c) If a shipper's rates reflect ANGTS charges that satisfy the condition prescribed in paragraph (a)(2)(i) of this section, the Commission will presume that such charges also satisfy the condition prescribed in paragraph (a)(2)(ii) of this section, unless the reflection of such charges in the shipper's rates is challenged in a timely manner in accordance with the Commission's Revised Rules of Practice and Procedure.

(d) The Commission will not disallow any ANGTS charges from the Canadian Pipeline Segment in a shipper's rates, or order any refund of such ANGTS charges, on the basis that such charges do not satisfy the conditions prescribed in paragraphs (a)(2)(i) and (a)(2)(ii) of this section, unless and until the matter has been resolved through:

(1) Consultation with the NEB pursuant to the provisions of Paragraph 9 of the Agreement on Principles, and thereafter, if necessary,

(2) Diplomatic negotiation and, if necessary, arbitration pursuant to the provisions of Article IX of the Transit Pipeline Treaty.

§ 154.204 General rule.

A shipper may recover the jurisdictional portion of its ANGTS charges incurred prior to the delivery of Alaska natural gas by adjusting its rates pursuant to filings prescribed in § 154.206 of this chapter or pursuant to a cost-of-service tariff approved by the Commission. After delivery of Alaska natural gas commences, a shipper may track changes in the jurisdictional portion of its ANGTS charges pursuant to filings prescribed in § 154.208 of this chapter, provided the shipper first makes a filing pursuant to § 154.207 of this chapter to establish a Base Tariff Rate and periodically restates its Base Tariff Rate pursuant to filings prescribed in § 154.209 of this chapter. In the alternative, after delivery of Alaska natural gas commences, a shipper may recover ANGTS charges and track changes in these charges pursuant to a cost-of-service tariff approved by the Commission as appropriate under the circumstances or through general rate change filings under section 4 of the Natural Gas Act. If a shipper chooses to track changes in the jurisdictional portion of its ANGTS charges, the shipper shall continue to track until the shipper elects, pursuant to § 154.213 of this chapter, to recover such charges through general rate change filings under section 4 of the Natural Gas Act, or until the Commission approves a cost-of-service tariff. Any election to discontinue tracking or to discontinue a cost-of-service tariff shall be subject to approval by the Commission.

§ 154.205 ACR clause requirements.

A shipper may recover ANGTS charges pursuant to § 154.206 of this chapter and track changes in its ANGTS charges pursuant to § 154.208 of this chapter if the shipper has filed with the Commission an ACR Clause and the Commission has approved the ACR Clause. The Commission will consider approving a proposed ACR Clause if that clause sets forth provisions for implementing the requirements and procedures specified in §§ 154.206 through 154.213 of this chapter. As an alternative, a shipper may propose for Commission approval the use of a cost-of-service tariff to recover ANGTS charges and track changes in those charges. A shipper may file its proposed ACR Clause or alternative proposal at any time after the effective date of this final rule.

§ 154.206 Filing to recover ANGTS charges incurred prior to delivery of Alaska natural gas.

(a) *General Rule.* In the event and to the extent the Commission and/or the NEB approves the billing of ANGTS charges by the project sponsors within their respective jurisdictions prior to the commencement of delivery of Alaska natural gas ("pre-delivery ANGTS charges"), a shipper may recover the jurisdictional portion of such charges upon incurrence by adjusting its rate(s) pursuant to filings made in accordance with the terms and conditions of this section and the shipper's approved ACR Clause; *Provided, however,* That recovery of pre-delivery ANGTS charges from the Canadian Pipeline Segment may commence only upon completion and testing of that segment, so that it is proved capable of operation, and not before a date certain, as determined (in consultation with the Federal Inspector) by the Commission in issuing a final certificate for the ANGTS to be the most likely date for the entire ANGTS to begin operation, within the meaning of the President's *Waiver.*

(b) *Terms and Conditions.* (1) A shipper shall file any rate adjustment to recover the jurisdictional portion of pre-delivery ANGTS charges as follows:

(i) It may file any such adjustment at the same time that it files rate adjustments to reflect changes in its purchased gas costs ("PGA filing") pursuant to § 154.38(d)(4)(iv)(a) of this chapter; or

(ii) It may file any such adjustment on other semi-annual dates set forth in its ACR clause, if the Commission approves the ACR clause. The shipper must continue filing on these dates until the Commission orders otherwise.

(2) At a shipper's first scheduled PGA filing following the initial incurrence of pre-delivery ANGTS charges, or on the first date set forth in the shipper's ACR Clause and approved by the Commission under paragraph (b)(1)(ii) of this section, the shipper shall adjust its existing tariff rates to include a current adjustment to recover projected pre-delivery ANGTS charges, if any, and a surcharge to recover the amounts which have accumulated in the Unrecovered Pre-delivery ANGTS Charges Account, which is described in paragraph (b)(5) of this section.

(3) At each succeeding PGA filing or other ANGTS tracking filing date approved by the Commission under paragraph (b)(1)(ii) of this section and until that filing immediately following the effective date of the Base Tariff Rate established pursuant to a filing prescribed in § 154.207 of this chapter, a shipper shall adjust its existing tariff rates to recover projected pre-delivery ANGTS charges and a surcharge to recover or return the amounts which have accumulated in the Unrecovered Pre-delivery ANGTS Charges Account.

(4)(i) A shipper shall calculate and recover the current adjustment and the surcharge using the procedures set forth in the shipper's approved ACR Clause.

(iii) A shipper shall use the cost classification methodology set forth in its approved ACR Clause in accordance with § 154.207(c) of this chapter.

(5) A shipper shall maintain separate subaccounts for pre-delivery ANGTS charges and unrecovered pre-delivery ANGTS charges as specified in the following procedures. A shipper shall:

(i) Record the portion of the pre-delivery ANGTS charges to be recovered from jurisdictional sales customers in a separate subaccount of Account No. 858, Transmission and Compression of Gas by Others (18 CFR Part 201) designated as the "Pre-delivery ANGTS Charges Account."

(ii)(A) Credit or debit, as appropriate, no less than monthly, the Pre-delivery ANGTS Charges Account with the pre-delivery ANGTS charges incurred for the period, recoverable from jurisdictional customers, that are in excess of or less than the applicable amounts recovered during the period through the application of approved rate schedules, and

(B) Debit or credit, as appropriate, a separate subaccount of Account No. 186, Miscellaneous Deferred Debits (18 CFR Part 201), designated as the "Unrecovered Pre-delivery ANGTS Charges Account." Separate subaccounts of the Unrecovered Pre-delivery ANGTS Charges Account shall be maintained for each six-month period in which excesses or deficiencies are recorded.

(iii) Amortize to the Pre-Delivery ANGTS Charges Account, over the appropriate six-month period, the amounts, either positive or negative, including carrying charges, accumulated in the Unrecovered Pre-delivery ANGTS Charges Account coincidental with the recovery or return, as applicable, of such amounts through the application of an approved surcharge.

(iv) Carry forward to the next succeeding surcharge period any remaining balance in the Unrecovered Pre-delivery ANGTS Charges Account for recovery or return, as applicable, in that period.

(v) Adopt the principles of interperiod income tax allocation applicable to the amounts deferred in the Unrecovered Pre-delivery ANGTS Charges Account by deferring the appropriate tax effect of such amounts in Account 190, Accumulated Deferred Income Taxes (18 CFR Part 201) or Account 283,

Accumulated Deferred Income Taxes—Other (18 CFR Part 201), as applicable.

(6) A shipper shall compute carrying charges on amounts deferred in the Unrecovered Pre-delivery ANGTS Charges Account in the manner and at the rate prescribed in section 154.208(f) of this chapter.

(7) A shipper shall follow the same posting, service and verification requirements prescribed in § 154.208(g) of this chapter.

(8) Upon the commencement of delivery of Alaska natural gas through the ANGTS and the commencement of accounting for ANGTS charges associated with the delivery of Alaska natural gas, a shipper shall transfer any balances remaining in the Unrecovered Pre-delivery ANGTS Charges Account to a separate subaccount of Account No. 186, Miscellaneous Deferred Debits (18 CFR Part 201), designated as the "Unrecovered ANGTS Charges Account, " described in § 154.208(e) of this chapter.

(9) *Suspension Period.* In any rate adjustment filing made by a shipper to recover, pursuant to its approved ACR Clause or cost-of-service tariff, the jurisdictional portion of its pre-delivery ANGTS charges, the Commission will not suspend the portion of the shipper's adjusted rate(s) attributable to such changes for more than one day after the approved effective dates of the shipper's semi-annual rate adjustments.

§ 154.207 Initial filing to recover ANGTS charges associated with the delivery of Alaska natural gas.

(a) *General Rule.* No more than six months and no less than 30 days prior to the time a shipper can reasonably anticipate the incurrence of ANGTS charges associated with the actual delivery of Alaska natural gas, the shipper shall file to establish a Base Tariff Rate which reflects the inclusion of the jurisdictional portion of such charges in its rates by making a general rate change filing pursuant to section 4(e) of the Natural Gas Act and § 154.63 of this chapter. A shipper shall include in this filing all costs, volumes and revenues associated with the ANGTS and the introduction of Alaska natural gas into its total gas supply.

(b) *Suspension.* If the sole basis for the suspension of a shipper's proposed rate(s) in the proceeding described in this paragraph is a challenge of the rate(s) pursuant to § 154.203(a)(2) of this chapter, such that absent the challenge the rate(s) would not be suspended, the Commission will not suspend the rate(s) for more than one day after the proposed effective date of the rate(s).

(c) *Cost Classification.* In its ACR Clause, a shipper may classify up to 100 percent of the jurisdictional portion of its ANGTS charges as demand. A shipper shall classify the jurisdictional portion of its ANGTS charges into the demand component of its two-part, demand-commodity rates and into its one-part commodity rates in accordance with the formula set forth in that shipper's ACR Clause approved by the Commission. In any filing to adjust rates to track changes in the jurisdictional portion of its ANGTS charges, as prescribed in § 154.208 of this chapter, a shipper shall use this furmula until the Commission approves a new methodology, at the shipper's request.

(d) *Cost Allocation.* A shipper shall allocate its ANGTS charges between its jurisdictional and non-jurisdictional services on the basis of the jurisdictional allocation factor(s) approved by the Commission pursuant to the filing prescribed in paragraph (a) of this section. In any filing to adjust rates to track changes in the jurisdictional portion of its ANGTS charges, as prescribed in § 154.208 of this chapter, a shipper shall use such allocation factor(s) until the Commission approves a new allocation factor(s) at the shipper's request.

§ 154.208 Filing to track changes in ANGTS charges.

(a) *General Rule.* Following the effective date of its Base Tariff Rate established pursuant to the filing described in § 154.207(a) of this chapter, a shipper may adjust its rates positively and must adjust its rates negatively to track changes in the jurisdictional portion of its ANGTS charges and shall include a surcharge in its adjusted rates to recover or return amounts accumulated in the "Unrecovered ANGTS Account," described in paragraph (e) of this section, during the preceding six-month accounting period. A shipper shall follow this procedure in each succeeding rate adjustment filing to track changes in the jurisdictional portion of its ANGTS charges.

(b) *Timing.* A shipper shall file any rate adjustment to track changes in the jurisdictional portion of its ANGTS charges as follows:

(1) It may coincide the proposed effective date of such rate adjustments with the proposed effective date of the shipper's rate adjustments for changes in purchased gas costs ("PGA") pursuant to §154.38(d)(f)(iv)(a) of this chapter; or

(2) It may state in its ACR Clause that it will file on any other semi-annual dates. If the Commission approves this provision in the ACR Clause, pursuant to § 154.205 of this chapter, the shipper shall file to adjust its rates on these dates. The shipper must continue filing on these dates until the Commission orders otherwise.

(c) *Separate Computation.* A shipper shall compute rate adjustments separately for each of the project segments, and shall use the net sum of such separately computed rate adjustments to track changes in the jurisdictional portion of its ANGTS charges.

(d) *Threshold Amount.* A shipper shall adjust it rates to track changes in the jurisdictional portion of its ANGTS charges only if such rate adjustment equals or exceeds a level (either a stated dollar amount or a rate adjustment amount) specified in the shipper's approved ACR Clause.

(e) *Accounting Procedures.* A shipper shall maintain separate subaccounts for ANGTS charges and unrecovered ANGTS charges as specified in the following procedures. A shipper shall:

(1) Record the portion of the ANGTS charges to be recovered from jurisdictional sales customers in a separate subaccount of Account No. 858, Transmission and Compression of Gas by Others (18 CFR Part 201) designated as the "ANGTS Charges Account."

(2)(i) Credit or debit, as appropriate, no less than monthly, the ANGTS Charges Account with the ANGTS charges incurred for the period, recoverable from jurisdictional customers, that are in excess of, or less than, the applicable amounts recovered during the period through the application of approved rate schedules and,

(ii) Debit or credit, as appropriate, a separate subaccount of Account No. 186, Miscellaneous Deferred Debits (18 CFR Part 201), designated as the "Unrecovered ANGTS Charges Account." Separate subaccounts of the Unrecovered ANGTS Charges Account shall be maintained for each six-month period in which excesses or deficiencies are recorded.

(3) Amortize to the ANGTS Charges Account, over the appropriate six-month period, the amounts, either positive or negative, including carrying charges, accumulated in the Unrecovered ANGTS Charges Account coincidental with the recovery or return, as applicable, of such amounts through application of an approved surcharge.

(4) Carry forward to the next succeeding surcharge period any remaining balance in the Unrecovered ANGTS Charges Account for recovery or return, as applicable, in that period.

(5) Adopt the principles of interperiod income tax allocation applicable to the amounts deferred in the Unrecovered ANGTS Charges Account by deferring the applicable tax effect of the amounts recorded in the Unrecovered ANGTS Charges Account in Account 190, Accumulated Deferred Income Taxes (18 CFR Part 201) or Account 283, Accumulated Deferred Income Taxes—Other (18 CFR Part 201), as appropriate.

(f) *Carrying Charges.* A shipper shall compute carrying charges monthly based on the average daily balances properly recorded in the Unrecovered ANGTS Charges Account, net of the related amounts in the applicable deferred income tax accounts (Account No. 190 or Account No. 283). The rate for computation of carrying charges shall be the current rate of interest on pipeline refunds set forth in § 154.67(d)(2)(iii)(A) of this chapter, with interest compounded in the manner set forth in § 154.67(d)(2)(iii)(B) of this chapter. Monthly, a shipper shall debit carrying charges to the Unrecovered ANGTS Charges Account if the average daily balance for the month in that account is positive, and shall credit carrying charges to the Unrecovered ANGTS Charges Account if the average daily balance for the month in that account is negative.

(g) *Posting, Verification and Service Requirements.* At least 30 days prior to the proposed effective date of any rate adjustment to track changes in the jurisdictional portion of the ANGTS charges, a shipper shall file with the Commission and post pursuant to § 154.16 of this chapter a tariff sheet(s) containing the information required in § 154.33(d) of this chapter and including separate columns that show the current adjustment, cumulative adjustment and current surcharge for ANGTS charges. Simultaneously with this posting, a shipper shall file with the Commission a report containing detailed computations that clearly show the derivation of the current adjustment and the surcharge to be applied to the shipper's existing rate(s). A shipper shall furnish such report to its jurisdictional customers and interested state and local regulatory agencies at the same time the shipper files the report with the Commission.

(h) *Suspension Period.* In any rate adjustment filing made by a shipper pursuant to its approved ACR Clause or cost-of-service tariff to track changes in the jurisdictional portion of its ANGTS charges, the Commission will not suspend the portion of the shipper's adjusted rate(s) attributable to such changes for more than one day after the approved effective dates of the shipper's simi-annual rate adjustment.

§ 154.209 Filing to restate base tariff rate.

(a) *General Rule.* (1) At least 30 days prior to the expiration of 36 months after the effective date of any previously approved Base Tariff Rate (36-month anniversary date), a shipper shall file a tariff sheet(s) restating its Base Tariff Rate and file a cost-and-revenue study in the form and with the content prescribed by § 154.63 of this chapter, except Statements O and P, to support the restated Base Tariff Rate. This study shall be based on actual costs for the twelve months of most recently available experience, provided that such 12-month period ends not more than 4 months prior to the expiration of the 36-month period. Annualization for changes which actually occurred in the 12 months will be permitted.

(2) If, before the expiration of the 36-month period, a shipper makes a general rate change filing under section 4(e) of the Natural Gas Act to establish a new Base Tariff Rate or establishes a new Base Tariff Rate pursuant to § 154.38(d)(4)(vi) of this chapter, or the Commission initiates a proceeding under section 5(a) of the Natural Gas Act in which a new Base Tariff Rate is established, a new 36-month period will commence when the Base Tariff Rate established in any of these proceedings becomes effective.

(b) *Use of Study from Another Rate Proceeding.* If a shipper has a section 5(a) case pending issuance of a final order or has made a section 4(e) general rate change filing for which the proposed rates would not become effective before termination of the 36-month period, the shipper may propose for Commission approval a study from either proceeding to satisfy the requirements of paragraph (a)(1) of this section, if:

(1) That study has a test period ending less than 12 months prior to the 36-month anniversary date; and

(2) That study includes, or is adjusted to include, the effects of volumes and revenues attributable to ANGTS as well as ANGTS charges.

(c) *Service Requirement.* A shipper shall serve the study filed with the Commission to support the restatement of its Base Tariff Rate on its jurisdictional customers and interested state and local regulatory agencies at the same time as it files the study with the Commission. If the restatement involves a change in the tariff, the shipper shall post the tariff under § 154.16 of this chapter.

(d) *Refunds*—(1) *ACR Clause Requirement.* A shipper shall state its agreement that its restated Base Tariff Rate will automatically be subject to refund from the date the rate(s) proposed in that filing is permitted by the Commission to become effective until the date that rate becomes effective pursuant to a Commission final order approving that shipper's proposed new Base Tariff Rate or requiring a different new Base Tariff Rate.

(2) *Refund Obligation.* If as a result of conferences among the shipper, its jurisdictional customers, interested state and local regulatory agencies, and the Commission staff, or as a result of Commission determination after hearing, the Commission finds that on the basis of the study prescribed in paragraph (a)(1) of this section, the jurisdictional cost of service is less than the jurisdictional revenues collected, the shipper shall file with the Commission a revised tariff sheet(s) reflecting jurisdictional rates based on the jurisdictional cost-of-service agreed to by the shipper, affected parties, and the Commission staff, or determined by the Commission. The shipper shall also refund with interest to its jurisdictional customers any amounts collected subject to refund in excess of those amounts which would have been collected pursuant to rates based upon the jurisdictional cost-of-service agreed to by the shipper, affected parties, and the Commission staff; or, alternatively, the jurisdictional cost-of-service prescribed by the Commission to the date of billing under the revised tariff sheet(s). This refund obligation shall be limited to the amount collected in excess of the previously established Base Tariff Rate. Rate reductions, if any, below the previously established Base Tariff Rate shall be prospective from the date of the Commission's final order approving an agreement in regard to or determining a new Base Tariff Rate.

(3) *Refund Procedure.* A shipper shall make any refund determined to be owed to the shipper's jurisdictional coustomers according to the manner, timing, reporting requirements and threshold amounts specified in its approved ACR Clause.

(4) *Computation of Interest on Refunds.* A shipper shall compute interest on any refund determined to be owed to the shipper's jurisdictional customers in the manner and at the rate prescribed in § 154.208(f) of this chapter.

§ 154.210 Refunds from project sponsors.

(a) *General Rule.* A shipper shall flow-through to its jurisdictional customers the jurisdictional portion of all refunds attributable to ANGTS

charges (including interest received) received from the project sponsors.

(b) *Flow-through Procedure.* A shipper shall flow-through such refunds according to the manner, timing, reporting requirements and threshold amounts specified in the shipper's approved ACR Clause, unless the refund is attributable to a total cessation of service, in which event the procedure for flowing through the refund will be determined pursuant to a Commission order.

(c) *Computation of Interest.* A shipper shall accrue interest on the jurisdictional portion of all refunds, including interest received, from the date that it receives such refunds from the project sponsors until the date that it disburses the refund to its jurisdictional customers, and shall compute such interest in the manner and at the rate prescribed in § 154.208(f) of this chapter.

§ 154.211 Line pack gas costs.

In any filing by a shipper to establish a Base Tariff Rate and in any subsequent filing to restate a Base Tariff Rate, the shipper shall demonstrate that costs associated with line pack gas are properly accounted for and properly reflected in its rate(s). In the event a shipper's volume of line pack gas has decreased from the volume of line pack gas previously reflected in its rate(s), the shipper shall further demonstrate that it has appropriately recognized and accounted for any excess revenues collected from its jurisdictional customers.

§ 154.212 Separate tracking of ANGTS charges and purchased gas costs.

A shipper shall maintain separate tariff provisions for tracking changes in its ANGTS charges and for tracking changes in its purchased gas costs attributable to Alaska natural gas. A shipper shall track changes in its purchased gas costs attributable to Alaska natural gas pursuant to § 154.38(d)(4) of this chapter.

§ 154.213 Election of an ACR clause

(a) *General Rule.* A shipper shall elect once every three years whether to recover all changes in its ANGTS charges through filings made under § 154.208 of this chapter and pursuant to its ACR Clause (ACR Clause option), through general rate change filings under § 154.63 of this chapter (non-ACR Clause option), or through a cost-of-service tariff approved by the Commission under § 154.204; *Provided, however,* That election to discontinue the ACR Clause or the use of a cost-of-service tariff approved by the Commission shall be subject to approval by the Commission.

(b) *Procedure for Election.* For purposes of this section, "election period" means a three year calendar period to commence coincidentally on the approved effective date of the earlier of a shipper's semiannual rate adjustments (pursuant to § 154.208 of this chapter) every third year. The first election period commences on the approved effective date of the earlier of a shipper's semiannual rate adjustments (pursuant to § 154.208 of this chapter) of the fourth year following the year in which a shipper first tracks changes in its ANGTS charges under § 154.208 of this chapter and pursuant to its ARC Clause. The election for an election period must be made on or before the first day of the month preceding the new election period and is binding for an entire election period. A shipper electing the ACR Clause option pursuant to this section may terminate its ACR Clause effective as of the next election period by filing revised tariff sheets eliminating the ACR Clause from its tariff. Such tariff sheets must be filed on or before the first day of the month preceding a new election period to become effective on the first day of the new elections period. If a shipper does not make such a filing, it shall be considered to have elected to renew its ACR Clause option for the new election period. A shipper which has chosen the non-ACR Clause option for an election period may file revised tariff sheets implementing the ACR Clause option for the next election period. Such tariff sheets must be filed on or before the first day of the month preceding a new election period to make the ACR Clause effective on the first day of that election period.

(c) *Effect of Election.* If a shipper elects the ACR Clause option, or if a shipper elects the non-ACR option and the Commission does not approve such election, the shipper shall file for changes in its ANGTS charges exclusively through its ACR Clause during the following election period. If a shipper elects the non-ACR Clause option and the Commission approves such election, the shipper shall file for changes it its ANGTS charges exclusively in general rate change filings under § 154.63 of this chapter. A shipper shall not change any provision in its approved cost-of-service tariff without the Commission's approval.

Note.—This Appendix will not appear in the Code of Federal Regulations.

Appendix—Suggested Format for Tariff Sheet for any Filing With Commission Made Pursuant to §§ 154.206 Through 154.209

STATEMENT OF RATES

Rate schedule	Base tariff rate [1]	ANGTS charges			Purchased gas costs			Total rate
		Current adjustment	Cumulative adjustment	Surcharge	Current adjustment	Cumulative adjustment	Surcharge	
Rate Schedule A:								
Demand								
Commodity								
Excess/Deficiency								
Rate Schedule B:								
Demand								
Commodity								
Excess/Deficiency								

[1] Note: The Base Tariff Rate includes a base average purchased gas cost of $ per MMBtu and an ANGTS base charge of $ per MMBtu.

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DEPARTMENT OF THE TREASURY

Customs Service

19 CFR 101

[T.D. 83-146]

Change in the Customs Service Field Organization

AGENCY: Customs Service, Treasury.

ACTION: Final rule; correction.

SUMMARY: This document corrects an error in a document relating to an extension and redefinition of the geographical limits of the port of Seattle, Washington, within the consolidated Customs port of entry of Puget Sound, Washington. The document was published in the **Federal Register** on Tuesday, July 5, 1983 (48 FR 30611).

FOR FURTHER INFORMATION CONTACT: Richard C. Coleman, Office of Inspection, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202-566-8157).

Background

In FR Doc. 83-17963, appearing at page 30611, in the issue of July 5, 1983, the document omitted several words from the description of the geographical limits of the port of Seattle, Washington, on Page 30612, left hand column, under the heading "Changes in the Customs Service Field Organization". Thus, the entire corrected description of the consolidated port of Puget Sound, Washington, is reprinted as follows:

The ports of Seattle (section 35, Township 27 North, Range 3 East, West Meridian, County of Snohomish, and the geographical area within the boundaries beginning at the intersection of NW., 205th Street and the waters of Puget Sound, proceeding in an easterly direction along the King County line to its intersection with 100th Avenue NE., thence southerly along 100th Avenue NE., and its continuation to the intersection of 100th Avenue SE., and 240th Street SE., thence westerly along 240th Street SE., and South, to its intersection with the waters of Puget Sound and then northerly along the shores of Puget Sound to its intersection with NW., 205th Street, the point of beginning, County of King, all within the State of Washington), Anacortes, Bellingham, Everett, Friday Harbor, Neah Bay, Olympia, Port Angeles, Port Townsend, and the territory in Tacoma beginning at the intersection of the westernmost city limits of Tacoma and The Narrows and proceeding in an easterly, then southerly, then easterly direction along the city limits of Tacoma to its intersection with Pacific Highway (U.S. Route 99), then proceeding in a southerly direction along Pacific Highway to its intersection with Union Avenue Extended and continuing in a southerly direction along Union Avenue Extended to its intersection with the northwest corner of McChord Air Force Base, then proceeding along the northern, then western, then southern boundary of McChord Air Force Base to its intersection, just west of Lake Mondress, with the northern boundary of the Fort Lewis Military Reservation, then proceeding in an easterly direction along the northern boundary of the Fort Lewis Military Reservation to its intersection with Pacific Avenue, then proceeding in a southerly direction along Pacific Avenue to its intersection with National Park Highway, then proceeding in a southeasterly direction along National Park Highway to its intersection with 224th Street, East, then proceeding in a easterly direction along 244th Street, East, to its intersection with Meridian Street, South then proceeding in a northerly direction along Meridian Street to the northern boundary of Pierce County, then proceeding in a westerly direction along the northern boundary of Pierce County to its intersection with Puget Sound, then proceeding in a generally southwesterly direction along the banks of the East Passage of Puget Sound, Commencement Bay, and The Narrows to the point of intersection with the westernmost city limits of Tacoma, including all points and places on the southern boundary of the Juan de Fuca Strait from the eastern port limits of Neah Bay to the western port limits of Port Townsend, all points and places on the western boundary of Puget Sound, including Hood Canal, from the port limits of Port Townsend to the northern port limits of Olympia, all points and places on the southern boundary of Puget Sound from the port limits of Olympia to the western port limits of Tacoma, and all points and places on the eastern boundary of Puget Sound and contiguous waters from the port limits of Tacoma north to the southern port limits of Bellingham, all in the State of Washington.

Dated: July 25, 1983.

B. James Fritz,

Director, Regulations Control and Disclosure Law Division.

[FR Doc. 83-20597 Filed 7-28-83; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 74, 81, and 82

[Docket No. 82N-0378]

D&C Red No. 6 and D&C Red No. 7; Listing as a Color Additive in Drugs and Cosmetics; Termination of Stay and Confirmation of Effective Date

AGENCY: Food and Drug Administration.

ACTION: Final rule; termination of stay and confirmation of effective date.

SUMMARY: The Food and Drug Administration (FDA) is terminating the stay of the regulations for the "permanent" listing of D&C Red No. 6 and D&C Red No. 7 for use in drugs and cosmetics, excluding use in the area of the eye. The regulations were stayed by the filing of objections under the formal rulemaking provisions of the Federal Food, Drug, and Cosmetic Act (the act) while FDA evaluated and acted on the objections. The agency has completed its evaluation of the objections and concludes that they do not provide a sufficient basis to persuade the agency that its decision to list D&C Red No. 6 and D&C Red No. 7 should be changed. Therefore, this document terminates the stay and confirms the effective date of January 28, 1983, for regulations that permanently list D&C Red No. 6 and D&C Red No. 7 for general use in drugs and cosmetics, excluding use in the area of the eye. This document also amends the color additive regulations by removing D&C Red No. 6 and D&C Red No. 7 from the color additive provisional list.

DATE: Effective date confirmed: January 28, 1983.

FOR FURTHER INFORMATION CONTACT: John L. Herrman, Bureau of Foods (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION:

I. Introduction

FDA has received two objections to the final rule that permanently lists D&C Red No. 6 and D&C Red No. 7 for use in drugs and cosmetics. One objection requested a change in the specifications that FDA has established for these color additives. The other objection, which focused on the manner in which FDA reached its determination on the safety of these color additives, urged FDA to withdraw the final rule.

FDA is rejecting these objections and confirming the effective date of the

permanent listing regulations. The agency finds that the specifications are appropriate as written. In addition, the agency has concluded that D&C Red No. 6 and D&C Red No. 7 are safe, even though they both contain a carcinogenic impurity (sometimes referred to as a "constituent" or "contaminant"). The impurity in each color additive is a carcinogenic chemical that is used to make one of the materials from which these additives are fabricated and that is present in these additives at extremely low levels. FDA has made its determination on the safety of these color additives on the basis of principles first enunciated in the final rule on D&C Green No. 6 (47 FR 14130; April 2, 1982). (See also the advance notice of proposed rulemaking on "Policy for Regulating Carcinogenic Chemicals in Food and Color Additives" (47 FR 14464; April 2, 1982).) D&C Red No. 6 and D&C Red No. 7 were tested for carcinogenicity in two bioassays of D&C Red No. 6 and not shown to cause cancer in either bioassay. In addition, the agency has used risk assessment procedures to assess the likelihood that any harm will result from use of these color additives because they contain a carcinogenic impurity. These procedures produced upper bound risk estimates that are so low that FDA can conclude to a reasonable certainty that no harm will result from the use of these color additives.

II. Background

In the **Federal Register** of December 28, 1982 (47 FR 57681), FDA published a final rule that amended the color additive regulations by "permanently" listing D&C Red No. 6 under §§ 74.1306 and 74.2306 (21 CFR 74.1306 and 74.2306) and D&C Red No. 7 under §§ 74.1307 and 74.2307 (21 CFR 74.1307 and 74.2307). The final rule also amended § 81.1(b) (21 CFR 81.1(b)) by removing D&C Red No. 6 and D&C Red No. 7 from the provisional list of color additives and amended § 81.27 (21 CFR 81.27) by removing and reserving paragraph (c) and by removing D&C Red No. 6 and D&C Red No. 7 from the conditions of provisional listing in paragraph (d). Additionally, the final rule amended § 82.1306 (21 CFR 82.1306) for D&C Red No. 6 to conform the identity and specifications to the requirements of § 74.1306 (a)(1) and (b) and amended § 82.1307 (21 CFR 82.1307) for D&C Red No. 7 to conform the identity and specifications to the requirements of § 74.1307 (a)(1) and (b).

The agency received objections to the permanent listing regulations from the petitioner, the Cosmetic, Toiletry and Fragrance Association, Inc. (CTFA), and from the Natural Resources Defense Council, Inc. (NRDC), a national nonprofit environmental organization. The objections are on file in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, under the docket number found in brackets in the heading of this document. No requests for a hearing were received in response to the listing regulations.

To provide FDA time to evaluate and to act on these objections, the current closing date of July 29, 1983, for the provisional listing of D&C Red No. 6 and D&C Red No. 7 was established by a final rule published in the **Federal Register** of May 31, 1983 (48 FR 24061). An earlier document that established the May 31, 1983 closing date also announced that the regulations that permanently listed D&C Red No. 6 and D&C Red No. 7 for drug and cosmetic use were stayed pending final agency action on the objections (see 48 FR 13022).

After evaluating the two objections, the agency finds that neither presents issues of fact that warrant a hearing (21 CFR 12.24(b)). The objections and the agency's responses to them are summarized below.

III. Objections and Agency Responses

1. The objection from CTFA indicated concern that the specification for ether soluble material was set too low. They state that absorbance (a logarithmic measure of opaqueness to light) measured in the spectra of ether soluble material from recently certified batches of these color additives closely approaches the specifications set by the regulation. CTFA pointed out that, for example, the absorbance seen in the area of 400 nanometers for the lake of D&C Red No. 6 (D&C Red No. 6 extended on rosin) may show absorbance unrelated to the color additive, or instrument noise at longer wavelengths could result in absorbance in excess of the established limit. Therefore, CTFA requested that the specification for ether soluble material be 300 percent of the absorbance seen in the spectrum obtained for the toxicology sample, Lot AA5169.

This rulemaking is concerned with the straight color additive only. Lakes of color additives are still provisionally listed because of, among other things, analytical problems in certification. FDA published a notice of intent to propose rules concerning lakes of color additives in the **Federal Register** of June 22, 1979 (44 FR 36411). In that document, the agency discussed additional information that it will need before it can issue regulations. For example, FDA pointed out that rosin, which is used as a substratum in the formulation of lakes, interferes with the analysis of some components of a color additive. The agency, therefore, requested the submission of methods of analysis for the determination of total intermediates in lakes using rosin as the substratum.

No straight D&C Red No. 7 has been certified in the past decade. However, FDA surveyed samples of straight D&C Red No. 6 that have been certified recently and found that all batches for which data are available would pass the test for ether soluble material as the specification is currently written. On the other hand, when correcting for the percentage of straight color additive in the lake (for details on this correction see the notice of intent to propose rules, referenced above (44 FR 36411, 36414)), a high percentage of D&C Red No. 6 and D&C Red No. 7 lakes using rosin as substratum would not pass the test as currently written. Many samples of rosin lakes would not pass the test even if the agency changed the specification to reflect an absorbance that is 300 percent of the absorbance seen in the spectrum obtained for the toxicology sample. Most of these failures are evidently caused by interference from the rosin substratum.

FDA believes that there is no reason to change the specification for ether soluble material in straight D&C Red No. 6 and D&C Red No. 7 because almost all samples of the straight color additive appear to be capable of passing the test as written. FDA intends to publish in the near future proposed regulations governing the use of color additives in lakes. In that document, the agency will address the problem of specifications for rosin lakes and test interference from the rosin substratum. In the meantime, FDA will take this interference into account and will not refuse to certify the provisionally listed D&C Red No. 6 and D&C Red No. 7 lakes solely because of interference from the rosin.

2. NRDC objected that FDA has adopted a new policy relating to carcinogenic constituents without appropriate public participation. NRDC argued that this new regulatory approach represents a major change in FDA policy, and that the agency should have engaged in rulemaking before making this policy change. NRDC pointed out that FDA has instituted a proceeding on carcinogenic constituents by issuing an advance notice of proposed rulemaking in the **Federal Register** of April 2, 1982 (47 FR 14464). NRDC argued that the agency has rendered that proceeding a nullity by

adopting the new policy and applying it to D&C Green No. 6 (47 FR 14138) on the same day it published the advance notice of proposed rulemaking.

FDA rejects this objection. No case has ever suggested that an agency must engage in notice and comment rulemaking to establish a general rule regarding an interpretative principle before applying that principle in another more specific proceeding, such as a rulemaking to list a color additive. The procedure that FDA has followed in listing color additives that may contain carcinogenic impurities has provided the full opportunity required by statute and by due process for public participation with regard to the agency's policy on such color additives as well as with regard to its decision to list each color additive.

The proceeding to list a color additive involves the adoption of a regulation. That regulation is a "rule" within the meaning of 5 U.S.C. 551(4): "an agency statement of general or particular applicability and future effect designed to implement * * * law or policy * * *." Although this type of proceeding does not involve notice and comment as provided for in 5 U.S.C. 553, it does involve the rulemaking procedure established by Congress in sections 706 and 701(e) of the act (21 U.S.C. 376 and 371(e) and the formal rulemaking provisions of the Administrative Procedure Act (5 U.S.C. 556 and 557). Contrary to the claims of NRDC (see NRDC's objection, p. 8), this type of proceeding actually provides greater procedural rights than are provided under 5 U.S.C. 553. Under this procedure, "any person who will be adversely affected" by a regulation may file an objection with FDA, and the filing of the objection automatically stays the effect of the regulation until the agency takes final action on the objection. In addition, an objector may request a public hearing on its objection (21 U.S.C. 371(e)(2)).

FDA first announced the principles it would follow with regard to color additives that may contain carcinogenic impurities in the D&C Green No. 6 rulemaking. Those principles had only prospective application, however, and if any person had objected to them, the regulation listing D&C Green No. 6 would not have gone into effect until the objection had been resolved. The agency did not receive any objections (47 FR 24278; June 4, 1982). Thus, there was no unfairness and no violation of due process when the agency took final action on D&C Green No. 6 on the basis of those principles.

FDA has continued to rule on color additives that may contain carcinogenic impurities on a case-by-case basis. This proceeding involves D&C Red No. 6 and D&C Red No. 7, both of which may contain low levels of the carcinogenic impurity *p*-toluidine. After reviewing the data on these color additives, FDA has determined, for the reasons set forth in the final rule listing these additives (47 FR 57681), which is incorporated herein by reference, that the use of D&C Red No. 6 and D&C Red No. 7 in drugs and cosmetics is safe. The agency emphasizes, however, that it has reached this decision on the basis of its interpretation of the act and of its review of the data on these substances, not on the basis of the advance notice of proposed rulemaking.

NRDC claims that FDA's case-by-case approach to dealing with carcinogenic impurities has rendered the proceeding instituted by the advance notice of proposed rulemaking a nullity. This claim is without merit. FDA decided to publish the advance notice of proposed rulemaking because it recognized that the problem of how to treat substances that may contain carcinogenic impurities involves substances other than color additives. Specifically, the agency is aware that a number of food additives also contain such impurities. The agency therefore decided to seek broad public comment on the issues presented by the policy it was applying in listing D&C Green No. 6, including comment on the issue of how best to develop an approach to food and color additives that may contain carcinogenic impurities (47 FR 14469). FDA will take the public comment on the issues raised in the advance notice of proposed rulemaking into account in determining its future course of action. Nonetheless, the pendency of the advance notice of proposed rulemaking does not prevent the agency from making specific decisions, in accordance with lawful procedure, that make use of some of the principles on which comment is sought in the advance notice of proposed rulemaking. See *Securities and Exchange Comm.* v. *Chenery Corp.*, 332 U.S. 194, 202 (1947), in which the court recognized that it might be necessary for an agency to proceed on a case-by-case basis when it has not "* * * had sufficient experience with a particular problem to warrant rigidifying its tentative judgment into a hard and fast rule."

3. As explained in the D&C Green No. 6 final rule, FDA interprets the Delaney Clause of the Color Additive Amendments of 1960 (the Amendments) (section 706(b)(5)(B))) of the act (21 U.S.C. 376(b)(5)(B)) as applicable only when a color additive as a whole is found to cause cancer in appropriate testing. The safety of a color additive that has not been found to cause cancer in appropriate testing but that may contain carcinogenic impurities is evaluated under the general safety clause using risk assessment among other analytical tools (47 FR 14141–14142).

NRDC argued in its objection that this policy is inconsistent with the Delaney Clause, asserting that the purpose of the Delaney Clause is to prohibit the deliberate addition of carcinogenic substances to food, drugs, and cosmetics. In support of this position, NRDC cited the legislative history of the Amendments, including testimony on the bill that became the Amendments by the Secretary of Health, Education, and Welfare (HEW) to the effect that the Delaney Clause "is based on the simple fact that no one knows how to set a safe tolerance for substances in human foods when those substances are known to cause cancer when added to the diet of animals." H.R. Rep. No. 1761, 86th Cong., 2d Sess. 12 (1960), *reprinted in* 1960 U.S. Code Cong. & Admin. News 2887, 2893. NRDC asserted that scientific thought on this matter has not changed since the enactment of the Amendments. In addition, NRDC pointed out that FDA's past practice has been to establish a zero tolerance for any carcinogenic substance, whether the substance is termed an additive, a constituent of an additive, a residue, or anything else. NRDC argued that the effect of FDA's policy is to permit the addition of a carcinogenic substance to a food, drug, and cosmetic, and thus that there is neither legal nor scientific authority for this policy.

FDA believes that the interpretation of the Delaney Clause that the agency has applied in acting on the petition to list D&C Red No. 6 and D&C Red No. 7 is consistent with the language and intent of that provision. Section 706 of the act (21 U.S.C. 376) prescribes a system for regulating substances called "color additives," which the statute distinguishes from the intermediates and other impurities that these substances contain. The statute specifically states that the impurities and intermediates contained in a color additive should be considered in determining whether use of the color additive is safe (21 U.S.C. 376(b)(5)(A)(iv)(1)). However, it makes no mention of these impurities and intermediates in the Delaney Clause, which speaks only of the color additive (21 U.S.C. 376(b)(5)(B)). Therefore, FDA believes that by its terms the Delaney Clause applies only when the color additive as a whole is found to induce cancer. In appropriate testing, D&C Red

No. 6 (and hence D&C Red No. 7, because FDA considers them to be toxicologically equivalent) was not found to induce cancer.

Although the legislative history of the Amendment is silent on how Congress intended to treat carcinogenic impurities,[1] the agency's interpretation of the Delaney Clause in the period immediately following the enactment of the Amendment is consistent with the agency's current view that the Delaney Clause is applicable only if tests of the color additive as a whole reveal that the additive causes cancer. The agency recounts its earlier interpretation at length in the preamble to the final rule on D&C Green No. 6 (47 FR 14142). There FDA quotes an agency review of the objections that it received to a regulation that it proposed on January 24, 1961 (26 FR 679). This regulation, 21 CFR 8.36 (now 21 CFR 70.50), is entitled "Application of the cancer clause of section 706 of the act." In its review, FDA made clear that the agency did not interpret the Delaney Clause to require the rejection of a color additive simply because it contains a carcinogenic impurity. (See 47 FR 14142.) This contemporaneous interpretation is particularly relevant to the question of the intent underlying the Delaney Clause because the agency drafted the Amendments. H. Rep. 1761, 86th Cong., 2d Sess. p. 61 (1960) (letter from Secretary Flemming to Hon. Sam Rayburn, May 28, 1959).

It is true that since 1961 FDA has terminated the provisional listings of several color additives that contained or were suspected of containing a carcinogenic impurity or constituent. In each case, FDA acted because it was unable to resolve questions about the safety of the use of the color additive that were created by the presence of the carcinogenic impurity, not because the Delaney Clause applied to the impurity. Now, however, the agency believes that is has the ability, using risk extrapolation procedures, to ensure the safe use of color additives that are not carcinogenic but that may contain carcinogenic impurities (47 FR 14141). (See also Confirmation of Effective Date for D&C Green No. 5 (47 FR 49628, 49630; November 2, 1982).) In the present case, risk extrapolation procedures demonstrate that it is extremely unlikely that D&C Red No. 6 and D&C Red No. 7, which both may contain a carcinogenic impurity, will pose any safety problems (see paragraph 5 below).

Thus, contrary to the objection, there is strong support for the principles that FDA applied in listing D&C Red No. 6 and D&C Red No. 7.

4. NRDC objected that FDA relied heavily, indeed exclusively, on the decision in *Monsanto Co.* v. *Kennedy*, 613 F.2d. 947 (D.C. Cir. 1979), to justify the new additives policy. NRDC argued that that case arose under the general safety clause of the Food Additives Amendment rather than the Delaney Clause, and that because of the difference between the clauses, *Monsanto* did not apply to the Delaney Clause. NRDC also argued that even if *Monsanto* did apply to the Delaney Clause, the constituents approach was an unwarranted extension of that decision.

NRDC is in error when it claims that FDA's policy on color additives that may contain carcinogenic impurities is based exclusively on the *Monsanto* decision. Although supported by *Monsanto*, see 47 FR 14141, FDA's policy is based on a number of factors, including the language of the act, its legislative history, FDA's contemporaneous interpretation of the Delaney Clause, and the validity of using extrapolation procedures as a means of assessing upper bound limits of risk.

NRDC's claim that the *Monsanto* case has no relevance to this proceeding is also without merit. Both the *Monsanto* decision and the decision on whether to list D&C Red No. 6 and D&C Red No. 7 deal with the regulation of contaminants under the act (47 FR 49631). This, the *Monsanto* decision is relevant to the issues presented here (see also 47 FR 14145; April 2, 1982; and 47 FR 24278, 24280; June 4, 1982).

In *Monsanto*, the court was aware that the carcinogenicity of the contaminant, acrylonitrile monomer (a component of acrylonitrile bottles), had not been established, but it was also aware that the agency's safety concern with this chemical was its possible carcinogenicity. The court's decision that FDA could disregard the migration of very small amounts of the acrylonitrile monomer into food constituted recognition by the court that, in appropriate circumstances, FDA could find to a reasonable certainty that the use of a substance is not harmful (or assures a wide margin of safety) even if its use will result in the addition of a very small amount of a carcinogenic chemical that is not a food additive to the food supply. The court's decision thus supports the agency's determination in this rulemaking that there is a reasonable certainty that no harm will result from the use of D&C Red No. 6 and D&C Red No. 7 even though they may contain, as an impurity, a small amount of a carcinogenic chemical.

5. NRDC argued that the constituents approach would allow a contaminant to be present in potentially significant amounts so long as it was not functional or intentionally present. NRDC contended that D&C Red No. 6 and D&C Red No. 7, for example, are necessarily contaminated with detectable amounts of *p*-toluidine. NRDC further contended that the public is left with nothing but unenforceable assurances of FDA's benign intent not to apply a constituents approach to situations in which there is gross contamination by carcinogenic impurities.

FDA disagrees. The agency is confident for three reasons that the constituents approach will not result in the agency's approving a color additive that contains significant levels of carcinogenic impurities.

First, to be listed, the color additive must not have been shown to induce cancer in appropriate testing (21 U.S.C. 376 (b)(5)(B)).

Second, for a color additive to be approvable under the general safety clause, the data must establish that use od the color additive will be safe (21 U.S.C. 376(b)(4)). Under 21 CFR 70.3(i), a color additive is "safe" if "there is convincing evidence that establishes with reasonable certaintly that no harm will result from the intended use of the

[1] NRDC contended that there is evidence in the legislative history that Congress intended to ban the use of any color additive that contains a carcinogenic impurity. It pointed to the testimony of the Secretary of HEW that government has a duty to do everything possible "* * * to put persons in a position where they will not unnecessarily be adding residues of carcinogens to their diet." Hearings on H.R. 7624 and S. 2197. Before House Comm. on Interstate and Foreign Commerce, 86th Cong., 2d Sess. 61 (1960). The objection points to the Secretary's use of the term "residue" in support of its argument. However, read in context, it is clear that the Secretary was using "residue" merely as a synonym for "color additive." The Secretary had testified that the purpose of the Delaney Clause was to prohibit the use of a color additive if it is found by appropriate tests to cause cancer in man or animal. *Id.* at 40. In addition, later in his testimony, he stated: "It has also been suggested that when a compound shown to produce cancer in test animals has been modified in chemical structure so that it no longer produces cancer, it continues to be incriminated by its past history. This, too, is erroneous. The Food and Drug Administration would—and should—take a close look at the modified compound to be certain that it did not have the same cancer potential as its parent. But once convinced that the cancer potential had been eliminated, the anticancer clause would not preclude use of the substance." *Id.* at 62. When a compound is modified in chemical structure, it invariably contains some of the original unmodified compound as an unreacted impurity. This fact was well known at the time of the Secretary's testimony. It is therefore illogical to suggest that the Secretary used the word "residue" to refer to extremely small concentrations of carcinogenic impurities of the type present in some color additives and in other complex chemical substances in common use.

color additive." FDA's risk assessment procedures enable the agency to assess whether any harm might result from use of a color additive that may contain a carcinogenic impurity (see 47 FR 14141 and 14143–14144). Only additives that contain insignificant amounts of carcinogenic impurities can meet the standard of safety under the general safety clause and can be permanently listed by FDA.

Third, if the agency determines that a color additive that may contain a carcinogenic impurity is safe, it will promulgate a regulation that ensures that future batches of the color additive will not contain impurities at a level that will make the use of the color additive unsafe.

Furthermore, NRDC is incorrect that the public is left with nothing but unenforceable assurances. The basis for the agency's determination that a color additive is safe is set forth in the **Federal Register** document that announces the agency's decision and the administrative record. Any person who believes that the agency's determination is incorrect has full procedural rights to challenge that determination under the act. See sections 701(e) and (f) and 706 of the act (21 U.S.C. 371(e) and (f), and 376, respectively).

D&C Red No. 6, which has been shown not to induce cancer in two long-term bioassays (see 47 FR 57683), and D&C Red No. 7 both have as one of their starting materials *p*-toluidine-*m*-sulfonic acid. As a result, both color additives may contain the carcinogenic impurity *p*-toluidine. In accordance with the specifications contained in the regulations that list these color additives, FDA will not certify a batch of D&C Red No. 6 or D&C Red No. 7 that it finds to contain more than 15 parts per million (ppm) of *p*-toluidine.

However, most batches of D&C Red No. 6 and D&C Red No. 7 are likely to contain a much lower level of *p*-toluidine than that permitted by the specification. Of the four batches of D&C Red No. 6 and one batch of D&C Red No. 7 examined by FDA or Shiseido Laboratories, the levels of *p*-toluidine ranged from 0.63 to 2.25 ppm (see 47 FR 57682–57683). In addition, contrary to the assertion made by NRDC in its objection (see NRDC's objection, p. 4), the presence of *p*-toluidine in some batches of these color additives may not even be detectable.

In the final rule listing D&C Red No. 6 and D&C Red No. 7, FDA calculated the level of risk form the use of these color additives. The agency assumed, based on the examinations of these color additives that had been done, that the average level of *p*-toluidine in certified batches of these color additives would be 5 ppm (47 FR 57683). On the basis of this assumption, FDA calculated the upper limit of lifetime risk from use of D&C Red No. 6 and C&C Red No. 7 to be 1 in 50 million to 1 in 500 million (47 FR 57686), depending on the method of analysis. Even if every batch of these color additives contained the maximum amount of *p*-toluidine with which they could still be certified (15 ppm), the upper limit of lifetime risk from use of these color additives would be 1 in 17 million to 1 in 170 million, depending on the method of analysis. Under either assumption about the level of *p*-toluidine that will be in these color additives, it is clear that there is a reasonable certainty of no harm from the use of D&C Red No. 6 and D&C Red No. 7.

Thus, contrary to the objection, as is evidenced by D&C Red No. 6 and D&C Red No. 7, use of the constituents approach by FDA will ensure that the agency will not approve a color additive if it contains significant levels of a carcinogenic impurity.

Conclusion

The agency has completed its evaluation of the objections and concludes, for the reasons discussed in this document, that the objections do not require any change in the regulations listing D&C Red No. 6 and D&C Red No. 7 as color additives. No requests for a hearing were received in response to the listing regulation. Therefore, this document terminates the stay of the regulations and confirms the effective date of January 28, 1983, for the regulations listing D&C Red No. 6 and D&C Red No. 7. With the listing of D&C Red No. 6 and D&C Red No. 7, the entries for these color additives under 21 CFR Part 81 are now obsolete.

Therefore, the agency also concludes that the entries for D&C Red No. 6 and D&C Red No. 7 should be removed from 21 CFR 81.1 and 81.27. The agency further concludes that there is good cause not to provide for further public comment on this change in the regulation. The change is a mere editorial revision to remove D&C Red No. 6 and D&C Red No. 7 from the provisional list.

List of Subjects

21 CFR Part 74

Color additives, Color additives subject to certification; Cosmetics, Drugs.

21 CFR Part 81

Color additives, Color additives provisional list, Cosmetics, Drugs.

21 CFR Part 82

Color additives, Color additive lakes, Color additives provisional list, Cosmetics, Drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 701, 706(b), (c), and (d), 52 Stat. 1055–1056 as amended, 74 Stat. 399–403 (21 U.S.C. 371, 376(b), (c), and (d))) and the transitional provisions of the Color Additive Amendments of 1960 (Title II, Pub. L. 86–618, sec. 203, 74 Stat. 404–407 (21 U.S.C. 376, note)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), Chapter I of Title 21 of the Code of Federal Regulations is amended as follows:

1. The stay of effectiveness of §§ 74.1306, 74.1307, 74.2306, 74.2307, 82.1306, and 82.1307 is terminated.

PART 81—GENERAL SPECIFICATIONS AND GENERAL RESTRICTIONS FOR PROVISIONAL COLOR ADDITIVES FOR USE IN FOODS, DRUGS, AND COSMETICS

2. Part 81 is amended:

§ 81.1 [Amended]

a. In § 81.1 *Provisional lists of color additives* by removing the entries for "D&C Red No. 6 and D&C Red No. 7" in paragraph (b).

§ 81.27 [Amended]

b. In § 81.27 *Conditions of provisional listing* by removing the entries for "D&C Red No. 6 and D&C Red No. 7" in paragraph (d).

Effective date. January 28, 1983.

(Secs. 701, 706(b), (c), and (d), 52 Stat. 1055–1056 as amended, 74 Stat. 399–403 (21 U.S.C. 371, 376(b), (c), and (d)); sec. 203, 74 Stat. 404–407 (21 U.S.C. 376, note))

Dated: July 21, 1983.

Arthur Hull Hayes, Jr.,

Commissioner of Food and Drugs.

[FR Doc. 83-20209 Filed 7-28-83; 8:45 am]

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21 CFR Part 81

[Docket No. 76N-0366]

Provisional Listing of D&C Red No. 33; Postponement of Closing Date

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is postponing the closing date for the provisional listing of D&C Red No. 33 for use as a color additive in drugs and cosmetics. The new closing date will be September 30, 1983. This brief postponement will

provide time for the agency to complete its review and to consider the scientific and legal aspects of the results of the toxicological studies submitted by several petitioners. Additionally, during this brief postponement, the agency will prepare the appropriate **Federal Register** document(s) upon completion of its review.

DATES: Effective July 29, 1983, the new closing date for D&C Red No. 33 will be September 30, 1983.

FOR FURTHER INFORMATION CONTACT: Patricia J. McLaughlin, Bureau of Foods (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: FDA established the current closing date of July 29, 1983, by a rule published in the **Federal Register** of May 31, 1983 (48 FR 24059). The agency extended the closing date to provide time for the agency to complete its review and to consider the scientific and legal aspects of the results of the toxicological studies submitted by several petitioners. Previously in the **Federal Register** of April 1, 1983 (48 FR 13975), FDA had published a rule establishing the May 31, 1983 closing date for the provisional listing of D&C Red No. 33 to provide time for completion of its review. The regulation set forth below will postpone the July 29, 1983 closing date for the provisional listing of the color additive until September 30, 1983.

As noted in the **Federal Register** of November 20, 1968 (33 FR 17205) and the **Federal Register** of August 6, 1973 (38 FR 21200), D&C Red No. 33 is the subject of a petition (CAP 8C0086) submitted by the Toilet Goods Association, Inc. (now the Cosmetic Toiletry and Fragrance Association, Inc.), the Pharmaceutical Manufacturers Association, and the Certified Color Industry Committee (now the Certified Color Manufacturers Association, Inc.) and of a petition (CAP 7C0059) submitted by the Procter & Gamble Co. The petitions requested that D&C Red No. 33 be permanently listed for use in ingested drugs, all types of cosmetics subject to ingestion, including lipsticks, externally applied drugs and cosmetics, and for use in the area of the eye.

The review and evaluation of the data on the use of D&C Red No. 33 have required more time than anticipated. FDA concludes that a brief postponement will provide time for the agency to complete its review and to prepare the appropriate **Federal Register** document(s). Therefore, FDA concludes that the brief extention of the closing date to September 30, 1983, is necessary. The agency has also concluded that no harm to the public health will result from this extension.

Because of the short time until the July 29, 1983 closing date, FDA concludes that notice and public procedure on this regulation are impracticable, and that good cause exists for issuing this postponement as a final rule. This regulation will permit the uninterrupted use of this color additive until September 30, 1983. To prevent any interruption in the provisional listing of D&C Red No. 33, and in accordance with 5 U.S.C. 553(d) (1) and (3), this postponement is issued as a final regulation, effective on July 29, 1983.

List of Subjects in 21 CFR Part 81

Color additives, Color additives provisional list, Cosmetics, Drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 701, 706(b), (c), and (d), 52 Stat. 1055-1056 as amended, 74 Stat. 399-403 (21 U.S.C. 371, 376 (b), (c), and (d))) and under the transitional provisions of the Color Additive Amendments of 1960 (Title II, Pub. L. 86-618, sec. 203, 74 Stat. 404-407 (21 U.S.C. 376 note)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), Part 81 is amended as follows:

PART 81—GENERAL SPECIFICATIONS AND GENERAL RESTRICTIONS FOR PROVISIONAL COLOR ADDITIVES FOR USE IN FOODS, DRUGS, AND COSMETICS

§ 81.1 [Amended]

1. In § 81.1 *Provisional lists of color additives* by revising the closing date for "D&C Red No. 33" in paragraph (b) to read "September 30, 1983."

§ 81.27 [Amended]

2. In § 81.27 *Conditions of provisional listing* by revising the closing date for "D&C Red No. 33" in paragraphs (d) and (e) to read "September 30, 1983."

Effective date. This final rule shall be effective July 29, 1983.

(Secs. 701, 706 (b), (c), and (d), 52 Stat. 1055-1056 as amended, 74 Stat. 399-403 (21 U.S.C. 371, 376 (b), (c), and (d)); sec. 203, 74 Stat. 404-407 (21 U.S.C. 376 note))

Dated: July 8, 1983.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 83-20225 Filed 7-28-83; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Part 81

[Docket No. 76N-0366]

Provisional Listing of D&C Orange No. 17 for Use in Externally Applied Drugs and Cosmetics; Postponement of Closing Date

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is postponing the closing date for the provisional listing of D&C Orange No. 17 for use as a color additive in externally applied drugs and cosmetics. The new closing date will be September 30, 1983. This brief postponement will provide time for the agency to determine the applicability of the statutory standard for the listing of noningested color additives to the results of the scientific investigations of D&C Orange No. 17.

DATES: Effective July 29, 1983, the new closing date for D&C Orange No. 17 will be September 30, 1983.

FOR FURTHER INFORMATION CONTACT: Julia L. Ho, Bureau of Foods (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204; 202-472-5690.

SUPPLEMENTARY INFORMATION: FDA established the current closing date of July 29, 1983, for the provisional listing of the use of D&C Orange No. 17 in externally applied drugs and cosmetics by a rule published in the **Federal Register** of May 31, 1983 (48 FR 24060). The agency extended the closing date until July 29, 1983, to provide time for the agency to determine the applicability of the statutory standard for the listing of noningested color additives to the results of the scientific investigations of D&C Orange No. 17. Previously in the **Federal Register** of April 1, 1983 (48 FR 13975), FDA had published a rule establishing the May 31, 1983 closing date for the provisional listing of D&C Orange No. 17 to provide time for the uninterrupted use of this color additive in externally applied drugs and cosmetics while FDA considered the scientific and legal aspects of the recent skin penetration studies submitted by the Cosmetic, Toiletry and Fragrance Association, Inc. (CTFA). In the **Federal Register** of April 1, 1983 (48 FR 13976), FDA announced that the provisional listing of D&C Orange No. 17 for coloring ingested drugs and cosmetics had expired. In that issue of the **Federal Register** (48 FR 14045), FDA also published a final rule denying those portions of the color additive petition for D&C Orange No. 17 that requested

permanent listing of the color additive for use in drugs and cosmetics intended for ingestion and in cosmetics intended for use in the area of the eye.

As noted in the **Federal Register** of August 6, 1973 (38 FR 21199), D&C Orange No. 17 is the subject of a petition (CAP 9C0090) submitted by the Toilet Goods Association, Inc. (now CTFA), for use in coloring drugs and cosmetics. The agency has concluded that D&C Orange No. 17 is an animal carcinogen when administered in the diet, based on the increased incidence of hepatocellular neoplasms in two mammalian species (48 FR 13977 and 14046–7). Therefore, FDA has denied that portion of the petition for this color additive that relates to ingested uses. However, under 21 U.S.C. 376(b)(5)(B)(ii), the agency must determine whether the ingestion studies that show D&C Orange No. 17 to be a carcinogen are appropriate for the evaluation of the safety of the external uses of this color additive. To assist the agency in making this determination, the petitioner has submitted the recent skin penetration studies on D&C Orange No. 17.

The evaluation of the data involved has taken FDA more time than the agency expected. FDA concludes that the brief postponement will provide time for the agency to prepare and publish a **Federal Register** document setting forth its final decision on the petition for the permanent listing of this color additive. Thus, FDA finds that a brief extension of the closing date to September 30, 1983, is necessary. The agency has also concluded that no harm to the public health will result from this extension.

Because of the short time until the July 29, 1983 closing date, FDA concludes that notice and public procedure on this regulation are impracticable. This regulation will permit the uninterrupted use of this color additive until September 30, 1983. To prevent any interruption in the provisional listing of D&C Orange No. 17 and in accordance with 5 U.S.C. 553(d) (1) and (3), this final rule is being made effective July 29, 1983.

List of Subjects in 21 CFR Part 81

Color additives, Color additives provisional list, Cosmetics, Drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 701, 706 (b), (c), and (d), 52 Stat. 1055–1056 as amended, 74 Stat. 399–403 (21 U.S.C. 371, 376 (b), (c), and (d))) and under the transitional provisions of the Color Additive Amendments of 1960 (Title II, Pub. L. 86–618; sec. 203, 74 Stat. 404–407 (21 U.S.C. 376 note)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), Part 81 is amended as follows:

PART 81—GENERAL SPECIFICATIONS AND GENERAL RESTRICTIONS FOR PROVISIONAL COLOR ADDITIVES FOR USE IN FOODS, DRUGS, AND COSMETICS

§ 81.1 [Amended]

1. In § 81.1 *Provisional lists of color additives* by revising the closing date for "D&C Orange No. 17" in paragraph (b) to read "September 30, 1983."

§ 81.27 [Amended]

2. In § 81.27 *Conditions of provisional listing* by revising the closing date for "D&C Orange No. 17" in paragraph (d) to read "September 30, 1983."

Effective date. This final rule shall be effective July 29, 1983.

(Secs. 701, 706 (b), (c), and (d), 52 Stat. 1055–1056 as amended, 74 Stat. 399–403 (21 U.S.C. 371, 376 (b), (c), and (d))); sec. 203, 74 Stat. 404–407 (21 U.S.C. 376 note))

Dated: July 14, 1983.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 83-20695 Filed 7-28-83; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Part 520

Oral Dosage Form New Animal Drugs Not Subject to Certification; Trimethoprim and Sulfadiazine Oral Paste

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Wellcome Animal Health Division, Burroughs Wellcome Co., providing for safe and effective oral use in horses of a combination antibacterial drug containing trimethoprim and sulfadiazine.

EFFECTIVE DATE: July 29, 1983.

FOR FURTHER INFORMATION CONTACT: Sandra K. Woods, Bureau of Veterinary Medicine (HFV-114), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3420

SUPPLEMENTARY INFORMATION: Wellcome Animal Health Division, Burroughs Wellcome Co., 2000 South 11th St., Kansas City, KS 66103, filed NADA 131–918 providing for oral use of Tribrissen® 400 Oral Paste (67 Milligrams (mg) of trimethoprim and 333 mg of sulfadiazine per gram of paste) for treating certain bacterial infections in horses. NADA's have previously been approved for use of a combination of trimethoprim and sulfadiazine in injectable form in horses, and for use in tablet and injectable forms in dogs. Use of the drug in horses is indicated where control of bacterial infections is required during treatment of acute strangles, respiratory infections, acute urogenital infections, and wound infections and abscesses. The NADA is approved, and the regulations are amended to reflect the approval. The basis of approval of the NADA is discussed in the freedom of information (FOI) summary.

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 Docket Management Branch (HFA-305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The Bureau of Veterinary Medicine has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement therefore will not be prepared. The Bureau's finding of no significant impact and the evidence supporting this finding, contained in a statement of exemption (pursuant to 21 CFR 25.1(f)(1)(ii)(*a*), (*e*)(*1*), and (g)) may be seen in the Dockets Management Branch (address above).

List of Subject in 21 CFR Part 520

Animal drugs, Oral use.

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

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 5.10) and redelegated to the Bureau of Veterinary Medicine (21 CFR 5.83), Part 520 is amended by adding new § 520.2611 to read as follows:

§520.2611 Trimethoprim and sulfadiazine oral paste.

(a) *Specifications.* Each gram of oral paste contains 400 milligrams (67 milligrams of trimethoprim and 333 milligrams of sulfadiazine).

(b) *Sponsor.* See No. 017220 in § 510.600(c) of this chapter.

(c) *Conditions of use*—(1) *Dosage.* Five grams (335 milligrams of trimethoprim and 1,665 milligrams of sulfadiazine) per 150 pounds (68 kilograms) of body weight per day.

(2) *Indications for use.* For horses where systemic anti-bacterial action against sensitive organisms is required during treatment of acute strangles, respiratory infections, acute urogenital infections, and wound infections and abscesses.

(3) *Limitations.* Administer orally, once a day, as a single dose for 5 to 7 days; daily dose may also be halved and given morning and evening; for acute infection therapy continue treatment 2 to 3 days after clinical signs have subsided; if no improvement of acute infections is seen in 3 to 5 days, reevaluate diagnosis; a complete blood count should be done periodically for prolonged use; not for use in horses intended for food; Federal law restricts this drug to use by or on the order of a licensed veterinarian.

Effective date. July 29, 1983.

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

Dated: July 25, 1983.

Lester M. Crawford, Director,

Bureau of Veterinary Medicine.

[FR Doc. 83-20208 Filed 7-28-83; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Part 809

[Docket No. 81N-0163]

Investigational In Vitro Diagnostic Products for Human Use; Removal of Shipment Notification Requirement

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is removing a requirement that a person notify FDA of shipments of certain investigational in vitro diagnostic devices that are not subject to the investigational device exemption (IDE) regulations as a condition for the shipments to be exempt from certain labeling and other requirements. FDA has found the required notification to be unnecessary.

EFFECTIVE DATE: July 29, 1983.

FOR FURTHER INFORMATION CONTACT: Les Weinstein, National Center for Devices and Radiological Health (HFK-143), Food and Drug Administration, 8757 Georgia Ave. Silver Spring, MD 20910, 301-427-7114.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of August 10, 1982 (47 FR 34575), FDA published a proposal to remove the current requirement of § 809.10(c)(2)(iii) (21 CFR 809.10(c)(2)(iii)) that a person shipping or delivering an in vitro diagnostic device for product testing prior to full commercial marketing notify FDA that such shipments are being made. Interested persons were given until October 12, 1982 to comment. FDA received six comments in response to the proposal, all favorable. The following is a summary of the comments and the agency's response to them.

1. Three comments generally supported the proposal on the ground that it would relieve industry of a regulatory burden. Five comments stated that the notification requirement is not necessary and does not contribute to the protection of the public; three of these comments stated that other requirements such as the labeling requirements of § 809.10(c)(2)(ii) will provide sufficient protection.

FDA agrees with these comments. Under § 809.10(c)(2)(ii), all labeling for an in vitro diagnostic device being shipped or delivered for testing before full commercial marketing is required to bear the statement: "For Investigational Use Only. The performance characteristics of this product have not been established." Section 812.2(c)(3) (21 CFR 812.2(c)(3)) provides that, to be exempt from the IDE regulations (21 CFR Part 812), in addition to complying with the labeling requirement, the diagnostic information obtained with the investigational diagnostic device is to be confirmed by another, medically established diagnostic device or procedure. This requirement protects the public by assuring that the diagnosis is not made solely on the basis of an investigational device. The other requirements that have to be met for the product to be exempt from the IDE regulations (see paragraph 2 of this preamble) provided further protection to the public health and safety.

2. One comment stated that the notification requirement has been effectively superseded by the IDE regulations and is, therefore, superfluous. Another comment stated that the same rationale that FDA used in the preambles to the reproposed and final IDE rule to justify exempting investigations of in vitro diagnostic devices from the IDE requirements also justifies eliminating the notification requirement for these products.

FDA concurs with these comments. The IDE regulations do not apply to clinical investigations of a diagnostic device if, among other things, the device complies with the labeling requirements discussed above and if the testing performed: (1) Is noninvasive, (2) does not require an invasive sampling procedure that presents significant risk, (3) does not, by design or intention, introduce energy into the subject, and (4) is not used as a diagnostic procedure without confirmation of the diagnosis by another, medically established diagnostic product or procedure.

3. One comment stated that § 812.2(c)(3), which provides for exemptions from the IDE regulations for in vitro diagnostic devices, and the labeling requirement in § 809.10(c)(2) are contradictory because § 809.10(c)(2)(iii) refers to § 812.19, which addresses IDE applications and other correspondence relating to matters covered by the IDE regulations.

FDA disagrees with this comment. The only reason that § 809.10(c)(2)(iii) refers to § 812.19 is to provide the address to which notification of shipments is to be sent. In any event, because FDA has decided to remove § 809.10(c)(2)(iii) from Part 809, the comment is moot.

This final rule will eliminate a reporting requirement and will therefore relieve a restriction within the meaning of 21 CFR 10.40(c)(4)(i). Accordingly, the final rule is effective July 29, 1983.

List of Subjects in 21 CFR Part 809

In vitro diagnostic devices, Labeling, Medical devices.

PART 809—IN VITRO DIAGNOSTIC PRODUCTS FOR HUMAN USE

§ 809.10 [Amended]

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 301, 501, 502, 520(g), 701(a), 702, 704, 801, 52 Stat. 1042-1043 as amended, 1049-1051 as amended, 1055-1058 as amended, 67 Stat. 477 as amended, 90 Stat. 569-571 (21 U.S.C. 331, 351, 352, 360j(g), 371(a), 372, 374, 381)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), Part 809 is amended in § 809.10 *Labeling for in vitro diagnostic products,* by removing paragraph (c)(2)(iii).

Effective date. This regulation shall become effective July 29, 1983.

(Secs. 301, 501, 502, 520(g), 701(a), 702, 704, 801, 52 Stat. 1042-1043 as amended, 1049-1051 as amended, 1055-1058 as amended, 67 Stat. 477 as amended, 90 Stat. 569-571 (21 U.S.C 331, 351, 352, 360j(g), 371(a), 372, 374, 381))

Dated: July 19, 1983.

Mark Novitch,

Deputy Commissioner of Food and Drugs.

[FR Doc. 83-20287 Filed 7-28-83; 8:45 am]

BILLING CODE 4160-01-M

VETERANS ADMINISTRATION

38 CFR Part 3

Veterans Benefits; Implementing Legislation

AGENCY: Veterans Administration.

ACTION: Final regulation amendments.

SUMMARY: The Veterans Administration has amended its adjudication regulations to implement pertinent provisions of the Omnibus Budget Reconciliation Act of 1982. These changes affect the date of reduction or termination of an award based on the loss of a dependent, the monthly or other periodic rate of pension payments, the surviving spouse's benefit for the month of the veteran's death, and the commencement of the period of payment on all original and reopened awards, and certain increased awards.

EFFECTIVE DATE: These changes are effective October 1, 1982, with the exception of the change affecting monthly or other periodic pension rates (§§ 3.29, 3.30, 3.273) which will be effective June 1, 1983.

FOR FURTHER INFORMATION CONTACT: Robert M. White, (202) 389-3005.

SUPPLEMENTARY INFORMATION: On pages 46696–46699 of the **Federal Register** of October 20, 1982, the Veterans Administration published interim final regulation amendments to 38 CFR 3.20, 3.29, 3.30, 3.31, 3.273, 3.500, 3.501, 3.502 and 3.660. Interested persons were given until November 18, 1982, to submit comments, objections or suggestions on these regulatory amendments.

Only one comment was received and that was in relation to 38 CFR 3.31 concerning the commencement of the period of payment. The commentator suggested that an additional specific exclusion to the general rule of applicability should be provided for awards that are temporarily reduced because of the beneficiary's receipt of lump-sum, nonrecurring income. Such an award, it is argued, appears to provide for an increase in benefits based on a reduction of income at the end of the annualization period in which the lump-sum income was received, and a specific exclusion should be provided. For the following reasons the Veterans Administration does not agree.

The provisions of 38 CFR 3.31 apply only to original, reopened, and certain increased awards. Under paragraph (a) of the section the term "increased award" includes awards which are increased because of a reduction in income. The receipt of lump-sum, nonrecurring income constitutes an increase in income which results in an award that has a net effect of providing for a reduction in benefits. Such a reduced award based on an increase in income clearly does not come within the meaning of the term "increased award" and the provisions of section 3.31 do not apply.

The specific exclusion provided in paragraph (c)(3) of the section for adjustments of awards clearly applies to the commentator's situation. Award adjustments are not limited to those award actions listed under paragraph (c)(3). They are listed as examples of adjustments which, in the final analysis, do not constitute increased awards. Attempting to list every award action which constitutes an adjustment would produce a lengthy, unreasonable and unnecessary regulation. Consequently, the suggestion is not accepted. The regulatory amendments are adopted as proposed and are set forth below.

The Administrator hereby certifies that these regulations will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. The reason for this certification is that the regulations carry out a statutory mandate; moreover, only Veterans Administration beneficiaries would be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), these regulations are exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

In accordance with Executive Order 12291, Federal Regulations, we have determined that these regulation changes are nonmajor for the following reasons:

(1) They will not have an effect on the economy of $100 million or more.

(2) They will not cause a major increase in costs or prices.

(3) They will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Handicapped, Health care, Pensions, Veterans.

(Catalog of Federal Domestic Assistance Program numbers are 64.104, 64.105, 64.109, and 64.110)

Approved: July 13, 1983.

By direction of the Administrator.

Everett Alvarez, Jr.,

Deputy Administrator.

PART 3—ADJUDICATION

The Veterans Administration is amending 38 CFR Part 3 as follows:

1. Section 3.20 is revised as follows:

§ 3.20 Surviving spouse's benefit for month of veteran's death.

(a) Where the veteran died on or after December 1, 1962 and before October 1, 1982, the rate of death pension or dependency and indemnity compensation otherwise payable for the surviving spouse for the month in which the death occurred shall be not less than the amount of pension or compensation which would have been payable to or for the veteran for that month but for his or her death. (38 U.S.C. 3110)

(b) Where the veteran dies on or after October 1, 1982, the surviving spouse may be paid death pension or dependency and indemnity compensation for the month in which the veteran died at a rate equal to the amount of compensation or pension which would have been payable to the veteran for that month had death not occurred, but only if such rate is greater than the monthly rate of death pension or dependency and indemnity compensation to which the surviving spouse is entitled. Otherwise, no payment of death pension or dependency and indemnity compensation may be made for the month in which the veteran died. (38 U.S.C. 3011(c))

2. Section 3.29 is revised as follows:

§ 3.29 Rounding.

(a) *Annual rates.* Where the computation of an increase in improved pension rates under §§ 3.23 and 3.24 would otherwise result in a figure which includes a fraction of a dollar, the benefit rate will be adjusted to the next higher dollar amount. This method of computation will also apply to increases in old-law and section 306 pension annual income limitations under § 3.26, including the income of a spouse which is excluded from a veteran's countable income, and parents' dependency and indemnity compensation benefit rates and annual income limitations under § 3.25. (38 U.S.C. 3112(c)(2)

(b) *Monthly or other periodic pension rates.* After determining the monthly or other periodic rate of improved pension under §§ 3.273 and 3.30 or the rate payable under section 306(a) of Pub. L. 95–588 (92 Stat. 2508), the resulting rate, if not a multiple of one dollar, will be

rounded down to the nearest whole dollar amount. The provisions of this paragraph apply with respect to amounts of pension payable for periods beginning on or after June 1, 1983, under the provisions of 38 U.S.C. 521, 541 or 542, or under section 306(a) of Pub. L. 95-588. (38 U.S.C. 3023)

3. In § 3.30, paragraphs (b) and (c) are revised as follows:

§ 3.30 Frequency of payment of improved pension.

* * * * *

(b) *Quarterly.* Payment shall be made every 3 months on or about March 1, June 1, September 1, and December 1, if the annual rate payable is at least $40 but less than $120. Effective June 1, 1983, the provisions of § 3.29(b) apply to this paragraph.

(c) *Semiannually.* Payment shall be made every 6 months on or about June 1, and December 1, if the annual rate payable is at least $20 but less than $40. Effective June 1, 1983, the provisions of § 3.29(b) apply to this paragraph.

* * * * *

4. Section 3.31 is added as follows:

§ 3.31 Commencement of the period of payment.

Regardless of VA regulations concerning effective dates of awards, and except as provided in paragraph (c) of this section, payment of monetary benefits based on original, reopened, or increased awards of compensation, pension or dependency and indemnity compensation may not be made for any period prior to the first day of the calendar month following the month in which the award became effective. However, beneficiaries will be deemed to be in receipt of monetary benefits during the period between the effective date of the award and the date payment commences for the purpose of all laws administered by the Veterans Administration except that nothing in this section will be construed as preventing the receipt of retired or retirement pay prior to the effective date of waiver of such pay in accordance with 38 U.S.C. 3105.

(b) *General rule of applicability.* The provisions of this section apply to all original, reopened, or increased awards unless such awards provide only for continuity of entitlement with no increase in rate of payment.

(c) *Specific exclusions.* The provisions of this section do not apply to the following types of awards.

(1) Surviving spouse's rate for the month of a veteran's death (for exception see § 3.20(b))

(2) In cases where military retired or retirement pay is greater than the amount of compensation payable, compensation will be paid as of the effective date of waiver of such pay. However, in cases where the amount of compensation payable is greater than military retired or retirement pay, payment of the available difference for any period prior to the effective date of total waiver of such pay is subject to the general provisions of this section.

(3) Adjustments of awards—such as in the case of original or increased apportionments or the termination of any withholding, reduction, or suspension by reason of:

(i) Recoupment,

(ii) An offset to collect indebtedness,

(iii) Institutionalization (hospitalization),

(iv) Incompetency,

(v) Incarceration,

(vi) An estate that exceeds the limitation for certain hospitalized incompetent veterans, or

(vii) Discontinuance of apportionments.

(4) Increases resulting solely from the enactment of legislation—such as

(i) Cost-of-living increases in compensation or dependency and indemnity compensation,

(ii) Increases in Improved Pension or parents' dependency and indemnity compensation pursuant to § 3.27, or

(iii) Changes in the criteria for statutory award designations.

5. In § 3.273, paragraphs (a) and (b) are revised as follows:

§ 3.273 Rate computation.

(a) *Initial award.* For the purpose of determining initial entitlement, or for resuming payments on an award which was previously discontinued, the monthly rate of pension payable to a beneficiary shall be computed by reducing the beneficiary's applicable maximum pension rate by the beneficiary's annual rate of countable income on the effective date of entitlement and dividing the remainder by 12. Effective June 1, 1983, the provisions of § 3.29(b) apply to this paragraph.

(b) *Running awards*—(1) *Change in maximum annual pension rate.* Whenever there is change in a beneficiary's applicable maximum annual pension rate, the monthly rate of pension payable shall be computed by reducing the new applicable maximum annual pension rate by the beneficiary's annual rate of countable income on the effective date of the change in the applicable maximum annual pension rate, and dividing the remainder by 12. Effective June 1, 1983, the provisions of § 3.29(b) apply to this paragraph.

(2) *Change in annual rate of income.* Whenever there is a change in a beneficiary's annual rate of countable income the monthly rate of pension payable shall be computed by reducing the beneficiary's applicable maximum annual pension rate by the beneficiary's new annual rate of countable income on the effective date of the change in the annual rate of income, and dividing the remainder by 12. Effective June 1, 1983, the provisions of § 3.29(b) apply to this paragraph.

* * * * *

6. In § 3.500, the introductory text is reprinted for the convenience of the reader and paragraphs (g)(2) and (n)(2) are revised as follows:

§ 3.500 General.

The effective date of a rating which results in the reduction or discontinuance of an award will be in accordance with the facts found except as provided in § 3.105. The effective date of reduction or discontinuance of an award of pension, compensation, or dependency and indemnity compensation for a payee or dependent will be the earliest of the dates stated in these paragraphs unless otherwise provided. Where an award is reduced, the reduced rate will be effective the day following the date of discontinuance of the greater benefit. (38 U.S.C. 3012(b))

* * * * *

(g) *Death (38 U.S.C. 3012(a), (b))*—

* * *

(2) *Dependent of payee (includes apportionee):*

(i) Death prior to October 1, 1982: last day of the calendar year in which death occurred.

(ii) Death on or after October 1, 1982: last day of the month in which death occurred, except that section 306 and old-law pension reductions or terminations will continue to be effective the last day of the calendar year in which death occurred.

* * * * *

(n) *Marriage (or remarriage) (38 U.S.C. 101(3), 3012(b)* * * *

(2) *Dependent of payee (includes apportionee):*

(i) Marriage prior to October 1, 1982: last day of the calendar year in which marriage occurred.

(ii) Marriage on or after October 1, 1982: last day of the month in which marriage occurred, except that section 306 and old-law pension reductions or terminations will continue to be effective the last day of the calendar year in which marriage occurred.

* * * * *

7. In § 3.501, the introductory text is reprinted for the convenience of the reader and paragraph (d) is revised as follows:

§ 3.501 Veterans.

The effective date of discontinuance of pension or compensation to or for a veteran will be the earliest of the dates stated in this section. Where an award is reduced, the reduced rate will be payable the day following the date of discontinuance of the greater benefit.

* * * * *

(d) *Divorce or annulment (38 U.S.C. 3012(b)(2):*

(1) Divorce or annulment prior to October 1, 1982: last day of the calendar year in which divorce or annulment occurred.

(2) Divorce or annulment on or after October 1, 1982: last day of the month in which divorce or annulment occurred, except that section 306 and old-law pension reductions or terminations will continue to be effective the last day of the calendar year in which divorce or annulment occurred.

* * * * *

8. In § 3.502, the introductory text is reprinted for the convenience of the reader and paragraph (a) is revised as follows:

§ 3.502 Widows (Widowers).

The effective date of discontinuance of pension, compensation, or dependency and indemnity compensation to or for a widow (widower) will be the earliest of the dates stated in this section. Where an award is reduced, the reduced rate will be payable the day following the date of discontinuance of the greater benefit.

(a) *Additional allowance of dependency and indemnity compensation for children (38 U.S.C. 3012(b) § 3.5(e)(3).* (1) If marriage occurred prior to October 1, 1982, the day preceding child's 18th birthday or last day of calendar year in which child's marriage occurred (see § 3.500(n) (2) and (3)), which ever is earlier.

(2) If marriage occurred on or after October 1, 1982, the day preceding child's 18th birthday or last day of the month in which marriage occurred (see §3.500(n) (2) and (3)) whichever is earlier.

* * * * *

9. In § 3.660, paragraph (a)(2) is revised as follows:

§ 3.660 Dependency, income and estate.

(a) *Reduction or discontinuance.*

* * *

(2) *Contingency.* Where reduction or discontinuance of a running award of section 306 pension or old-law pension is required because dependency of another person ceased due to marriage, annulment, divorce or death, or because of an increase in income, which increase could not reasonably have been anticipated based on the amount actually received from that source the year before, the reduction or discontinuance shall be made effective the end of the year in which the increase occurred. Where reduction or discontinuance of a running award of improved pension or dependency and indemnity compensation is required because of an increase in income, the reduction or discontinuance shall be made effective the end of the month in which the increase occurred. Where reduction or discontinuance of a running award of any benefit is required because of an increase in net worth or corpus of estate, because dependency of a parent ceased, or because dependency of another person ceased prior to October 1, 1982, due to marriage, annulment, divorce, or death, the award shall be reduced or discontinued effective the last day of the calendar year in which the increase occurred or dependency ceased. Except as noted in this subparagraph for section 306 or old-law pension, where the dependency of another person ceased on or after October 1, 1982, due to marriage, annulment, divorce or death, the reduction or discontinuance shall be effective the last day of the month in which dependency ceased.

(38 U.S.C. 3012(b))

* * * *. *

(38 U.S.C. 210(c))

[FR Doc. 83-20673 Filed 7-28-83; 8:45 am]

BILLING CODE 8320-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[SW-8-FRL 2407-7]

Hazardous Waste Management Programs; Montana, North Dakota, and Utah; Request for Extension of Phase I Interim Authorization Beyond July 26, 1983

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Extension of Application, Submission and Interim Authorization Period.

SUMMARY: On July 6, 1983; May 13, 1983, and; May 20, 1983, the States of Montana, North Dakota and Utah, respectively, requested extensions beyond the July 26, 1983, deadline for continuation of Phase I Interim Authorization in the absence of an application for Interim Phase II, Component C. Authorization (authority to permit storage, treatment and disposal facilities) under the Resource Conservation and Recovery Act of 1976, as amended. EPA is granting these extensions. This extension avoids termination on July 26, of the Interim Authorization which EPA granted previously to the States for the Phase I portions of the hazardous waste program.

EFFECTIVE DATE: July 26, 1983.

FOR FURTHER INFORMATION CONTACT: Louis W. Johnson, Chief, Waste Management Branch, Environmental Protection Agency, 1860 Lincoln Street, Denver, Colorado 80295 (8AW-WM), Telephone: (303) 837-2221.

SUPPLEMENTARY INFORMATION:

Background

40 CFR 271.122(c)(4) (formerly § 123.122(c)(4); 47 FR 32377, July 26, 1982) requires that States which have received any but not all Phases/Components of Interim Authorization amend their original submissions by July 26, 1983, to include all Components of Phase II. 40 CFR 271.137(a) (formerly 123.137(a); 47 FR 32378, July 26, 1982) further provides that on July 26, 1983, interim authorizations terminate except where the State has submitted by that date an application for all Phases/Components of interim authorization.

Where the authorization (approval) of the State program terminates, EPA is to administer and enforce the Federal program in those States. However, the Regional Administrator may, for good cause, extend the July 26, 1983, deadline for submission of the interim authorization application and the deadline for termination of the approval of the State program. (Note: 40 CFR Part 123, including the July 26, 1982, amendments (47 FR 32373), was recodified on April 1, 1983, as 40 CFR Part 271 (48 FR 14248).)

Utah received Phase I Interim Authorization on December 12, 1980; North Dakota received partial Phase I Interim Authorization on December 12, 1980; and Montana received partial Phase I Interim Authorization on February 26, 1981 and complete Phase I Interim Authorization on February 17, 1982. In each case, these States' ability to apply for Phase II A, B, and C Interim Authorization was delayed by pending actions in the State Legislatures, completion of State land disposal regulations, and decisions by the States to apply directly for Full Authorization. Each state is committed to applying for Full Authorization on the following schedule:

	Montana	North Dakota	Utah
1. State Hearing on Hazardous Waste Regulations.	July 1983	June 1983	September 1983.
2. Submit Draft Final Authorization Application	July 1983	September 1983	September 1983.
3. Submit Complete Application for Final Authorization.	December 1983	December 1983	December 1983.

Decision

In consideration of the efforts of the States of Montana, North Dakota, and Utah to finalize RCRA equivalent regulations and the above schedules for Final Authorization Application, I find good cause to exist to grant the states' requests for extension beyond the July 26, 1983, deadline for applying for Interim Authorization as follows:

Montana—180 days to January 22, 1984
North Dakota—180 days to January 22, 1984
Utah—180 days to January 22, 1984

Therefore, these states must officially submit a complete application for Final Authorization to EPA on or before January 22, 1984. If any one or all of the states of Montana, North Dakota and/or Utah fails to submit a complete application by January 22, 1984, approval of that State's Phase I program will terminate automatically and administration of the hazardous waste management program will revert to EPA.

List of Subjects in 40 CFR Part 271

Hazardous materials, Indian lands, Reporting and recordkeeping requirements, Waste treatment and disposal, Water pollution control, Water supply, Intergovernmental relations, Penalties, Confidential business information.

Authority: This notice is issued under the authority of Sec. 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. 6912(a), 6926 and 6974(b).

Dated: July 20, 1983.

John G. Welles,

Regional Administrator.

[FR Doc. 83-20213 Filed 7-28-83; 8:45 am]

BILLING CODE 6560-50-M

INTERSTATE COMMERCE COMMISSION

49 CFR Parts 1104, 1105, 1151, 1152, 1155 and 1160

[Ex Parte No. 449]

Filing of Pleadings and Applications

AGENCY: Interstate Commerce Commission.

ACTION: Final rules.

SUMMARY: The Commission has centralized certain functions and made the Office of the Secretary responsible for the receipt and docketing of all formal applications, petitions and subsequent pleadings filed in such proceedings. The Commission is modifying various regulations to reflect this centralization of functions. In the future, parties should identify the type of pleading or application on the incoming envelope. All pleadings should be addressed to the Secretary. Other regulations are modified to state that docket numbers for rail proceedings can be obtained before filing from the Office of the Secretary. The purpose of these changes is to facilitate their handling of applications and pleadings. Since this change relates to agency practice and procedure and internal agency organization, public comment is not required and these changes are being issued as final rules.

EFFECTIVE DATE: July 29, 1983.

FOR FURTHER INFORMATION CONTACT:

For Application Information: Edward Fernandez, (202) 275-7591,
For Pleading Information: Darlene Proctor, (202) 275-7233.

SUPPLEMENTARY INFORMATION: The Commission has centralized in the Office of the Secretary responsibility for the receipt and docketing of all applications, petitions, and pleadings in formal proceedings. The Mail Room is now part of that Office. We are asking for the cooperation of the public in following the practices outlined here which are intended to expedite the handling of case mail. This is of particular concern where short processing deadlines are involved.

Where filings are made in person, all new undocketed applications and fee items should be delivered to the Office of the Secretary, Applications and Fees Unit, Room B-213 of the Commission's Headquarters in Washington, DC. Pleadings and other non-fee items filed in formal proceedings should be filed in the Office of the Secretary, Case Control Branch, Room 1312. The Office of Proceedings, the Office of Hearings and the Secretary's Main Office in Room 2215 will no longer accept pleadings for filing. Delivery of copies directly to those offices will only delay their official acceptance as those offices will return all unstamped pleadings to the Case Control Branch for recording (entry into the computer system) and stamping. Despite the new procedures, the Office of Proceedings would appreciate a courtesy copy of any pleading, especially where expedited action is requested.

The public is asked to discontinue sending unsolicited copies of pleadings to the Commissioners and their staff. The copies which are sent with the original pleading are used for the Commissioners and staff. Extra, unsolicited copies increase the workload of the Case Processing Branch and interfere with the prompt flow of paperwork.

More specifically, documents accepted for filing in formal proceedings cases must now bear the Secretary's stamp as indication that the filing has been docketed and recorded in the Official records. Otherwise, the filing has not been officially accepted.

As part of the centralization it is necessary to make some modifications of our regulations regarding addressing of pleadings and advance requests for docket numbers for various rail proceedings. We are also updating the names and addresses of several organizational units which have been changed in recent years. This applies primarily to references to the Office of Policy and Analysis, which has been renamed the Office of Transportation Analysis.

The major rule modification that we are making is the addition of several new provisions in 49 CFR Part 1104, *Pleadings, Generally*. The first modification is the inclusion in the regulation of the requirement that parties include their addresses on the first page of their pleadings. The return address is necessary so that the party's name and correct address can be placed on the service list for the proceeding involved.

Another change is that those who submit pleadings to the Commission must identify on the envelope the docket number, if known, and the type of pleading mailed or delivered. Where filings are made by mail, the incoming envelope must be marked to show the case docket number and the envelope's contents, e.g., OP-1 Application, AB Application, MC-F Application, rail or motor complaint (new), applicant's verified statement (Dkt. No.——), protestant's verified statement (Dkt. No.——), etc. The purpose of this change

is to speed the processing of pleadings and to make it easier to identify time sensitive mail and pleadings. Parties are reminded to be sure that the docket number of the proceeding involved appears on the front page of the document being filed.

The third change is that an original and one copy of correspondence concerning cases should be submitted, unless otherwise stated in the Commission's Rules of Practice or the individual case. The original will be used for the public docket and the copy will be used by the working office.

We have modified our Feeder Line Development Program rules, 49 CFR 1151.2 Procedures, to state that applicant must obtain a docket number before the application is filed from Office of the Secretary, Public Records Section, Rate/Finance Unit, Room B-207, rather than from the Commission's Rail Section.

Amendments are also being made in 49 CFR Part 1152, Abandonment and Discontinuance of Rail Lines and Rail Transportation under 49 U.S.C. 10903, and 49 CFR Part 1180, Railroad Acquisition, Control, Merger, Consolidation, Project, Trackage Rights and Lease Procedures, to have pleadings submitted to the Secretary of the Commission rather than to the Deputy Director of Finance.

Part 1160—*How to Apply for Operating Authority* is being amended in § 1160.63 to direct that requests for extension of time in operating rights cases be addressed in the following manner "Extension of Time Request", Secretary, Interstate Commerce Commission, Washington, DC 20423.

In addition to the above changes, we wish to remind parties of procedures recently outlined for submission of confidential material. In No. 39174, *Petition of Burlington Northern Railroad Company For Review of a Decision of Railroad Commission of Texas Rail Rate Board Pursuant to 49 U.S.C. 11501,* (not printed) served April 25, 1983, the Commission requested that parties submitting confidential material for which a protective order is sought do so by furnishing the documents in a separate package marked "confidential material subject to request for protective order." Physical segregation and clear labeling are essential for an agency which handles a large volume of material, most of which is of public record. Our clerical personnel need clear warning of sensitive documents and an easy manner of assuring that they are not inadvertently exposed to public scrutiny. In addition, segregation allows easy return of confidential matter which is not crucial to the decisional process. In the last resort, complete return of these materials is the best guarantee of secrecy.

Since this matter primarily affects agency internal organization, it is not necessary to make a certification with regard to the Regulatory Flexibility Act (5 U.S.C. 601).

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

We adopt the revisions to 49 CFR Chapter X, set forth in the Appendix.

List of Subjects

49 CFR Parts 1104, 1151, and 1160

Administrative practice and procedure.

49 CFR 1105

Reporting and recordkeeping requirements.

49 CFR 1152 and 1155

Railroads.

Authority: 49 U.S.C. 10321 and 5 U.S.C. 553.

Decided: July 19, 1983.

By the Commission, Chairman Taylor, Vice Chairman Sterrett, Commissioners Andre and Gradison.

Agatha L. Mergenovich,

Secretary.

Appendix

Chapter X—Subchapter B of Title 49 of the Code of Federal Regulations is amended to read as follows:

PART 1104—PLEADINGS, GENERALLY

(1) Section 1104.1 is amended by revising the section heading and designating the existing text as paragraph (a) and by adding new paragraphs (b) and (c) to read as follows:

§ 1104.1 Address and identification.

* * * * *

(b) The address of the person filing the pleading should be included on the first page of the pleading.

(c) All envelopes in which a pleading is being submitted should be marked in the lower left hand corner with the docket number, if known, (not the full title) and the pleading type.

(2) Section 1104.3 is amended by designating the existing text as paragraph (a) and by adding a new paragraph (b) to read as follows:

§ 1104.3 Copies.

* * * * *

(b) The original and one copy of all correspondence relating to a formal proceeding before the Commission must be furnished for the Commission's use, unless otherwise specifically directed by another commission regulation or notice in an individual proceeding.

PART 1105—GUIDELINES FOR IMPLEMENTATION OF THE NATIONAL ENVIRONMENTAL POLICY ACT OF 1969

§ 1105.2 [Amended]

(3) Section 1105.2 is amended by revising the words, "Office of Policy and Analysis" to read "Office of Transportation Analysis".

§ 1105.3 [Amended]

(4) Section 1105.3 is amended by revising the words "Energy and Environment Branch (Room 5377), Office of Policy and Analysis," and "202-275-7916" to read "Section of Energy and Environment (Room 4143), Office of Transportation Analysis" and "202-275-0800," respectively.

§§ 1105.7, 1105.9 and 1105.10 [Amended]

(5) Sections 1105.7, 1105.9 and 1105.10 are amended by revising the words "Energy and Environment Branch" to read "Section of Energy and Environment" wherever they appear in those sections.

PART 1151—FEEDER RAILROAD DEVELOPMENT PROGRAM

§ 1151.2 [Amended]

(6) In § 1151.2 paragraph (a) is amended by revising the words "Commission's Rail Section" to read "Office of the Secretary, Public Records Section, Rate/Finance Unit, Room B-207."

§ 1151.5 [Amended]

(7) In § 1151.2 paragraph (b) is amended by revising the words "Rail Section, Room 5417," to read Secretary".

PART 1152—ABANDONMENT AND DISCONTINUANCE OF RAIL LINES AND RAIL TRANSPORTATION UNDER 49 U.S.C. 10923

§ 1152.21 [Amended]

(8) In § 1152.21 unnumbered paragraph 10 is amended by revising the words "Deputy Director Section of

Finance, Room 5417," to read "Secretary".

(9) In § 1152.21 unnumbered paragraph 13 is amended by revising the words "Section of Finance" to read "Rail Section" and "Commission Rail Service Planning Office" to read "Office of Transportation Analysis, Rail Services Planning Office".

§ 1152.25 [Amended]

(10) In § 1152.25 paragraph (c)(1) is amended by revising the words "Commission (Deputy Director, Section of Finance, Room 5417, Interstate Commerce Commission, Washington, DC 20423)" to read "Secretary, Interstate Commerce Commission, Washington, DC 20423."

§ 1152.27 [Amended]

(11) In § 1152. 27 paragraph (c)(1) is amended by revising the words "Commission (Deputy Director, Section of Finance, Room 5417, Interstate Commerce Commission, Washington, DC 20423)" to read "Secretary, Interstate Commerce Commission, Washington, DC 20423."

PART 1155—STANDARDS FOR DETERMINING RAIL SERVICES CONTINUATION SUBSIDIES

§ 1155.4 [Amended]

(12) In § 1155.4 paragraph (c) is amended by revising the acronym "RSPO" to read "OTA" wherever it appears.

(13) In § 1155.4 paragraph (c) is amended by revising the words "Rail Services Planning Office, 1900 L Street NW., Washington, D.C. 20036" to read "Office of Transportation Analysis, Rail Service Planning Office, Interstate Commerce Commission, Washington, DC 20423."

PART 1160—HOW TO APPLY FOR OPERATING AUTHORITY

§ 1160.63 [Amended]

(14) In § 1160.63 paragraph (c) is amended by revising the words "Section of Operating Rights" to read "Extension of Time Request, Secretary, Interstate Commerce Commission, Washington, DC 20423.

[FR Doc. 83-20574 Filed 7-28-83; 8:45 am]
BILLING CODE 7035-01-M

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49 CFR Part 1241

[No. 38923]

Elimination of Report of Incentive Per Diem Items; Railroads

AGENCY: Interstate Commerce Commission.

ACTION: Final rule.

SUMMARY: This rule removes 49 CFR 1241.12, Report of Incentive Per Diem Items—Railroads. The Commission has concluded that 49 CFR 1241.12 should be eliminated because the regulations concerning the use of earmarked funds at 49 CFR 1036.3, 1036.4, and 1036.5 were terminated on June 30, 1982 (Ex Parte No. 252, Sub-No. 5). Therefore, the report of incentive per diem items, 49 CFR 1241.12, for the year ended December 31, 1983, and thereafter, is no longer necessary.

DATE: This rule is effective for the accounting and reporting year beginning January 1, 1983.

FOR FURTHER INFORMATION CONTACT: Scott Decker, (202) 275-7448.

SUPPLEMENTARY INFORMATION: As a part of the Commission's continuing effort to simplify regulatory requirements and eliminate extraneous regulations, the Commission is eliminating 49 CFR 1241.12—Report of Incentive Per Diem Items—Railroads. The decision in Ex Parte No. 252 (Sub-No. 5) (47 FR 29246, July 6, 1982) directed that rules concerning the use of incentive per diem funds at 49 CFR 1036.3, 1036.4, and 1036.5 be terminated as of June 30, 1982. Therefore, we have concluded that 49 CFR Part 1241.12 is no longer necessary.

The Commission finds that a notice of proposed rulemaking as defined under the Administrative Procedure Act, 5 U.S.C. 553(b), is not required to adopt this revision because it involves the elimination of extraneous carrier reporting regulations.

Regulatory Flexibility Act

The Commission certifies that this final rule will not have a significant economic impact upon a substantial number of small entities. In this proceeding, we do not propose any new instructions; rather, we are eliminating an extraneous rule. Thus, we anticipate no adverse economic impact on businesses, organizations or other small entities.

This final rule does not significantly affect the quality of the human environment or the conservation of energy resources.

List of Subjects in 49 CFR Part 1241

Railroads.

Accordingly, we adopt the changes to Title 49 of the Code of Federal Regulations as set forth in Appendix A.

This rule is issued under authority of 49 U.S.C. 10321 and 5 U.S.C. 553.

Decided: July 18, 1983.

By the Commission, Chairman Taylor, Vice Chairman Sterrett, Commissioners Andre and Gradison.

Agatha L. Mergenovich,
Secretary.

Appendix A

PART 1241—[AMENDED]

Title 49 CFR shall be amended by making the following changes in part 1241:

§ 1241.12 [Removed]

1. Remove 49 CFR 1241.12—Report of incentive per diem items—Railroads, and reserve it for future use.

[FR Doc. 83-20573 Filed 7-28-83; 8:45 am]
BILLING CODE 7035-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 662

[Docket No. 30722-141]

Northern Anchovy Fishery

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of final determination.

SUMMARY: This notice announces the final determination of estimated spawning biomass and harvest quotas for the northern anchovy (*Engraulis mordax*) fishery in the fishery conservation zone for the 1983-84 fishing season. The harvest quotas have been determined by application of the formulas in the Northern Anchovy Fishery Management Plan and implementing regulations. A preliminary determination of estimated spawning biomass and harvest quotas was announced in the **Federal Register** on July 11, 1983.

EFFECTIVE DATE: August 1, 1983.

ADDRESS: Copies of Administrative Report Number LJ-83-15, upon which this determination is based, are available from Mr. Floyd S. Anders, Jr., Acting Regional Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731.

FOR FURTHER INFORMATION CONTACT: Mr. Floyd S. Anders, Jr., 213-548-2575.

SUPPLEMENTARY INFORMATION: In consultation with the California Department of Fish and Game and the Southwest Fisheries Center, National Marine Fisheries Service (NMFS), the Acting Director, Southwest Region,

NMFS (Regional Director), made a preliminary determination of the spawning biomass of the central subpopulation of northern anchovy and harvest quotas for the 1983–84 anchovy fishing season. This preliminary determination was published in the **Federal Register** on July 11, 1983 (48 FR 31680). Regulations at 50 CFR 662.3 require the announcement of a final determination on or about August 1 of each year, by notice published in the **Federal Register.**

The preliminary determinations were discussed at public meetings of the Pacific Fishery Management Council (Council) on July 20 in Culver City, California, the Council's Scientific and Statistical Committee and Anchovy Plan Development Team on July 19 in Culver City, California, and the Council's Anchovy Advisory Subpanel on July 14 in Terminal Island, California. Based on the recommendations of these groups, the Council concurred in the spawning biomass determination.

The Regional Director has made a final determination that the spawing biomass of the central subpopulation of the northern anchovy is estimated to be 1,549,000 short tons which is the same as the preliminary estimate. This determination is based on Administrative Report Number LJ-83-15, Southwest Fisheries Center, NMFS. The report is available from the Regional Director at the above address. It documents the method used to estimate the 1983 spawning biomass of the central subpopulation of northern anchovies. The biomass estimate is based on an egg production estimate. This method of biomass estimation has been calibrated to the larva census measure which has been used each year since implementation of the Northern Anchovy Fishery Management Plan (FMP) and provides the historical data series for establishing annual harvest quotas.

Amendment 4 to the FMP was approved by the Council on March 11, 1983, published in the **Federal Register** as a proposed rule on April 25, 1983 (48 FR 17627) and made partially effective on May 16, 1983 (48 FR 22301; May 18, 1983), by an emergency rulemaking that expires on August 15, 1983. The amendment and emergency rule reserve half of the reduction harvest quota and allow its retention as a reserve if scientific evidence demonstrates that the original biomass estimate was too high. The reduction quota reserve established by the amendment and the emergency regulations has been included in the final determination of harvest quotas.

According to specifications in the FMP as amended, the optimum yield in the fishery conservation zone (FCZ) is set at 128,100 short tons and the total allowable level of foreign fishing is zero. The Regional Director has made the following determinations for the 1983–84 fishing season applying the formulas in the FMP and in 50 CFR 662.3 as amended:

1. The total harvest quota is 128,100 short tons.

2. The domestic annual harvest (DAH) capacity is 128,100 short tons.

a. The portion of the DAH reserved for non-reduction fisheries is 12,600 short tons. However, non-reduction fisheries may exceed 12,600 short tons provided that the total of the reduction and non-reduction fisheries harvest does not exceed the total harvest quota.

b. The total harvest limit for U.S. reduction purposes is 115,500 short tons.

c. The first half of the total harvest limit available for initial allocation to the U.S. reduction fishery is 57,800 short tons (rounded to the nearest 100 short tons).

d. Ten percent of the initial allocation or 5,800 short tons (rounded to the nearest 100 short tons) is reserved for the fishery north of Pt. Buchon, California.

e. The remainder of the initial allocation or 52,000 short tons is available to the fishery south of Pt. Buchon, California.

3. The extent to which U.S. firms are capable of processing anchovies (DAP) is estimated to be 119,600 short tons.

4. The amount of northern anchovy available for joint venture processing is zero because DAH is equal to DAP plus the estimated live bait harvest of 8,500 short tons.

As specified in the FMP, the final determination has been made in consultation with the Council and a summary of the information on which the estimates are based has been provided to the Council. This action is taken under the authority of 50 CFR 662.3 and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 662

Fish, Fisheries, Fishing.

(16 U.S.C. 1801 *et seq.*)

Dated: July 25, 1983.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

[FR Doc. 83-20541 Filed 7-28-83; 8:45 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 48, No. 147
Friday, July 29, 1983

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.

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 229, 230, 240, and 249

[Release No. 33-6474; 34-20003; 40-13399; File No. S7-985]

Request for Comments on the Uniformity of Securities Laws

AGENCY: Securities and Exchange Commission.

ACTION: Publication of release announcing issues to be considered at hearing and requesting written comments concerning uniformity of securities laws.

SUMMARY: The Commission and the North American Securities Administrators Association today announced public hearings and published a request for comments on effectuating increased uniformity in the state and federal regulation of securities matters. This inquiry is intended to carry out the policies and purposes of Section 19(c) of the Securities Act of 1933, as adopted as part of the Small Business Investment Incentive Act of 1980, to maximize the effectiveness of securities regulation and reduce burdens on capital formation through increased cooperation between the Commission and the state securities regulatory authorities.

DATES: Hearings will commence on September 12, 1983 at 10:00 a.m. Written comments not prepared in connection with an oral presentation must be received on or before September 9, 1983.

ADDRESSES: Hearings will be held at the headquarters of the Securities and Exchange Commission, 450 5th Street, NW., Washington, D.C. 20549. Any written submissions not prepared in connection with an oral presentation should be submitted in triplicate to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, 450 5th Street, NW., Washington, D.C. 20549. Comments should refer to File No. S7-985. All witnesses desiring to make oral presentations should submit copies of their prepared statements to the Commission. Such materials should be directed to the attention of either Paul A. Belvin or Suzanne S. Brannan as specified below. All written submissions, including the written texts submitted in connection with oral presentations and the transcripts of such oral presentations, will be available for public inspection at the Commission's Public Reference Room, 450 5th Street NW., Washington, D.C. 20549.

FOR FURTHER INFORMATION CONTACT: Paul A. Belvin or Suzanne S. Brannan, Office of Small Business Policy, Division of Corporation Finance, Securities and Exchange Commission, 450 5th Street NW., Washington, D.C. 20549 at (202) 272-2644.

SUPPLEMENTARY INFORMATION:

I. Discussion

A dual federal-state system of securities regulation has existed since the adoption of a federal regulatory structure in the Securities Act of 1933 [15 U.S.C. 77a *et seq.*] (the "Securities Act"). A constant theme in the re-examination of securities regulation on both levels has been the minimization of burdens on issuers of securities and others resulting from a dual regulatory system. In recent years the need for issuers, both small and large, to assemble substantial amounts of capital has led to a significant increase in multi-state securities offerings. Further, new technological developments have improved the speed and facility with which offerings can be accomplished. These developments in the securities markets have made it even more important to increase uniformity between federal and state regulatory systems and among the various state systems and to improve cooperation among those regulatory bodies so that capital formation can be made easier while investor protections are retained.

The importance of facilitating greater uniformity in securities regulation was endorsed by Congress with the enactment of new Section 19(c) of the Securities Act [15 U.S.C. 77s(c)] in the Small Business Investment Incentive Act of 1980 [Pub. L. No. 96-477 (October 21, 1980)] (the "Investment Incentive Act"). Section 19(c) authorizes the Commission to cooperate with any association of state securities regulators which can assist in carrying out the declared policy and purpose of Section 19(c). The declared policy of the section is that there should be greater federal and state cooperation in securities matters, including: (1) Maximum effectiveness of regulation; (2) maximum uniformity in federal and state regulatory standards; (3) minimum interference with the business of capital formation; and (4) a substantial reduction in costs and paperwork to diminish the burdens of raising investment capital, particularly by small business, and to diminish the costs of the administration of the government programs involved. The purpose of Section 19(c) is to engender cooperation between the Commission and state regulatory authorities in the following areas: (1) the sharing of information regarding the registration or exemption of securities issues applied for in the various states; (2) the development and maintenance of uniform securities forms and procedures; and (3) the development of a uniform exemption from registration.

Senator Gaylord Nelson, in proposing new Section 19(c), noted that, "[i]n the absense of systematic coordination of efforts the present regulatory situation is exorbitantly expensive, maddeningly inefficient, and utterly frustrating. . . . It is apparent that no single agency, either Federal or State, is in a position to straighten this situation out."[1] To this end, Section 19(c) calls upon the Commission to meet at least annually, with representatives from securities associations, securities self-regulatory organizations, agencies, and private organizations involved in capital formation. These conferences are intended to provide a framework for cooperation among all interested parties to increase the efficiency and effectiveness of securities regulation. Also, the conferences provide a formal mechanism for regulatory policy and staff personnel to confer on a continuing basis.

The Commission and the North American Securities Administrators

[1] Federal Securities Laws and Small Business Legislation: Hearings on S. 1533, S. 1940 and S. 2699 Before the Subcomm. on securities of the Senate Comm. on Banking, Housing and Urban Affairs, 96th Cong., 2d Sess. 649 (1980) (statement of Senator Gaylord Nelson, Chairman, Senate Select Comm. on Small Business regarding the addition of language to the Small Business Investment Incentive Act of 1980 contained in S. 2764, on small business capital formation).

Association ("NASAA") strongly support the policies and purposes of Section 19(c) and, in this regard, are hosting a two part conference in September 1983. In Phase I, the Commission and NASAA are soliciting private sector comments and recommendations, as discussed below, for increasing the efficiency of securities regulation through enhanced federal-state uniformity. In addition, interested persons are invited to make oral presentations to a panel of Commission and NASAA representatives at public hearings commencing on September 12, 1983. In Phase II, representatives of the Commission, NASAA, the National Association of Securities Dealers, Inc. (the "NASD"), and the registered securities exchanges, will meet to consider the public commentary received and to develop ideas and methods for improving cooperation in securities matters.

II. Request for Comments

The Commission and NASAA request specific public comments and recommendations concerning the ways that the existing scheme of state and federal regulation can be improved to enhance capital formation while maintaining high standards of investor protection and the integrity of the securities markets.

Clearly, one general way to improve the existing scheme of regulation is through increased communications among all entities involved in the regulation of securities. This effort in the past has been somewhat sporadic and often dependent upon individual relationships, rather than the existence of a more formal institutional process. Recently, however, the Commission, the states, through NASAA, and the self-regulatory organizations have engaged in various cooperative efforts aimed at reducing the burdens and costs of regulation.

For example, the Commission worked together with NASAA in developing Regulation D [17 CFR 230.501-506], a series of rules providing exemptions from the registration provisions of the Securities Act for certain limited offerings of securities.[2] Regulation D was intended to serve as a basis for a uniform limited offering exemption at the federal and state level. The Commission and NASAA are continuing these efforts, and several individual states have adopted exemptive provisions in response to Regulation D. Similarly, NASAA and the NASD have developed a centralized registration system for securities agents and broker dealers. Cost savings to the securities industry have been estimated between twenty and forty million dollars annually. Commentators are encouraged to address these and all other aspects of the capital formation process under the current regulatory pattern, including other areas where federal-state uniformity or coordination may be desirable, such as additional coordinated registration requirements and forms.

III. Procedures

A. Written Submissions

Interested persons are invited to submit their views on the foregoing no late than September 9, 1983. Written submissions should be made in triplicate to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, 450 5th Street, NW., Washington, D.C. 20549 and refer to File No. S7-985.

B. Oral Presentations

Public hearings on the foregoing will commence at 10:00 a.m. on September 12, 1983 at the headquarters of the Securities and Exchange Commission 450 5th Street, NW., Washington D.C. 20549. Any interested person desiring to make a presentation at the hearings is requested to call or write Paul A. Belvin or Suzanne S. Brannan on or before September 8, 1983, as specified above. All witnesses are requested to submit 10 copies of their prepared statements by September 8, 1983.

Lists of Subjects in 17 CFR Parts 229, 230, 240 and 249

Reporting requirements, Securities.

By the Commission.

George A. Fitzsimmons,

Secretary.

July 22, 1983.

[FR Doc. 83-20578 Filed 7-28-83; 8:45 am]

BILLING CODE 8010-01-M

[2] Release No. 33-6389 (March 8, 1982) [47 FR 11251].

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 201 and 429

[Docket No. 83N-0023]

Drugs Composed Wholly or Partly of Insulin; Advance Notice of Proposed Rulemaking; Extension of Comment Period

AGENCY: Food and Drug Administration.

ACTION: Advance notice of proposed rulemaking; extension of comment period.

SUMMARY: The Food and Drug Administration (FDA) is extending to August 1, 1983, the comment period on its advance notice of proposed rulemaking for drugs composed wholly or partly of insulin. This action is in response to a request to extend the comment period.

DATE: Comments by August 1, 1983.

ADDRESS: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Robert Bradley, National Center for Drugs and Biologics (HFN-8), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-6490.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of April 19, 1983 (48 FR 16704), FDA published an advance notice of proposed rulemaking announcing the agency's intention to review its existing regulations on insulin. The advance notice gives interested individuals and organizations an opportunity to submit their comments (1) for revising the regulations, and (2) on several specific issues concerning the packaging and labeling of insulin products as set forth in the advance notice of proposed rulemaking. Interested persons were given to June 20, 1983 to submit comments.

In response to the advance notice of proposed rulemaking, counsel for Nordisk-USA requested that the comment period be extended to July 15, 1983. Reasons for requesting that extension were that, in addition to soliciting general comments, FDA specifically solicited comments on 15 distinct subjects, some of which are complex and would require significant time for preparation of useful comments. This extension was granted in the **Federal Register** of June 14, 1983 (48 FR 27389). In a letter dated July 7, 1983, counsel for Nordisk-USA requested an additional 2-week extension because of problems in mail service and other unforeseen problems. FDA has considered this request and has decided to grant it. Further, the agency has determined that its schedule for preparing a proposed regulation will permit a general extension of the comment period to August 1, 1983, as requested.

Interested persons may, on or before August 1, 1983, submit written comments on the advance notice of proposed rulemaking to the Dockets Management Branch at the address above. The comments will be considered in the agency's review and revision of its

insulin regulations. Comments should be in two copies (except that individuals may submit single copies), identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: July 20, 1983.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 83-20284 Filed 7-22-83; 2:26 pm]

BILLING CODE 4160-01-M

[Docket No. 83N-0135]

21 CFR Part 640

Additional Standards for Human Blood and Blood Products; Normal Serum Albumin (Human) and Plasma Protein Fraction (Human); Proposed Amendment of Additional Standards

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend the biologics regulations on additional standards for Normal Serum Albumin (Human) and Plasma Protein Fraction (Human) by revising a cautionary labeling statement about administering these products. FDA is proposing this labeling change to clarify the meaning and intent of the cautionary labeling statement.

DATES: Written comments by September 27, 1983. FDA is proposing that any final rule based on this proposal be effective 1 year after the date of its publication in the **Federal Register** and that all affected products initially introduced or initially delivered for introduction into interstate commerce after that effective date bear the revised cautionary labeling statement.

ADDRESS: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Joseph Wilczek, National Center for Drugs and Biologics (HFN-813), Food and Drug Administration, 8800 Rockville Pike, Bethesda, MD 20205, 301-443-1306.

SUPPLEMENTARY INFORMATION: Normal Serum Albumin (Human) and Plasma Protein Fraction (Human) are injectable biological products regulated under the provisions of section 351 of the Public Health Service Act (42 U.S.C. 262) and regulations thereunder (21 CFR Parts 600 through 640). Both products are derived from fractionation of human blood and are similar in nature. Either product may be used in treating a burn patient to overcome loss of fluids and sodium, in treating a shock/trauma patient, or in replacing plasma proteins in a patient with a lower than normal level of protein in the blood.

In the **Federal Register** of May 31, 1977 (42 FR 27575), FDA published regulations for Normal Serum Albumin (Human) and Plasma Protein Fraction (Human) to safeguard the public health and to reflect changes in manufacturing techniques and testing procedures. These regulations require that each of the above products be labeled with the statement "DO NOT USE IF TURBID, OR MORE THAN 4 HOURS AFTER THE CONTAINER HAS BEEN ENTERED." 21 CFR 640.84(a)(2) and 640.94(b). Some users of the products erroneously interpreted this warning as advising that the entire contents of the container must be infused into a patient within 4 hours after the container is first entered. The agency intended, however, that the required labeling statement caution users to begin administration of these products within 4 hours after the container is first entered.

The agency is proposing to clarify the cautionary labeling statement in §§ 640.84(a)(2) and 640.94(b) to read, "DO NOT USE IF TURBID. DO NOT BEGIN ADMINISTRATION MORE THAN 4 HOURS AFTER THE CONTAINER HAS BEEN ENTERED." Because both Normal Serum Albumin (Human) and Plasma Protein Fraction (Human) have the potential for being good culture media for bacteria, the approved labeling for these products cautions that a container of either product should be entered only once and any contents not used should be discarded.

The agency is aware that manufacturers of these products often prepare final printed labeling as much as 1 year before using it. To preclude any unnecessary costs to manufacturers, the agency is proposing that any final rule based on this proposal be effective 1 year after the date of its publication in the **Federal Register** and that all affected products initially introduced or initially delivered for introduction into interstate commerce after that effective date bear the revised cautionary labeling statement.

The agency has determined pursuant to 21 CFR 25.24(d)(13) (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.

In accordance with Executive Order 12291 and the Regulatory Flexibility Act, the agency has considered the impact of the proposal. FDA believes that the labeling change will have a minimal effect on manufacturers of biological products because the proposal only clarifies an existing labeling requirement. There are currently 15 licensed manufacturers of Normal Serum Albumin (Human) and 6 manufacturers of Plasma Protein Fraction (Human), and the proposed labeling statement relieves a burden on certain users of the biological products who have misinterpreted the meaning of the present labeling requirement. The agency concludes that the proposed rule to amend the labeling of the two products does not warrant designation as a major rule under any of the criteria under section 1(b) of Executive Order 12291. The agency certifies that a regulatory flexibility analysis is not required because the proposed rule would not have a significant economic impact on a substantial number of small entities.

List of Subjects in 21 CFR Part 640

Blood.

Therefore, under the Public Health Service Act (sec. 351, 58 Stat. 702 as amended (42 U.S.C. 262)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), it is proposed that Part 640 be amended as follows:

PART 640—ADDITIONAL STANDARDS FOR HUMAN BLOOD AND BLOOD PRODUCTS

1. In § 640.84 by revising paragraph (a)(2) to read as follows:

§ 640.84 Labeling.

(a) * * *

(2) The cautionary statement placed in a prominent position on the label, "DO NOT USE IF TURBID. DO NOT BEGIN ADMINISTRATION MORE THAN 4 HOURS AFTER THE CONTAINER HAS BEEN ENTERED."

* * * * *

2. In § 640.94 by revising paragraph (b) to read as follows:

§ 640.94 Labeling.

* * * * *

(b) The cautionary statement placed in a prominent position on the label, "DO NOT USE IF TURBID. DO NOT BEGIN ADMINISTRATION MORE THAN 4 HOURS AFTER THE CONTAINER HAS BEEN ENTERED."

Interested persons may, on or before September 27, 1983, submit to the Dockets Management Branch (address above), written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: July 21, 1983.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 83-20426 Filed 7-28-83; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 254

Conveyance of Small Tracts

AGENCY: Forest Service, USDA.

ACTION: Extension of comment period on proposed rule.

SUMMARY: Notice is hereby given that the public comment period on the proposed rule governing Conveyance of Small Tracts (48 FR 22589) is being entended for an additional 60 days to allow for interested parties to more fully develop and present their comments to the Agency.

DATE: Comment must be received by September 16, 1983.

ADDRESS: Comments should be sent to: R. Max Peterson (5450), Chief, Forest Service, U.S. Department of Agriculture, P.O. Box 2417, Washington, DC 20013.

FOR FURTHER INFORMATION CONTACT: George Liddicoatt, Paul Haarala, or Jerry Sutherland, Forest Service, Lands Staff, (703) 235-8188.

SUPPLEMENTARY INFORMATION: On May 19, 1983 (48 FR 22589), The Forest Service published a proposed rule to govern conveyance of certain small tracts within the National Forest System. The proposed rule would establish standards for implementing the Act of January 12, 1983 (96 Stat. 2535), commonly known as the Small Tracts Act. That Act enables the Secretary of Agriculture to sell, exchange, or interchange certain limited and specific categories of National Forest System land to resolve title conflicts over small parcels of land, facilitate the rapid resolution of certain encroachment problems, provide for disposal of narrow strips of land held for right-of-way purposes but no longer needed, and provide for disposal of small, odd-shaped parcels of National Forest System lands intermingled with patented mining claims.

The comment period on the proposed rule ended on July 18. Because several issues have arisen during the initial comment period over the interpretation of the Small Tracts Act as reflected in the proposed rule, the comment period is being extended to allow those who have concerns about interpretation of the Act to more fully develop and present their comments.

Richard D. Siegel,

Deputy Assistant Secretary for Natural Resources and Environment.

July 25, 1983.

[FR Doc. 83-20594 Filed 7-28-83; 8:45 am]

BILLING CODE 3410-11-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 799

[OPTS-42034A]

Ethyltoluenes; Trimethylbenzenes; C_9 Aromatic Hydrocarbon Fraction Proposed Test Rule; Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; extension of comment period.

SUMMARY: EPA is extending the comment period for the proposed test rule for the C_9 aromatic hydrocarbon fraction containing ethyltoluenes and trimethybenzenes published in the **Federal Register** of May 23, 1983. The extension is in response to a request by the American Petroleum Institute for additional time for comment. The date for the public meeting on the proposed rule has also been changed.

DATES: Written comments on the proposed rule should be submitted on or before September 1, 1983. EPA will hold a public meeting on September 22, 1983, on this proposed rule in Washington, D.C., if persons request time for oral comment by August 25, 1983.

ADDRESS: Address written comments identified by the document control number (OPTS-42034A) in triplicate to: TSCA Public Information Office (TS-793), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E-108, 401 M St. SW., Washington, D.C. 20460.

The administrative record supporting this action is available for public inspection at the above address from 8:00 a.m. to 4:00 p.m. Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: Jack P. McCarthy, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-545, 401 M St. SW., Washington, D.C. 20460. Toll Free: (800-424-9065), in Washington, D.C.: (554-1404), outside the USA: (Operator-202-554-1404). For exact time and place of meeting contact Jack P. McCarthy.

SUPPLEMENTARY INFORMATION: EPA issued a notice of proposed rulemaking published in the **Federal Register** of May 23, 1983 (48 FR 23088) to consider for testing under section 4(a) of the Toxic Substances Control Act a C_9 aromatic petroleum fraction containing the substances ethyltoluenes and trimethylbenzenes.

In response to a request by the American Petroleum Institute, the Agency is extending the comment period from July 22, 1983, to September 1, 1983. Additionally, the public meeting for those interested in presenting oral comments will be held September 22, 1983.

Information on the exact time and place of the meeting will be available from the TSCA Assistance Office at the telephone numbers given above. Persons who wish to attend or present comments at the meeting should call the TSCA Assistance Office by August 25, 1983. While the meeting will be open to the public, active participation will be limited to those persons who have arranged to present comments and to designated EPA participants. Attendees should call the TSCA Assistance Office before making travel plans, because the meeting will not be held if members of the public do not wish to make oral comments.

The Agency will transcribe the meeting and will include the written transcript in the public record of the test rule. Participants are invited, but not required, to submit copies of their statements prior to or on the day of the meeting. All such written materials will become part of EPA's record for this rulemaking.

(Sec. 4, Pub. L. 94-469, 90 Stat. 2003 (15 U.S.C. 2601))

Dated: July 20, 1983.

Don R. Clay,

Acting Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 83-20212 Filed 7-28-83; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 5400

Advertised Sales; General

AGENCY: Bureau of Land Management, Interior.

ACTION: Extension of comment period on proposed rulemaking.

SUMMARY: This notice extends the comment period on the proposed rulemaking on timber sale access published in the **Federal Register** on June 29, 1983 (48 FR 29890). The comment period is hereby extended for thirty days, from July 29, 1983, to August 29, 1983.

DATE: Comments are due by August 29, 1983.

ADDRESS: Send comments to: Director (140), Bureau of Land Management, 1800 "C" Street, NW., Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Debbie Pietrzak (230), Bureau of Land Management, 1800 "C" Street, NW., Washington, D.C. 20240, (202) 653-8864.

July 26, 1983.

Garrey E. Carruthers,

Assistant Secretary of the Interior.

[FR Doc. 83-20211 Filed 7-28-83; 8:45 am]

BILLING CODE 4310-84-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Parts 61 and 62

[Docket No. FEMA-FIA]

National Flood Insurance Program; Assistance to Private Sector Property Insurers

AGENCY: Federal Insurance Administration (FIA), Federal Emergency Management Agency (FEMA).

ACTION: Proposed rule.

SUMMARY: This proposed rule would revise the National Flood Insurance Program (NFIP) regulations dealing with the issuance of flood insurance policies and the adjustment of claims arising under such contracts of insurance to establish a program of assistance to private sector property insurance companies in the provision of NFIP flood insurance coverage to policyholders insured by these companies for other lines of property insurance business.

DATES: All comments received on or before October 27, 1983, will be considered before final action is taken on the proposed rule. The proposed effective date is October 1, 1983.

ADDRESS: Persons wishing to comment should submit comments in duplicate to the Rules Docket Clerk, Office of the General Counsel, Federal Emergency Management Agency, Washington, D.C. 20472.

FOR FURTHER INFORMATION CONTACT: Donald L. Collins, Federal Emergency Management Agency, Federal Insurance Administration, Room 429, 500 "C" Street, SW., Washington, D.C. 20472; telephone number (202) 287-0740

SUPPLEMENTARY INFORMATION: These proposed amendments are intended to more fully effectuate the purposes of the National Flood Insurance Act of 1968, as amended (Pub. L. 90-448, U.S.C. 4001), while providing a direct and tangible benefit to citizens insured against property insurance perils, other than flood, by insurers availing themselves of the assistance contemplated by this proposed rule.

Regarding the purposes of the 1968 Act, the NFIP enabling legislation establishes the direction of having the program "carried out to the maximum extent praticable by the private insurance industry" (42 U.S.C. 4001) and authorizes the Director, FEMA, to "encourage and arrange for . . . appropriate financial participation and risk sharing in the program by insurance companies" (42 U.S.C. 4011). Clearly, the rationale for the enabling legislation recognizes the benefits to be derived from the operation of a national program of flood insurance by private sector property insurers, who are the traditional providers of insurance to the public. In this connection, the Act declares, as its purpose that there be "a flood insurance program by means of which flood insurance, over a period of time, can be made available on a nationwide basis through the cooperative efforts of the Federal Government and the private insurance industry" (42 U.S.C. 4001). Thus, it was felt that the public would best be served if the flood insurance program was grounded in the considerable insurance expertise reposing in the private sector. Also, if the program is to be truly "nationwide" in scope, it must effectively penetrate its potential insurance market in every flood hazard area in the nation.

At present, the program is being operated as a direct Federal program of insurance, in cooperation with private sector property insurance agents, brokers and independent claims adjustment organizations. Insurers, per se, have no direct relationship with the program, nor any opportunity, over the long-term, to participate in the program on a risk sharing or other financial basis, as envisioned by the enabling legislation. The book of business stands at almost 1.9 million policies of flood insurance in-force, with a potential policy base ranging upwards of three times that amount. Not having adequate marketing facilities (the program is centrally located in the District of Columbia and does not have a sales force or a direct contractual relationship with the insurance agents who are, actually, the agents of the policyholders, rather than of the Government), the potential for reaching those millions of citizens who should be but are not covered by flood insurance is little more than a distant hope. Under these conditions, unless the program accelerates its marketing direction, millions of structures at risk will remain uninsured against the peril of flood, subjecting the national treasury to flood-related disaster assistance payouts, which could otherwise be advoided by the purchase of flood insurance coverage by those most in need of such insurance benefits.

To reach this market and to assist private sector property insurers improve insurance service to their policyholders, it is the purpose of this proposed rulemaking to establish a "Write-Your-Own" (WYO) program of flood insurance whereby an individual insurer will be able to write Federal flood insurance coverage under its own name to any of its own policyholders, who are insured by the company against other property insurance perils, e.g., under a homeowners policy, or to other applicants for flood insurance. The principal beneficiary of this arrangement will be those policyholders of private sector insurers who presently need but do not have flood insurance coverage. The coverage will be provided under the auspices of the National Flood Insurance Program, pursuant to the program's regulations, and will be identical to the coverage offered by the NFIP, at the same costs to the policyholder. Inasmuch as the rates charged under the NFIP are subsidized, insurers offering NFIP coverage to their policyholders will be in the position of conducting business at a loss and, to insulate such insurers from loss, the WYO arrangements will provide for Government subsidization of all flood insurance losses sustained by WYO insurers, after application of flood insurance premium funds to the insurers' losses and expenses. Under WYO arrangements, therefore, insurers will issue and service policies of flood insurance to their customers, pay agents' commissions, losses and loss adjustment expenses, just as these companies would do in the case of their customary

lines of property insurance business. Other customary company expenses, such as State taxes, assessments and other expenses incurred in the performance of WYO functions will be borne by the companies and reimbursed to them by the Government. The WYO arrangements will be for a yearly term and neither the participating company nor the Government need renew the arrangements. All arrangements will be subject to audit by the Comptroller General of the United States and the Federal Insurance Administration, FEMA, and will comply with the NFIP's statutory and regulatory provisions.

FEMA has determined, based upon an Environmental Assessment, that this rule does not have significant impact upon the quality of the human environment. A finding of no significant impact is included in the formal docket file and is available for public inspection and copying at the Rules Docket Clerk, Office of General Counsel, Federal Emergency Management Agency, 500 "C" Street, SW., Washington, D.C. 20472.

These regulations do not have a significant economic impact on a substantial number of small entities and have not undergone regulatory flexibility analysis.

The proposed rule is not a "major rule" as defined in Executive Order 12291, dated February 17, 1981 and, hence, no regulatory analysis has been prepared.

FEMA has determined that the proposed rule does not contain a collection of information requirement as described in Section 3504(h) of the Paperwork Reduction Act.

List of Subject in 44 CFR Parts 61 and 62

Flood insurance.

Accordingly, Parts 61 and 62 of Subchapter B of chapter 1 of Title 44 are proposed to be amended as follows:

PART 61—INSURANCE COVERAGE AND RATES

1. Section 61.13 is amended by the addition of new paragraph (f), as follows:

§ 61.13 Standard Flood Insurance Policy.

* * * * *

(f) The Standard Flood Insurance Policy and endorsements may be issued by private sector 'Write-Your-Own' (WYO) property insurance companies, based upon flood insurance applications and renewal forms, all of which instruments of flood insurance may bear the name, as Insurer, of the issuing WYO Company. In the case of any Standard Flood Insurance Policy, and its related forms, issued by a WYO Company, wherever the names 'Federal Emergency Management Agency' and 'Federal Insurance Administration' appear, the WYO Company is authorized to substitute its own name therefor. Standard Flood Insurance Policies issued by WYO Companies may be executed by the issuing WYO Company as Insurer, in the place and stead of the Federal Insurance Administrator.

PART 62—SALE OF INSURANCE AND ADJUSTMENT OF CLAIMS

2. Part 62 is amended by the addition of a new Subpart C, as follows:

Subpart C—Write-Your-Own (WYO) Companies

§ 62.23 WYO companies authorized.

(a) Pursuant to section 1310 of the Act, the Administrator may enter into arrangements with individual private sector property insurance companies whereby such companies may offer flood insurance coverage under the Program to eligible applicants for such insurance, including policyholders insured by them under their own property insurance business lines of insurance in any State in which such WYO Companies are licensed to engage in the business of property insurance.

(b) Any duly licensed insurer so engaged in the Program shall be a WYO Company.

(c) A WYO Company will arrange for the issuance of flood insurance in any amount within the maximum limits of coverage specified in § 61.6 of this subchapter, as Insurer, to any person qualifying for such coverage under Parts 61 and 64 of this subchapter who submits an application to the WYO Company; coverage shall be issued under the Standard Flood Insurance Policy.

(d) A WYO Company issuing flood insurance coverage shall arrange for the adjustment, settlement, payment and defense of all claims arising from policies of flood insurance it issues under the Program, based upon the terms and conditions of the Standard Flood Insurance Policy.

(e) In carrying out its functions under this Subpart, a WYO Company shall utilize its own customary standards, staff and independent contractor resources, as it would in the ordinary and necessary conduct of its own business affairs, subject to the Act and regulations prescribed by the Administrator pursuant to the Act.

(f) To facilitate the marketing of flood insurance coverage under the Program to policyholders of WYO Companies, the Administrator will enter into arrangements with such companies whereby the Federal Government will be a guarantor and in which the primary relationship between the WYO Company and the Federal Government will be one of a fiduciary nature, i.e., to assure that any taxpayer funds are accounted for and appropriately expended.

(g) WYO Companies shall not be agents of the Federal Government and are solely responsible for their obligations to their insureds under any flood insurance policies issued pursuant to arrangements entered into with the Administrator.

(National Flood Insurance Act of 1968, as amended (Title XIII of the Housing and Urban Development Act of 1958), 42 U.S.C. 4001–4128; Reoganization Plan No. 3 of 1978 (43 FR 4193), E.O. 12127, dated March 31, 1979 (44 FR 19367) E.O. 11988, dated May 24, 1977 and 44 CFR 9, Delegation of Authority to Federal Insurance Administrator)

Issued at: Washington, D.C., July 25, 1983.

Jeffrey S. Bragg,

Federal Insurance Administrator.

[FR Doc. 83-20627 Filed 7-28-83; 8:45 am]

BILLING CODE 6718-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for Cereus Robinii (Key Tree-Cactus)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service proposes to determine *Cereus robinii* (Key tree-cactus) to be an Endangered species under the authority contained in the Endangered Species Act of 1973, as amended. *Cereus robinii* occurs in the Florida Keys and in Cuba, where its range and population numbers have been drastically reduced. The remaining five U.S. populations, three of which occur on privately-owned land, are threatened by the continuing urbanization of the Keys and by horticultural exploitation. If this proposal is made final, a determination that *Cereus robinii* is an Endangered species would implement the needed protection provided by the Endangered Species Act of 1973, as amended. The Service seeks data and comments from the public on this proposal.

DATES: Comments from all interested parties must be received by September

27, 1983. Public hearing requests must be received by September 12, 1983.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Endangered Species Field Station, U.S. Fish and Wildlife Service, 2747 Art Museum Drive, Jacksonville, Florida 32207. Comments and materials received will be available for public inspection during normal business hours, by appointment, at the above address.

FOR FURTHER INFROMATION CONTACT: Mr. David Wesley, Endangered Species Field Supervisor, U.S. Fish and Wildlife Service, 2747 Art Museum Drive, Jacksonville, Florida 32207, (904/791-2580).

SUPPLEMENTARY INFORMATION:

Background

Cereus robinii, a member of the cactus family or Cactaceae, consists of two varieties, *Cereus robinii* var. *robinii* and *Cereus robinii* var. *deeringii*. Both varieties are covered by this proposed rule. *Cereus robinii* was originally described as *Pilocereus robinnii* by the French botanist Lemaire in 1864, based on specimens from Cuba. Other names which have applied to this species include *Cephalocereus keyensis*, based on material from Key West, Florida (Britton and Rose, 1909), and *Cephalocereus deeringii*, based on a plant from Lower Matecumbe Key, Florida (Small, 1917). Benson (1969) considered these taxa to be conspecific with *Pilocereus robinii* Lemaire, which he transferred to the genus *Cereus*. He considered *Cephalocereus deeringii* Small to represent a variety of *Cereus robinii*. *Cereus robinii* var. *robinii* has now been reduced to a few locations in the Florida Keys and Cuba, while *Cereus robinii* var. *deeringii* has not been seen for many years and is probably extinct.

Cereus robinii is the largest of the native Florida cacti. Its erect, branched stems reach heights of 8 meters (25 feet). The succulent stems are cylindrical, spiny, and light or bluish-green, and measure 7–10 centimeters in diameter. The beautiful flowers, which open in the late afternoon or evening, are 5–6 centimeters long and vary from white to green to purplish. The fruit is a dark red berry which measures 3–5 centimeters in diameter. *Cereus robinii* is the only native Florida cactus which stands erect at maturity and is considered a tree. This unique cactus occurs in rocky hammocks of the Florida Keys and Cuba. Early botanists describe *Cereus robinii* as locally abundant. However, the plant communities in which *Cereus robinii* occurs have largely disappeared from the Keys due to development and urbanization, and today *Cereus robinii* has been pushed to near extinction. Of the five remaining populations, three occur on privately-owned land and are very vulnerable due to the continuing urbanization of coastal Florida and the Keys.

Previous Federal protective actions began with Section 12 of the Endangered Species Act of 1973, which directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be Endangered, Threatened, or extinct. This report, designated as House Document No. 94–51, was presented to Congress on January 9, 1975. On July 1, 1975, the Service published a notice in the **Federal Register** (40 FR 27823) of its acceptance of the report of the Smithsonian Institution as a petition within the context of Section 4 of the Act, and of its intention thereby to review the status of the plant taxa named within. On June 16, 1976, the Service published a proposed rule in the **Federal Register** (41 FR 24523) to determine approximately 1,700 vascular plant species to be Endangered species pursuant to Section 4 of the Act. This list of plants was assembled on the basis of comments and data received by the Smithsonian Institution and the Service in response to House Document No. 94–51, and the July 1, 1975, **Federal Register** notice. *Cereus robinii* was included in all three of these documents. General comments on the 1976 proposal are summarized in an April 26, 1978, **Federal Register** publication (43 FR 17909). The Endangered Species Act Amendments of 1978 required that all proposals over 2 years old be withdrawn. A 1-year grace period was given to proposals already over 2 years old. On December 10, 1979, the Service published a notice withdrawing the June 16, 1976, proposal along with four other proposals which had expired (44 FR 79796). The Service is reproposing *Cereus robinii* to be an Endangered species.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations promulgated to implement the listing provisions of the Act (codified at 50 CFR Part 424; under revision to accommodate 1982 amendments to the Act) set forth the procedures for adding species to the Federal list. The Secretary of the Interior shall determine whether any species is an Endangered or a Threatened species due to one or more of the five factors described in Section 4(a)(1) of the Act. These factors and their application to *Cereus robinii* are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Historically, *Cereus robinii* was known from at least 11 sites in the Florida Keys and also from at least two sites in Cuba. Today only five sites remain in the Florida Keys, a reduction of almost 60 percent. Twelve areas of suitable habitat within the historical range of *Cereus robinii* in Florida were searched in June 1979, but in only four of these areas was *Cereus robinii* relocated (Austin, 1980). One of these sites, on Layton's Hammock, was visited again in August 1979, and most of the hammock and its vegetation had been bulldozed. Part of the hammock containing the cacti was turned into a borrow pit several feet deep (Austin, 1980). This site was presumed extirpated, but was rediscovered in 1982.

A fifth site was discovered on private property in 1982. One of the historical sites for *Cereus robinii* was Key West, Florida. Small (1917) described this cactus as being abundant on Key West at one time, but being on the verge of extermination due to the destruction of the hardwood hammocks for firewood and for building sites. It was apparently extirpated by land clearing for a military base during World War II, and today, no specimens can be located there. Only two of the five sites where this species still occurs today are protected, one site located on land administered by the U.S. Fish and Wildlife Service (National Key Deer Refuge), and the other on land administered by the State of Florida, Department of Natural Resources (Long Key State Park). The plants on privately-owned land are especially vulnerable to destruction through the continuing development of the Keys.

The past destruction of hardwood hammock habitat has reduced *Cereus robinii* to a very vulnerable level, and its future is now uncertain. The Florida Keys still are undergoing rapid residential and recreational development. This has resulted not only in the loss of populations of the cacti discussed in this rule, but also of the entire hardwood hammock habitats where they once grew.

In Cuba, *Cereus robinii* has suffered a similar plight. Housing and recreational development have destroyed a large percentage of the species' habitat. *Cereus robinii* has been reduced to only a couple of remaining localities in Cuba as well as in the Keys and it is now considered Endangered throughout its range by the International Union for the Conservation of Nature and Natural Resources (Lucas and Synge, 1978).

B. *Overutilization for commercial, recreational, scientific, or educational purposes. Cereus robinii* is an attractive species with high horticultural potential. The horticultural value of these cacti as landscape ornamentals, and the consequent exploitation, has been mentioned by many authors (Lucas and Synge, 1978; Little, 1975; Austin, 1980). Like many other species of cacti, *Cereus robinii* is vulnerable to over-collection due to the activities of some collectors, hobbyists, and societies. *Cereus robinii* could potentially be extirpated from its remaining sites by such activities. Since three of the populations occur on privately-owned land, control of taking of these attractive plants is a special problem. Even on public lands, the enforcement of taking prohibitions has been found to be difficult. Observation of one population of *Cereus robinii* showed evidence of vandalism in the form of cut-off branches and carved initials on the branches (Austin, 1980).

C. *Disease or predation* (including grazing). Not applicable to this species.

D. *The inadequacy of existing regulatory mechanisms. Cereus robinii* is listed as Endangered under Florida law, offering it some protection from taking, intrastate transporting, and selling. However, this protection does not protect its habitat and, by itself, will probably not be adequate to prevent the species' further decline. The collection of plants is also prohibited on State Parks and on National Wildlife Refuges, but these prohibitions are difficult to enforce. All native cacti are on Appendix II of the Convention on International Trade in Endangered Species of Wild Fauna and Flora, which regulates export of this plant, but does not regulate interstate trade or habitat destruction. The Endangered Species Act would offer additional protection for the species, through Section 7 interagency coordination, and through Section 9, which prohibits taking with intent to reduce to possession on Federal lands.

E. *Other natural or manmade factors affecting its continued existence.* Restrictions to specialized habitats and geographically limited ranges tends to intensify any adverse effects upon the populations of any rare plant. This is certainly true for *Cereus robinii*, and is increased by the large amount of destruction which has already taken place. The small remaining populations of *Cereus robinii* are also threatened by natural factors, such as hurricanes. Small (1917) describes the destruction and damage of a population due to windthrow after a hurricane passed over the Keys. The growth habit of *Cereus robinii* makes it particularly vulnerable to this natural phenomenon. The reduction of the natural vegetation of coastal Florida and the Keys has reduced the natural buffering capacity to storm effects, increasing the vulnerability of the remaining cacti.

Critical Habitat

Section 4(a)(3) of the Endangered Species Act, as amended, requires that, to the maximum extent prudent and determinable, the Secretary shall specify any habitat of species which is considered to be Critical Habitat at the time of determining the species to be Endangered or Threatened. The Act defines "Critical Habitat" as (i) the specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the provisions of Section 4 of the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection, and (ii) specific areas outside the geographic area occupied by the species at the time it is listed in accordance with the provisions of Section 4 of the Act, upon a determination by the Secretary that such areas are essential for the conservation of the species.

As discussed under Factor B in the "Summary of Factors affecting the Species," *Cereus robinii* is threatened by taking, an activity not regulated by the Endangered Species Act with respect to plants, except on Federal lands. Publication of Critical Habitat descriptions would make this species even more vulnerable. Therefore, it would not be prudent to determine Critical Habitat for *Cereus robinii* at this time.

Available Conservation Measures

The protection which will be offered to *Cereus robinii* once it is listed is discussed below:

Subsection 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species which is proposed or listed as Endangered or Threatened. Federal agencies are required under Section 7(a)(4) to informally confer with the Service on any action that is likely to jeopardize the continued existence of a species proposed for listing under Section 4. When species are listed, Section 7 requires Federal agencies to insure that activities they authorize, fund or carry out are not likely to jeopardize the continued existence of the species.

The Act and implementing regulations published in the June 24, 1977, **Federal Register** set forth a series of general trade prohibitions and exceptions which apply to all Endangered plant species. The regulations pertaining to Endangered plants are found at 50 CFR 17.61 and 17.62 and are summarized below.

With respect to *Cereus robinii* all trade prohibitions of Section 9(a)(2) of the Act, implemented by 50 CFR 17.61, would apply. These prohibitions, in part, would make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, or sell or offer for sale this species in interstate or foreign commerce. Certain exceptions would apply to agents of the Service and State conservation agencies. The Act and 50 CFR Section 17.62 also provide for the issuance of permits to carry out otherwise prohibited activities involving Endangered species under certain circumstances.

Section 9(a)(2)(B) of the Act, as amended in 1982, states that it is unlawful to remove and reduce to possession Endangered plant species from areas under Federal jurisdiction. The new prohibition would apply to *Cereus robinii.* Permits for exceptions to this prohibition are available through Section 10(a) and 4(d) of the Act, following the general approach of 50 CFR 17.62, until revised regulations are promulgated to incorporate the 1982 amendments to the Act.

Requests for copies of the regulations on plants, and inquires regarding them may be addressed to the Federal Wildlife Permit Office, U.S. Fish and Wildlife Service, Washington, DC 20240 (703/235-1932).

Cereus robinii is already on Appendix II of the Convention on International Trade in Endangered Species of Wild Fauna and Flora, which requires a permit for export. International and interstate commercial trade in this species is minimal or nonexistent. It is anticipated that few permits involving plants of wild origin would ever be issued, since these cacti are not common in the wild or in cultivation.

Public Comments Solicited

The Service intends that any rules finally adopted will be accurate and as effective as possible in the conservation of any Endangered or Threatened species. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, private interests, or any other interested party concerning any aspect of these proposed

rules are hereby solicited. Comments particularly are sought concerning:

1. Biological or other relevant data concerning any threat (or lack thereof) to *Cereus robinii*.

2. The location of any additional populations of *Cereus robinii* and the reasons why any habitat of this species should or should not be determined to be Critical Habitat as provided by Section 4 of the Act;

3. Additional information concerning the range and distribution of this species;

4. Current or planned activities in the subject area and their possible impacts on *Cereus robinni*.

Final promulgation of the regulations on *Cereus robinni* will take into consideration the comments and any additional information received by the Service, and such communications may lead to a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be filed within 45 days of the date of the proposal. Such requests should be made in writing and addressed to the Endangered Species Field Supervisor, U.S. Fish and Wildlife Service, 2747 Art Museum Drive, Jacksonville, Florida 32207 (904/791-2580).

National Environmental Policy Act

A draft Environmental Assessment has been prepared in conjunctin with this proposal. It is on file in the Service's Endangered Species Field Station, U.S. Fish and Wildlife Service, 2747 Art Museum Drive, Jacksonville, Florida 32207 (904/791-2580), and may be examined during regular business hours, by appointment. A determination will be made prior to the time of a final rule as to whether this is a major Federal action which would significantly affect the quality of the human environment within the meaning of Section 102(2)(C) of the National Environmental Policy Act of 1969 (implemented at 40 CFR Parts 1500-1508).

Authors

The primary authors of this proposed rule are Ms. E. LaVerne Smith, Office of Endangered Species, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (703/235-1975), and Dr. Andrew F. Robinson, Jr., U.S. Fish and Wildlife Service, Lloyd 500 Building, Suite 1692, 500 NE. Multnomah Street, Portland, Oregon 97232. Mr. Marshall P. Jones of the Service's Atlanta Regional Office served as editor.

References

Austin, Daniel F. 1980. Endangered and Threatened Plant Species Survey in Southern Florida and the National Key Deer and Great White Heron National Wildlife Refuges, Monroe County, Florida. Contracted report submitted to the U.S. Fish and Wildlife Service, March 1980.

Benson, L. 1969. The Cacti of the United States and Canada—New Names and Nomenclatural Combinations—I. *Cactus and Succulent Journal*. 41:124-128.

Britton, N. L., and J. N. Rose. 1920. The Genus *Cereus* and its Allies in North America. Contributions from the National Herbarium. XII:416.

Little, Elbert L., Jr. 1975. Our Rare and Endangered Trees. *American Forests*. 81(7):18.

Lucas, Gran, and Hugh Synge. 1978. *The IUCN Plant Red Data Book*. Published by the International Union for the Conservation of Nature and Natural Resources with financial assistance from the World Wildlife Fund.

Small, John K. 1917. The Tree Cacti of the Florida Keys. *Journal of the New York Botanical Garden*. 18:199-203.

Ward, Daniel B. 1979. Rare and Endangered Biota of Florida: Volume Five—Plants. University Presses of Florida.

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Proposed Regulation Promulgation

PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter I Title 50 of the U.S. Code of Federal Regulations, as set forth below:

1. The authority citation for Part 17 reads as follows:

Authority: Pub. L. 93-205, 87 Stat. 884; Pub. L. 95-632, 92 Stat. 3751; Pub. L. 96-159, 93 Stat. 1225; Pub. L. 97-304, 96 Stat. 1411 (16 U.S.C. 1531, *et seq.*).

§ 17.12 [Amended]

2. It is proposed to amend § 17.12(h) by adding, in alphabetical order the following to the list of Endangered and Threatened plants:

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
*	* *	*	*	*	*	
Cactaceae—Cactus family:						
Cereus robinii	Key tree-cactus	U.S.A. (FL); Cuba	E		NA	NA.
*	* *	*	*	*	*	

Dated: June 9, 1983.

J. Craig Potter,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 83-20629 Filed 7-28-83; 8:45 am]

BILLING CODE 4310-55-M

50 CFR Part 18

Request for Information Concerning the Revision of Marine Mammal Regulations To Implement the Marine Mammal Protection Act Amendments of 1981

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent.

SUMMARY: The Fish and Wildlife Service announces its intent to revise 50 CFR Part 18 to implement the changes made by the Marine Mammal Protection Act Amendments of 1981. The public is invited to submit information and suggestions of changes that may be necessary or appropriate to bring the existing regulations of 50 CFR Part 18 in line with the Marine Mammal Protection Act, as amended.

DATE: Information should be submitted on or before October 27, 1983.

ADDRESS: All information should be submitted to: Division of Wildlife Management, U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Mr. William C. Reffalt, Chief, Division of Wildlife Management, U.S. Fish and Wildlife Service, Department of the

Interior, Washington, D.C. 20240. Telephone (202) 632-2202.

SUPPLEMENTARY INFORMATION: The Marine Mammal Protection Act (MMPA or Act) was enacted in 1972, and the Fish and Wildlife Service (FWS) implemented the Act by regulations contained in 50 CFR Parts 18 and 82. The MMPA was enacted for the purpose of ensuring that marine mammals are maintained at healthy population levels. In passing the Act, Congress responded to the growing concern regarding the decline of certain marine mammal species and recognized the important role that marine mammals play in the ecosystem as well as their economic, aesthetic and recreational value. Under the MMPA the Department of the Interior is charged with responsibility for polar bears, walruses, sea and marine otters, manatees and dugongs. The Department of Commerce has responsibility for whales, dolphins (porpoises), sea lions and seals. On October 9, 1981, Congress amended the MMPA with the passage of Pub. L. 97-58. A discussion of the Congressional intent behind the 1981 Amendments is contained in House of Representative Report 97-228 (1981), Congressional Record-Senate (S 10714) (September 29, 1981) and Congressional Record-House (H-6427) (September 21, 1981).

A final rule Governing Small Takes or Marine Mammals Incidental to Specified Activities, under Section 101(a)(5) of the Act, was published in the **Federal Register** on July 7, 1983 (48 FR 31220). A new Part 403 of 50 CFR, implementing amended Section 109 of the Act establishing procedures for the Transfer of Marine Mammals Management Authority to States, was published in the **Federal Register** on May 6, 1983 (48 FR 20614).

The Service is presently analyzing 50 CFR Part 18 to determine other regulatory actions necessary or appropriate to fully implement the October 9, 1981 Amendments.

Provisions of the 1981 Amendments likely to be addressed in a proposed rule are:

Section 3 of the MMPA was amended by deleting the definition of "optimum carrying capacity," amending the definition of "depleted," and making the conforming amendments required by these changes.

Section 101(a) of the Act was changed by amending paragraph 2, and by adding new paragraphs 4 and 5. Amended Section 101(a)(2) states that it shall be the immediate goal that the incidental kill or serious injury of marine mammals permitted in the course of commercial fishing operations be reduced to insignificant levels approaching a zero mortality and serious injury rate. New Section 101(a)(4) provides that during any five-year period the Secretary shall allow the incidental, but not the intentional, taking by United States commercial fishermen of small numbers of marine mammals. As noted above, a final rule to implement Section 101(a)(5) has already been published in the **Federal Register** on July 7, 1983 (48 FR 31220).

Section 102 of the Act specifies the activities which are prohibited under the Act. Section 102(a) makes clear that these prohibitions apply except to the extent that they are permitted under other sections of the Act. Section 3(a)(1) of the 1981 Amendments changed Section 102(a) to include actions authorized under Section 109 in the list of activities exempted from the coverage of Section 102. Section 102(a) was further amended by making it illegal for any person to possess an illegally taken marine mammal or any product from that mammal and for any person to transport, purchase, sell or offer to purchase or sell any marine mammal or marine mammal product.

Amended Section 105(a)(2) authorized the Secretary, in lieu of instituting a formal notice of violation proceeding, to allow an individual to abandon an illegally imported item at the port of entry if the importation was made for that individual's personal or family use and was not an importation for other purposes or for sale or commercial use.

Section 109(h) essentially restates existing law, except that, as rewritten, subsection (h) clarifies that Federal as well as State or local employees may take marine mammals in the course of their official duties for certain public welfare reasons and clarifies that the non-lethal removal of nuisance animals may also be carried out by Federal, State or local government employees in the course of their official duties.

Section 109(i) authorizes the Secretary, after providing notice and opportunity for a hearing in the affected area, to prescribe regulations requiring the marking, tagging and reporting of marine mammals taken by Alaskan Natives pursuant to Section 101(b). This provision is designed to enable the Secretary to gather sufficient data on the taking of marine mammals by Alaskan Natives to determine what effect such taking is having on marine mammal populations. The marking and tagging of animals will also provide the Secretary with a means of monitoring the disposition of the native harvest to ensure that any commercial use of marine mammal products meets the criteria set forth in Section 101(b)(2).

The Service invites the public to provide comments concerning potential revisions of 50 CFR Part 18 to implement the 1981 MMPA Amendments. Comments and information are also solicited concerning biological, social and economic data concerning potential regulatory actions. Such information will be used in preparing environmental and economic impact assessments under the National Environmental Policy Act, the Regulatory Flexibility Act and Executive Order 12291.

This notice was prepared by Rupert R. Bonner, Jr., Division of Wildlife Management, U.S. Fish and Wildlife Service, Washington, D.C. 20240.

List of Subjects in 50 CFR Part 18

Administrative practice and procedure, Alaska, Imports, Marine mammals, Transportation.

Dated: July 21, 1983.

G. Ray Arnett,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 83-20533 Filed 7-28-83; 8:45 am]

BILLING CODE 4310-55-M

Notices

Federal Register
Vol. 48, No. 147
Friday, July 29, 1983

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

Commodity Credit Corporation

Delegation of Authority With Respect to Letters of Credit

The Agricultural Stabilization and Conservation Service officials listed below are authorized to consent to reduction or cancellation of letters of credit issued, confirmed or advised to or in favor of the Commodity Credit Corporation and to draw drafts under such letters of credit against issuing, confirming or advising banks:

Director or Acting Director, Kansas City Management Office, 8930 Ward Parkway, Kansas City, Missouri 64114.

Chief, Fiscal Division, Kansas City Management Office, 8930 Ward Parkway, Kansas City, Missouri 64114.

Specimen signatures of officials presently occupying the above entitled positions of those persons authorized to act in that capacity in their absence may be obtained by addressing a written request to the Director or Chief of the office indicated.

The delegation of authority shall be effective as of July 29, 1983.

The delegation of authority published October 22, 1975 (40 FR 49377) is hereby terminated.

(Sec. 4(d), Pub. L. 80–89, 62 Stat. 1071 (15 U.S.C. 714(b))

Signed at Washington, D.C. July 25, 1983.

Everett Rank,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 83-20642 Filed 7-28-83; 8:45 am]

BILLING CODE 3410-05-M

Delegation of Authority To Sign Disbursement Documents

In order to provide for the execution of documents disbursing funds in connection with Commodity Credit Corporation transactions at the Agricultural Stabilization and Conservation Service Management Office, a delegation of authority is provided below, pursuant to authority vested in me by the Bylaws of Commodity Credit Corporation.

The authority herein delegated shall be exercised in conformity with the Bylaws, regulations, and programs of Commodity Credit Corporation, and the policies adopted by the board of Directors of the Corporation.

The Director or Acting Director of the Kansas City Agricultural Stabilization and Conservation Service Management Office may sign documents expending the capital funds of Commodity Credit Corporation. This authority may not be redelegated.

This delegation of authority shall be effective as of July 29, 1983.

The delegation of authority published February 27, 1979 (44 FR 11100) is hereby terminated.

(Sec. 4, Pub. L. 80–89, 62 Stat. 1070, as amended (15 U.S.C. 714b))

Signed at Washington, D.C., on July 25, 1983.

Everett Rank,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 83-20219 Filed 7-28-83; 8:45 am]

BILLING CODE 3410-05-M

Soil Conservation Service

Port Norris Recreation Development RC&D Measure, New Jersey

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Port Norris Recreation Development RC&D Measure, Cumberland County, New Jersey.

FOR FURTHER INFORMATION CONTACT: Joseph C. Branco, State Conservationist, Soil Conservation Service, 1370 Hamilton Street, Somerset, New Jersey 08873, telephone (201) 246–1205.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Joseph C. Branco, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The measure concerns a plan for rebuilding an existing dilapidated wharf along the Maurice River to provide recreational opportunities for fishing and crabbing for the townspeople of Port Norris.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Joseph C. Branco.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register.**

(Catalog of Federal Domestic Assistance Program No. 10.901, Resource Conservation and Development Program. Office of Management and Budget Circular A–95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects is applicable)

Dated: July 22, 1983.

Joseph C. Branco,

State Conservationist.

[FR Doc. 83-20605 Filed 7-28-83; 8:45 am]

BILLING CODE 3410-16-M

Rural Electrification Administration

Old Dominion Electric Cooperative; Finding of No Significant Impact

AGENCY: Rural Electrification Administration; USDA.

ACTION: Notice of Finding of No Significant Impact.

SUMMARY: Notice is hereby given that the Rural Electrification Administration (REA) pursuant to the Natoinal Environmental Policy Act of 1969, the Council on Environmental Quality Guidelines (40 CFR Parts 1500–1508),

and REA's Bulletin 20-21:320-21, Environmental Policies and Procedures, has prepared a Finding of No Significant Impact (FONSI) with respect to proposed financing assistance to Old Dominion Electric Cooperative (Old Dominion) of Richmond, Virginia. This financing assistance will be used by Old Dominion to purchase a 12.5 percent share of Virginia Electric and Power Company's existing North Anna Nuclear Generating Station, Units One and Two, located in Louisa County, Virginia.

FOR FURTHER INFORMATION CONTACT: REA's FONSI and Environmental Assessment (EA) along with Old Dominion's Borrower's Environmental Report (BER) and other related material can be reviewed in, or requested from, the Office of the Director, Northeast Area—Electric, REA, South Agriculture Building, Room 0241, Washington, D.C. 20250, telephone (202) 382-1420, or the Office of Old Dominion (Mr. Ernest M. Jordan, Jr., Executive Vice President and General Manager), 5602 Chamberlayne Road, Richmond, Virginia 23227, telephone (804) 264-2801.

SUPPLEMENTARY INFORMATION: REA has reviewed the BER submitted by Old Dominion and determined that it represents an accurate evaluation of the environmental impacts of the proposed purchase and continued operation of the generating station. REA has also determined that the proposed purchase and continued operation will have no effect on threatened an endangered species, known cultural resources, prime farmland, floodplains, or wetlands.

The alternatives evaluated by REA included no action, conservation, purchasing power from other sources, joint ownership in other generating facilities, and construction of an electric generating facility. After evaluating these alternatives, REA determined that the proposed purchase represents an acceptable alternative when environmental, economic, and technical factors are balanced.

Based upon the BER and other related data, REA prepared an EA and FONSIE concerning the proposed purchase. It is REA's view that if financing assistance for the proposed purchase is approved, it will not be a major Federal action that will significantly affect the quality of the human environment.

This program is listed in the catalog of Federal Domestic Assistance as 10.850—Rural Electrification Loans and Loan Guarantees.

Dated: July 22, 1983.

Jack Van Mark,

Acting Administrator.

[FR Doc. 83-20450 Filed 7-28-83; 8:45 am]

BILLING CODE 3410-15-M

Northeast Texas Electric Cooperative, Inc., Longview, Texas; Proposed Loan Guarantee

AGENCY: Rural Electrification Administration (REA), USDA.

ACTION: Proposed Loan Guarantee.

SUMMARY: Under the authority of Pub. L. 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 $75,800,000 to Northeast Texas Electric Cooperative, Inc. (NTEC), of Longview, Texas. This loan guarantee will be used to finance NTEC 11.72 percent undivided ownership in the 640 MW Henry W. Pirkey Unit No. 1 lignite-fired generating plant.

FOR FURTHER INFORMATION CONTACT: Mr. J. L. Johns, President, Northeast Texas Electric Cooperative, Inc., 200 N. Fredonia Street, First National Bank Building, Ste. 507, Longview, Texas 75601.

SUPPLEMENTARY INFORMATION: 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 advances to the borrower of the guaranteed loan funds from Mr. Johns at the address given above.

In order to be considered, proposals must be submitted on or before (within 30 days from the date of the **Federal Register** publication of this notice) to Mr. Johns. The right is reserved to give such consideration and to make such evaluation or other disposition of all proposals received as NTEC 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, Public Information Office, 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: July 22, 1983

Jack Van Mark,

Acting Administrator.

[FR Doc. 83-20449 Filed 7-28-83; 8:45 am]

BILLING CODE 3410-15-M

CIVIL AERONAUTICS BOARD

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q of the Board's Procedural Regulations; Week Ended July 22, 1983

Subpart Q Applications

The due date for answers, conforming application, or motions to modify scope are set forth below for each application. Following the answer period the board may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings (see, 14 CFR 302.1701 et seq.).

Date filed	Docket No.	Description
7-18-83	41048	Northeast Imperial Airlines, Inc., c/o Barry B. Feiner, 605 Third Avenue, New York, New York 10016. Amendment to Application of Northeast Imperial Airlines, Inc.

Date filed	Docket No.	Description
		Information supplied in response to Appendix A of Order 83-5-111. Answers may be filed by August 15, 1983.

Phyllis T. Kaylor,
Secretary.
[FR Doc. 83-20662 Filed 7-28-83; 8:45 am]
BILLING CODE 6320-01-M

[Docket No. 41560]

South Seas Airlines Fitness Investigation; Postponement of Prehearing Conference

Notice is hereby given that the prehearing conference in the above-titled proceeding scheduled to be held on July 28, 1983, is postponed. The conference will be held on August 12, 1983, at 2:30 p.m. (local time), in Room 1027, Universal Building, 1825 Connecticut Avenue, N.W., Washington, D.C.

Dated at Washington, D.C., July 25, 1983.

William A. Kane, Jr.,
Administrative Law Judge.
[FR Doc. 83-20661 Filed 7-28-83; 8:45 am]
BILLING CODE 6320-01-M

DEPARTMENT OF COMMERCE

International Trade Administration

[A-588-055]

Acrylic Sheet From Japan; Final Results of Administrative Review of Antidumping Finding

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of Final Results of Administrative Review of Antidumping Finding.

SUMMARY: On October 22, 1982, the Department of Commerce published the preliminary results of its administrative review of the antidumping finding on acrylic sheet from Japan. The review covered the 13 known manufacturers and/or exporters and one third-country reseller of this merchandise to the United States currently covered by the finding and the period August 1, 1980 through July 31, 1981.

Interested parties were given an opportunity to submit written or oral comments on the preliminary results. The Department received comments from one manufacturer and one importer. Based on our analysis of the comments received, we made no changes in these final results from those presented in the preliminary results.

EFFECTIVE DATE: July 29, 1983.

FOR FURTHER INFORMATION CONTACT: Sheila Forbes or David Chapman, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230, telephone: (202) 377-5255.

SUPPLEMENTARY INFORMATION:

Background

On August 20, 1976, the Treasury Department published in the **Federal Register** (41 FR 36497) an antidumping finding with respect to acrylic sheet from Japan. On October 22, 1982, the Department of Commerce ("The Department") published in the **Federal Register** (47 FR 47051-2), the preliminary results of its administrative review of the finding. The Department has now completed that administrative review.

Scope of the Review

Imports covered by the review are shipments of acrylic sheet, which is commonly made by polymerizing methyl methacrylate ("MMA") into a stiff, transparent, high-molecular-weight polymer with resistance to ultraviolet radiation, and includes sheet, whether or not cast, extruded, drilled, milled or ground on the edges. Acrylic sheet is currently classifiable under items 771.4100, 771.4500, and 771.5500 of the Tariff Schedules of the United States Annotated.

We have inserted the word "commonly" into our description of the merchandise to clarify that the presence or absence of MMA is not dispositive of whether or not merchandise is acrylic sheet. While the petition in the original investigation did state without elaboration that acrylic sheet is made by polymerizing MMA, neither the International Trade Commission ("the ITC", formerly the Tariff Commission) determination of injury (41 FR 32294, August 2, 1976) nor the Treasury Department order included such a limitation.

Mitsui & Co. requested that we determine whether a product known as KYOWAGLAS-XA is within the scope of the finding. We have determined that KYOWAGLAS-XA is an acrylic sheet and is, therefore, subject to the finding (*cf.* Comment 1 infra.).

The review covered the 13 known manufacturers and/or exporters and one third-country reseller of Japanese acrylic sheet to the United States currently covered by the finding and the period August 1, 1980 through July 31, 1981.

Analysis of Comments Received

We invited interested parties to submit written comments or request a hearing. We received comments from one manufacturer, Tsutsunaka Plastic Ind. Co., and one importer, Calsak Corporation.

Comment 1:

Tsutsunaka argues that its merchandise exported to the United States, "Sunloid Granterior Pattern Embossed Acrylic Sheet," has extreme light refraction and diffusion properties which result in significantly blurred images and is therefore outside the scope of the antidumping finding on acrylic sheet. The original antidumping investigation was concerned with importations of "transparent, high-molecular-weight polymer with high optical clarity."

Department's Position:

The Department's primary bases for determining whether a product is outside the scope of an antidumping finding are the descriptions of the product contained in the petition, the initial investigation, and the ITC, Treasury, or Commerce determinations.

When there is vagueness in the description of a product and the Department cannot make a determination concerning the scope of a finding or order based upon the information mentioned above, we use four additional criteria to make the determination on the scope. These criteria are: (1) Physical characteristics of the merchandise; (2) the uses for which the merchandise is imported; (3) the expectation of the ultimate purchasers; and (4) the channels of trade in which the merchandise moves.

In this instance the Department did not need to resort to the four additional criteria to make a determination. We reviewed the petition, the intitial investigation, and the ITC's determination, and we find that acrylic sheet, that is clear and/or translucent, regardless of optical clarity, is included within the scope of the finding. Because "Sunloid Granterior Pattern Embossed Acrylic Sheet" possesses transparent properties, it is included within the scope of the finding.

Comment 2:

Tsutsunaka argues that the cash deposit of estimated antidumping duties applicable to merchandise manufactured by Tsutsunaka and exported by K. Sakai should be the same as the cash deposit rate applicable to merchandise manufactured by Tsutsunaka and exported by Toyo Menka Kaisha. Both exporters are trading companies and, during the time period covered, K. Sakai had no shipments, while Toyo Menka did have shipments. Tsutsunaka contends that the dumping margin applicable to exports by Toyo Menka represents the "best information" for establishing a cash deposit rate for K. Sakai.

Department's Position:

Since the statute directs that duties and deposits be based upon price information, the Department has established and consistently applied the policy of resorting to the most recent price information available for firms not shipping during a review period to estimate information deemed necessary to determine deposits of estimated duties. That information is considered to be the latest appraisement instructions containing foreign market value and United States price information or, in the absence of appraisement instructions for the firm, the foreign market value and United States price information found in the determination of sales at less than fair value. When a manufacturer sells to the United States through trading companies we establish a cash deposit rate for each manufacturer/exporter combination. If the manufacturer does not export to the United States through a particular trading company during a review period, the most current data we have concerning the pricing behavior of that combination is that for the combination's last known shipments, not more recent data for some other manufacturer/exporter combination.

Comment 3:

Tsutsunaka argues that the Department should adjust the foreign market value to reflect differences in sales quantities or, alternatively, levels of trade. The largest individual sale quantity sold in the home market was less than 3% of the individual sale quantities sold to the United States. Tsutsunaka submits that it cannot seriously be argued that sales in such small quantities would not demand a higher price than larger quantity sales. If we do not allow this adjustment, it argues that we should make a level of trade adjustment since the sale in the home market is to a retail market while the sale for exportation to the U.S. is to a wholesaler. Accordingly, Tsutsunaka argues that the Department should accept a new submission and make either an adjustment for differences in quantities based on differences in price or an adjustment for differences in level of trade.

Department's Position:

Tsutsunaka submitted the new information on April 7, 1983, well after the end of the comment period. The Department will generally not use new submissions of data received after publication of its preliminary results in the **Federal Register** except when mitigating circumstances exist. None exist here. Further, the Department will not make adjustments for price discounts based on differences in quantities unless the criteria in § 353.14 of the Commerce Regulations are met. These criteria are either: (1) The exporter must demonstrate that it granted discounts of the same magnitude with respect to 20% or more of such or similar merchandise sold in the home market, or in third countries when sales to third countries are the basis for comparison (the six-month rule); or (2) the exporter can demonstrate that the discounts are warranted on the basis of savings which are specifically attributable to the production of the different quantities involved (cost justification). Before we allow a difference in a level of trade adjustment, we must have adequate quantification that the differences in price are due to a difference in level of trade.

Comment 4:

Calsak argues that its importations of matte-finished merchandise are outside the scope of the finding. The importer claims that the matte-finished merchandise in physically unlike the class or kind of merchandise involved in the original Treasury fair value investigation because its imports permit different light transmission rates than does standard acrylic sheet.

Department's Position:

For the reasons stated in our position under Comment 1, we also consider the matte-finished merchandise imported by Calsak, which possesses translucent properties, to be included within the scope of the finding.

Comment 5:

Calsak argues that the Department's use with respect to acrylic sheet manufactured by Nitto Jushi Kogyo Co. of the highest dumping margin calculated during the fair value investigation for assessment and cash deposit purposes is inappropriate, because in the Department's first review, the Department used the rate of 10.86 percent as best evidence for assessment and cash deposit purposes.

Department's Position:

The Department maintains that its use of the highest dumping margin calculated during the fair value investigation is valid and in accordance with the Department's adminstrative practice in dumping section 751 reviews regarding best evidence.

Final Results of the Review

Based on our anlaysis of the comments received, we have made no changes in these final results from those presented in the preliminary results of review. We determine that the following weighted-average margins exist for the period August 1, 1980 through July 31, 1981:

Manufacturer/exporter	Margin (percent)
Asahi Chemical Industry Co., Ltd./Taikyo Sangyo	[1]13.15
C. Itoh & Co., Ltd	[1]0.00
Kanase Industries Co., Ltd	[1]1.36
Kanematsu-Gosho Ltd	[1]11.98
Kyowa Gas Chemical Industry Co., Ltd	[1]48.90
Kyowa Gas Chemical/K. Sakai	[1]7.50
Marubeni Corporation	[1]0.00
Midorikawa Chemical Inc. Co./Mitsubishi Corp. (Hong Kong)	[1]7.50
Nitto Jushi Kogyo	[1]48.90
S.P. International	[1]0.00
Taikyo Sanyko Co. Ltd	[1]13.15
Tsutsunaka Plastic Ind. Co./Toyo Menka Kaisha	[1]23.68
Tsutsunaka Plastic Ind. Co./K. Sakai & Co	[1]30.29

Manufacturer/exporter	Margin (percent)
Third-country reseller (Country):	
Rainbow Enterprises (Hong Kong)/I. J. Langleb....	[1]6.3

[1] No shipments during this period.

The Department shall determine, and the U.S. Customs Service shall assess, dumping duties on all entries with purchase dates during the period involved. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions on each exporter directly to the Customs Service.

Further, as provided for in § 353.48(b) of the Commerce Regulations, a cash deposit of estimated antidumping duties based on the above margins shall be required on all shipments of Japanese acrylic sheet from these firms entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice. For any shipment from a new exporter not covered in this or prior administrative reviews, whose first shipments occurred after July 31, 1981 and who is unrelated to any covered firm, a cash deposit of 23.68 percent shall be required on future entries. These deposit requirements shall remain in effect until publication of the final results of the next administrative review. The Department intends to conduct the next administrative review immediately after publication of this notice. The Department encourages interested parties to review the public record and submit applications for protective orders, if desired, as early as possible after the Department's receipt of the information during the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act of 1930 (19 U.S.C. 1675(a)(1)) and § 353.53 of the Commerce Regulations (19 CFR 353.53).

July 22, 1983.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 83-20592 Filed 7-28-83; 8:45 am]

BILLING CODE 3510-25-M

[A-588-091]

Certain Electric Motors From Japan; Preliminary Results of Administrative Review of Antidumping Duty Order

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of Preliminary Results of Administrative review of Antidumping Duty Order.

SUMMARY: The Department of Commerce has conducted an administrative review of the antidumping duty order on certain electric motors from Japan. The review covers the six known manufactures and/or exporters of this merchandise to the United States and generally the period December 1, 1980 through November 30, 1981. The review indicates the existence of dumping margins for certain firms during the period.

As a result of the review, the Department has preliminarily determined to assess dumping duties equal to the calculated differences between United States price and foreign market value on each of their sales during the period of review.

Where company-supplied information was incomplete or no information was received, we used the best information available for assessment and estimated antidumping duty cash deposit rate purposes.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: July 29, 1983.

FOR FURTHER INFORMATION CONTACT: F. Patrick Pope, Laurie Lucksinger, or Susan M. Crawford, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230, telephone: (202) 377-2923/5255.

SUPPLEMENTARY INFORMATION:

Background

On April 5, 1983, the Department of Commerce ("the Department") published in the **Federal Register** (48 FR 14719-14722) the final results of its last administrative review of the antidumping duty order on certain electric motors from Japan (45 FR 84994, December 24, 1980) and announced its intent to immediately conduct the next administrative review, as required by section 751 of the Tariff Act of 1930 ("the Tariff Act"), the Department has now conducted that administrative review.

Scope of the Review

Imports covered by the review are shipments of alternating current, polyphase electric motors of not less than 150 horsepower but not greater than 500 horsepower, not including submersible well pump motors. Such motors are currently classifiable under items 682.4545, 682.4600, 682.5010, and 682.5030 of the Tariff Schedules of the United States Annotated.

The review covers the six known manufactures and/or exporters of these Japanese electric motors to the United States and generally the period December 1, 1980 through November 30, 1981.

Two firms, Fuji Electric Co., Ltd. and Meidensha/Toyo Menka Kaisha, failed to respond to the Department's questionnaire and one firm, Toshiba Corporation, provided an incomplete response to certain portions of the Department's questionnaire. For Fuji Electric Co., Ltd. and Meidensha/Toyo Menka Kaisha, we used the best information available to determine the assessment and estimated antidumping duty cash deposit rates. The best information available for those two firms is the highest current rate for responding firms with shipments. For Toshiba, we used the best information available for those imcomplete portions of its response to our questionnaire. Since analysis of the complete portions of Toshiba's response provided the highest current rate for responding firms with shipments, we used that rate as the best information available to determine the assessment and cash deposit rates for the two non-respondents. Two firms did not ship this merchandise to the United States during the period. The cash deposit rate for those two firms will be the most recent rate for each firm.

United States Price

In calculating United States price the Department used purchase price or exporter's sales price ("ESP"), both as defined in section 772 of the Tariff Act. Purchase price and ESP were based on the packed delivered price to unrelated purchasers in the United States. Deductions were made, where applicable, for U.S. and foreign inland freight, ocean freight, marine insurance, U.S. duty, brokerage charges, handling charges, discounts, commissions to unrelated parties and selling expenses, in accordance with section 353.10 of the Commerce Regulations. No other adjustments were claimed or allowed.

Foreign Market Value

In calculating foreign market value the Department used home market price, the price to unrelated purchasers in a third country (Canada) when there were no sales or insufficient quantities sold in the home market, or constructed value when there were no sales or insufficient quantities sold in the home market or to third countries, all as defined in section 773 of the Tariff Act. Home market price was based on the packed delivered price to unrelated customers. Third-

country price was based on the packed delivered price to unrelated customers in Canada.

Adjustments were made, where applicable, for inland freight, handling charges, commissions to unrelated parties, ocean freight, marine insurance, import duties, delivery charges, discounts, warranty, advertising, indirect selling expenses to offset U.S. selling expenses for ESP calculations and differences in packing. Further adjustments were made for differences in the physical characteristics of the merchandise, in accordance with § 353.16 of the Commerce Regulations. No other adjustments were claimed or allowed.

Constructed values were calculated as the sum of the cost of materials, fabrication, general expenses, profit and the cost of packing. The amount added for general expenses was ten percent of the sum of materials and fabrication costs or actual general expenses, whichever was higher. The amount added for profit was eight percent of the sum of materials, fabrication costs and general expenses or the calculated company profit, whichever was higher.

Preliminary Results of the Review

As a result of our comparison of United States price to foreign market value, we preliminarily determine that the following margins exist:

Manufacturer/exporter	Time period	Margin (percent)
Fuji Electric Co., Ltd.	12/1/80 to 11/30/81	15.76
Hitachi Limited	12/1/80 to 11/30/81	[1] 6.7
Meidensha/Toyo Menka Kaisha, Ltd.	12/1/80 to 11/30/81	15.76
Mitsubishi Electric Corp.	12/1/80 to 11/30/81	[1] 6.7
Toshiba Corp.	04/1/80 to 03/30/82	15.76
Yaskawa	12/1/80 to 11/30/81	2.02

[1] No shipments during the period.

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within 10 days of the date of publication. Any hearing, if requested, will be held 45 days after the date of publication or the first workday thereafter. Any request for an administrative protective order must be made no later than 5 days after the date of publication. The Department will publish the final results of the administrative review including the results of its analysis of any such comments or hearing.

The Department shall determine and the U.S. Customs Service shall assess, dumping duties on all appropriate entries.

Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department shall issue appraisement instructions on each exporter directly to the Customs Service.

Further, as provided for in § 353.48(b) of the Commerce Regulations, a cash deposit of estimated antidumping duties based on the above margins shall be required on all shipments of these Japanese electric motors from these firms entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative reveiw.

For any future entries from a new exporter not covered in this or prior reviews, whose first shipments occurred after November 31, 1981 and who is unrelated to any reviewed firm, a cash deposit shall be required at the rate of 15.76 percent. These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.53 of the Commerce Regulations (19 CFR 353.53).

July 26, 1983.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 83-20593 Filed 7-28-83; 8:45 am]

BILLING CODE 3510-25-M

Applications for Duty-Free Entry of Scientific Instruments

The following are notices of the receipt of applications for duty-free entry of scientific instruments published pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89-651; 80 Stat. 897) and the regulations issued pursuant thereto (15 CFR Part 301 as amended by 47 FR 32517).

Interested persons may present their views with respect to the question of whether an instrument or apparatus of equivalent scientific value for the purposes for which the instrument is intended to be used is being manufactured in the United States.

Comments must be filed in accordance with § 301.5(a) (3) and (4) of the regulations. They are to be filed in triplicate with the Director, Statutory Import Programs Staff, U.S. Department of Commerce, Washington, D.C. 20230, within 20 calendar days after the date on which this notice of application is published in the **Federal Register.**

A copy of each application is on file in the Department of Commerce, and may be examined between 8:30 A.M. and 5:00 P.M., Monday through Friday, Room 1523, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Docket No. 81-00272R. Applicant: Midwest Center for Mass Spectrometry, University of Nebraska-Lincoln, Department of Chemistry, Lincoln, Nebraska 68588. Instrument: Gas Chromatograph/Mass Spectrometer, Model MS-80 with Accessories. Original notice of this resubmitted application was published in the **Federal Register** of August 14, 1981.

Docket No. 82-00371R. Applicant: Cornell University, Applied and Engineering Physics, 212 Clark Hall, Ithaca, NY 14853. Instrument: FL 2002 High Performance Tunable Dye Laser. Original notice of this resubmitted application was published in the **Federal Register** of October 29, 1982.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 83-20609 Filed 7-28-83; 8:45 am]

BILLING CODE 3510-25-M

[C-469-061]

Ferroalloys From Spain; Final Results of Administrative Review of Countervailing Duty Order

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of final results of administrative review of countervailing duty order.

SUMMARY: On January 28, 1983, the Department of Commerce published the preliminary results of its administrative review of the countervailing duty order on ferroalloys from Spain. The review covers the period January 1, 1980 through December 31, 1981.

We gave interested parties an opportunity to comment on our preliminary results. After review of all comments received, the final assessment rates are the same as those presented in the preliminary results.

EFFECTIVE DATE: July 29, 1983.

FOR FURTHER INFORMATION CONTACT: Laura Kneale or Joseph Black, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 377-277-2786.

SUPPLEMENTARY INFORMATION:

Background

On January 28, 1983, the Department of Commerce ("the Department")

published in the **Federal Register** (48 FR 4019) the preliminary results of its administrative review of the countervailing duty order on ferroalloys from Spain (45 FR 25, January 2, 1980). The Department has now completed that administrative review.

Scope of the Review

Imports covered by the review are shipments of Spanish ferroalloys. Such merchandise is currently classifiable under the following items of the Tariff Schedules of the United States Annotated: ferrochrome (over 3 percent carbon), 606.2400; ferromanganese (1–4 percent carbon), 606.2800; ferromanganese (over 4 percent carbon), 606.3000; ferrosilicon manganese, 606.4400; and ferrosilicon (60–80 percent silicon), 606.3600 and 606.3700.

The review covers the period January 1, 1980 through December 31, 1981, and two programs: (1) A rebate upon exportation of indirect taxes, under the Desgravacion Fiscal a la Exportacion ("DFE"); and (2) an operating capital loans program.

Analysis of Comments Received

We gave interested parties an opportunity to comment on our preliminary results. At the request of the two known exporters to the United States, Hidro-Nitro Espanola, S.A. and S.E. Carburos Metalicos, S.A., we held a public hearing on March 15, 1983.

Comment 1: The exporters argue that, to calculate the DFE overrebate, the Department should offset the entire amount of indirect taxes applicable to carbon and carbon in the form of electrode paste, because all of the carbon used is physically incorporated into the manufacturing *process.* Any amount which is lost in the manufacturing process is "necessary waste."

Department's Position: We only allow the rebate of indirect taxes borne by those inputs which are physically incorporated in the final product. Annex 1.1 of part 355 of the Commerce Regulations makes clear, by deeming catalysts as not incorporated, that the test focuses on the final product, not the manufacturing process. Although some carbon is present in the final product, it functions primarily as a reducing agent. The exporters have not provided evidence differentiating that portion of carbon used as a reducing agent from the portion serving as "necessary waste" in yielding carbon deposits in the final product. Therefore, we must treat all carbon not present in the final product as a reducing agent and not as "necessary waste."

Comment 2: The exporters assert that the operating capital loans program is not a subsidy, because the Spanish government provides no funds to the program, does not mandate the level of bank investment in the program or a specific interest rate differential, and does not assume any risk or guarantee the repayment of operating capital loans. Further, Spanish banks are under no obligation to make such operating capital loans, since the banks are able to meet the government's "privileged circuit" requirements via other forms of export financing.

Department's Position: To determine whether a program is countervailable, the Department examines the benefit to the recipient, not the cost to the donor. As the exporters pointed out, the operating capital loans program is part of a government-mandated "privileged circuit" financing program, which, among other purposes, provides that 3 percent of bank investments must be for export financing at government-mandated interest rates which have, in fact, been below the commercial rate. Short-term operating capital loans at the government-directed rate represent one form of activity that the banks may use in meeting the government mandate regarding exports. This, plus the fact that the banks do grant operating capital loans, is sufficient to establish the government-directed nature of the operating capital loans program, and therefore its contervailability.

Comment 3: On February 28, 1983, the exporters submitted new information showing the amount of operating capital loans outstanding and total operating capital and commercial financing charges actually paid by the only exporter to the U.S. in 1981. The exporters claim their submission demonstrates that the differential between charges paid on operating capital loans and on other short-term credit in 1981 was 5.39 percent.

Department's Position: Because the exporters submitted this information after publication of our preliminary results, it is untimely, and we will not consider it.

Comment 4: The exporters contend that various additional charges associated with preferential export financing raise the cost of the operating capital loans from a nominal rate (as of March 1, 1981) of 10 percent to an effective rate of 14–15 percent.

Department's Position: The exporters have not provided us with any documentary evidence to corroborate their assertion. In the absence of documentary evidence of additional interest charges, we have continued to use the published, nominal rate of interest on the operating capital loans.

Comment 5: The exporters claim that the Department is overstating the benefit from the operating capital loans program in 1981. They assert that over half of the operating capital loans outstanding in 1981 were contracted for prior to the March 1, 1981 liberalization of commercial short-term interest rates. The interest differential for the earlier loans remained at only 1.5 percent. Further, any loan outstanding in the period January to June 14, 1981 could only have been contracted for in June 1980; only after July 15, 1981 could such loans be obtained at times other than June of each year. Therefore, exporters could only benefit from the higher interest rate differential after July 15, 1981. The exporters argue that the Department should calculate the 1981 subsidy based on the interest rate differential in effect at the time of receipt of loans outstanding in 1981, rather than on the weighted-average interest rate differential for 1981.

Department's Position: Department does use date of receipt of the loan in measuring the interest differential. Because the Spanish government did not respond to our request for actual loan data, we assumed uniform borrowing throughout the period of review and maximum use of the program. Therefore, the Department used a 1.5 percent differential for borrowings up to March 1, 1981.

Comment 6: The exporters suggest that the Department calculate the benefit from the operating capital loans in 1980 by dividing the interest savings on loans received from June 15, 1979 to June 15, 1980, by exports during that same period.

Department's Position: Again, the exporters are asking us to accept, without support, the fact that loans are given only once a year, in June. In the absence of specific loan data showing dates of receipt and repayment, and based on the best information available, we have calculated the benefit from operating capital loans as though they are granted uniformly over the period of review.

Comment 7: The exporters contend that the commercial benchmark used by the Department is too high. They contest the Department's 2.5 percent addition to the average of the monthly prime rates for one-year loans because "any exporter that could obtain any significant amount of financing under the operating capital loans program, would have been able to obtain normal commercial credit at a rate no higher than prime." Alternatively, the exporters

suggest that the Department use the published rate for loans "of one to three years" as the commercial benchmark.

Department's Position: Since the preferential loans are given under a broad, national lending program, we have used a national commercial interest rate as our benchmark. Additionally, because the operating capital loans program is not directed toward a particular group of exporters, we have used an average commercial rate (composed of prime plus 2.5 percent), and not a rate available to borrowers of better-than-average creditworthiness. Finally, any one-to-three year rate is inappropriate because the operating capital loans were granted for less than one year.

Comment 8: The exporters argue that the Department should adjust the benchmark commercial rate downward, "since any alleged subsidy for operating capital loans would in turn be compensated for in higher commercial rates applied to non-privileged circuit financing."

Department's Position: In choosing a commercial benchmark, we are attempting to measure the cost of alternative financing. Any downward adjustment, as suggested by the exporters, would require calculating a shadow rate of interest encompassing unverifiable assumptions concerning the effect of the operating capital loans program on the Spanish short-term capital market. Such a shadow rate could not be a measure of the cost of alternative financing.

Comment 9: The exporters maintain that the duty deposit rate should be updated to reflect the current status of Spain's phase-out of the operating capital loans program, citing a 1982 regulation reducing maximum eligibility to 15 percent effective January 1, 1983, and to 9 percent effective January 1, 1984.

Department's Position: It is our policy to include in setting the duty deposit rate timely corroborated reports of government actions in effect, subsequent to the review period, that affect the size of the benefits on future entries. Therefore, we have incorporated the January 1, 1983 eligibility change in setting our deposit rate.

Comment 10: The exporters have submitted new information showing the most recent weighted-average prime interest rates published by the Bank of Spain, for all of 1982, and suggest that the Department use this updated information in its final calculation of the deposit rate.

Department's Position: In the calculations for our preliminary results, we used the most recent published data then available. We have now included the updated rates in our calculation of the deposit rate.

Comment 11: The exporters contend that, unless all newly submitted information for 1981 is accepted by the Department, "there is substantial question as to the validity of making a determination for 1981 at this time as there has been no published notice of an annual review for 1981 and the regular annual review questionnaire for 1981 was never received or answered."

Department's Position: On their own initiative, the exporters submitted information covering the first half of 1981 during the Department's 1981 verification of 1980 data. We requested information covering the remaining portion of 1981 prior to publication of our preliminary results. Therefore, there was no need for a "regular annual review questionnaire" for the 1981 period. Moreover, section 751 only requires us to give prior public notice that we are commencing a review; it does not require us to announce the period to be covered by the review. The Department did publish an announcement of the current review.

Final Results of the Review

As a result of our review, we determine the aggregate net subsidy conferred during 1980 by the two programs to be 3.09 percent *ad valorem* for ferromanganese with a carbon content of 2 percent or less and 2.14 percent *ad valorem* for all other ferroalloys subject to the order. For 1981, we determine the aggregate net subsidy to be 2.61 percent *as valorem* for all ferroalloys subject to the order.

The Department will instruct the Customs Service to assess countervailing duties of 3.09 percent of the f.o.b. invoice price on all shipments of Spanish ferromanganese consisting of 2 percent or less carbon, and 2.14 percent of the f.o.b. invoice price on all shipments of all other ferroalloys subject to the order, entered, or withdrawn from warehouse, for consumption on or after January 1, 1980 and exported on or before December 31, 1980. The Department will also instruct the Customs Service to assess countervailing duties of 2.61 percent of the f.o.b. invoice price on all shipments of Spanish ferroalloys subject to the order exported on or after January 1, 1981 and on or before December 31, 1981.

As mentioned above, since the publication of our preliminary results, the Spanish government reduced the maximum eligibility amount for operating capital loans to 15 percent, effective January 1, 1983. In addition, we have updated our benchmark interest rate, composed of the prime rate for one-year loans plus 2.5 percent. In our preliminary results, we estimated the average prime rate for 1982, based on monthly rates through May 1982, as 16.85 percent. The updated interest rate data shows the average prime rate for 1982 was 16.88 percent. Therefore, our revised commercial benchmark rate is 19.38 percent. As a result of these changes, we determine, for purposes of cash deposits of estimated countervailing duties, that the net subsidy attributable to the operating capital loans program has decreased from 2.31 percent to 1.53 percent *ad valorem*. As stated in our preliminary results, the net subsidy attributable to the DFE for purposes of cash deposit is zero.

Therefore, as provided for by section 751(a)(1) of the Tariff Act of 1930 ("the Tariff Act"), a cash deposit of estimated countervailing duties of 1.53 percent of the f.o.b. invoice price shall be required on all shipments of this merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice. This deposit requirement shall remain in effect until publication of the final results of the next administrative review. The Department is now commencing the next adminstrative review of the order.

The Department encourages interested parties to review the public record and submit applications for protective orders, if desired, as early as possible after the Department's receipt of the information in the next administrative review.

The administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 355.41 of the Commerce Regulations (19 CFR 355.41).

Dated: July 22, 1983.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 83-20610 Filed 7-28-83; 8:45 am]

BILLING CODE 3510-25-M

National Bureau of Standards

[Docket No. 30328-46]

Revision to Federal Information Processing Standard 60-1, I/O Channel Interface

Under the provisions of Pub. L. 89-306 (79 Stat. 1127; 40 U.S.C. 759(f)) and Executive Order 11717 (38 FR 12315, dated May 11, 1973), the Secretary of Commerce (Secretary) is authorized to

establish uniform Federal automatic data processing standards.

The purpose of this notice is to announce that the Secretary has approved a revision of the current FIPS 60–1, and that the revision shall be published as FIPS Publication 60–2. The original version of this standard became effective June 23, 1980, and the provisions from it which this revision retains continue in effect from that date. The changes made by this revision become effective July 29, 1983.

This revision makes the standard less restrictive and products which conform to FIPS 60–1 will also conform to the FIPS 60–2. FIPS 60–2 will enable Federal users to purchase newer and more efficient technology.

The detailed justification document which was presented to the Secretary is part of the public record and is available for inspection and copying in the Department's Central Reference and Records Inspection Facility, Room 6622, Main Commerce Building, 14th Street between Constitution Avenue and E Street NW., Washington, D.C. 20230.

The original standard, FIPS 60, was approved by the Secretary and announced in the **Federal Register** on February 16, 1979 (44 FR 10098–10101) and was the subject of corrections and revisions published in the **Federal Register** on August 27, 1979 (44 FR 50079–50080), August 31, 1979 (44 FR 51294), December 3, 1979 (44 FR 69317), November 26, 1980 (45 FR 78746) and December 16, 1980 (45 FR 82689). This revised standard supersedes FIPS 60–1 in its entirety, including its subsequent corrections and revisions.

The approved FIPS contains two portions: (1) An announcement portion which provides information concerning the applicability, implementation, and maintenance of the standard and (2) a specifications portion which deals with the technical requirements of the standard. Only the announcement portion of the standard is provided in this notice.

Interested parties may purchase either paper or microfiche copies of this revised standard, including the technical specifications portion, from the National Technical Information Service (NTIS). Specific ordering information from NTIS for this revised standard is set out in the Where to Obtain Copies section of the announcement portion of the standard.

Persons desiring further information about this revised standard may contact Mr. William Burr, Center for Computer Systems Engineering, Institute for Computer Sciences and Technology, National Bureau of Standards, Washington, D.C. 20234, (301) 921–3723.

Dated: July 25, 1983.

John W. Lyons,

Acting Director.

Federal Information Processing Standards Publication 60–2—Announcing the Standard for I/O Channel Interface

Federal Information Processing Standards Publications are issued by the National Bureau of Standards pursuant to section 111(f)(2) of the Federal Property and Administrative Services Act of 1949, as amended, Pub. L. 89–306 (79 Stat. 1127), Executive Order 11717 (38 FR 12315, dated May 11, 1973) and Part 6 of Title 15 Code of Federal Regulations (CFR).

Name of Standard. I/O Channel Interface (FIPS PUB 60–2).

Category of Standard. Hardware Standard, Interface.

Explanation. This standard defines the functional, electrical, and mechanical interface specifications for connecting computer peripheral equipment as a part of automatic data processing (ADP) systems. This standard, together with a companion standard for power control, defines the hardware characteristics for the I/O channel level interface. In order to achieve full plug-to-plug interchangeability or peripheral components, device class specific operational specifications standards are also required for each class of peripheral device. Three of these operational specifications standards are already approved as FIPS 62, FIPS 63–1, and FIPS 97, and others will be proposed as they are developed.

The Government's intent in employing this I/O Channel Interface standard is to reduce the cost of satisfying the Government's data processing requirements through increasing its available alternative sources of supply for computer system components at the time of initial system acquisition, as well as in system replacement and augmentation and in system component replacement.

This standard is also expected to lead to improved reutilization of system components. When acquiring ADP systems and system components, Federal agencies shall cite this standard in specifying the interface for connecting computer peripheral equipment as a part of ADP systems.

Approving Authority. Secretary of Commerce.

Maintenance Agency. Department of Commerce, National Bureau of Standards (Institute for Computer Sciences and Technology).

Cross Index. The original version of this standard was based upon American National Standards Institute document X3T9/600, Rev. 2, Draft Proposed American National Standard for I/O Channel Interface.

Applicability. This standad is applicable to the acquisition of all ADP systems and peripheral equipment for those systems except those minicomputer, microcomputer, and other small scale systems which are specifically excluded by the National Bureau of Standards (NBS). A list of such currently excluded systems and the current criteria for exclusion will be developed and maintained by NBS and will be periodically distributed to all Federal agencies and be publicly available upon request.

This standard is applicable to the acquisition of (1) all new and replacement ADP systems, (2) computer peripheral equipment acquired to replace existing peripheral equipment of or to augment ADP systems that employ interfaces conforming with this standard, and (3) peripheral equipment acquired to replace existing peripheral equipment of or to augment ADP systems that do not conform to this standard, but for which the hardware and software necessary to conform to this standard are commercially available.

Specifically, this standard shall be employed in the interconnection of computer peripheral equipment as a part of ADP systems for the following types of peripherals: (1) Magnetic tape equipment employing open reel-to-reel magnetic tape storage devices, specifically excluding magnetic tape cassette and tape cartridge storage devices, (2) magnetic disk storage equipment employing disk drives each having a capacity greater than 7 megabytes per storage module, specifically excluding flexible disk and disk cartridge devices having a smaller storage capacity per device, and (3) peripheral equipment employing all peripheral device types for which accompanying operational specifications standards have been issued as Federal Information Processing Standards.

Verification of the correct operation of all interfaces that are required to conform to this standard shall, through demonstration or other means acceptable to the Government, be provided prior to the acceptance of all applicable ADP equipment.

Specifications. This standard incorporates by reference the technical specifications of the following NBS document: Technical Specifications for I/O Channel Interface, dated August 3, 1982. Copies of the technical specifications section of the standard will be available from the National Technical Information Service as described in the *Where to Obtain Copies* section below.

Implementation. The original version of this standard became effective June 23, 1980, and the provisions from it which this revision retains continue in effect from that date. The changes made by this revision become effective July 29, 1983.

All applicable equipment ordered on or after the effective date, or procurement actions for which solicitation documents have not been issued by that date, must conform to the provisions of this standard unless a waiver has been granted in accordance with the procedure described elsewhere in this standard. In addition, in the absence of such a waiver, interconnection of any type of peripheral equipment specified in the third paragraph under "Applicability," as a part of any ADP system described in the second paragraph under that heading, shall conform to this standard, FIPS 61, and the applicable peripheral standard(s) where either the peripheral equipment or the ADP

system or both were acquired on or after June 23, 1980.

Regulations concerning the specific use of this standard in Federal procurement will be issued by the General Service Administration to be a part of the Federal Property Management Relations.

This standard shall be reviewed by NBS within three years after its effective date, taking into account technological trends and other factors, to determine whether the standard should be affirmed, revised, or withdrawn.

Waivers. Heads of agencies desiring a waiver from the requirements stated in this standard, so as to acquire ADP equipment that does not conform to this standard, shall submit a request for such a waiver to the Secretary of Commerce for review and approval. Approval will be granted if, in the judgment of the Secretary based on all available information, including that provided in the waiver request, a major adverse economic or operational impact would occur through conformance with this standard.

A request for waiver shall include: (1) A description of the existing or planned ADP system for which the waiver is being requested, (2) a description of the system configuration, identifying those items for which the waiver is being requested, and including a description of planned expansion of the system configuration at any time during its life cycle, and (3) a justification for the waiver, including a description and discussion of the major adverse economic or operational impact that would result through conformance to this standard as compared to the alternative for which the waiver is requested.

The request for waiver shall be submitted to the Secretary of Commerce, Washington, D.C. 20230, and labeled as a Request for Waiver to a Federal Information Processing Standard. Waiver requests will normally be processed within 45 days of receipt by the Secretary. No action shall be taken to issue solicitation documents or to order equipment to which this standard is applicable and which does not conform to this standard prior to receipt of a waiver approval response from the Secretary.

Where to Obtain Copies. Either paper or microfiche copies of this Federal Information Processing Standard, including the technical specifications, may be purchased from the National Technical Information Service (NTIS) by ordering Federal Information Processing Standard Publication 60-2 (NBS-FIPS-PUB-60-2), I/O Channel Interface. Order information, including prices and delivery alternatives, may be obtained by contacting the National Technical Information Service (NTIS), U.S. Department of Commerce, Springfield, Virginia 22161, telephone: (703) 487-4650.

[FR Doc. 83-20617 Filed 7-28-83; 8:45 pm]

BILLING CODE 3510-13-M

National Oceanic and Atmospheric Administration

Land Remote Sensing Satellite Advisory Committee; Amended Meeting

AGENCY: National Environmental Satellite, Data, and Information Service, NOAA, Commerce.

ACTION: This notice amends an open meeting announcement published on July 14, 1983 (48 FR 32211), and informs the public that the meeting is changed from an open meeting to a partially closed meeting.

DATES: The meeting is scheduled from 9:00 a.m. to about 4:00 p.m. on Friday, July 29, 1983, but may be continued by the chairman on the following day. The meeting will be open except for one and one-half hours in the afternoon of July 29 or in the morning on July 30 which will be closed.

ADDRESS: U.S. Department of Commerce, Herbert C. Hoover Bldg., Conference Room 4830, 14th and Constitution Avenue, NW, Washington, D.C.

Agenda

In the open sessions, the Committee will be reviewing the technical and policy implications of transferring the civil operational remote sensing satellites to the private sector. During the closed session, the Committee will discuss potential candidates for membership vacancies.

FOR FURTHER INFORMATION CONTACT: Contact the Committee Executive Secretary, Dr. Richard J. Keating (301) 763-5904, or the Committee Staff Officer, Ms. Peggy Harwood (301) 763-7821, External Relations Staff, National Environmental Satellite, Data, and Information Service, NOAA (E/ER), Washington, D.C. 20233.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Administration of the Department of Commerce, with the concurrence of the delegate of the General Counsel, formally determined on July 27, 1983, pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended by Section 5(c) of the Government in the Sunshine Act, Pub. L. 94-409, that the matters to be discussed in the closed session should be exempt from the provisions of the Federal Advisory Committee Act relating to open meetings and public participation therein, because the discussions are likely to disclose information of a personal nature and constitute a clearly unwarranted invasion of privacy, matters that are within the purview of 5 U.S.C. 522b(c)(6). (A copy of the determination is available for public inspection and copying in the Public Reading Room, Central Reference and Records Inspection Facility, Room 6628, Department of Commerce.)

Dated: July 28, 1983.

Mirco P. Snidero,

Deputy Director, Administrative and Technical Services.

[FR Doc. 83-20812 Filed 7-28-83; 11:38 am]

BILLING CODE 3510-12-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Task Force on International Industry-to-Industry Armaments Cooperation; Advisory Committee Meeting

The Defense Science Board Task Force on International Industry-to-Industry Armaments Cooperation will meet in closed session on 30 August 1983 in the Pentagon, Washington, D.C.

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 scientific and technical matters as they affect the perceived needs of the Department of Defense.

At the meeting on 30 August 1983 the Defense Science Board Task Force on International Industry-to-Industry Armaments Cooperation will continue its review of the Defense Department's policies, plans and procedures which impede or might impede international arms cooperation and thereby have the potential for adversely impacting the collective security of the United States, its friends and Allies. In this context the Task Force will also analyze the effect current international cooperation policies have on the utility of the US, its friends and Allies to achieve in good order and sustain mobilization capacities.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Pub. L. 92-463, as amended (5 U.S.C. App. I, (1976)), it has been determined that this DSB Task Force meeting concerns matters listed in 5 U.S.C. 552b (c) (1) (1976), and that accordingly these meetings will be closed to the public.

Dated: July 25, 1983.

M. S. Healy,

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

[FR Doc.83-20551 Filed 7-28-83;-8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF EDUCATION

Strengthening Research Library Resources Program

AGENCY: Department of Education.

ACTION: Application notice.

Applications are invited for new projects under the Strengthening Research Library Resources Program for Fiscal Year 1984.

Authority for this program is contained in Sections 201, 231, and 232 of the Higher Education Act of 1965, as amended by the Education Amendments of 1980. (20 U.S.C. 1021 *et seq.)*

The Secretary may award a grant to a public or private nonprofit institution, including the library resources of an institution of higher education, an independent research library, or a State or other public library.

The purpose of the awards is to promote research and education of high quality throughout the United States by providing financial assistance that helps the Nation's major research libraries maintain and strengthen their collections and make their holdings available to other libraries whose users have need for research materials.

Closing date for transmittal of applications: An application for a grant must be mailed or hand delivered on or before November 14, 1983.

Applications delivered by mail: Applications must be addressed to the Department of Education Application Control Center, Attention: (84.091) Washington, D.C. 20202.

An applicant must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other evidence of mailing acceptable to the U.S. Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

An applicant is encouraged to use registered or at least first class mail.

Each late applicant for a new project will be notified that its application will not be considered.

Applications delivered by hand: Hand delivered applications must be taken to the U.S. Department of Education, Application Control Center, Room 5673, Regional Office Building 3, 7th and D Streets, SW., Washington, D.C.

The Application Control Center will accept hand-delivered applications between 8:00 a.m. and 4:30 p.m. (Washington, D.C. time) daily, except Saturdays, Sundays, and Federal holidays.

An application for a new project that is hand delivered will not be accepted by the Application Control Center after 4:30 p.m. on the closing day.

Program information: Evaluation criteria and eligibility requirements for the Strengthening Research Library Resources program appear in the Code of Federal Regulations in 34 CFR Part 778. The Fiscal Year 1984 grant program will be governed by the provisions of the final regulations published on August 13, 1982, in the **Federal Register** (47 FR 35455).

Available funds: For Fiscal Year 1984, the Department of Education has not requested funds for the Strengthening Research Library Resources program. However, applications are invited to allow for sufficient time to evaluate applications and complete processing prior to the end of the fiscal year in the event that funds are appropriated for the program. At the present time there are no multiyear projects under this program.

In Fiscal Year 1983 49 grants were awarded to major research libraries either directly or through joint applications. With a Fiscal Year 1983 appropriation of $6,000,000, each institution received an average of $122,000. However, the U.S. Department of Education is not bound to a specific number of grants or to the amount of any grant unless that number is specified by statute or regulations.

Application forms: Application forms and program information packages are expected to be ready for mailing by August 19, 1983. They must be obtained by writing to the Library Education, Research and Resources Branch, Attn: II-C, U.S. Department of Education (Suite 725, Brown Building, Mail Stop 30), 400 Maryland Avenue, SW., Washington, D.C. 20202.

Applications must be prepared and submitted in accordance with the regulations, instructions, and forms included in the program information package. However, the program information is only intended to aid applicants in applying for assistance. Nothing in the program information package is intended to impose any paper work, application content, reporting, or grantee performance requirement beyond those imposed under the Statute or Regulations. The Secretary urges that applicants not submit information that is not requested.

Applicable regulations: Regulations applicable to this program include the following:

(a) Regulations governing the Strengthening Research Library Resources Program (34 CFR Part 778).

(b) Education Department General Administrative Regulations (EDGAR) (34 CFR Parts 74, 75, 77, and 78).

Further information: For further information, contact Mr. Frank A. Stevens or Ms. Louise Sutherland, Library Education, Research and Resources Branch, Division of Library Programs, U.S. Department of Education (Suite 725, Brown Building, Mail Stop 30), 400 Maryland Avenue, SW., Washington, D.C. 20202. Telephone (202) 254-5090. (20 U.S.C. 1021, *et seq.*)

(Catalog of Federal Domestic Assistance Program No. 84.091, Strengthening Research Library Resources Program)

Dated: July 26, 1983.

Donald J. Senese,

Assistant Secretary, Office of Educational Research and Improvement.

[FR Doc. 83-20621 Filed 7-28-83; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Nuclear Waste Reports; Availability

AGENCY: Nuclear Waste Policy Project Office, Office of the Secretary, U.S. Department of Energy.

ACTION: Notice of Availability of Reports.

SUMMARY: On January 7, 1983, the President signed into law the "Nuclear Waste Policy Act of 1982" which established programs and procedures to provide for "a permanent solution to the problems of civilian radioactive waste disposal." While the primary thrust of the Act is to provide for long-term, geologic disposal of such waste, it includes the requirement to develop a monitored retrievable storage (MRS) proposal in parallel to the repository program. The Act also provides that the owners and operators of civilian nuclear power reactors have the primary responsibility to store their own spent nuclear fuel until a repository or MRS is available, that the Federal Government is to encourage and expedite effective use of existing spent fuel storage at reactor sites, and that the Federal Government is to provide very limited interim storage for those utilities who

are unable, despite diligent efforts, to store all their own spent fuel.

The Act directs the Secretary of the Department of Energy to report to Congress on certain activities of the programs. The purpose of this Notice is to announce the availability of two such reports which were submitted to the Congress on or before July 7, 1983. The first report is the "Monitored Retrievable Storage Proposal Research and Development Report" which concludes that the MRS proposal, including the site-specific designs and construction and operation plans, can be provided to Congress as required under the Act using current design and engineering practices and thus, no further research and development activities are necessary to develop the MRS proposal.

The Second report is concerned with the fees necessary to be charged utilities by the Government for Federal Interim Storage (FIS). The report describes the study conducted by the Department in order to establish "Payment Charges for Federal Interim Storage of Spent Nuclear Fuel from Civilian Power Plants in the U.S." It includes the methodology proposed for calculating annual fee schedules, a range of estimates for the fee, and a proposed method of payment. In addition, a back-up report, "Federal Interim Storage Fee Study for Civilian Spent Nuclear Fuel: A Technical and Economic Analysis", is also available which includes the information needed to estimate the costs of, and develop fees for, such storage, recognizing the many variables and uncertainties.

Copies of the three reports may be obtained by telephoning or writing the Office of Public Affairs, Room 1E-206, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585; (202) 252-5568.

FOR FURTHER INFORMATION CONTACT: Mr. James Carlson (Monitored Retrievable Storage) or Mr. Robert Bown (Federal Interim Storage), Storage Projects, Nuclear Waste Policy Project Office, Room 7F-048 (Mail Stop S-10), Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585; (202) 252-9433.

Issued in Washington, D.C., July 13, 1983.

Robert L. Morgan,

Project Director, Nuclear Waste Policy Act Project Office.

[FR Doc. 83-20210 Filed 7-28-83; 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

[ERA Docket No. 83-CERT-206, et al.]

Georgia-Pacific Corp. et al.; Certifications of Eligible Use of Natural Gas To Displace Fuel Oil

The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) has received the following applications for certification of an eligible use of natural gas to displace fuel oil pursuant to 10 CFR Part 595 (44 FR 47920, August 16, 1979). Notice of these applications, along with pertinent information contained in the applications, was published in the **Federal Register** and an opportunity for public comment was provided for a period of ten calendar days from the date of publication. No comments were received. More detailed information is contained in each application on file and available for inspection at the ERA Fuels Conversion Division Docket Room, RG-42, Room GA-093, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585, from 8:00 a.m. to 4:30 p.m., Monday through Friday, except Federal holidays.

Applicant and facility location	Date filed	Docket No.	FEDERAL REGISTER notice of application
Georgia-Pacific Corp., Franklin, Ohio	June 17, 1983	83-CERT-206	48 FR 31285, July 7, 1983.
National-Standard Co., Mt. Joy, Pa	June 20, 1983	83-CERT-208	48 FR 31285, July 7, 1983.
Endura Products, Quakertown, Pa	do	83-CERT-210	48 FR 31285, July 7, 1983.
Uniroyal, Inc., Port Clinton, Ohio	do	83-CERT-211	48 FR 31285, July 7, 1983.
Good Samaritan Hospital, Cincinnati, Ohio	do	83-CERT-212	48 FR 31285, July 7, 1983.
United States Gypsum Co., Baltimore, Md	do	83-CERT-213	48 FR 31285, July 7, 1983.
Vulcan Materials Co., Sandusky, Ohio	do	83-CERT-214	48 FR 31285, July 7, 1983.
Vulcan Materials Co., Pittsburgh, Pa	do	83-CERT-215	48 FR 31285, July 7, 1983.
Locke Insulators, Inc., Baltimore, Md	do	83-CERT-216	48 FR 31285, July 7, 1983.

The ERA has carefully reviewed the above applications for certification 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 the applications satisfy the criteria enumerated in 10 CFR Part 595 and, therefore, has granted the certifications and transmitted those certifications to the Federal Energy Regulatory Commission.

Issued in Washington, D.C., on July 22, 1983.

James W. Workman,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 83-20544 Filed 7-28-83; 8:45 am]

BILLING CODE 6450-01-M

[ERA Docket No. 83-CERT-255]

Moore Business Forms, Inc., et al.; Applications for Certification of the Eligible Use of Natural Gas To Displace Fuel Oil

The Economic Regulatory Administration (ERA) of the Department of Energy has received the following applications for certification of an eligible use of natural gas to displace fuel oil pursuant to 10 CFR Part 595 (44 FR 47920, August 16, 1979). End-users who have the capability to use natural gas in place of fuel oil at any of their facilities can arrange for direct purchases and transportation of the gas to those facilities under the Federal Energy Regulatory Commission's (FERC) fuel oil displacement program. The ERA certification is required by the FERC as a precondition to interstate transportation of fuel oil displacement gas in accordance with the procedures in 18 CFR Part 284, Subpart F.

Pertinent information regarding these applications is listed below, while more detailed information is contained in each application on file and available for inspection at the ERA Fuels Conversion Division Docket Room, RG-42, Room GA-093, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585 from 8:00 a.m. to

4:30 p.m., Monday through Friday, except Federal holidays.

1. 83-CERT-255

Applicant: Moore Business Forms, Inc., Buckhannon, W.Va.
Date Filed: July 7, 1983
Facility Location: Buckhannon, W.Va.
Gas Volume: 25,000 Mcf per year
Oil Displacement: 3,916 barrels No. 6 fuel oil (2.0% sulfur)
Eligble Seller: Union Drilling Co., Buckhannon, W.Va.
Transporter: Columbia Gas Transmission Corp., Charleston, W.Va.; Columbia Gas of West Virginia, Inc., Columbus, Ohio

2. 83-CERT-256

Applicant: Occidental Chemical Corp., Houston, Tex.
Date Filed: July 7, 1983
Facility Location: Durez Resins & Molding, North Tonawanda, N.Y.
Gas Volume: 114,000 Mcf per year
Oil Displacement: 750,000 gallons No. 6 fuel oil (1.7% sulfur)
Facility Location: Hooker Industrial & Specialty Chemicals, Niagara Falls, N.Y.
Gas Volume: 114,000 Mcf per year
Oil Displacement: 800,000 gallons No. 2 fuel oil (1.0% sulfur)
Total: Gas volume, 228,000 Mcf of natural gas per year; oil displacement, 750,000 gallons of No. 6 fuel oil and 800,000 gallons of No. 2 fuel oil
Eligible Seller: Eclipse Energy Corp., N.Y., N.Y.; P&S Drilling Co., Clarence, N.Y.; U.S. Energy, Buffalo, N.Y.; Envirogas, Inc., Hamburg, N.Y.; Midwest Exploration, Inc., Oklahoma City, Okla.
Transporter: National Fuel Gas Supply Corp., Oil City, Pa.; National Fuel Gas Distribution Corp., Buffalo, N.Y.

3. 83-CERT-257

Applicant: Airco Carbon Div. of Airco, Inc., Pittsburgh, Pa.
Date Filed: July 8, 1983
Facility Location: St. Mary's, Pa.
Gas Volume: 1,000,000 Mcf per year
Oil Displacement: 7,400,000 gallons No. 2 fuel oil (.4% sulfur)
Eligible Seller: Bounty 80 Exploration, Jamestown, N.Y.; Hanley & Bird Inc., Bradford, Pa.; Meridian Exploration, Pittsburgh, Pa.; Northwest Natural Gas Company, Albion, Pa.; ST Joint Venture, Westport, Conn.; U.S. Energy Development Corp., Buffalo, N.Y.; Wray Petroleum, Westerville, Ohio
Transporter: National Fuel Gas Supply Corp., Oil City, Pa.; National Fuel Gas Distribution Corp., Buffalo, N.Y.

4. 83-CERT-258

Applicant: Federal Paper Board Co., Inc., Riegelwood, N.C.
Date Filed: July 11, 1983
Facility Location: Riegelwood Operations, Riegelwood, N.C.
Gas Volume: 3,540,000 Mcf per year
Oil Displacement: 550,000 barrels No. 6 fuel oil (2.1% sulfur)
Eligible Seller: Silverthorn Co., Houston, Tex.
Transporter: Transcontinental Gas Pipeline Co., Houston, Tex.; North Carolina Natural Gas Corp., Fayetteville, N.C.

5. 83-CERT-259

Applicant: E. I. du Pont de Nemours & Co., Wilmington, Del.
Date Filed: July 12, 1983
Facility Location: Waynesboro, Va.
Gas Volume: 100,000 Mcf per year
Oil Displacement: 15,500 barrels No. 6 fuel oil (2.4% sulfur)
Eligible Seller: Texas International, Oklahoma City, Okla.; NRM Petroleum Corp., Midland, Tex.
Transporter: Columbia Gas Transmission Corp., Charleston, W. Va., and Columbia Gas of Virginia, Inc., Columbus, Ohio

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 any of these applications to submit comments in writing to the Economic Regulatory Administration, Office of Fuels Programs, Fuels Conversion Division, RG-42, Room GA-093, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585, Attention: Richard A. Ransom, within ten calendar days of the date of publication of this notice in the **Federal Register**. The docket number of the case should be printed on the outside of the envelope.

An opportunity to make an oral presentation of data, views, and arguments either against or in support of any of the above applications may be requested by any interested person in writing within the ten-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 in a particular case, further notice will be given to the applicant and any person filing comments in that case and will be published in the **Federal Register**.

Issued in Washington, D.C., on July 22, 1983.

James W. Workman,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 83-20545 Filed 7-28-83; 8:45 am]

BILLING CODE 6450-01-M

[6COX00242]

International Petroleum Refining and Supply; Proposed Remedial Order

Pursuant to 10 CFR 205.192(c), the Economic Regulatory Administration of the Department of Energy hereby gives Notice of a Proposed Remedial Order which was issued to International Petroleum Refining and Supply of Denver, Colorado. This Proposed Remedial Order alleges violations in the pricing of crude oil of 10 CFR 212.93, 212.186, 210.62(c), 205.202 and 212.182. The total violation alleged during November 1974 through December 1980 is $5,228,439.94.

A copy of the Proposed Remedial Order, with confidential information deleted, may be obtained from: U.S. Department of Energy, Economic Regulatory Administration, Attn: John W. Sturges, Director, 440 S. Houston, Room 306, Tulsa, Oklahoma 74127.

Within 15 days of publication of this Notice any agrieved person may file a Notice of Objection with the Office of Hearings and Appeals, U.S. Department of Energy, 12th & Pennsylvania Avenue, NW., Washington, D.C. 20461, in accordance with 10 CFR 205.193.

Issued in Tulsa, Oklahoma on the 18th day of July 1983.

John W. Sturges,

Director, Tulsa Office, Economic Regulatory Administration.

[FR Doc. 83-20546 Filed 7-27-83; 8:45 am]

BILLING CODE 6450-01-M

[94OX00222]

Petroex Energy Corp.; Proposed Remedial Order

Pursuant to 10 CFR 205.192(c), the Economic Regulatory Administration of the Department of Energy hereby gives Notice of a Proposed Remedial Order which was issued to Petroex Energy Corporation of Newport Beach, California. This Proposed Remedial Order alleges violations in the pricing of crude oil of 10 CFR 212.183. The total violation alleged during January 1978 through July 1980 is $147,995.36.

A copy of the Proposed Remedial Order, with confidential information deleted, may be obtained from: U.S. Department of Energy, Economic

Regulatory Administration, Attn: John W. Sturges, Director, 440 S. Houston, Room 306, Tulsa, Oklahoma 74127.

Within 15 days of publication of this Notice any agrieved person may file a Notice of Objection with the Office of Hearings and Appeals, U.S. Department of Energy, 12th & Pennsylvania Avenue, NW., Washington, D.C. 20461, in accordance with 10 CFR 205.193.

Issued in Tulsa, Oklahoma, on the 18th day of July 1983.

John W. Sturges,

Director, Tulsa Office, Economic Regulatory Administration.

[FR Doc. 83-20547 Filed 7-28-83; 8:45 am]

BILLING CODE 6450-01-M

Lone Star Oil & Chemical Co. and Michael A. McAlister; Proposed Remedial Order

Pursuant to 10 CFR 205.192(c), the Economic Regulatory Administration (ERA) of the Department of Energy hereby gives notice of a Proposed Remedial Order which was issued to Lone Star Oil & Chemical Company & Michael A. McAlister at 16250 Dallas Parkway, Suite 202, Dallas, Texas 75248. This Proposed Remedial Order alleges pricing violations in the amount of $140,146.24 plus interest in connection with the resale of crude oil at prices in excess of those permitted by 10 CFR Part 212, Subpart L during the time period June 1978 through January 1980.

A copy of the Proposed Remedial Order, with confidential information deleted, may be obtained from James F. Murphy, Manager, Crude Reseller Program, Economic Regulatory Administration, Department of Energy, P.O. Box 35228, Dallas, Texas 75235, or by calling (214) 767-7432. Within fifteen (15) days of publication of this notice, any aggrieved person may file a Notice of Objection with the Office of Hearings and Appeals, Federal Building, Room 3304, 12th & Pennsylvania Ave., NW., Washington, D.C. 20461, in accordance with 10 CFR 205.193.

Issued in Dallas, Texas on the 15th day of July, 1983.

Ben L. Lemos,

Director, Dallas Office, Economic Regulatory Administration.

[FR Doc. 83-20549 Filed 7-28-83; 8:45 am]

BILLING CODE 6450-01-M

[ERA-P-01]

Review of Government Policy in Authorizing Imports of Natural Gas

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Solicitation of Public Comments and Announcement of Public Conference.

SUMMARY: The Department of Energy (DOE) has been assessing for a number of months the policies and procedures employed by the government relating to the importation of natural gas. This review, which has been undertaken in parallel with the Administration's efforts to reform the laws regulating domestic natural gas, has been coordinated by the Administrator of the Economic Regulatory Administration (ERA) and has involved other offices of the DOE, the Department of State, and the Federal Energy Regulatory Commission (FERC).

As a matter of policy, the position held by the Administration is that imported gas should be regulated by the market, with the government's role limited to foreign and trade policy, broad economic considerations and national security concerns. This position has been represented in our government's discussions with officials of countries that export gas to the U.S. Our objective is to bring about natural gas import arrangements that are based on buyer-seller agreements and are responsive to market conditions. The government's role, we believe, should be to ensure that these arrangements reflect this objective and are consistent with the public interest.

In authorizing gas imports in the past, the ERA has applied criteria that do not fully achieve this policy objective. As a result, ERA is presently assessing the criteria that should be applied in authorizing gas imports. We believe that changes are required in these criteria in order that authorizations of imports reflect our market-oriented position. An important element in our assessment of gas import criteria is input from the general public. We are thus requesting comments from interested parties on the factors that ERA should consider in authorizing gas imports.

In order to facilitate this comment process, we will hold a public conference on September 8, 1983, beginning at 10:00 a.m. e.d.t., in the auditorium, Room GE-086, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. All interested persons are invited to comment on what the criteria should be and how they should be applied in the consideration of applications to import natural gas.

The conference will be conducted by the ERA and will include participation by the FERC, the Department of State and the DOE Office of International Affairs.

DATES: A public conference will be held on September 8, 1983, and will continue an additional day if necessary. Requests to speak should be made by 4:30 p.m. e.d.t. on August 31, 1983. Written comments may be submitted in lieu of oral presentations and should be submitted by 4:30 p.m. e.d.t. on August 31, 1983.

FOR FURTHER INFORMATION CONTACT:

Clifford Tomaszewski (Natural Gas Division, Office of Fuels Programs), Economic Regulatory Administration, Forrestal Building, Room GA-007, 1000 Independence Avenue, SW., Washington, D.C. 20585; (202) 252-9760

Jack C. Vandenberg (Public Affairs), Economic Regulatory Administration, Federal Building, Room 4309, 12th & Pennsylvania Avenue, NW., Washington, D.C. 20461; (202) 633-8108

James K. White (Assistant General Counsel, Natural Gas and Mineral Leasing), Forrestal Building, Room 6E-042, 1000 Independence Avenue, SW., Washington, D.C. 20585; (202) 252-6667

SUPPLEMENTARY INFORMATION:

Background

On January 18, 1983, the Department of Energy (DOE) convened a conference to obtain the views of interested persons on the problems relating to the importation of natural gas and to obtain suggestions of appropriate solutions. Most comments indicated that a more flexible approach to pricing of imports was needed and that prices should be set through company-to-company negotiations. These comments reinforced our conclusions regarding the appropriate policy approach to gas imports. We are now requesting comments on what changes are needed in the regulatory criteria used in authorizing gas imports to ensure that future gas import contracts reflect this policy framework, thus resulting in flexible and market-oriented arrangements.

There are currently over 20 import applications pending before the ERA, as well as several before the FERC.[1] As these applications are considered, both agencies will need to employ criteria that will ensure that the proposed imports are responsive to the U.S. markets to which they are destined,

[1] The Secretary of Energy has delegated to the ERA Administrator responsibility for authorizing imports under section 3 of the Natural Gas Act. An exception to this delegation authority was made for imports through the Alaska Natural Gas Transportation System, which was delegated to the FERC.

particularly with respect to the pricing of the gas over the entire contract period. Following receipt of the requested comments and results of the conference, details of the revised import authorization criteria will be announced. ERA will then move expeditiously to consider all pending import applications.

Areas of Consideration and Criteria Employed In Review of Applications To Import Natural Gas Into the United States

The delegation of authority to ERA relating to the review of applications for the import of natural gas to determine whether they are "not inconsistent with the public interest" enunciates certain "areas of consideration" in the authorization process: the security of supply; the effect on the U.S. balance of payments; the price proposed to be charged at the point of importation; the national or regional need for the gas; consistency with regulations and statements of policy; and other matters within the scope of section 3 of the Natural Gas Act.

It is with reference to these areas of consideration that ERA has made its determinations in the past.

The areas of consideration and the criteria applied within them should reflect the realities of the present and future marketplace. Thus, we are reviewing both the appropriateness of the current areas of consideration and the criteria employed in each area. We are particularly interested in receiving comments on those areas that relate to reasonableness of price and flexibility of import arrangements. It is our belief that once these market responsive criteria are developed and made known to importers and exporters, they will ensure that their gas trade agreements are developed in a manner consistent with them. Thus our import authorization reviews as they would relate to price and marketability of the gas would consist primarily of confirming the inclusion of contract provisions that assure market responsive imports. This should substantially reduce the extent and the time of government review. This would largely remove the government from direct involvement in those areas that are more appropriately the province of private commercial transactions.

We have prepared a series of questions, the answers to which would be helpful to our policy deliberations.

1. Should we require the applicant to show that the contract contains a pricing mechanism that would allow the gas to be sold in the market at a price competitive with competing fuels?

2. Should one of the competing fuels be domestic gas?

3. If the applicant cannot show that the gas would be competitive, should the applicant be required to show that there are extraordinary reasons for having the gas priced at levels that are not competitive?

4. Should the applicant be required to identify the fuels with which the imported gas would be competing and the nature of that competition?

5. Should the applicant be required to show that the minimum volume obligations of the contract are reasonable, and that the penalties for not taking the minimum volumes are not overly severe?

6. Should the applicant be required to show that the contract provides adequate means for adjusting certain provisions as the market changes? If so, what provisions and adjustment mechanisms would be appropriate? How will such adjustment mechanisms affect the financing of new projects?

7. Should the applicant be required to include provisions in contracts that would allow either party to renegotiate the terms of the contracts if certain events change in the marketplace? If so, what terms should be subject to renegotiation and what events should trigger the renegotiations?

8. Should the applicant be required to show that the contract can be cancelled if such a market-triggered renegotiation is unsuccessful? If the contract cannot be cancelled are there other provisions that should be required to protect the consumer?

9. Should the applicant be required to show what markets the proposed import would serve and that there would be a need for the gas in those markets? What should be required to demonstrate such need?

We will review the comments submitted and the oral testimony in the course of the policy review and will formulate and publicly announce any changes in regulatory policy and criteria that we develop as a result of this review. While it is our present intention to apply these criteria in our consideration of pending and future import applications, we also would invite your views on whether and in what manner these new criteria should be applied to existing authorizations.

Conference Procedures

The conference will be conducted in an informal manner before a panel of representatives of the ERA, the Department of Energy's Offices of General Counsel and International Affairs, as well as the FERC and the Department of State. The conference will be conducted in a manner that will facilitate the orderly presentation of oral statements. We reserve the right to select the persons to be heard at this conference, to schedule their respective statements, and to establish the procedures governing the conduct of the conference. All interested persons are encourage to present their views; however, statements may be subject to time limitations if determined necessary.

Questions may be asked of persons presenting statements by members of the panel and a free dialogue between the panel and the speakers will be encouraged. At the conclusion of all intitial oral statements, each person who has made an oral statement will be given the opportunity for further comments, time permitting. There will also be an opportunity for questions from the audience, as time permits. Any further procedural rules needed for the proper conduct of the conference will be announced at the time of the conference. The conference will be open to the public. However, any person who wishes to make an oral statement should notify the Director, Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, RG-43, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252-9482, on or before August 31, 1983. This request should indicate the person (with address and telephone number) who wishes to speak and the amount of time desired. Any person making an oral presentation should bring at least 100 copies of their statement to the conference for distribution at the conference. Witnesses are encouraged to submit their statements before the day of the conference to permit additional copying and more orderly distribution. Persons wishing to speak at the conference who have not scheduled itme will be given an opportunity to do so if time permits.

A transcript of the conference will be made and will be available for public review at the Natural Gas Division Docket Room, Room GA-007, Forrestal Building, 1000 independence Avenue, SW., Washington, D.C., between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Written Comments

Any person who wishes to file written comments in lieu of an oral presentation or in addition to their statement must file these (30 copies) with the Director, Natural Gas Division, at the above address, by August 31, 1983. The filing should be labeled "Natural Gas Import Policy Proceeding [ERA-P-01]." Any

submission including information or data considered confidential by the person furnishing it must be so identified on the first page of the document (one copy only). The person should also submit 30 copies of the document with the confidential material excluded.

The ERA reserves the right to determine the confidential status of the information or data and to treat it according to that determination. All comments received (with confidential material excluded) will be available for public inspection in the Natural Gas Division Docket Room at the above address between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, D.C., on July 27, 1983.

Rayburn Hanzlik,

Administrator, Economic Regulatory Administration.

[FR Doc. 83-20562 Filed 7-28-83; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. CI83-188-002 and CI83-322-100]

ANR Production Co.; Application for Limited-Term Partial Abandonment and Limited-Term Certificate of Public Convenience and Necessity

July 25, 1983.

Take notice that on July 19, 1983, ANR Production Company filed an application for (1) permission and approval for limited-term partial abandonment of the sale to Transcontinental Gas Pipe Line Corporation from Mustang Island Block A-85, Offshore Texas that had been previously authorized in Docket No. CI83-188-000, and (2) a limited-term certificate of public convenience and necessity, with pregranted abandonment, authorizing the sale of "surplus" gas from such block to Washington Gas Light Company (WGL).

Applicant is requesting authorization so that it may participate in Transco's short-term contract carriage program. The quantities of gas involved would be surplus to both Transco's requirements under the sale authorized in Docket No. CI83-188-000 and to Transco's Industrial Sales Program authorized in Docket No. CP83-279-000. Upon termination of short-term sale, service shall resume in full to Transco.

Applicant seeks authorization for the period from the date of authorization through October 31, 1983, and from month to month thereafter until March 31, 1984.

It appears reasonable and consistent with the public interest in this case to prescribe a period shorter than 15 days for the filing of protests and petitions to intervene. Therefore, any person desiring to be heard or to make any protest with reference to said application should on or before August 4, 1983, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure a hearing will be held without further notice before the Commission on all applications in which no petition to intervene is filed within the time required herein if the Commission on its own review of the matter believes that a grant of the certificate or the authorization for the proposed abandonment is required by the public convenience and necessity. Where a petition for leave to intervene is timely filed, or where the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-20630 Filed 7-28-83; 8:45 am]

BILLING CODE 6717-01-m

[Project No. 6134-001]

Michael Springer and James Boulden; Surrender of Preliminary Permit

July 26, 1983.

Take notice that Michael Springer and James Boulden, Permittees for the proposed West Walker River Project No. 6134, have requested that their preliminary permit be terminated. The Preliminary Permit was issued on September 7, 1982, and would have expired on March 31, 1984. The project would have been located on the West Walker River near Walker, in Mono County, California.

The Permittees filed their request on June 20, 1983, and the surrender of the permit for Project No. 6134 is deemed accepted as of June 20, 1983, and effective 30 days after the date of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-20631 Filed 7-28-83; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 4481-001]

Midvale Irrigation District; Surrender of Preliminary Permit

July 26, 1983.

Take notice that Midvale Irrigation District, Permittee for the proposed Bull Lake Dam Project No. 4481, has requested that its preliminary permit be terminated. The permit was issued on September 21, 1982, and would have expired on February 29, 1984. The project would have been located at the U.S. Bureau of Reclamation's Bull Lake Dam on Bull Lake Creek in Fremont County, Wyoming.

The Permittee filed its request on May 20, 1983, and the surrender of the preliminary permit for Project No. 4481 is deemed accepted 30 days after issuance of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-20632 Filed 7-28-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ST82-397-001]

Mississippi Fuel Co.; Application for Approval of Rates

July 25, 1983.

Take notice that on June 14, 1983, Mississippi Fuel Company (Applicant), 1100 First National Center East, Oklahoma City, Oklahoma 73102, filed in Docket No. ST82-397-001 an application pursuant to § 284.123(b)(2) of the Commission's Regulations for approval of the rates and charges to be assessed by Applicant for transportation services to be provided for Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Pursuant to a gas transportation and exchange agreement among Applicant, Tennessee, System Fuels, Inc., and

Mississippi Power & Light Company dated June 10, 1982, Applicant states that it sought approval of a transportation rate which was fair and equitable in accordance with § 284.132(b)(2) of the Regulations, initially set at 20.27 cents per Mcf of natural gas transported. Applicant explains that the transportation agreement contemplated that the transportation rate would be adjusted annually effective June 15.

Applicant states that it has adjusted its rate and proposes that a revised rate of 16.59 cents per Mcf, to be effective June 15, 1983, is fair and equitable for the service to be rendered.

Any person desiring to be heard or to make any protest with reference to said application should on or before August 15, 1983 file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-20633 Filed 7-28-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ST80-298-002]

Mississippi Fuel Co., Application for Approval of Rate

July 25, 1983.

Take notice that on June 14, 1983, Mississippi Fuel Company (Applicant), 1100 First National Center East, Oklahoma City, Oklahoma 73102, filed in Docket No. ST80-298-002 an application pursuant to § 284.123(b)(2) of the Commission's Regulations for approval of its revised rate and charge for the transportation of natural gas for Transcontinental Gas Pipe Line Corporation (Transco), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that pursuant to a transportation and exchange agreement with transco, System Fuels, Inc., and Mississippi Power and Light Company dated August 20, 1980, as amended, a demand charge of 20.27 cents per Mcf was established. It is provided and stated that an adjustment to the demand charge would be made at the end of the 12-month period commencing with the initial deliveries hereunder to be effective during the ensuing 12-month period to reflect actual throughput of the pipeline system and any modifications in the cost of service factors. It is asserted that Applicant proposes to establish a revised demand charge of 16.59 cents per Mcf, to be effective June 15, 1983.

It is stated that this application is filed pursuant to § 284.123(b(2) of the Commission's Regulations as the elections otherwise available to an intrastate pipeline under § 284.123(b)(1) are not available to Applicant because Applicant has no rate schedules on file with the Mississippi Public Service Commission covering city-gate service or transportation service of the nature proposed to be rendered on behalf of Transco. Applicant further asserts that the Commission has not taken into account the revenues received for establishing transportation services to its intrastate customers because neither that agency nor any other state regulatory agency establishes transportation rates charged by Applicant to its intrastate customers.

Any person desiring to be heard or to make any protest with reference to said application should on or before August 15, 1983, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to inervene or protest in accordance with the requirements of the Commission's Rules of Practice and Procedue (18 CFR 385.214 or 385.211). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-20634 Filed 7-28-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ES83-58-000]

Texas-New Mexico Power Co.; Application

July 26, 1983.

Take notice that on July 20, 1983, Texas-New Mexico Power Company (Applicant) filed an application with the Federal Energy Regulatory Commission, pursuant to Section 204 of the Federal Power Act, seeking authorization to negotiate for not more than $20 million of First Mortgage Bonds.

Any person desiring to be heard or to make any protest with reference to this application should, on or before August 18, 1983, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with 18 CFR 385.211 or 385.214, respectively. The application is on file with the Commission and available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-20635 Filed 7-28-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ES83-59-000]

Texas-New Mexico Power Co.; Notice of Application

July 26, 1983.

Take notice that on July 20, 1983, Texas-New Mexico Power Company (Applicant) filed an application with the Federal Energy Regulatory Commission, pursuant to Section 204 of the Federal Power Act, seeking authorization to negotiate for not more than 400,000 shares of Common Stock.

Any person desiring to be heard or to make any protest with reference to this application should, on or before August 18, 1983, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with 18 CFR 385.211 or 385.214, respectively. The application is on file with the Commission and available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-20636 Filed 7-28-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP83-381-000]

Transcontinental Gas Pipe Line Corp. et al.; Application

July 25, 1983.

Take notice that on June 17, 1983, Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas 77251, Texas Eastern Transmission Corporation (TETCO), P.O. Box 2521, Houston, Texas 77251, Natural Gas Pipeline company of America (Natural), 122 South Michigan Avenue, Chicago, Illinois 60603, and Michigan Wisconsin Pipe Line Company (Michigan Wisconsin), One woodward

Avenue, Detroit, Michigan 48226, hereinafter collectively referred to as Applicants, filed in Docket No. CP83-381-000 a joint application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain pipeline and appurtenant facilities in the offshore Texas area, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicants propose to construct and operate in the High Island Area, South Addition, offshore Texas (1) approximately 10.67 miles of 20-inch pipeline extending from a connection with the 30-inch West Leg of High Island Offshore System in Block A-539 to production platform A in Block A-568, (2) approximately 2.02 miles of 12-inch pipeline extending from an underwater connection with the above 20-inch line in Block A-552 to a production platform in Block A-567, (3) approximately 0.96 mile of 10-inch pipeline extending from an underwater connection with the above 20-inch line in Block A-552 to a production platform in the same Block A-552, and (4) a meter and regulator station on each of the above production platforms.

It is anticipated that the proposed facilities will enable Applicants to attach and transport reserves they have contracted to purchase in High Island Blocks 552, 567 and 568. It is further stated that the individual ownership percentages of Applicants in the various segments of the proposed facilities are based upon respective maximum daily volumes expected to be purchased and transported by them through such segments. It is indicated that the facilities would be constructed in 1983 by Transco and operated by Michigan Wisconsin. Such facilities would have a capacity of 140,000 Mcf of gas per day, it is asserted.

It is estimated that such facilities would cost $23,105,000. Applicants state that their respective portions would be financed initially through revolving credit arrangements, short-term loans or funds on hand, with permanent financing to be undertaken as part of Applicants' respective overall long/term financing program at later dates.

Any person desiring to be heard or to make any protest with reference to said application should on or before August 15, 1983, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or be represented at the hearing.

Kenneth F. Plumb.

Secretary.

[FR Doc. 83-20637 Filed 7-28-83; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Apeals

Objection to Proposed Remedial Orders Filed; Week of June 13 Through June 17, 1983

During the week of June 13 through June 17, 1983, 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 the 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.

All requests to participate in these proceedings should be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20461.

Dated: July 22, 1983.

George B. Breznay,

Director, Office of Hearings and Appeals.

Brent Exploration, Inc., Denver, Colorado; HRO-0162, crude oil

On June 17, 1983, Brent Exploration, Inc., 2060 Energy Center One, 717 Seventeenth Street, Denver, Colorado filed a Notice of Objection to a Proposed Remedial Order which the Dallas Office of Enforcement of the Economic Regulatory Administration issued to the firm on May 6, 1983. In the Proposed Remedial Order, the Office of Enforcement found that during the period of August 1979 through December 1980, Bent Exploration, Inc. sold crude oil at prices in excess of those permitted by 10 CFR Part 212, Subpart D. According to the Proposed Remedial Order, the Brent Exploration, Inc. violation resulted in $1,542,912.41 of overcharges.

Granite Petroleum Co., Houston, Texas, HRO-0163, Crude oil

On June 17, 1983, Granite Petroleum Company, 7880 San Felipe, Suite 201, Houston, Texas 77063 filed a Notice of Objection to a Proposed Remedial Order which the DOE Southwest District Office of Enforcement issued to the firm on March 4, 1983. In the PRO the Southwest Enforcement District found that during the period October 1979 through November 1980, Granite Petroleum Company violated the DOE Mandatory Petroleum Price Regulations in its sales of crude oil in the States of Texas and Oklahoma.

According to the PRO, the Granite Petroleum Company pricing violations resulted in $1,140,622.57 of overcharges.

[FR Doc. 83-20543 Filed 7-28-83; 8:45 am]

BILLING CODE 6450-01-M

Objection to Proposed Remedial Orders; Week of June 20 Through June 24, 1983.

During the week of June 20 through June 24, 1983, 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.

Dated: July 22, 1983.

George B. Breznay,

Director, Office of Hearings and Appeals.

Kung Oil Company, Edina, Minnesota; HRO-0165, crude oil

On June 20, 1983, King Oil Company 5200 Eden Circle, Edina, Minnesota 55435 filed a Notice of Objection to a Proposed Remedial Order which the Kansas City Field Office of the Economic Regulatory Administration issued to the Firm on May 20, 1983.

In the PRO the Kansas City Field Office found that during May 1, 1979 to August 31, 1979, Kung violated the price regulations in its sales of motor gasoline.

According to the PRO the Kung Oil Company violation resulted in $143,375.11 of overcharges.

National Hydrocarbon Resources Corp., Houston, Texas; HRO-0169, crude oil

On June 20, 1983, National Hydrocarbons Group, Inc. 600 Jefferson, Suite 900; Houston, Texas 77002 filed a Notice of objection to a Proposed Remedial Order which the DOE Houston District Office of Enforcement issued to the firm on May 13, 1983. In the PRO the Houston District found that during July 1979 to December 1980, the firm violated 10 CFR 212.186, 210.62, 212.183 and 205.202. According to the PRO the National Hydrocarbon Group, Inc. violations resulted in $17,991,423.42 of overcharges.

Tyson Producing Company, Jackson Mississippi; HRO-0166, crude oil

On June 23, 1983, Tyson Producing Company, P.O. Box 16448, Jackson, Mississippi 39206 filed a Notice of Objection to a Proposed Remedial Order which the DOE Dallas Field Office of the Economic Regulatory Administration issued to the firm on May 20, 1983.

In the PRO the ERA found that during the period September 1973 through July 1979, the firm sold crude oil at prices in excess of those permitted under 10 CFR Part 212, Subpart D.

According to the PRO the Tyson Producing Company violation resulted in $91,108.69 of overcharges.

[FR Doc. 83-20542 Filed 7-28-83; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-2407-5]

Availability of Environmental Impact Statements Filed July 18 Through July 22, 1983, Pursuant to 40 CFR Part 1506-9

RESPONSIBLE AGENCY: Office of Federal Activities General Information (202) 382-5075 or 382-5076.

US Army Corps of Engineers:
- EIS No. 830385, Draft, COE, HI, Hilo Harbor Breakwater Modification, Hilo Bay, Hilo, Hawaii County, Due: Sept. 12, 1983.
- EIS No. 830386, Draft, COE, HI, Hilo Bayfront Beach and Bayfront Highway Protection, Hilo, Hawaii County, Due: Sept. 12, 1983.
- EIS No. 830387, Draft, COE, HI, Reeds Bay Small Craft Recreational Harbor Construction, Hawaii County, Due: Sept. 12, 1983.
- EIS No. 830388, Draft, COE, HI, Cape Kumukahi Small Craft Commercial Harbor Construction, Hawaii County, Due: Sept. 12, 1983.
- EIS No. 830389, Draft, COE, AK, Mahoney Lakes System Hydroelectric Development, Revillagigedo Island, Due: Sept. 19, 1983.
- EIS No. 830390, Draft, COE, WI, Wisconsin River Flood Protection Plan, Portage, Columbia County, Due: Sept. 12, 1983.
- EIS No. 830395, Final, COE, TX, Lower Rio Grande Basin Flood Control, Willacy, Cameron & Hidalgo Counties, Due: Aug. 29, 1983.

Department of Energy:
- EIS No. 830372, Final, DOE, MT, Fort Peck-Havre Transmission Line Construction, Approval, Due: Aug. 29, 1983.

Department of the Interior:
- EIS No. 830393, Final, BLM, SEV, UT WY Chevron Phosphate Project, Construction and Operation, Permit, Due: Aug. 29, 1983.
- EIS No. 830394, DSuppl, IBR, Co, Narrows Unit Multipurpose Water Development Project, Morgan County, Due: Sept. 18, 1983.
- EIS No. 830397, Draft, SFW, AK, Bristol Bay Region, Cooperative Land Management Plan, Due: Sept. 12, 1983.

Department of Transportation:
- EIS No. 830396, Draft, FHW, CA, Santa Ana Freeway/I-5 Transitway Construction, Los Angeles/Orange Counties, Due: Sept. 28, 1983.
- EIS No. 830392, Final, FHW, MS, I-110 Completion, US 90 to Chartres Street, Harrison County, Due: Aug. 29, 1983.

Department of Housing and Urban Development:
- EIS No. 830391, Final, HUD, HI, Kaka'ako Community Development Plan, Honolulu County, Island of Oahu, Due: Aug. 29, 1983.

Amended Notices:
- EIS No. 830378, Draft, USA, PAC, Johnston Atoll Chemical Agent Disposal System, Johnston Island, Due: Sept. 6, 1983.

Published **Federal Register** July 22, 1983—Incorrect agency.

Dated: July 26, 1983.

Pasquale A. Alberico,

Acting Director, Office of Federal Activities.

[FR Doc. 83-20659 Filed 7-28-83; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-2402-8]

Availability of Environmental Impact Statements Filed July 11 Through July 15, 1983 Pursuant to 40 CFR Part 1506-9

Correction

In FR Doc. 83-19896 beginning on page 33531 in the issue of Friday, July 22, 1983, make the following corrections on that page: Under the Department of the Interior, the due date for EIS No. 830370, EIS No. 830382, and EIS No. 830377 should read "Aug. 22, 1983".

BILLING CODE 1505-01-M

[OPTS-51471; TSH-FRL 2384-3]

Certain Chemicals Premanufacture Notices

Correction

In a correction appearing on page 33042 in the issue of Wednesday, July 20, 1983, the OPTS number should have read as set forth above.

BILLING CODE 1505-01-M

[OPTS-51477; TSH-FRL 2407-4]

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. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statements of interim policy published in the **Federal Register** of May 15, 1979 (44 FR 28558) and November 7, 1980 (45 FR 74378). This notice announces receipt of thirteen PMNs and provides a summary of each.

DATES: Close of review period:

PMN 83-976—October 12, 1983.

PMN 83-977 and 83-978—October 16, 1983.

PMN 83-979 and 83-980—October 17, 1983.

PMN 83-981, 83-982, 83-983, 83-984, 83-985, 83-986, 83-987 and 83-988—October 18, 1983.

Written comments by:

PMN 83-976—September 12, 1983.

PMN 83-977 and 83-978—September 16, 1983.

PMN 83-979 and 83-980—September 17, 1983.

PMN 83-981, 83-982, 83-983, 83-984, 83-985, 83-986, 83-987 and 83-988—September 18, 1983.

ADDRESS: Written comments, identified by the document control number "[OPT-51477]" and the specific PMN number should be sent to: Document Control Officer (TS-793), Office of Toxic Substances, Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E-409, 401 M St. SW., Washingon, DC 20460, (202-382-3532).

FOR FURTHER INFORMATION CONTACT: Theodore Jones, Acting Chief, Notice Review Branch, Chemical Control Division (TS-974), Office of Toxic Substances, Environmental Protection Agency, Rm. E-216, 401 M St. SW., Washington, DC 20460, (202-382-3729).

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete non-confidential document is available in the Public Reading Room E-107.

PMN 83-976

Manufacturer. Confidential.

Chemical. (G) Fluoroalkylamine.

Use/Production. Confidential. Prod. range: Confidential.

Toxicity Data. No data on the PMN substance submitted.

Exposure. Confidential.

Environmental Release/Disposal. Release to water. Disposal by publicly owned treatment works (POTW).

PMM 83-977

Manufacturer. E. I. du Pont de Nemours and Company, Inc.

Chemical. (G) Acrylic polymer.

Use/Production. (G) Mixture Component. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal, 2 persons/shift, 8 hrs/shift, 3 shifts/da, up to 1 da/yr.

Environmental Release/Disposal. Release to land. Disposal by incineration, Resource Conservation and Recovery Act (RCRA), recycled or recovered.

PMN 83-978

Manufacturer. Confidential.

Chemical. (G) Aromatic copolyester.

Use/Production. (G) Use is a polymer in the manufacture of electrical insulation which is an industrial application. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture, quality control and disposal: dermal, inhalation and ocular, a total of 22 workers.

Environmental Release/Disposal. Confidential.

PMN 83-979

Manufacturer. Monsanto Company.

Chemical. (G) Blocked nitrile fumarate polymer.

Use/Production. (G) Polymer modifier and molding resin. Prod. range: Confidential.

Toxicity Data. Acute oral: >5.0 g/kg; Acute dermal: >5.0 g/kg; Irritation: Skin—Mild to moderate, Eye—Non-irritant; 96 hr LC_{50} (Bluegill sunfish)—>1,000 mg/l; 96 hr LC_{50} (Daphnia magna)—>1,000 mg/1; 96 hr LC_{50} (Rainbow trout)—>1,000 mg/l.

Exposure. Manufacture: a total of 5 workers, up to 1.0 hr/da, up to 275 da/yr.

Environmental Release/Disposal. Less than 0.1 kg/batch released to air with 0.45 to less than 0.1 kg/batch to water. Disposal by secondary sewage treatment.

PMN 83-980

Manufacturer. Confidential.

Chemical. (G) Cyanocetate ester.

Use/Production. Confidential. Prod. range: Confidential.

Toxicity Data. No data on PMN submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

PMN 83-981

Importer. Confidential.

Chemical. (G) Quarternized alkyl amine.

Use/Import. (G) Surfactant. Import range: Confidential.

Toxicity Data. Acute oral: 254 mg/kg; Acute dermal: 2,230 mg/kg; Irritation: Skin—Slight, Eye—Moderate.

Exposure. Confidential.

Environmental Release/Disposal. No release expected. Disposal by reclamation and waste treatment system.

PMN 83-982

Manufacturer. Confidential.

Chemical. (G) Cyanoacrylate ester.

Use/Production. Confidential. Prod. range: Confidential.

Toxicity Data. No data on the PMN substance submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

PMN 83-983

Manufacturer. E. I. du Pont de Nemours and Company, Inc.

Chemical. (G) Styrene/acrylic copolymer.

Use/Production. Confidential. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal, 2 persons/shift, 8 hrs/shift, 3 shifts/da, up to 4 da/yr.

Environmental Release/Disposal. Release is minimal. Disposal by incineration, RCRA approved site, recycled or recovered.

PMN 83-984

Manufacturer. E. I. du Pont de Nemours and Company, Inc.

Chemical. (G) Styrene/acrylic copolymer.

Use/Production. (G) Intermediate. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal, 2 persons/shift, 8 hrs/shift, 3 shifts/da, up to 1.4 da/yr.

Environmental Release/Disposal. Release is minimal. Disposal by incineration, RCRA approved site, recycled or recovered.

PMN 83-985

Manufacturer. E. I. du Pont de Nemours and Company, Inc.

Chemical. (G) Styrene/acrylic copolymer.

Use/Production. (G) Mixture component. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal, 2 persons/shift, 8 hrs/shift, 3 shifts/da, up to 13.1 da/yr.

Environmental Release/Disposal. Release is minimal. Disposal by incineration, RCRA approved site, recycled or recovered.

PMN 83-986

Manufacturer. Confidential.

Chemical. (G) Amino silane.

Use/Production. (G) Intermediate. Prod range: Confidential.

Toxicity data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

PMN 83-987

Manufacturer. Confidential.
Chemical. (G) Amino silane.
Use/Production. (G) Intermediate. Prod range: Confidential.
Toxicity data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

PMN 83-988

Manufacturer. Confidential.
Chemical. (G) Hydroxy functional silane.
Use/Production. (G) Intermediate. Prod. range: Confidential.
Toxicity data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

Dated: July 22, 1983.

V. Paul Fuschini,

Acting Director, Management Support Division.

[FR Doc. 83-20618 Filed 7-28-83; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-59132; TSH-FRL 2407-3]

Certain Chemicals; Premanufacture Exemption Applications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA may upon application exempt any person from the premanufacturing notification requirements of section 5 (a) or (b) of the Toxic Substances Control Act (TSCA) to permit the person to manufacture or process a chemical for test marketing purposes under section 5(h)(1) of TSCA. Requirements for test marketing exemption (TME) applications, which must either be approved or denied within 45 days of receipt, are discussed in EPA's revised statement of interim policy published in the **Federal Register** of November 7, 1980 (45 FR 74378). This notice, issued under section 5(h)(6) of TSCA, announces receipt of eight applications for exemptions, provides a summary, and requests comments on the appropriateness of granting each of the exemptions.

DATE: Written comments by: August 12, 1983.

ADDRESS: Written comments, identified by the document control number "[OPTS-59132]" and the specific TME number should be sent to: Document Control Officer (TS-793), Management Support Division, Office of Toxic Substances, Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E-409, 401 M Street, SW, Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Theodore Jones, Acting Chief, Notice Review Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E-216, 401 M Street, SW, Washington, DC 20460, (202-382-3729).

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission provided by the manufacturer on the TME received by EPA. The complete non-confidential document is available in the Public Reading Room E-107.

TME 83-68

Close of Review Period. August 31, 1983.
Manufacturer. Confidential.
Chemical. (G) Alkyl metallic halide.
Use/Production. (G) Industrial intermediate. Prod. range: 6 mos-3,300 lbs.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. No data submitted.

TME 83-69

Close of Review Period. August 31, 1983.
Manufacturer. Sun Alert, Incorporated.
Chemical. (S) Methyl fluorene-9-carboxylate.
Use/Production. (S) Intermediate for sun dosimeter. Prod. range: 10-110 kg/yr.
Toxicity Data. No data submitted.
Exposure. Use: dermal, a total of 3 workers monthly.
Environmental Release/Disposal. No data submitted.

TME 83-70

Close of Review Period. August 31, 1983.
Manufacturer. Sun Alert, Incorporated.
Chemical. (S) 9-Methyl carboxylate-9-aminophenyl(4-dimethylamino) fluorene.
Use/Production. (S) Intermediate for sun dosimeter. Prod. range: 10-110 kg/yr.
Toxicity Data. No data submitted.
Exposure. Use: dermal, a total of 3 workers monthly.
Environmental Release/Disposal. No data submitted.

TME 83-71

Close of Review Period. August 31, 1983.
Manufacturer. Sun Alert, Incorporated.
Chemical. (S) Methyl 9-bromofluorene-9-carboxylate.
Use/Production. (S) Intermediate for sun dosimeter. Prod. range: 10-110 kg/yr.
Toxicity Data. No data submitted.
Exposure. Use: dermal, a total of 3 workers montly.
Environmental Release/Disposal. No data submitted.

TME 83-72

Close of Review Period. August 31, 1983.
Importer. Confidential.
Chemical. (G) Polysiloxane resin.
Use/Import. Confidential. Import range: Confidential.
Toxicity Data. No data on the TME substance submitted.
Exposure. Use: dermal and inhalation, a maximum of 100 workers, up to 8 hrs/da, up to 1 month.
Environmental Release/Disposal. No release expected. Disposal by incineration.

TME 83-73

Close of Review Period. August 31, 1983.
Manufacturer. Stauffer Chemical Company.
Chemical. (G) Isocyanate—reactive prepolymer.
Use/Production. (S) Reaction injection molding products. Prod. range: 25,000 lbs/1 yr.
Toxicity Data. Confidential.
Exposure. Manufacture: dermal and ocular.
Environmental Release/Disposal. No release expected. Disposal by incineration.

TME 83-74

Close of Review Period. August 31, 1983.
Manufacturer. Stauffer Chemical Company.
Chemical. (G) Isocyanate—reactive prepolymer.
Use/Production. (S) Reaction injection molding products. Prod. range: 25,000 lbs/1 yr.
Toxicity Data. Confidential.
Exposure. Manufacture: dermal and ocular.
Environmental Release/Disposal. No release expected. Disposal by incineration.

TME 83-75

Close of Review Period. September 1, 1983.
Manufacturer. Confidential.
Chemical. (G) Alkoxy alkanol.

Use/Production. Confidential. Prod. range: Confidential.

Toxicity Data. Acute oral: 5–10 g/kg; Acute dermal: 9 ml/kg; Irritation: Skin—Slight, Eye—Irritant (transient damage).

Exposure. Manufacture: dermal, inhalation and ocular, a maximum of 20 workers, up to 8 hrs/da, up to 30 da/yr; Use: dermal, inhalation and ocular, a maximum of 250 workers, up to 8 hrs/da, up to 250 da/yr.

Environmental Release/Disposal. No release expected. Disposal by incineration.

Dated: July 22, 1983.

V. Paul Fuschini,

Acting Director, Management Support Division.

[FR Doc. 83-20619 Filed 7-28-83; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Form Submitted to the Office of Management and Budget for Clearance

The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following information collection packages for approval in accordance with the Paperwork Reduction Act (44 U.S.C. Ch. 35).

Type: Information Collection in Existing Regulation 44 CFR 205.54(e).

Title: State Administrative Plan for Individual and Family Grant Program.

Abstract: The plan is required to facilitate easier monitoring of the IFG program since the program is State administered, but cost shared (25% State and 75% Federal). It also provides a guide for the State personnel responsible for administering and auditing the program.

Type of respondents: State or Local Government.

Number of respondents: 75.

Burden hours: 3,000.

OMB Desk Officer: Ken Allen (202) 395–3876.

Copies of the above information collection clearance packages can be obtained by calling or writing the FEMA Clearance Officer, Linda W. Shiley (202) 287–9906, Federal Plaza Center, 500 C Street, SW., Washington, D.C. 20472.

Written comments and recommendations for the proposed information collection package should be sent to Linda Shiley, FEMA Reports Clearance Officer, Federal Plaza Center, 500 C Street, SW., Washington, D.C. 20472 and to Ken Allen, Desk Officer, OMB Reports Management Branch, Room 3235, New Executive Office Building, Washington, D.C. 20503.

Dated: July 25, 1983.

Walter A. Girstantas,

Assistance Association Director, Administrative Support.

[FR Doc. 83-20559 Filed 7-28-83; 8:45 am]

BILLING CODE 6718-01-M

Agency Form Submitted to the Office of Management and Budget for Clearance

The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following information collection packages for approval in accordance with the Paperwork Reduction Act (44 U.S.C. Ch. 35).

Type: Information Collection in Existing Regulation 44 CFR 75.11–12.

Title: Exemption of State-Owned Properties Under Self-Insurance Plan.

Abstract: Information collection enables FIA to determine whether the applying State meets the requirements for an exemption pursuant to Section 102(c) of the Flood Disaster Protection Act of 1973, which enables FIA to grant a State having an adequate policy of Self-Insurance for its state owned structures an exemption from the insurance purchase requirements of the 1973 Act.

Type of respondents: State or Local Governments.

Number of respondents: 20.

Burden hours: 20.

Type: Information Collection in Existing Regulations.

Title: Request to Maintain Claims Subject to Federal Audit.

Abstract: When a Federal audit is conducted, States must have available its files containing all documents on individual claims in order to perform an adequate evaluation of the program. The requirement is imposed because the program is cost shared—25% State and 75% Federal.

Type of respondents: State or Local Governments.

Number of respondents: 25.

Burden hours: 25.

OMB Desk Officer: Ken Allen, (202) 395–3786.

Copies of the above information collection clearance packages can be obtained by calling or writing the FEMA Clearance Officer, Linda Shiley, (202) 287–9906, Federal Plaza Center, 500 C Street, SW., Washington, D.C. 20472.

Written comments and recommendations for the proposed information collection packages should be sent to Linda Shiley, FEMA Reports Clearance Officer, Federal Plaza Center, 500 C Street, SW., Washington, D.C. 20472 and to Ken Allen, Desk Officer, OMB Reports Management Branch, Room 3235, New Executive Office Building, Washington, D.C. 20503.

Dated: July 22, 1983.

Walter A Girstantas,

Assistant Associate Director, Administrative Support.

[FR Doc. 83-20561 Filed 7-28-83; 8:45 am]

BILLING CODE 6718-01-M

[Docket No. FEMA-REP-4-MS-1 and FEMA-REP-6-LA-1]

Mississippi and Louisana Emergency Response Plans for the Grand Gulf Nuclear Power Station

ACTION: Certification of FEMA findings and determination.

In accordance with the Federal Emergency Management Agency (FEMA) Rule 44 CFR Part 350 (proposed), the States of Mississippi and Louisiana have submitted their plans relating to the Grand Gulf Nuclear Power Station to the Region IV and Region VI Directors who have, in turn, forwarded their evaluation to the Associate Director, State and Local Programs and Support pursuant to § 350.11 of the proposed rule. Included was a review of the State and local plans around the Grand Gulf facility; a critique of the exercises conducted November 4 and 5, 1981, and January 26, 1983, in accordance with § 350.9; and a report of the public meetings held October 27, 1981, and November 3, 1981, to discuss the site-specific aspects of the State and local plans in accordance with § 350.10 of the proposed rule.

Based on a review of the Regions' evaluations by FEMA Headquarters, I find and determine that, subject to the condition specified in this paragraph, the States' plans and preparedness for the Grand Gulf Nuclear Power Station are adequate to protect the health and safety of the public living in the vicinity of the facility. There is reasonable assurance that appropriate protective measures can and will be taken offsite in the event of a radiological emergency. The condition for the above approval is that the public alerting and notification system, which is already installed and operational, must be verified as meeting the standards in NUREG–0654/FEMA–REP–1, Rev. 1.

FEMA will continue to review the status of plans and preparedness of the States and their local jurisdictions associated with the Grand Gulf Nuclear Power Station, in accordance with Section 350.13 of the proposed rule.

For further details concerning this action for the Grand Gulf Nuclear Power Station, refer to Docket File FEMA-REP-4-MS-1 maintained by the FEMA IV Regional Director at 1375 Peachtree Street, N.E., Suite 778, Atlanta, Georgia 30309 For Mississippi and Docket File FEMA-REP-6-LA-1 maintained by the FEMA VI Regional Director at the Federal Center, Denton, Texas 76201 for Louisana.

Dated: July 12, 1983.

For the Federal Emergency Management Agency.

Dave McLoughlin,

Deputy Associate Director, State and Local Programs and Support.

[FR Doc. 83-20560 Filed 7-28-83; 8:45 am]

BILLING CODE 6718-01-M

FEDERAL MARITIME COMMISSION

[Agreement No. 10480]

Availability of Finding of No Significant Impact

Upon completion of an environmental assessment, the Federal Maritime Commission's Office of Energy and Environmental Impact has determined that the Commission's decision on Agreement No. 10480 will not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*, and that preparation of an environmental impact statement is not required.

The Agreement is between Cameroon Shipping Lines S.A. (Cameroon) and Delta Steamship Lines, Inc. (Delta). The subject of the Agreement is a charter by Cameroon of cargo capacity, on a space available basis, aboard the vessels of Delta in the trade between Cameroon, West Africa and U.S. Gulf Coast ports.

This Finding of No Significant Impact (FONSI) will become final within 10 days of publication of this notice in the **Federal Register** unless a petition for review is filed pursuant to 46 CFR 547.6(b).

The FONSI and related environmental assessment are available for inspection on request from the Office of the Secretary, Room 11101, Federal Maritime Commission, Washington, D.C. 20573, telephone (202) 523-5725.

Francis C. Hurney,

Secretary.

[FR Doc. 83-20626 Filed 7-28-83; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Agency Forms Under Review

July 25, 1983

Background

When executive departments and independent agencies propose public use forms, reporting, or recordkeeping requirements, the Office of Management and Budget (OMB) reviews and acts on those requirements under the Paperwork Reduction Act [44 U.S.C. Chapter 35]. Departments and agencies use a number of techniques to consult with the public on significant reporting requirements before seeking OMB approval. OMB in carrying out its responsibilities under the act also considers comments on the forms and recordkeeping requirements that will affect the public. Reporting or recordkeeping requirements that appear to raise no significant issues are approved promptly. OMB's usual practice is not to take any action on proposed reporting requirements until at least ten working days after notice in the **Federal Register**, but occasionally the public interest requires more rapid action.

List of Forms Under Review

Immediately following the submission of a request by the Federal Reserve for OMB approval of a reporting or recordkeeping requirement, a description of the report is published in the **Federal Register**. This information contains the name and telephone number of the Federal Reserve Board clearance officer (from whom a copy of the form and supporting documents is available). The entries are grouped by type of submission—i.e., new forms, revisions, extensions (burden change), extensions (no change), and reinstatements.

Copies of the proposed forms and supporting documents may be obtained from the Federal Reserve Board clearance officer whose name, address, and telephone number appear below. The agency clearance officer will send you a copy of the proposed form, the request for clearance (SF 83), supporting statement, instructions, transmittal letters, and other documents that are submitted to OMB for review.

FOR FURTHER INFORMATION CONTACT:

Federal Reserve Board Clearance Officer—Cynthia Glassman—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 (202-452-3829)

OMB Reviewer—Judy McIntosh—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, D.C. 20503 (202-395-6880)

Request for Approval of a New Report

1. Report title: Survey of Home Seller Financing in the Mortgage Market.

Agency form number: FR 3028.

Frequency: Special survey to be conducted in the fall of 1983 and the Spring of 1984.

Reporters: Households.

SIC Code: 881.

Small businesses are not affected.

General description of report: Respondent's obligation to reply is voluntary [12 U.S.C. 225a]; a pledge of confidentiality is not promised.

The survey will obtain information from households about recent experience with home-seller-financed mortgages, to be used in the construction and revision of estimates of outstanding mortgage debt, a component of the credit aggregates followed by the Federal Reserve in assessing its policy actions.

Board of Governors of the Federal Reserve System, July 25, 1983.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 83-20534 Filed 7-28-83; 8:45 am]

BILLING CODE 6210-01-M

Acquisition of Bank Shares by Bank Holding Companies; First Burlington Corp.

The companies listed in this notice have applied for the Board's approval under section 3(a) (3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire voting shares or assets of a bank. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application may be inspected at the offices of the Board of Governors, or at the Federal Reserve Bank indicated for that application. With respect to each application, interested persons may express their views in writing to the address indicated for that application. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

A. **Federal Reserve Bank of Chicago** (Franklin, D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *First Burlington Corporation,* LaGrange, Illinois; to acquire 80 percent of the voting shares of First Security Bank, Willowbrook, Willowbrook, Illinois. Comments on this application must be received not later than August 24, 1983.

B. **Federal Reserve Bank of St. Louis** (Delmer P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Mercantile Bancorporation,* St. Louis Missouri; to acquire 100 percent of the voting shares or assets of First Community Bancorporation, Joplin, Missouri. Comments on this application must be received not later than August 24, 1983.

c. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 400 Sansome Street, San Francisco, California 94120:

1. *BSD Bancorp, Inc.,* San Diego, California; to acquire 51 percent of the voting shares or assets of Bank of LaCosta, Carlsbad, California. Comments on this application must be received not later than August 23, 1983.

D. **Board of Governors of the Federal Reserve System** (William W. Wiles, Secretary) Washington, D.C. 20551:

1. *Allied Bancshares, Inc.,* Houston, Texas; to acquire 100 percent of the voting shares of Commercial National Bank, Longview, Texas. This application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of Dallas. Comments on this application must be received not later than August 24, 1983.

Board of Governors of the Federal Reserve System, July 25, 1983.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 83-20535 Filed 7-28-83; 8:45 am]

BILLING CODE 6210-01-M

Bank Holding Companies; Proposed de Novo Nonbank Activities; Barclays Bank

The organizations identified in this notice have applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.4(b)(1) of the Board's Regulation Y (12 CFR § 225.4(b)(1)), for permission to engage *de novo* (or continue to engage in an activity earlier commenced *de novo*), directly or indirectly, solely in the activities indicated, which have been determined by the Board of Governors to be closely related to banking.

With respect to these applications, interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking pratices." Any comment that requests a hearing must include a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of that proposal.

The applications may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank indicated. Comments and requests for hearing should identify clearly the specific application to which they relate, and should be submitted in writing and received by the appropriate Federal Reserve Bank not later than the date indicated.

A. **Federal Reserve Bank of New York** (A. Marshall Puckett, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Barclays Bank PLC* and *Barclays Bank International Limited,* London, England (consumer finance and insurance activities; New Mexico, Oklahoma, and Tennessee): To continue to engage through their subsidiary, BarclaysAmerican/Financial, Inc. ("BAF"), in making direct consumer loans, including loans secured by real estate, and purchasing sales finance contracts representing extensions of credit such as would be made or acquired by a consumer finance company, and wholesale financing (floor planning) and acting as agent for the sale of related credit life, credit accident and health and credit property insurance. These insurance activities are permissible pursuant to sections 601 (A) and (D) of the Garn-St Germain Depository Institutions Act of 1982. Credit life and credit accident and health insurance sold as agent may be underwritten or reinsured by the insurance underwriting subsidiaries of BarclaysAmerican-Corporation ("BAC"). These activities would be conducted from relocated offices of BAC in Hobbs, New Mexico; Oklahoma City, Oklahoma; and Nashville, Tennessee, serving customers in Hobbs and surrounding areas in New Mexico, Oklahoma City and surrounding area in Oklahoma, and Nashville and surrounding areas in Tennessee, respectively. Comments on this application must be received not later than August 25, 1983.

2. *Manufacturers Hanover Corporation,* New York, New York (lending, servicing, and insurance activities; Tennessee): To engage, through its wholly owned subsidiary, Manufacturers Hanover Financial Services of Tennessee, Inc., in all types of sales finance activities, in loan servicing activities, and acting as agent in the sale of single and joint credit life insurance. These activities will be conducted in the State of Tennessee, serving Tennessee. Comments on this application must be received not later than August 24, 1983.

B. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *St. Francisville Bancshares, Inc.,* St Francisville, Louisiana (insurance activities; Louisiana): To engage in the sale of general insurance in a town with a population not exceeding 5,000, through a wholly owned subsidiary, Community Insurance Agency Inc. These activities would be performed in the town of St. Francisville, Louisiana, and the surrounding rural area. Comments on this application must be received not later than August 24, 1983.

C. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Gulf Coast Bancshares, Inc.,* Alvin, Texas (extensions of credit; Texas): To engage, through its subsidiary, Gulf Coast Financial Services, Inc., in making, acquiring, and selling of secured loans such as would be made by a commercial or consumer finance company. These activities will be performed from an office located in Houston, Texas, serving the State of Texas. Comments on this application must be received not later than August 24, 1983.

Board of Governors of the Federal Reserve System, July 25, 1983.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 83-20537 Filed 7-28-83; 8:45 am]

BILLING CODE 6210-01-M

Mercantile Bancorporation, Inc.; Proposed Acquisition of Conqueror Life Insurance Company

Mercantile Bancorporaton, Inc., St. Louis, Missouri, has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C 1843(c)(8)) and § 225.4(b)(2) of the Board's Regulation Y (12 CFR 225.4(b)(2)), for permission to acquire voting shares of Conqueror Life Insurance Company, Phoenix, Arizona.

Applicant states that the proposed subsidiary would engage in the

activities of reinsuring credit life, accident and health insurance sold by its subsidiaries. These activities would be performed from offices of Applicant's subsidiaries in Phoenix, Arizona. Such activities have been specified by the Board in § 225.4(a) of Regulaton Y as permissible for bank holding companies, subject to Board approval of individual proposals in accordance with the procedures of § 225.4(b).

Interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of St. Louis.

Any person wishing to comment on the application should submit views in writing to the Reserve Bank to be received not later than August 24, 1983.

Board of Governors of the Federal Reserve System, July 25, 1983.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 83-20536 Filed 7-28-83; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Department of Health and Human Services (HHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Ch. 35). The following are those packages submitted to OMB since the last list was published on July 22.

Public Health Service

Food and Drug Administration

Subject: Application for Exemption from Preemption for Medical Device Requirements (0910-0129)—Extension
Respondents: State and local governments
OMB Desk Officer: Richard Eisinger

Office of the Assistant Secretary for Health

Subject: National Hospital Discharge Survey (0937-0004)—Revision
Respondents: National sample of short stay non-Federal hospitals
OMB Desk Officer: Fay S. Iudicello

Alcohol, Drug Abuse, and Mental Health Administration

Subject: Obligated Service for Mental Health Traineeships (0930-0074)—Extension no change
Respondents: Individuals receiving mental health traineeships
Subject: Confidentiality of Alcohol and Drug Abuse Patient Records—New
Respondents: Individuals
OMB Desk Officer: Fay S. Iudicello

National Institutes of Health

Subject: Small Business Innovative Research: Announcement and Application Information (0925-0195)—Revision
Respondents: Small businesses
OMB Desk Officer: Fay S. Iudicello

Office of the Secretary

Subject: Survey of Privately Contracted Individuals (0990-0101)—Extension
Respondents: Individuals or households
OMB Desk Officer: Milo Sunderhauf

Copies of the above information collection clearance packages can be obtained by calling the HHS Reports Clearance Officer on 202-245-6511.

Written comments and recommendations for the proposed information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, D.C. 20503, Attn: (name of OMB Desk Officer).

Dated: July 22, 1983.

Robert F. Sermier,

Deputy Assistant Secretary for Management Analysis and Systems.

[FR Doc. 83-20431 Filed 7-28-83; 8:45 am]

BILLING CODE 4150-04-M

Food and Drug Administration

[Docket No. 83N-0076]

Bulk New Animal Drug Substances; Availability of Task Force Report

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a report by a task force in the agency's Bureau of Veterinary Medicine. The report is titled "Task Force Report on Bulk New Animal Drug Substances."

ADDRESS: The report is available for public examination at, and requests for single copies may be sent to, the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Edward Ballitch, Bureau of Veterinary Medicine (HFV-230), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3336.

SUPPLEMENTARY INFORMATION: In 1981, FDA's Bureau of Veterinary Medicine formed a Bulk Drug Task Force to review existing statutory and regulatory requirements for bulk veterinary drugs, to decide whether to retain these requirements or to seek their revision. The task force has completed its review and has prepared a report titled "Task Force Report on Bulk New Animal Drug Substances." The report, among other things, concludes that the statutory requirements are necessary to protect the public health.

The agency has reviewed the report and is reaffirming its position that unapproved bulk drugs for veterinary use may not be sold except to holders of approved new animal drug applications. The agency is continuing to consider whether to modify any of its current regulations or policies as they relate to bulk veterinary pharmaceuticals. FDA will publish any such changes for comment in the **Federal Register**. Therefore, FDA is not inviting comments on this report at this time.

The task force report is available for public examination at, and requests for single copies may be sent to, the Dockets Management Branch (address above).

Dated: July 19, 1983.

Mark Novitch,

Deputy Commissioner of Food and Drugs.

[FR Doc. 83-20299 Filed 7-28-83; 8:45 am]

BILLING CODE 4160-01-M

Philips Roxane's Vita-Treet Bolus ™ (Chlortetracycline); Withdrawal of Approval of New Animal Drug Application

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of a new animal drug application (NADA) sponsored by Philips Roxane, Inc., providing for use of Vita-Treet Bolus ™ (chlortetracycline) for prevention and treatment of bacterial scours of calves. The sponsor requested withdrawal of approval.

EFFECTIVE DATE: August 8, 1983.

FOR FURTHER INFORMATION CONTACT: David N. Scarr, Bureau of Veterinary Medicine (HFV-214), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3183.

SUPPLEMENTARY INFORMATION: Philips Roxane, Inc., 2621 North Belt Highway, St. Joseph, MO 64502, is the sponsor of NADA 65-047 providing for use of Vita-Treet Bolus ™ containing 250 milligrams of chlortetracycline hydrochloride and certain vitamins. The product is for oral use for prevention and treatment of bacterial scours of calves. The vitamins help guard against vitamin depletion commonly associated with scours and reduced feed intake.

The application was originally approved by a letter dated May 21, 1968. By letter of February 17, 1983, the sponsor requested withdrawal of approval of the NADA because the product is not being 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 5.10) 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 65-047 and all supplements for Vita-Treet Bolus ™ is hereby withdrawn, effective August 8, 1983.

Dated: July 21, 1983.

Gerald B. Guest,

Acting Director, Bureau of Veterinary Medicine.

[FR Doc. 83-20429 Filed 7-28-83; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 83F-0224]

Ciba-Geigy Corp.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Ciba-Geigy Corp. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of tris (2, 4-di-*tert*-butylphenyl)phosphite as a component of food-packaging polymers.

FOR FURTHER INFORMATION CONTACT: Geraldine E. Harris, Bureau of Foods (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, D.C. 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 3B3725) has been filed by Ciba-Geigy Corp., Three Skyline Drive, Hawthorne, NY 10532, proposing that 21 CFR Parts 177 and 178 be amended to provide for the safe use of tris (2, 4-di-*tert*-butylphenyl)phoshpite as a component of food-packaging polymers.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c) (proposed December 11, 1979; 44 FR 71742).

Dated: July 20, 1983.

Sanford A. Miller,

Director, Bureau of Foods.

[FR Doc. 83-20294 Filed 7-28-83; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 83F-0234]

Shell Oil Co.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Shell Oil Co. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of styrene block polymers in food-contact articles.

FOR FURTHER INFORMATION CONTACT: Vir Anand, Bureau of Foods (HFF-334), Food and Drug Administration, 200 C St., SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 3B3732) has been filed by Shell Oil Co., Suite 200, 1025 Connecticut Ave. NW., Washington, DC 20036, proposing that the food additive regulations be amended to allow for an increased maximum extractable fraction in distilled water and 50 percent ethanol from styrene block polymers with 1,3-butadiene listed under § 177.1810 (21 CFR 177.1810), intended for use in food-contact articles.

The agency has determined pursuant to 21 CFR 25.24(b)(22) (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.

Dated: July 20, 1983.

Sanford A. Miller,

Director, Bureau of Foods.

[FR Doc. 83-20293 Filed 7-28-83; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 83P-0219]

Food for Human Consumption; Enriched Bread Deviating From Identity Standard; Temporary Permit for Market Testing

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a temporary permit has been issued to Interstate Brands Corp., to market test a bread enriched to the nutrient levels recommended by the National Academy of Science, Food and Nutrition Board (FNB), in 1974 (with the exception that iron will remain at the level required by the standard of identity for enriched bread). The purpose of the temporary permit is to allow the applicant to measure consumer acceptance of the food.

DATES: This permit is effective for 15 months, beginning on the date the food is introduced or caused to be introduced into interstate commerce, but no later than October 27, 1983.

FOR FURTHER INFORMATION CONTACT: F. Leo Kauffman, Bureau of Foods (HFF-214), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-245-1164.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 130.17 concerning temporary permits to facilitate market testing of foods deviating from the requirements of a standard of identity promulgated under

section 401 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 341), FDA is giving notice that a temporary permit has been issued to Interstate Brands Corp., Kansas City, MO 64141.

The permit covers limited interstate marketing tests of enriched special formula bread. The test product deviates from the standard of identity for enriched bread, 21 CFR 136.115, in that it will contain in each 2-slice (approximately 2 ounces) serving: (1) 6 percent of the U.S. Recommended Daily Allowance (RDA) of vitamin A, (2) 8 percent of U.S. RDA of vitamin B-6, (3) 8 percent of the U.S. RDA of folic acid, (4) 6 percent of the U.S. RDA of magnesium, and (5) 6 percent of the U.S. RDA of zinc. The test product meets all requirements of § 136.115, with the exception of these deviations.

The permit provides for the temporary marketing of 432,000 pounds of the product. The test product will be distributed in the States of Alabama, California, Georgia, Illinois, Indiana, Kansas, Kentucky, Massachusetts, Michigan, Missouri, New York, Ohio, Pennsylvania, Vermont, and Wisconsin. The Test product is to be manufactured in plants in Birmingham, AL; Blendale, CA; Los Angeles, CA; Chicago, IL; Peoria, IL; Grand Rapids, MI; Kansas City, MO; Albany, NY; Syracuse, NY; Cincinnati, OH; and Cleveland, OH.

The principal display panel of the label states the product name as "enriched special formula bread", and each of the ingredients used is stated on the label as required by the applicable sections of 21 CFR Part 101. A side-by-side comparison of the percentage of U.S. RDA's for nutrients in the test product and in regular enriched bread is shown on the label for the applicable nutrients. This permit is effective for 15 months, beginning on the date the test product is introduced or caused to be introduced into interstate commerce, but no later than September 27, 1983.

Dated: July 20, 1983.

Sanford A. Miller,

Director, Bureau of Foods.

[FR Doc. 83-20296 Filed 7-28-83; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 83P-0220]

Food for Human Consumption; Enriched Bread Deviating From Identity Standard; Temporary Permit for Market Testing

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a temporary permit has been issued to ITT Continental Baking Co., Inc., to market test a bread enriched to the nutrient levels recommended by the National Academy of Sciences, food and Nutrition Board (FNB), in 1974 (with the exception that iron will remain at the level required by the standard of identity for enriched bread). The purpose of the temporary permit is to allow the applicant to measure consumer acceptance of the food.

DATE: This permit is effective for 15 months, beginning on the date the food is introduced or caused to be introduced into interstate commerce, but no later than September 29, 1983.

FOR FURTHER INFORMATION CONTACT: F. Leo Kauffman, Bureau of Foods (HFF-214), Food and Drug Administration, 200 C St. SW., Washington, D.C. 20204, 202-245-1164.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 130.17 concerning temporary permits to facilitate market testing of foods deviating from the requirements of a standard of identity promulgated under section 401 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 341), FDA is giving notice that a temporary permit has been issued to ITT Continental Baking Co., Inc., Rye, NY 10580.

The permit covers limited interstate marketing tests of enriched special formula bread. The test product deviates from the standard of identity for enriched bread, 21 CFR 136.115, in that it will contain in each 2-slice (approximately 2 ounces) serving: (1) 6 percent of the U.S. Recommended Daily Allowance (RDA) of vitamin A, (2) 8 percent of U.S. RDA of vitamin B-6, (3) 8 percent of the U.S. RDA of folic acid, (4) 6 percent of the U.S. RDA of magnesium, and (5) 6 percent of the U.S. RDA of zinc. The test product meets all requirements of § 136.115, with the exception of these deviations.

The permit provides for the temporary marketing of 6.2 million pounds of the product. The test product will be distributed in the States of Kansas, Maine, Massachusetts, and New York. The test product is to be manufactured at Wonder Bread Bakery plants in Buffalo, NY 14211; Natick, MA 01760; and Wichita, KS 67214.

The principal display panel of the label states the product name as "enriched special formula bread", and each of the ingredients used is stated on the label as required by the applicable sections of 21 CFR Part 101. A side-by-side comparison of the percentage of U.S. RDA's for nutrients in the test product and in regular enriched bread is shown on the label for the applicable nutrients. This permit is effective for 15 months, beginning on the date the test product is introduced or caused to be introduced into interstate commerce, but no later than September 29, 1983.

Dated: July 20, 1983.

Sanford A. Miller,

Director, Bureau of Foods.

[FR Doc. 83-20295 Filed 7-28-83; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 82N-0082; DESI No. 6303]

Human Drugs; Two Prescription Products Offered for Relief of Symptoms of Cough, Cold, or Allergy; Withdrawal of Approval

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Commissioner of Food and Drugs withdraws approval of the new drug applications for two controlled-release prescription products offered for relief of symptoms of cough, cold, or allergy. Approval is withdrawn because these combination drug products lack substantial evidence of effectiveness: the products are controlled-release dosage forms for which no data on bioavailability and bioequivalence have been submitted. The Commissioner also denies the hearing request of the marketer of a product which is not the subject of a new drug application but which is related to one affected by this notice.

EFFECTIVE DATE: August 29, 1983.

FOR FURTHER INFORMATION CONTACT: David T. Read, National Center for Drugs and Biologics (HFN-8), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3650.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of April 30, 1982 (47 FR 18667), the Director of the Bureau of Drugs revoked the temporary exemption for the drug products described below which permitted these products to remain on the market beyond the time limit scheduled for the implementation of the Drug Efficacy Study. The notice also reclassified the products to lacking substantial evidence of effectiveness, and offered an opportunity for a hearing on a proposal to withdraw approval of the new drug applications for the products. Although the active ingredients in the products listed below have been classified as effective when in conventional release form (38 FR 7265), the basis of the proposal was that the products listed below are controlled-release dosage forms for which evidence of in vivo bioavailability may not be

waived. 21 CFR 320.22(c) (1). No person has submitted bioavailability and bioequivalence data on the drugs listed below.

1. NDA 8-915: as it pertains to Clistin R-A containing carbinoxamine maleate; McNeil Laboratories, Inc., 500 Office Center Dr., Fort Washington, PA 19034.

2. NDA 12-336: Forhistal Lontabs containing dimethindene maleate; Ciba Pharmaceutical Co., 556 Morris Ave., Summit, NJ 07901.

Neither McNeil Laboratories, Inc., nor Ciba Pharmaceutical Co., requested a hearing. Failure to file an appearance and request a hearing constitutes a waiver of the opportunity for a hearing.

A hearing was requested by Colmed Laboratories, Inc., P.O. Box 1613, Fort Collins, CO 80522, because it markets a drug product related to Clistin R-A: Noxecon, a controlled-release drug product containing carbinoxamine maleate and pseudoephedrine hydrochloride. (This product was correctly identified as being "related" to Clistin R-A in Colmed's May 14, 1982 notice of appearance, but was inaccurately described as "identical" to Clistin R-A in Colmed's June 28, 1982 submission in support of its hearing request.) The four literature references submitted by Colmed in support of its hearing request offer no evidence or even allegations that address the issue of bioavailability and bioequivalence in controlled-release dosage forms. Bioavailability and bioequivalence data are necessary to show both the rate of release and amount of active ingredient(s) released. Without such information the Commissioner cannot conclude that a controlled-release drug product is safe or that it is effective as claimed in its labeling. The references submitted by Colmed merely describe the pharmacologic classes of drugs available for the treatment of allergy and colds, and discuss their advantages and disadvantages.

The Commissioner is unaware of any adequate and well-controlled investigation conducted by experts who are qualified by scientific training and experience, that meets the requirements of section 505 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355), 21 CFR 314.111(a) (5), and 21.CFR Part 320 for demonstrating the effectiveness (i.e., bioavailability) of the drug products subject to this notice. Accordingly, the Commissioner finds that there is no genuine and substantial issue of fact requiring a hearing. Therefore, the Commissioner denies the hearing request of Colmed and is withdrawing the approval of the McNeil and Ciba applications.

Any drug product that is identical, related, or similar to the drug products named above and is not the subject of an approved new drug application is covered by the new drug applications reviewed and is subject to this notice (21 CFR 310.6). This notice is not applicable to over-the-counter products (21 CFR 310.6(f)).

Under the Federal Food, Drug, and Cosmetic Act (sec. 505(e), 25 Stat. 1053 as amended (21 U.S.C. 355(e))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), approval of those parts of new drug application 8-915 pertaining to the drug product named above, and approval of new drug application 12-336, and all amendments and supplements thereto are withdrawn effective August 29, 1983.

Shipment in interstate commerce of the above products, or any identical, related, or similar product that is not the subject of an approved new drug application, will then be unlawful.

Dated: June 29, 1983.

Mark Novitch,

Deputy Commissioner of Food and Drugs.

[FR Doc. 83-20427 Filed 7-28-83; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 82N-0058; DESI 11300]

Human Drugs; Combination Drugs Containing Chlorzoxazone 125 Milligrams and Acetaminophen 300 Milligrams; Drug Efficacy Study Implementation; Withdrawal of Approval

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) withdraws approval of those parts of a new drug application pertaining to Parafon Tablets for which FDA offered an opportunity for a hearing and classified the product as lacking substantial evidence of effectiveness. No hearing was request for this product.

EFFECTIVE DATE: August 29, 1982.

ADDRESS: Requests for opinion of the applicability of this notice to a specific drug product should be identified with Docket No. 82N-0058 and the reference number DESI 11300 and directed to the Division of Drug Labeling Compliance (HFN-310), National Center for Drugs and Biologics, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Herbert Gerstenzang, National Center for Drugs and Biologics (HFN-8), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3650.

SUPPLEMENTARY INFORMATION: In a notice of opportunity for hearing published in the **Federal Register** on May 25, 1982 (47 FR 22599), the Food and Drug Administration (FDA) proposed to withdraw approval of the new drug application (NDA) for the combination drug products described below on the ground that the products lack substantial evidence of effectiveness as required by section 505 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355) and 21 CFR 300.50 and 314.111(a)(5). The notice also offered an opportunity for hearing on the proposal.

Those parts of NDA 11-529 that pertain to Parafon Tablets containing chlorzoxazone 125 milligrams (mg) and acetaminophen 300 mg; previously marketed by McNeil Pharmaceutical, Spring House, PA 19477.

2. Those parts of NDA 11-529 that pertain to Parafon Forte Tablets containing chlorzoxazone 250 mg and acetaminophen 300 mg; McNeil Pharmaceutical.

Neither McNeil Pharmaceutical nor any other person requested a hearing on Parafon Tablets (chlorzoxazone 125 mg and acetaminophen 300 mg). Failure to file an appearance and request a hearing constitutes a waiver of the opportunity for a hearing. Therefore, approval of those parts of the above new drug application pertaining to Parafon Tablets is now being withdrawn.

Hearings were requested, however, for Parafon Forte Tablets and other drug products containing chlorzoxazone 250 mg and acetaminophen 300 mg. These products with pending hearing requests are not affected by this notice and will be the subject of a future **Federal Register** notice.

Any drug product that is identical, related, or similar to Parafon Tablets and is not the subject of a pending hearing request or an approved new drug application is covered by the new drug application reviewed and is subject to this notice (21 CFR 310.6). Any person who wishes to determine whether a specific product is covered by this notice should write to the Division of Drug Labeling Compliance (address given above).

The Director of the National Center for Drugs and Biologics, under the Federal Food, Drug, and Cosmetic Act (sec. 505, 52 Stat. 1052-1053 as amended (21 U.S.C. 355)), and under the authority delegated to him (21 CFR 5.82) finds that on the basis of new information before him with respect to the product, evaluated together with the evidence available to him when the application

was approved, there is a lack of substantial evidence that Parafon Tablets containing chlorzoxazone 125 mg and acetaminophen 300 mg will have the effect it purports or is represented to have under the conditions of use prescribed, recommended, or suggested in its labeling.

Therefore, pursuant to the foregoing finding, approval of those parts of new drug application 11-529 pertaining to Parafon Tablets and all pertinent amendments and supplements applying to the drug product is withdrawn effective August 29, 1983

Shipment in interstate commerce of any product containing chlorzoxazone 125 mg and acetaminophen 300 mg that is not the subject of an approved new drug application will then be unlawful.

Dated: July 20, 1983.

Harry M. Meyer, Jr.,

Director, National Center for Drugs and Biologics.

[FR Doc. 83-20428 Filed 7-28-83; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 82N-0015; DESI 12056]

Human Drugs; Combination Drug Containing Sulfamethoxazole and Phenazopyridine Hydrochloride and Related Combination Drugs; Drug Efficacy Study Implementation; Conditions for Approval and Marketing Phenazopyridine-Containing Drug Products; Labeling Requirement

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) reclassifies a fixed-combination drug product containing sulfamethoxazole and phenazopyridine hydrochloride to effective, rescinds a notice of opportunity for a hearing on a proposal to withdraw approval of its new drug application, and announces the conditions for its approval and marketing. This notice also discusses the applicability of conclusions on this combination drug product to sulfamethoxazole/phenazopyridine combinatons in general. In addition, this notice announces certain required labeling statements for phenazopyridine-containing drug products indicated for use in relieving symptoms associated with a urinary tract infection, and certain required labeling statements for all phenazopyridine-containing drug products.

DATES: Supplements due on or before January 25, 1984. Required labeling shall be put into use by July 24, 1984.

ADDRESSES: Communications in response to this notice should be identified with the reference number DESI 12056, directed to the attention of the appropriate office named below, and addressed to the Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

Supplements to full new drug applications (identify with NDA number): Division of Anti-Infective Drug Products (HFN-140), National Center for Drugs and Biologics.

Original abbreviated new drug applications and supplements thereto (identify as such): Division of Generic Drug Monographs (HFN-530), National Center for Drugs and Biologics.

Requests for information on conducting bioavailability studies: Division of Biopharmaceutics (HFN-520), National Center for Drugs and Biologics.

Requests for an opinion of the applicability of this notice to a specific product: Division of Drug Labeling Compliance (HFN-310), National Center for Drugs and Biologics.

Requests for references: Dockets Management Branch (HFA-305), Rm. 4-62, Food and Drug Administration.

Petitions requesting a determination of ANDA suitability for related products: Dockets Management Branch (HFA-305), Rm. 4-62, Food and Drug Administration.

Other communications regarding this notice: Drug Efficacy Study Implementation Project Manager (HFN-501), National Center for Drugs and Biologics.

FOR FURTHER INFORMATION CONTACT: Douglas I. Ellsworth, National Center for Drugs and Biologics (HFN-8), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3650.

SUPPLEMENTARY INFORMATION:

I. Background and Conclusions

A. *Azo Gantanol.* In a notice published in the **Federal Register** of April 26, 1972 (37 FR 8405), FDA announced its evaluation of reports received from the National Academy of Sciences-National Research Council, Drug Efficacy Study Group (NAS-NRC) on the following drug product containing a sulfonamide in fixed combination with a urinary tract analgesic:

Azo Gantanol Tablets containing 500 milligrams (mg) of sulfamethoxazole (antibacterial component) and 100 mg of phenazopyridine hydrochloride (analgesic component) per tablet; Roche Laboratories, Division of Hoffmann-La Roche, Inc., Nutley, NJ 07110 (NDA 13-294).

The notice stated that the drug product lacked substantial evidence of effectiveness for its claimed indications, including its recommended use in certain urinary tract infections with associated pain or discomfort. The notice specifically stated that there was a lack of evidence that each component of the combination contributed to the total effects claimed for the drug.

The notice also announced FDA's intention to propose to withdraw approval of the new drug application for this combination drug, and invited interested persons to submit pertinent data bearing on the effectiveness of the drug product within 30 days. Because the data submitted did not provide substantial evidence of effectiveness for the drug product, FDA proposed to withdraw approval of the new drug application in a notice published in the **Federal Register** of November 15, 1972 (37 FR 24205) (formerly Docket No. FDC-D-519; now Docket No. 82N-0015), and offered an opportunity for a hearing on the proposal.

In response, Hoffman-La Roche requested a hearing and submitted additional data, The National Center for Drugs and Biologics (NCDB) has reviewed these data and concludes that Azo Gantanol is effective as a fixed-combination drug product (i.e., each component has the effect claimed for it) for the first 48-hour treatment period of an uncomplicated urinary tract infection caused by a sulfonamide-susceptible organism when relief of symptoms of pain, buring, or urgency is needed. This combination is effective only for the first 48-hour treatment period (four tablets initially followed by two tablets every 12 hours, with the last dose administered at 36 hours). There is no evidence that the phenazopyridine hydrochloride component has a beneficial effect on symptoms beyond 48 hours. Therefore, after initial treatment with the combination product, further treatment should be continued only with the sulfonamide.

NCDB has notified Hoffman-La Roche of its conclusions and the firm has agreed to relabel the drug product consistent with these conclusions. Accordingly, the November 15, 1972 notice of opportunity for a hearing is hereby rescinded.

B. *Packaging of the Combination Drug Product.* Because proper medical use of the combination drug product in the treatment of an urinary tract infection involves the administration of two separate drug products—the combination drug and a followup sulfonamide—NCDB encourages manufacturers to package the

combination drug product with an appropriate followup sulfonamide for complete treatment of the infection. This "unit of use" type of packaging would simplify prescribing and dispensing, help prevent patient confusion, encourage patient compliance, and assure proper use of the combination drug product. Examples of such "unit of use" packaging include (1) a "strip" or "blister" package containing sufficient doses of the combination drug product for a 48-hour treatment period and sufficient doses of the followup sulfonamide to complete treatment, (2) separate bottles: one containing sufficient doses of the combination for a 48-hour treatment period and the other containing sufficient doses of the followup sulfonamide to complete treatment, (3) a "strip" or "blister" package containing sufficient doses of phenazopyridine hydrochloride for a 48-hour treatment period and sufficient doses of the sulfonamide for initial and followup treatment, or (4) separate bottles: one containing sufficient doses of phenazopyridine hydrochloride for a 48-hour treatment period and the other containing sufficient doses of the sulfonamide for initial and followup treatment.

If the combination drug product is packaged in a "unit of use" package designed to provide phenazopyridine hydrochloride and a sulfonamide for the initial 48-hour treatment period and sufficient followup sulfonamide for complete treatment of a urinary tract infection, the labeling of such a product doses not need to discuss information concerning the use of phenazopyridine hydrochloride beyond 48 hours. However, if the combination drug product is not packaged in such a "unit of use" package, then the labeling of the combination drug product shall fully inform the practitioner that the combination drug product is not indicated beyond a 48-hour treatment period.

C. *Applicability of Conclusions on Azo Gantanol to Other Sulfonamide/Phenazopyridine Combinations (Similar or Related Drug Products; 21 CFR 310.6).* NCDB has evaluated the applicability of its conclusions on Azo Gantanol to sulfonamide/phenazopyridine combination drug products in general. Based upon this evaluation, NCDB concludes that a sulfonamide/phenazopyridine combination is effective if it (1) satisfies the conditions for approval and marketing set forth below, (2) contains a sulfonamide evaluated by FDA as effective for the treatment of urinary tract infections, (3) delivers a dose of the sulfonamide that is effective and at the appropriate intervals for treatment of a urinary tract infection, (4) provides 200 to 400 mg of phenazopyridine hydrochloride in the initial dose followed by 200 mg of phenazopyridine hydrochloride every 12 hours with the last dose of phenazopyridine hydrochloride administered at 36 hours. Drug products that meet these criteria, either through formulation or through special packaging, are suitable for an abbreviated new drug application (ANDA) (21 CFR 314.2, formerly 21 CFR 314.1(f); see the **Federal Register** of January 21, 1983, 48 FR 2751).

NCDB recognizes that many sulfonamide/phenazopyridine combinations, as currently marketed, will not meet the above criteria. These combinations contain a sulfonamide that must be administered more frequently than sulfamethoxazole. Thus, the combination must be administered more frequently. This results in the phenazopyridine hydrochloride being administered more frequently and at a lower dose than provided in the criteria listed above. NCDB does not have sufficient data and information to conclude that the more frequent and lower doses of phenazopyridine hydrochloride contribute a therapeutic effect to a sulfonamide/phenazopyridine combination. Therefore, these products are not suitable, at this time, for an ANDA. If a person wishes the agency to consider further whether the conclusions on Azo Gantanol should be extended to another sulfonamide/phenazopyridine combination drug product that does not meet the above criteria, and whether the product is suitable for an ANDA, the person should submit a petition under 21 CFR 10.30 requesting such action (21 CFR 314.2(d); see the **Federal Register** of January 21, 1983, 43 FR 2751). The petition must include the reasons justifying extension of the conclusions on Azo Gantanol to the other product, and include any pertinent data or information.

D. *General Conclusions Pertaining to All Phenazopyridine-Containing Drug Products With Recommendations for Use in the Treatment of Urinary Tract Infections.* NCDB believes that information concerning the duration of usefulness of phenazopyridine hydrochloride in relieving symptoms associated with a urinary tract infection is material to representations recommending phenazopyridine hydrochloride for this use. Therefore, the labeling of phenazopyridine-containing drug products that are recommended to relieve symptoms associated with a urinary tract infection and are packaged in a way that would permit use beyond 48 hours must disclose that there is a lack of evidence that phenazopyridine hydrochloride has a beneficial effect on these symptoms after 48 hours.

E. *Additional Considerations Pertaining to all Phenazopyridine-Containing Drug Products.* NCDB has reviewed a report of animal feeding studies concerning the potential carcinogenicity of phenazopyridine hydrochloride. ("Bioassay of Phenazopyridine Hydrochloride for Possible Carcinogenicity," National Cancer Institute Technical Report Series No. 99, Department of Health, Education, and Welfare, Publication No. NIH 78-1349, 1978.) In these studies, long-term oral administration of phenazopyridine hydrochloride significantly increased the incidence of hepatic tumors in mice and induced tumors of the large intestines in rats. With respect to human carcinogenic effects, no adequate epidemiological studies have been conducted. One epidemiological study reported no association between administration of phenazopyridine hydrochloride and human cancer. (Friedman, G. D. and H. K. Ury, "Initial Screening for Carcinogenicity of Commonly Used Drugs," *JNCI*, 63(4):723-733, October 1980.) However, this study utilized a very limited observation period and is inadequate to evaluate the drug's risk to humans. Based upon these considerations, NCDB concludes that the labeling for all products containing phenazopyridine hydrochloride should contain information concerning the available data on the drug's carcinogenic activity.

Copies of the references cited above have been placed on file with the Dockets Management Branch (address given above) and may be seen between 9 a.m. and 4 p.m., Monday through Friday.

II. Conditions for Approval and Marketing of Sulfamethoxazole/Phenazopyridine and Related Combination Drug Products

Drug products containing a sulfonamide in fixed combination with phenazopyridine hydrochloride are regarded as new drugs (21 U.S.C. 321(p)). Supplemental new drug applications are required in order to revise the labeling in and to update previously approved applications providing for such drugs. An approved new drug application is a requirement for marketing such drug products.

In addition to the product specifically named above, these conditions apply to

any drug product that is not the subject of an approved new drug application and is identical to the product named above. It may also be applicable, under 21 CFR 310.6, to a similar or related drug product that is not the subject of an approved new drug application. It is the responsibility of every drug manufacturer or distributor to review these conditions to determine whether they cover any drug product that the person manufactures or distributes. Such person may request an opinion of the applicability of these conditions to a specific drug product by writing to the Division of Drug Labeling Compliance (address given above).

A. *Effectiveness classification.* FDA has reviewed all available evidence and concludes that a fixed-combination drug product containing 500 mg of sulfamethoxazole and 100 mg of phenazopyridine hydrochloride, and other sulfonamide/phenazopyridine combinations that meet criteria specified above (see section I.C. "Applicability of Conclusions on Azo Gantanol to Other Sulfonamide/Phenazopyridine Combinations (Similar or Related Drug Products; 21 CFR 310.6)") are effective for the indication listed in the labeling conditions below.

B. *Conditions for approval and marketing.* FDA is prepared to approve abbreviated new drug applications and abbreviated supplements to previously approved new drug applications under conditions described herein.

1. *Form of drug.* The preparation is in tablet form suitable for oral administration, and either (i) contains 500 mg of sulfamethoxazole and 100 mg of phenazopyridine hydrochloride, or (ii) meets the criteria sepcified abcve under section I.C. "Applicability of Conclusions on Azo Gantanol to Other Sulfonamide/Phenazopyridine Combinations (Similar or Related Drug Products; 21 CFR 310.6)."

2. *Labeling conditions.* a. The label bears the statement "Caution: Federal law prohibits dispensing without prescription."

b. The drug is labeled to comply with all requirements of the act and regulations, and the labeling bears adequate information for safe and effective use of the drug.

c. If the drug product is packaged in a "unit of use" package designed to provide doses of the combination product for a 48-hour treatment period and doses of a followup sulfonamide for complete treatment of a urinary tract infection, the INDICATION is as follows:

For the treatment of uncomplicated urinary tract infections caused by susceptible strains of the following microorganisms: *Escherichia coli, Klebsiella* species, *Enterobacter* species, *Proteus mirabilis, Proteus vulgaris,* and *Staphylococcus aureus* when relief of symptoms of pain, burning, or urgency is needed during the first 2 days of therapy.

d. If the drug product is not packaged in a "unit of use" package with the followup sulfonamide, the following labeling conditions apply:

The INDICATION is:

For the initial treatment of uncomplicated urinary tract infections caused by susceptible strains of the following microorganisms: *Escherichia coli, Klebsiella* species, *Enterobacter* species, *Proteus mirabilis, Proteus vulgaris,* and *Staphylococcus aureus* when relief of symptoms of pain, burning, or urgency is needed during the first 2 days of therapy. Treatment with [*insert name of combination drug product*] should not exceed 2 days. There is a lack of evidence that the combination of [*insert name of sulfonamide component of combination*] and phenazopyridine hydrochloride provide greater benefit than [*insert name of sulfonamide component of combination*] alone after 2 days. Treatment beyond 2 days should only be continued with [*insert name of appropriate sulfonamide*]. (See DOSAGE AND ADMINISTRATION section.)

In addition, the DOSAGE AND ADMINISTRATION section shall specify, in its dosage and dosage interval recommendations, that the combination product is only indicated for up to 2 days, and shall include the following statements:

Treatment with [*insert name of combination drug product*] should not exceed 2 days. Treatment beyond 2 days should only be continued with [*insert name of appropriate sulfonamide*].

e. The PRECAUTION section shall include a statement in accord with the following guideline (the statement concerning the sulfonamide component is already reflected in current labeling):

Carcinogenesis: [*insert name of combination drug product*] has not undergone adequate trials relating to carcinogenicity; each component, however, has been evaluated separately. rats appear to be especially susceptible to the goitrogenic effects of sulfonamides, and long-term administration of sulfonamides has resulted in thyroid malignancies in this species. Long-term administration of phenazopyridine hydrochloride has induced neoplasia in rats (large intestine) and mice (liver). Although no association between phenazopyridine hydrochloride and human neoplasia has been reported, adequate epidemiological studies have not been conducted.

3. *Marketing status.* a. Marketing of such a drug product that is now the subject of an approved or effective new drug application may be continued provided that, on or before January 25, 1984, the holder of the application has submitted (i) a supplement for revised labeling as needed to be in accord with the labeling conditions described in this notice and (ii) a supplement to provide updating information with respect to items 6 (components), 7 (composition), and 8 (methods, facilities, and controls) of the new drug application form FD-356H (21 CFR 314.1(c)) to the extent required in abbreviated applications (21 CFR 314.2). Revised labeling in accord with the labeling conditions described above shall be put into use on or before July 24, 1984. The revised labeling may be put into use before approval of a supplemental new drug application, as provided for in 21 CFR 314.8 (d) and (e).

b. Approval of an abbreviated new drug application (21 CFR 314.2, formerly 21 CFR 314.1(f); see the **Federal Register** of January 21, 1983, 43 FR 2751) shall be obtained before maketing such products. The bioavailability regulations (21 CFR 320.21) require any person submitting an abbreviated new drug application after July 7, 1977, to include either evidence demostrating the in vivo bioavailability of the drug or information to permit waiver of the requirement. No waiver of this requirement will be granted. The application shall include the results of a single dose, crossover, in vivo bioavailability study demonstrating the bioavailability of the sulfonamide component of the combination drug product as it is contained in the combination drug product. A demonstration of the bioavailability of the phenazopyridine hydrochloride component is not required. Guidelines for conducting bioavailability studies are available from the Division of Biopharmaceutice (address given above). Marketing before approval of a new drug application will subject such products, and those persons who caused the products to be marketed, to regulatory action.

III. Labeling Requirement for Phenazopyridine-Containing Drug Products That Are Not Subject to the Conditions for Approval and Marketing of Sulfamethoxazole/Phenazopyridine and Related Combination Drug Products Given Above

The information listed below is required in the labeling of the types of drug products specified below to prevent misbranding of the drugs (21 U.S.C. 352(a); 21 U.S.C. 321(n); 21 CFR 1.21). These requirements do not necessarily mean that FDA recognizes or approves any claims regarding the safety, effectiveness, or legal status of any particular drug product. The applicability of these requirements to a particular drug product or group of drug

products may be superseded by a final agency determination regarding the safety, effectiveness, or legal status of the drug product or group of drug products.

It is the responsibility of every drug manufacturer or distributor to review these requirements to determine whether they cover any drug product that the person manufactures or distributes. Such person may request an opinion of the applicablility of these requirements to a specific drug product by writing to the Division of Drug Labeling Compliance (address given above).

A. *Labeling Requirement for Phenazopyridine-Containing Drug Products (Single-Entities or Fixed-Combinations) that are Recommended for Use in the Treatment of Urinary Tract Infections.* 1. The following information shall be disclosed in the INDICATION section (adapted to the labeling of particular drug products):

Treatment of a urinary tract infection with phenazopyridine hydrochloride or a combination drug product containing phenazopyridine hydrochloride should not exceed 2 days because there is a lack of evidence that the combined administration of phenazopyridine hydrochloride and an antibacterial provides greater benefit than administration of the antibacterial alone after 2 days.

2. The part of the INDICATION section pertaining to the use of the product in urinary tract infections shall also refer to the DOSAGE AND ADMINISTRATION section.

3. The DOSAGE AND ADMINISTRATION section, in its dosage and dosage interval recommendations pertaining to the use of the product in urinary tract infections, shall show that the product is only indicated for up to 2 days (the effect of phenazopyridine hydrochloride should not be relied upon after 48 hours).

B. *Labeling Requirement for All Drug Products that Contain Phenazopyridine.* The following statement shall be included in the CARCINOGENESIS subsection of the PRECAUTION section of the labeling:

Long-term administration of phenazopyridine hydrochloride has induced neoplasia in rats (large intestine) and mice (liver). Although no association between phenazopyridine hydrochloride and human neoplasia has been reported, adequate epidemiological studies along these lines have not been conducted.

C. *Implementation of Labeling Requirement.* The holder of an approved new drug application shall submit a supplement for revised labeling as needed to be in accord with the labeling requirements described above on or before January 25, 1984. All manufacturers marketing drug products affected by these requirements, whether or not the products are the subjects of approved new drug applications, shall put into use appropriately revised labeling on or before July 24, 1984. After July 24, 1984, shipment in interstate commerce of affected drug products with labeling not in accord with the above requirements will be unlawful and subject to regulatory action.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 201(n), 502, 505, 52 Stat. 1041, 1050–1053 as amended (21 U.S.C. 321(n), 352, 355)) and under the authority delegated to the Director of the National Center for Drugs and Biologics (see 21 CFR 5.70 and 47 FR 26913 published in the **Federal Register** of June 22, 1982).

Dated: July 18, 1983.

Harry M. Meyer, Jr.,

Director, National Center for Drugs and Biologics.

[FR Doc. 83-20430 Filed 7-28-83; 8:45 pm]

BILLING CODE 4160-01-M

[Docket No. 83M-0233]

Medical Devices; Premarket Approval; Barnes-Hind Hydrocurve, Inc.; Premarket Approval of Barnes-Hind® Soft Lens Salt Tablets

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application for premarket approval under the Medical Device Amendments of 1976 of BARNES-HIND® Soft Lens Salt Tablets (135 milligrams (mg)) for all soft (hydrophilic) contact lenses, sponsored by Barnes-Hind Hydrocurve, Inc., Sunnyvale, CA. BARNES-HIND® Soft Lens Salt Tablets are intended for use in the preparation of 15 milliliters (ml) of normal saline (0.9 percent) solution to be used in heat disinfection of all soft (hydrophilic) contact lenses. After reviewing the recommendation of the Ophthalmic Device Section of the Ophthalmic; Ear, Nose, and Throat; and Dental Devices Panel, FDA notified the sponsor that the application was approved because the device had been shown to be safe and effective for use as recommended in the submitted labeling.

DATE: Petitions for administrative review by August 29, 1983.

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 (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Charles H. Kyper, National Center for Devices and Radiological Health (HFK-402), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7445.

SUPPLEMENTARY INFORMATION: On December 9, 1980, Barnes-Hind Hydrocurve, Inc., Sunnyvale, CA, submitted to FDA an application for premarket approval of BARNES-HIND® Soft Lens Salt Tablets (135 mg) for all soft (hydrophilic) contact lenses. The application was reviewed by the Ophthalmic Device Section of the Ophthalmic; Ear, Nose, and Throat; and Dental Devices Panel, an FDA advisory committee, which recommended approval of the application. On July 5, 1983, FDA approved the application by a letter to the sponsor from the Associate Director for Device Evaluation of the Office of Medical Devices.

Before enactment of the Medical Device Amendments of 1976 (the amendments) (Pub. L. 94-295, 90 Stat. 539-583), salt tablets for preparing solutions for use in heat disinfection of soft (hydrophilic) contact lenses were regulated as new drugs. Because the amendments broadened the definition of the term "device" in section 201(h) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321 (h)), such salt tablets are now regulated as class III devices (premarket approval). As FDA explained in a notice published in the **Federal Register** of December 16, 1977 (42 FR 63472), the amendments provide transitional provisions to ensure continuation of premarket approval requirements for class III devices formerly regulated as new drugs. Furthermore, FDA requires, as a condition to approval, that sponsors of applications for premarket approval of soft contact lenses and lens care solutions for the use above comply with the records and reports provisions of Subpart D of Part 310 (21 CFR Part 310) until these provisions are replaced by similar requirements under the amendments.

A sumary of the safety and effectiveness data on which FDA's approval is based on file with the Dockets Management Branch (address above), and is available upon request from that office. A copy of all approved final labeling is available for public inspection at the Office of Medical Devices—contact Charles H. Kyper (HFK-402), address above. Requests should be identified with the name of

the device and the docket number found in brackets in the heading of this document.

The labeling of the BARNES-HIND® Soft Lens Salt Tablets states that the solution prepared from the salt tablets is designed for use in heat disinfection of all soft (hydrophilic) contact lenses. Sponsors of any soft (hydrophilic) contact lenses that have been approved for marketing are advised that whenever FDA publishes a notice in the **Federal Register** of the agency's approval of a new solution for use with an approved soft contact lens, the sponsor of each lens shall correct its labeling to refer to the new solution at the next printing or at such other time as FDA prescribes by letter to the sponsor. A sponsor who fails to update the restrictive labeling may violate the misbranding provisions of section 502 of the act (21 U.S.C. 3521) as well as the Federal Trade Commission Improvement Act (15 U.S.C. 41–58), as amended by the Magnuson-Moss Warranty-Federal Trade Commission Improvement Act (Pub. L. 93–637). Furthermore, failure to update the restrictive labeling to refer to new salt tablets that may be used with an approved lens may be grounds for withdrawing approval of the application for the lens under section 515(e)(1)(F) of the act (21 U.S.C. 360e(e)(1)(F)).

Opportunity for Administrative Review

Section 515(d)(3) of the 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 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's 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 a notice of its decision in the **Federal Register.** If FDA grants the petition, the notice will state the issues 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 August 29, 1983, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the 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: July 20, 1983.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 83–20297 Filed 7–28–83; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 79N–0156]

Radiological Health; Evaluation of Radiation Exposure in Diagnostic Radiology Examinations; Availability of Draft Recommendations

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) announces the availability for public review and comment of draft recommendations on evaluation of radiation exposure in diagnostic radiology examinations, prepared by FDA's National Center for Devices and Radiological Health (NCDRH). In addition to the draft recommendations, FDA is making available background information, rationale, and NCDRH's response to comments that were received on a notice of inquiry regarding the need for and content of such recommendations. FDA is also encouraging private groups and individuals to join in the research efforts needed to develop further technique/exposure guidance and suggests a number of principles to be followed in these efforts so all interested parties may achieve consistent and useful results. Final recommendations, when developed, will be published as a technical report in NCDRH's radiation recommendation series.

DATE: Comments by October 27, 1983.

ADDRESSES: Requests for single copies of the draft document should be addressed to: Roger Burkhart, National Center for Devices and Radiological Health (HFX–77), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3446. Written comments on the draft recommendations should be addressed to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Roger Burkhart, National Center for Devices and Radiological Health (HFX–77), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3446.

SUPPLEMENTARY INFORMATION: FDA is making available a draft document entitled "Recommendations for Evaluation of Radiation Exposure in Diagnostic Radiology Examinations" to give interested persons an opportunity to review and comment on the content of the recommendations.

These draft recommendations, prepared by NCDRH at the suggestion of the Medical Radiation Advisory Committee (an FDA advisory committee that advises on the formulation of policy and the development of coordinated national programs relating to the use of ionizing radiation in the healing arts), are directed to all diagnostic radiology facilities. The recommendations encourage those facilities to become aware of the approximate amount of radiation that would be received during each of the common radiographic projections used in examinations conducted in the facility. Facilities are further encouraged to compare their exposure levels for each projection with the range of exposure values "generally accepted' for the technique used for the projection, as providing diagnostic quality without unnecessary radiation. If the values are consistently outside of these ranges, the facility is encouraged to take appropriate action. This approach is based on the principle that many otherwise unnoticed problems in the radiological process manifest themselves as significant changes in exposure from usual levels.

In the **Federal Register** of August 17, 1979 (44 FR 48354), FDA published a notice of inquiry announcing that the agency was considering the need to develop radiation exposure recommendations and inviting interested persons to comment on several concerns FDA had regarding the need for and means to provide useful recommendations to diagnostic radiology personnel.

The comments received in response to the notice generally supported the provision of exposure evaluation guidance related to the techniques used, through educational means. The agency, therefore, has decided to publish the recommendations as part of NCDRH's radiation recommendation series. This approach is in accord with the majority of comments (that urged FDA not to

codify the recommendations in the Code of Federal Regulations). To give interested persons an opportunity to participate further in developing these recommendations and in any future activities in the technique/exposure guidance area, FDA is now making available NCDRH's draft recommendations. FDA invites and encourages interested persons to submit additional data and comment relating to the evaluation of radiation exposure in diagnostic radiology examinations.

Single copies of the draft recommendations are available from the contact person listed above. The draft document is on file under the docket number appearing in the heading of this notice and may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Interested persons may, on or before October 27, 1983, submit to the Dockets Management Branch (address above) written comments regarding these draft recommendations. All such comments will be considered in developing final recommendations. Comments received after October 27, 1983, may be considered, depending on the stage of development of any final recommendations. Two copies of any comments should be submitted, except that individuals may submit one copy. Comments should be identified with the docket number found in brackets in the heading of this document. The draft recommendations and received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: July 19, 1983.

Mark Novitch,

Deputy Commissioner of Food and Drugs.

[FR Doc. 83-20298 Filed 7-28-83; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 80N-0276; DESI 7630]

Nandrolone Decanoate; Drugs for Human Use; Drug Efficacy Study Implementation, Revocation of Exemption; Announcement of Marketing Conditions; Followup Notice and Opportunity for Hearing

Correction

In FR Doc. 83-18931 beginning on page 32394 in the issue of Friday, July 15, 1983, make the following correction on page 32396: In the first column, the second complete paragraph, the third line, "301" should read "310".

BILLING CODE 1505-01-M

National Institutes of Health

Ad Hoc Working Group To Develop Radioepidemiological Tables; Meeting

Notice is hereby given of two meetings of the Ad Hoc Working Group to Develop Radioepidemiological Tables.

The first meeting will be held on August 11, 1983, in Conference Room 4, Building 31, National Institutes of Health, Bethesda, Maryland, from 9:00 a.m. to 5:00 p.m. The second meeting will begin on September 28, 1983, from 5:00 p.m. to 9:00 p.m. and continue on September 29 from 9:00 a.m. to 5:00 p.m., in Conference Room 3, Building 31, National Institutes of Health, Bethesda, Maryland.

All sessions of both meetings will be open to the public to discuss the development of radioepidemiological tables in response to Pub. L. 97-414. Attendance by the public will be limited to space available.

For additional program information, summaries of the meeting, and a roster of the Committee members, please contact Dr. Victor H. Zeve, Landow Building, Room 4A20, National Institutes of Health, Bethesda, Maryland 20205, (301) 496-6111.

Dated: July 21, 1983.

Betty J. Beveridge,

NIH Committee Management Officer.

[FR Doc. 83-20550 Filed 7-28-83; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[F-19155-16]

Alaska Native Claims Selection

On December 10, 1979, a Decision to Issue Conveyance (DIC) was issued to Doyon, Limited and published in the **Federal Register** (44 FR 71913-71914, December 12, 1979). The DIC was modified in part on December 26, 1979, and published in the **Federal Register** (45 FR 848-849, January 3, 1980). The DIC included those water bodies determined to be navigable as recommended in the Alaska State Director (SD), BLM, memorandum dated October 3, 1979, as amended on December 21, 1979, concerning final easements and navigability determinations for Doyon, Limited in the vicinity of Galena.

On February 10, 1983, a further amendment to the SD memorandum of December 21, 1979, was issued which contained an administrative redetermination of a dead-end slough which is a part of the navigable Pilot Mountain Slough. The slough is located in Sec. 34, T. 8 S., R. 8 E., Secs. 2 and 3, T. 9 S., R. 8 E., Kateel River Meridian.

Accordingly, the previous determination for this selection area was modified to include the above slough as a navigable part of Pilot Mountain Slough. This water body is identified on the attached navigability maps, the original of which will be found in easement case file F-21779-16.

The DIC of December 10, 1979, approved for conveyance the surface and subsurface estates of the bed of the dead-end slough in Sec. 34, T. 8 S., R. 8 E., Kateel River Meridian. As this water body is now considered navigable, the submerged land is not public land and is not available for conveyance to the Native corporation under the Alaska Native Claims Settlement Act (43 CFR 2650.0-5 (g)).

Therefore, the DIC of December 10, 1979, is hereby modified to exclude the submerged land beneath the above-described water body from the approval for conveyance to Doyon, Limited. The total acreage approved for conveyance is changed from 176,785 acres to 176,750 acres.

In accordance with Departmental regulation 43 CFR 2650.7(d), notice of this decision is being published once in the **Federal Register** and once a week, for four (4) consecutive weeks in the Fairbanks Daily News-Miner.

Except as modified by this decision, the decision of December 10, 1979, as modified on December 26, 1979, stands as written.

B. LaVelle Black,

Section Chief, Branch of ANCSA Adjudication.

[FR Doc. 83-20608 Filed 7-28-83; 8:45 am]

BILLING CODE 4310-84-M

Livestock Grazing Environmental Impact Statements; Fiscal Year 1984

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: As required by the Court Order in *Natrual Resources Defense Council, Inc., et al.,* v. *Watt, et al.,* Civil Action No. 1983-73, this notice identifies 15 livestock grazing environmental impact statements scheduled for completion by the Bureau of Land Management during Fiscal Year 1984.

FOR FURTHER INFORMATION CONTACT: Billy Templeton, Chief, Division of Rangeland Resources, Bureau of Land Management, 1725 I Street, NW., Washington, D.C. 20006 (101/653-9193).

SUPPLEMENTARY INFORMATION: In accordance with the Court Order in *Natural Resources Defense Council, Inc., et al.*, v. *Watt et al.*, Civil Action No. 1983-73, the following described grazing environmental impact statements, involving 14,598,000 acres of public land, are scheduled for completion during Fiscal Year 1984.

EIS name	Acres of public land (000s)	Description
Coast Valley	207	An area in South Central California within the Bakersfield District and the Caliente Resource Area.
Hollister	320	An area in South Central California within the Bakersfield District and the Hollister Resource Area.
Honey Lake-Beckwourth	55	An area in Northeastern California within the Susanville District and the Eagle Lake Resource Area.
San Miguel-San Juan	959	An area in Southwestern Colorado within the Montrose District and the Uncompahgre and San Juan Resource Areas.
Cassia	476	An area in Southeastern Idaho within the Burley District and the Raft River Resource Area.
North Dakota	67	An area in Western North Dakota Administered by the Miles City District Montana and within the Dickinson Resource Area.
Powder River	1,072	An area in Southeastern Montana within the Miles City District and the Powder River Resource Area.
Egan	3,826	An area in Eastern Nevada within the Ely District and the Egan Resource Area.
Lahontan	2,422	An area in West Central Nevada within the Carson City District and the Lahontan Resource Area.
Roswell	1,062	An area in East Central New Mexico in the Roswell District and the Roswell Resource Area.
John Day	183	An area in North Central Oregon within the Burns District and the John Day Resource Area.
Medford	402	An area in Southwestern Oregon within the Medford District and Butte Falls, Klamath, Rouge River, Grants Pass, and Galice Resource Areas.
Book Cliffs	1,097	An area in Eastern Utah within the Vernal District and the Book Cliffs Resource Area.
Cedar	1,032	An area in Southeastern Utah within the Cedar City District and the Bear River and Kanab Resource Areas.
Platte River	1,418	An area in Southeastern Wyoming within the Casper District and the Platte River Resource Area.

Dated: July 25, 1983.

Delmar Vail,

Deputy Director, Lands and Renewable Resources.

[FR Doc. 83-20606 Filed 7-28-83; 8:45 am]

BILLING CODE 4310-84-M

Bureau Forms Submitted for Review

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed information collection requirement and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made directly to the Bureau clearance officer and the Office of Management and Budget reviewing official at 202-395-7340.

Title: 43 CFR Part 5424, Timber Export Determination and Substitution Reporting

Bureau Form Numbers: 5450-17, 5460-16, 5460-17

Frequency: Occasionally

Description of Respondents: Timber sale purchasers who elect to export domestic timber

Annual Responses: 100

Annual Burden Hours: 17

Bureau clearance officer (alternate): Linda Gibbs 202-653-8353

James M. Parker,

Acting Director.

June 28, 1983.

[FR Doc. 83-20598 Filed 7-28-83; 8:45 am]

BILLING CODE 4310-84-M

Bureau Forms Submitted for Review

AGENCY: Bureau of Land Management, Interior.

ACTION: Bureau Forms Submitted for Review to Office of Management and Budget.

SUMMARY: The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed information collection requirement and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made directly to the Bureau clearance officer and the Office of Management and Budget reviewing official, Mr. Richard Otis at 202-395-7340.

Title: "Automated Simultaneous Oil and Gas Lease Application"

Bureau Form Numbers: 3112-6, 3112-6a

Frequency: on occasion, bi-monthly

Description of Respondents: General public, small businesses and oil companies

Annual Responses: 1.2 million

Annual Burden Hours: 300,000

Bureau clearance officer (alternate): Linda Gibbs 202-653-6853

James M. Parker,

Acting Director.

June 30, 1983.

[FR Doc. 83-20599 Filed 7-28-83; 8:45 am]

BILLING CODE 4310-84-M

Bureau Forms Submitted for Review

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed information collection requirement and related forms and explanatory material may be obtained by contacting the Bureau of Land Management's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made directly to the Bureau clearance officer and the Office of Management and Budget Reviewing Official at 202-395-7340.

Title: 43 CFR 1601.5-3, Recreation Visitor Survey

Bureau Form Number: 8310-8

Frequency: Annually at Selected Recreation Areas/Sites

Description of Respondents: Recreation Visitors to Public Lands.

Annual Responses: 1800

Annual Burden Hours: 360

Bureau clearance officer (alternate): Linda Gibbs, 202-653-8853

June 28, 1983.

James M. Parker,

Acting Director.

[FR Doc. 83-20600 Filed 7-28-83; 8:45 am]

BILLING CODE 4310-84-M

Realty Action; Noncompetitive Sale of Public Lands in San Bernardino County, California

[CA 14377]

AGENCY: Bureau of Land Management, Interior.

ACTION: Realty Action—Noncompetitive Sale of Public Lands in San Bernardino County: CA 14377.

SUMMARY: The following described parcel has been examined and identified for disposal under Section 203 of the

Federal Land Policy and Management Act of 1976 (90 Stat. 2750; 43 U.S.C. 1713), at no less than the appraised fair market value.

San Bernardino Meridian

T. 4 N., R. 3W., Section 28, Lot 44

The land aggregates 4.66 acres in San Bernardino County. The parcel is being offered to Mr. Sirk to resolve and inequity created during a previous small tract disposal program in the area. It has been determined that a direct sale at appraised market value will be an equitable solution.

The proposed sale is consistent with the Bureau's planning for the land involved and the public interest would be served by offering this land at direct sale.

The terms and conditions applicable to the sale are:

1. A right-of-way for ditches and canals will be reserved to the United States (43 U.S.C. 945).
2. All minerals in the land will be reserved to the United States (43 U.S.C. 1719); however, under Section 209 of the said Act of October 21, 1976, the new landowner may apply to purchase the mineral interest.
3. Federal law requires that all bidders be United States citizens. Proof of these requirements shall accompany the bid.
4. An easement not to exceed 33 feet in width along the boundaries for access and public utilities purposes.
5. The patent will be subject to all vaid existing rights.

FOR FURTHER INFORMATION CONTACT: Detailed infromation concerning the sale, including the land report and environmental assessment report, is available for review at the California Desert District Office at 1695 Spruce Street, Riverside, California 92507.

For a period of 45 days from the date of publication of this notice, interested parties may submit comments to the State Director, California State Office, Federal Office Building, 2800 Cottage Way, Room E-2841, Sacramento, California 95825. Any adverse comments will be evaluated by the State Director who may vacate or modify this realty action and issue a final determination. In the absence of any action by the State Director, this realty action will become a final determination.

SUPPLEMENTARY INFORMATION: The land will not be offered for sale for at least 60 days after the date of this notice.

Dated: July 25, 1983.

Hugh Reicken,

Associate District Manager,

[FR Doc. 83-20566 Filed 7-28-83; 8:45 am]

BILLING CODE 4310-84-M

[A-8762 and NM-24763]

Arizona; Realty Action,

Modification of Realty Action—Competitive Sale of Public Land in Cochise County, Arizona and Hidalgo County, New Mexico

The Notice of Realty Action—Competitive Sale—Lands in Cochise County, Arizona and Hidalgo County, New Mexico, published in the **Federal Register**, Volume 48, No. 117 on June 16, 1983 at page 27605, is hereby modified to divide Parcel Q into two separate parcels as follows:

Parcel	Legal description	Acreage	Value
	Gila and Salt River Meridian, Arizona.		
Q1	T. 20 S., R. 32 E., Section 11: Lots 1, 2, 3, 4	147.88	$11,091
	New Mexico Principal Meridian, New Mexico.		
Q2	T. 30 S., R. 22 W., Section 11: Lots 1, 2, 3, 4; Section 14: Lots 1, 2, 3, 4	96.00	7,200

Requests received from the grazing lessees involved, William Kambitch of Rodeo, New Mexico and Three Triangle Ranch, Incorporated of Portal, Arizona have indicated that both parties would prefer to bid on the lands located within the states in which they operate. The District Managers have determined that these requests have merit and so move to modify the original notice of realty action.

The above modification necessitates the following additional modifications:

A patent for the land, when issued, will contain the following reservations to the United States:

3. A right-of-way under Serial Number A-18639 for a road granted under the authority of the Federal Land Policy and Management Act of 1976 (90 Stat. 2776; 43 U.S.C. 1761) on Parcel Q1.
4. A right-of-way under Serial Number NM-52975 for a road granted under the authority of the Federal Land Policy and Management Act of 1976n (90 Stat. 2776; 43 U.S.C. 1761) on Parcel Q2.

The patent will also be subject to:

2. Those rights granted by a term permit for grazing lease Number 1515, which affect Parcel Q2 located in New Mexico including the allowance of continued year-long grazing of 12 head (144 AUMs) until February 29, 1990 at a cost not higher than the BLM grazing fee scheduled for a given year.
3. Those rights granted by a term permit for grazing lease Number 5292, which affect Parcels Q1, R and S located in Arizona, including the allowance of continued grazing of 5 head (57 AUMs) until May 12, 1985 at a cost not higher than the BLM grazing fee scheduled for a given year.
4. Range improvements consisting of 3.8 miles of fence granted under Permits Number NM 3-4-429 and Arizona Number 1170, located in Parcels Q1 and Q2. In accordance with 43 CFR 4120.6-6, the grazing lessees will be allowed a period of 180 days from the date of cancellation of the range improvement permit to salvage the fences. the cancellation of the range improvement permits will occur at the same time as the cancellation of the grazing.

Dated: July 17, 1983.

Daniel C. B. Rathbun,

District Manager, Las Cruces District, New Mexico.

Dated; July 12, 1983.

Fritz U. Rennebaum,

Acting District Manager, Safford District, Arizona.

[FR Doc. 83-20602 Filed 7-28-83; 8:45 am]

BILLING CODE 4310-84-M

[OR-36015, OR-36016, OR-36017, OR-36018]

Oregon: Notice of Realty Action Competitive Sale of Public Land in Lake County, Oregon

The following described parcels of land have been examined and identified as suitable for disposal by sale under Section 203 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750, 43 U.S.C. 1713) at no less than the appraised fair market value shown:

Parcel No.	Legal Description	Acreage	Appraised value
1,OR-36015.	T. 25 S., R. 18 E., Willamette Meridian, Oregon Section 5: SE¼ SE¼	40	$10,200
2,OR-36016.	T. 25 S., R. 18 E., Willamette Meridian, Oregon Section 17: NE¼ NE¼	40	10,400
3,OR-36017.	T. 26 S., R. 19 E., Willamette Meridian, Oregon Section 6: Lot 5	34.52	10,000
4,OR-36018.	T. 26 S., R. 18 E., Willamette Meridian, Oregon Section 25: SW¼	160	38,400

The sale will be held on Wednesday, October 19, 1983, at 10:00 a.m., Bureau of Land Management Conference Room, 1000 South Ninth Street, Lakeview, Oregon.

The above described land will be sold at public auction through a competitive bid type sale.

The sale is consistent with publicly supported Bureau planning. The sale involves isolated land completely surrounded by private land, that is difficult and uneconomical to manage as part of the public lands, and is not suitable for management by another Federal Department or Agency. The public interest will be served by offering this land for sale.

Federal law requires that all bidders be U.S. citizens, 18 years of age or more, a state or state instrumentality authorized to hold property, or in the case of corporations, be authorized to own real estate in the state in which the sale land is offered.

Sealed written bids will be considered only if received by the Bureau of Land Management, 1000 South Ninth Street, P.O. Box 151, Lakeview, Oregon 97630, prior to 10:00 a.m., Wednesday, October 19, 1983, and for at least the appraised value. A separate written bid should be submitted for each sale parcel desired. Each written sealed bid must be accompanied by a certified check, postal money order, bank draft or cashiers check, made payable to the Bureau of Land Management for at least twenty percent (20%) of the amount bid and shall be enclosed in a sealed envelope clearly marked, "Bid for Public Land Sales OR-36015, OR-36016, OR-36017, OR-36018, Sale Parcel Number —, Lake County, Oregon October 19, 1983". The written sealed bids will be opened and publicly declared at the beginning of each sale. If 2 or more envelopes containing valid bids of the same amount are received, the determination of which is to be considered the highest bid, shall be by drawing.

Submission of a sealed written bid is not required in order to participate in oral bidding procedures.

If sealed bids are received, oral bidding will be entertained after public declaration of the high sealed bid. If no sealed bids are received, oral bidding will commence at the appraised fair market value. All oral bids shall be made in increments of $50.00. After oral bids are entertained, the successful bidder shall submit by cash, personal check, bank draft, money order or any combination thereof, twenty percent (20%) of the purchase price immediately following the close of the sale.

The terms and conditions applicable to the sale are:

1. The apparent high bidder shall submit the remainder of the full bid price within 30 days from the date of sale. Failure to submit the full bid price within 30 days from the date of sale shall result in sale cancellation of the specific parcel and the twenty percent (20%) deposit shall be forfeited.

2. The authorized officer may reject the highest qualified bid and release the bidder from his/her obligation and withdraw any tract from the sale, if he determines that consummation of the sale would be inconsistent with the provisions of any existing law, or collusive or other activities have hindered or restrained free and open bidding, or consummation of the sale would encourage or promote speculation in public lands.

3. The patents will contain a reservation to the United States for ditches and canals.

4. The sale is for surface estate only. The patents will contain a reservation to the United States for all minerals.

5. The sale will be subject to all valid existing rights.

Those parcels not sold pursuant to this Notice of Realty Action shall remain available for sale on a continuing basis until sold. The sale price shall be based on the appraised fair market value at the time of purchase. Subsequent purchases may be transacted at the Lakeview District Office, in person, during regular business hours (7.45 a.m. to 4:30 p.m.).

Detailed information concerning the sale, including the planning documents, environmental assessment and the record of public involvement, is available for review at the Lakeview District Office, Bureau of Land Management, 1000 South Ninth Street, Lakeview, Oregon 97630.

For a period of 45 days from the date of this notice, interested parties may submit comments to the District Manager, Lakeview District Office, Bureau of Land Management, P.O. Box 151, 1000 South Ninth Street, Lakeview, Oregon 97630. Any adverse comments received as a result of the Notice of Realty Action or notification to the congressional committees and delegations pursuant to Pub. L. 97-394, will be evaluated by the District Manager who may vacate or modify this realty action and issue a final determination. In the absence of any action by the District Manager, this realty action will become a final determination of the Department of the Interior. Interested parties should continue to check with the District Office to keep themselves advised of any changes.

Dated: July 21, 1983.

Richard A. Gerity,
District Manager.

[FR Doc. 83-20603 Filed 7-28-83; 8:45 am]
BILLING CODE 4310-84-M

N-1885, N-1885B, N-1885C

Classification Vacated; Nevada

1. Pursuant to the authority delegated by Bureau Order 701 and amendments thereto, the following Bureau of Land Management multiple use classifications were published in the **Federal Register**:

	Date published
N-1885	November 1, 1969 (FR Doc 69-13031).
N-1885B	December 18, 1970 (FR Doc 70-17009).
N-1885C	December 22, 1970 (FR Doc 70-17011).

Pursuant to the Classification and Multiple Use Act of September 19, 1964 (43 U.S.C. 1411-18) and the 43 CFR Part 2460 regulations, these actions classified approximately 202,320 acres of public land in Ormsby and Douglas Counties, Nevada, for multiple use management. The land was segregated as follows:

Classification	Acres	Segregated from
N-1885	164,520	Agricultural land laws, Sales under R.S. 2455.
N-1885B	13,000	Agricultural and laws, Sales under R.S. 2455, Sales under Act of September 19, 1964, 5,900 acres from mining.
N-1885C	24,800	Agricultural land laws, Sales under R.S. 2455; Exchanges; Sales under Act of September 19, 1964, 8,200 acres from mining, 7,500 acres from all forms of appropriation, except recreation and public purposes, mining, mining leasing and material sales.

2. Pursuant to 43 CFR 2461.5(c)(2), the classifications are hereby vacated with the exception of the following described area in N-1885B:

Mount Diablo Meridian, Nevada

T. 16 N., R. 20 E.,
Sec. 32, S½NE¼, N½SE¼;
Sec. 35, S½.
T. 15 N., R. 20 E.,
Sec. 1, W½NW¼, E½SE¼;
Sec. 2, NE¼, W½NW¼, NW¼SW¼, N½SE¼;
Sec. 3, NE¼NE¼, NE¼NW¼;
Sec. 4, NW¼NW¼;
Sec. 5, NE¼NE¼;
Sec. 12, NE¼SE¼, NE¼NE¼;
Sec. 14, W½E½;
Sec. 15, SE¼SW¼, SW¼SE¼;
Sec. 18, SW¼SW¼, W½SE¼SW¼, NE¼SE¼SW¼;
Sec. 21, SE¼NE¼, E½SE¼;
Sec. 22, NE¼NW¼, SW¼NW¼, W½SW¼, SE¼SW¼;
Sec. 23, S½NW¼NW¼NE¼;
Sec. 27, W½SW¼, NW¼;
Sec. 28, NE¼NE¼, S½NE¼, NE¼SW¼, SE¼;
Sec. 30, S½NW¼, W½SE¼;
Sec. 31, NW¼, N½SW¼, SW¼SW¼, NW¼SE¼, S½SW¼NE¼;

Sec. 32, W½NW¼NE¼SW¼, NE¼NW¼SW¼, E½NW¼NW¼SW¼;
Sec. 33, SW¼NW¼, E½E½;
Sec. 34, S½N½, S½, NW¼NW¼;
Sec. 35, E½NE¼, SW¼NW¼, W½SW¼.
T. 15 N., R. 21 E.,
Sec. 6, W½SW¼;
7, NW¼NW¼.
T. 15 N., R. 19 E.,
Sec. 13, S½SE¼;
Sec. 24, SW¼, W½SE¼, S½NW¼, NE¼NW¼, SW¼NE¼;
Sec. 25, SE¼NE¼, W½NE¼, NW¼;
Sec. 27, W½NE¼;
Sec. 35, E½NE¼, NW¼NE¼;
Sec. 36, NE¼NE¼, S½NE¼, S½NW¼, N½SW¼, SE¼.
T. 14, N., R. 20 E.,
Sec. 2, NW¼NW¼;
Sec. 3, N½, N½SW¼, NW¼SE¼;
Sec. 4, E½NE¼, NE¼SE¼.

The area described above comprises approximately 5,900 acres. This area has high public use values and will remain classified for a period of 5 years from the date of this publication at which time the classification will again be reviewed.

3. At 9:00 a.m. on July 29, 1983, all the land except that described in paragraph 2 above is hereby open to the operation of all the public land laws, subject to valid existing rights. All valid applications received prior to or at 9:00 a.m. on July 29, 1983 will be considered as simultaneously filed. All other applications received will be considered in the order of filing.

4. At 9:00 a.m. on July 29, 1983, the following described land will also be open to the operation of the mining laws:

Mount Diablo Meridian, Nevada

T. 14 N., R. 20 E.,
Sec. 5, Lots 3 thru 13 and 16, 17, 18, (NW¼NW¼), E½SW¼NW¼, NE¼NW¼SW¼NW¼, NE¼SW¼SW¼NW¼, NE¼SE¼NW¼, NW¼NW¼SE¼NW¼, S½NW¼SE¼NW¼, S½SE¼NW¼, SW¼;
Sec. 6, SW¼NE¼SW¼NE¼, N½SE¼SW¼NE¼, SW¼SE¼SW¼NE¼, E½NE¼SE¼NE¼, NW¼NE¼SE¼NE¼, NE¼NW¼SE¼NE¼, NW¼SW¼SE¼NE¼, SE¼SW¼SE¼NE¼, SE¼SE¼NE¼, E½E½SE¼, NW¼NW¼NE¼SE¼, SE¼NW¼NE¼SE¼, S½SW¼NE¼SE¼, N½N½NW¼SE¼, SW¼NE¼NW¼SE¼, S½NW¼NW¼SE¼, S½NW¼SE¼, S½NW¼SE¼SE¼, N½SW¼SE¼SE¼;
Sec. 7, NE¼NE¼NE¼, S½NW¼NE¼NE¼, S½NE¼NE¼;
Sec. 8, N½NW¼;
Sec. 18, S½SW¼;
Sec. 27, E½SW¼.
T. 14 N., R. 19 E.,
Sec. 24, NE¼SW¼, N½SE¼.
T. 10 N., R. 21 E.,
Sec. 23, Lots 4 and 5;
Sec. 24, Lots 4 thru 7.
T. 9 N., R. 22 E.,
Sec. 3, Lots 3, 4, S½NW¼, N½SE¼;
Sec. 4, Lots 1, 2, 8, 9, 10, 11, S½NE¼;
Sec. 10, E½NE¼, NW¼NE¼.
T. 10 N., R. 22 E.,
Sec. 19, S½NE¼, NE¼NW¼, S½NW¼, N½SW¼, SE¼SW¼, SE¼;
Sec. 20, All;
Sec. 21, S½;
Sec. 28, N½;
Sec. 29, E½NE¼, NW¼NE¼, N½SW¼NE¼, N½NE¼NW¼, SE¼NE¼NW¼, SE¼SW¼NE¼, E½SW¼SW¼NE¼, E½SW¼NE¼NW¼, N½NW¼NW¼;
Sec. 30, Lots 6 thru 14, NE¼NE¼, SW¼NE¼;
Sec. 31, Lot 3;
Sec. 33, SE¼NE¼, N½SE¼, SE¼SE¼;
Sec. 34, S½NE¼, SE¼NW¼, S½;
Sec. 35, W½NE¼, NE¼NW¼, S½NW¼, SW¼, NW¼SE¼.
T. 9 N., R. 23 E.,
Sec. 4, Lots 3, 4, 11, 12, 13, 14, S½NW¼;
Sec. 9, Lots 1 thru 8, E½W½;
Sec. 16, Lots 1 thru 7, E½W½;
Sec. 20, Lots 1 thru 11, SE¼NE¼, S½SE¼;
Sec. 21, W½.
T. 10 N., R. 23 E.,
Sec. 21, Lots 1, 2, 3, 4, 7, 8, 9, 10;
Sec. 22, Lots 1, 2, 3, 4, S½N½;
Sec. 28, Lots 1, 2, 3, 4, E½W½;
Sec. 33, Lots 1 thru 5, E½NW¼, NE¼SW¼.

This area comprises approximately 8,200 acres.

Appropriation of lands under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. Sec. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

5. All the land described in the classifications remain open to the mineral leasing and material sale laws.

Inquiries concerning this land should be addressed to the Deputy State Director, Operations, Bureau of Land Management, P.O. Box 12000, Reno, Nevada 89520.

Edward F. Spang,

State Director, Nevada.

[FR Doc. 83-20604 Filed 7-28-83; 8:15 am]

BILLING CODE 4310-84-M

Commencement of Wilderness Studies; Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Commencement of Wilderness Studies in Lewistown District, Valley Resource Area, Montana.

SUMMARY: In accordance with 43 CFR 1601.3(g), notice is hereby given of resource planning activity now underway.

The proposed action is the preparation of a Wilderness Planning Amendment/Environmental Impact Statement (WPA/EIS) for the Bitter Creek Wilderness Study Area (WSA) located in the Valley Resource Area of the Lewistown District. The WPA/EIS will fulfill the requirements of the Federal Land Policy and Management Act (FLPMA), of October 1976, and will amend the Valley Management Framework Plan (MFP) signed and implemented in 1978.

The purpose of the MFP amendment is to determine the suitability or nonsuitability for wilderness designation of the 59,660 acre Bitter Creek WSA (MT-064-356). The study area is located in Valley County in northeastern Montana approximately 25 miles northwest of Glasgow and 20 miles south of the Canadian Border. The WSA actually consists of three roadless segments, all identified by a single name and number. Segment B contains 8,605 acres, Segment C contains 11,105 acres and Segment D contains 39,950 acres. Two other roadless segments, A and E, were not recommended for wilderness study in the State Director's Final Wilderness Inventory Decision.

The amendment process will result in preliminary suitability recommendations which will be forwarded to the Secretary of the Interior. The Secretary will make final recommendations to the President who will send them to Congress. Congress will make the final decision on whether Bitter Creek will be designated as wilderness.

The amendment process will not determine how the study area will be managed. An area not designated as wilderness will be managed according to land use decisions already present in the MFP. A separate Wilderness Management Plan will be prepared for the Area if it is designated by Congress. The Draft WPA/EIS is scheduled for completion in March 1984.

The following issue topics have already been identified by the public: (1) A fear that wilderness designation will interfere with or eliminate grazing on public lands; (2) concern that wilderness designation will eliminate or heavily restrict the use of motor vehicles for grazing management, recreational use, oil and gas exploration, etc.; (3) the potential for interference with oil and gas exploration and production; (4) strong local opposition based on the feeling that the area is not natural and does not possess wilderness values; (5)

the area is primarily short grass prairie which is not represented in the wilderness system and designation would add ecological diversity.

Additional issues and possible alternatives should be sent to the address below. Significant concerns will be considered in the environmental analysis.

Open houses will be held in the Valley Resource Area Office in Glasgow on August 10th and 11th from 1:00 p.m. to 8:00 p.m. Additional meetings will be announced in the local media and the **Federal Register.**

In order to properly analyze and consider significant issues, an interdisciplinary team will be used. Resource skills represented on the team include wildlife biology, outdoor recreation planning, soil science, hydrology, range management, minerals and geology, wilderness, lands, economics and sociology.

The planning criteria published in February 3, 1982, **Federal Register,** Vol. 47, No. 23 (Wilderness Study Policy), will be used in the study process.

FOR FURTHER INFORMATION CONTACT: Glenn W. Freeman, District Manager, Bureau of Land Management, Lewistown District, Airport Road, Lewistown, Montana 59457 (406/538-7461).

Dated: July 20, 1983.

Glenn W. Freeman,

District Manager.

[FR Doc. 83-20311 Filed 7-28-83; 8:45 am]

BILLING CODE 4310-84-M

Fish and Wildlife Service

Endangered Species Permit; Receipt of Applications

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

Applicant: Patuxent Wildlife Research Center, Laurel, MD—PRT 2-10788.

The applicant requests a permit to export up to 25 Aleutian Canada geese (*Branta canadensis leucopareia*) to the Yagiyama Zoo, Japan, for enhancement of propagation.

Applicant: Blue Ridge Zoological Park, Meadows of Dan, VA—PRT 2-10806.

The applicant requests a permit to import 3 captive-born vicuna (*Vicugna vicugna*) from the Okanagan Game Farm, British Columbia, Canada for enhancement of propagation.

Applicant: Henry Doorly Zoo, Omaha, NE—PRT 2-10219.

The applicant requests an amendment to their permit to allow the import of the cubs born to the female Siberian tiger (*Panthera tigris altaica*) authorized under their permit.

Applicant: Norman Lee Zuspan, Lewisville, TX—PRT 2-10771.

The applicant requests a permit to import one bontebok (*Damaliscus dorcas dorcas*) trophy to be taken from the ranch of Victor Pringle, Bedford, Cape, RSA, for enhancement of survival of the species.

Applicant: Riverbanks Zoological Park, Columbia, SC—PRT 2-10817.

The applicant requests a permit to import up to 6 radiated tortoises (*Geochelone radiata*) from the Jersey Wildlife Preservation Trust, Jersey, England for enhancement of survival of the species.

Documents and other information submitted with these applications are available to the public during normal business hours in Room 601, 1000 N. Glebe Rd., Arlington, Virginia, or by writing to the U.S. Fish & Wildlife Service, WPO, P.O. Box 3654, Arlington, VA 22203.

Interested persons may comment on these applications within 30 days of the date of this publication by submitting written data, views, or arguments to the above address. Please refer to the file number when submitting comments.

Dated: July 26, 1983.

R. K. Robinson,

Chief, Branch of Permits, Federal Wildlife Permit Office.

[FR Doc. 83-20636 Filed 7-28-83; 8:45 am]

BILLING CODE 4310-55-M

Marine Mammal Permits; Receipt of Applications

Notice is hereby given that three applicants have applied in due form for permits to conduct activities with marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), and the regulations governing the taking and importing of Marine Mammals (50 CFR Part 18).

1. Applicant: San Francisco Zoological Garden, Zoo Road & Skyline Boulevard, San Francisco, CA 94132—PRT 2-10450.
2. Type of permit: Import.
3. Name and number of animals: polar bear (*Ursus maritimus*)—1.
4. Type of Activity: public display.
5. Location of Activity: import from Copenhagen, Denmark to San Francisco Zoological Park.
6. Period of Activity: Single importation to commence upon issuance of U.S. permit.

The purpose of this application is to obtain a permit under the Marine Mammal Protection Act to import one captive born polar bear for public display.

1. Applicant: Toba Aquarium, Toba 3-3-6, Toba City, MIE Prefecture, 517 JAPAN—PRT 2-10690.
2. Type of permit: take.
3. Name and number of animals: Northern sea otter (*Enhydra lutris*)—4.
5. Location of Activity: State of Alaska: Prince William Sound, Green Island or as designated by Alaska Department of Fish and Game.
6. Period of Activity: September 1, 1983, to December 31, 1983.

The purpose of this application is to take (capture) one male and three female sea otters and transport them to Toba Aquarium for public display.

1. Applicant: Izu-Mito Sea Paradise, 3-1 Uchiura-Nagahama, Numazu, Shizuoka-Prefecture, M. JAPAN—PRT 2-10689.
2. Type of permit: take.
3. Name and number of animals: Northern sea otter (*Enhydra lutris*)—4.
4. Type of Activity: public display.
5. Location of Activity: State of Alaska: Prince William Sound, Green Island or as designated by Alaska Department of Fish and Game.
6. Period of Activity: September 1, 1983, to December 31, 1983.

The purpose of this application is to take (capture) four female sea otters and transport them to Izu-Mito Sea Paradise for public display.

Concurrent with the publication of this notice in the **Federal Register** the Federal Wildlife Permit Office is forwarding copies of these applications to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data, views, or requests for copies of the complete applications, or requests for a public hearing on these applications should be submitted to the Director, U.S. Fish and Wildlife Service (WPO), P.O. Box 3654, Arlington, VA 22203, within 30 days of the publication of this notice. Please refer to the appropriate PRT 2# when submitting comments. Those individuals requesting a hearing should set forth the specific reasons why a hearing on a particular application would be appropriate. The holding of such hearing is at the discretion of the Director.

All statements contained in this notice are summaries of those of the applicants' and do not necessarily reflect the views of the United States Fish and Wildlife Service.

Documents submitted in connection with the above applications are available for review during normal

business hours in Room 605, 1000 North Glebe Road, Arlington, Virginia.

Dated: July 26, 1983.

R. K. Robinson,

Chief, Branch of Permits, Federal Wildlife Permit Office.

[FR Doc. 83-20639 Filed 7-28-83; 8:45 am]

BILLING CODE 4310-55-M

Minerals Management Service

Information Collection Submitted For Review

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the collection of information requirement and supporting statement documentation may be obtained by contacting David A. Schuenke at 703-860-7916. Comments and suggestions on the collection of information should be made directly to the Office of Information and Regulatory Affairs, Attention: Desk Officer for the Department of the Interior—Minerals Management Service, Office of Management and Budget, Washington, D.C. 20503, with copies to David A. Schuenke; Chief, Branch of Rules, Orders, and Standards; Offshore Rules and Operations Division; Mail Stop 646; Room 6A110; Minerals Management Service; Department of the Interior; 12203 Sunrise Valley Drive; Reston, Virginia 22091.

Title: Air Quality
Bureau Form Number: None
Frequency: On occasion
Description of Respondents: Federal Outer Continental Shelf Lessees
Annual Responses: 1,233
Annual Burden Hours: 29,592
Bureau Clearance Officer: Dorothy Christopher, 703-435-6213

Dated: June 30, 1983.

John B. Rigg,

Associate Director for Offshore Minerals Management.

[FR Doc. 83-20601 Filed 7-28-83; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

Lewis and Clark National Historic Trail

AGENCY: National Park Service, Interior.

ACTION: Notice of Route Selection and Availability of the Comprehensive Plan for Management and Use.

SUMMARY: The Lewis and Clark National Historic Trail (NHT) was established as a component of the National Trails System by the Act of November 10, 1978, 92 Stat. 3512. The National Trails System Act, 82 Stat. 919, 16 U.S.C. 1241 et seq., as amended, provides a period of two complete fiscal years following the establishment of the trail for preparation of a Comprehensive Plan for Management and Use, including selection of the trail route. Planning for the trail included a significant amount of public input and was completed in January 1982. The final plan was transmitted to Congress on March 22, 1982.

Notice is hereby given that a route for the Lewis and Clark NHT has been selected and maps of the route can be found in the Comprehensive Plan for Management and Use. Copies of the comprehensive plan have been sent to agencies, organizations, and individuals who participated in the preparation of the plan and to others who potentially may become involved in developing and managing portions of the trail. Copies of the comprehensive plan are available from the National Park Service, Midwest Regional Office, 1709 Jackson Street, Omaha, Nebraska 68102.

SUPPLEMENTARY INFORMATION: The National Park Service is responsible for overall administration of the Lewis and Clark NHT. Actual development and management of the trail, however, will be accomplished through many cooperating federal, State, and local agencies and private trail organizations.

Through preparation of the Comprehensive Plan for Management and Use, a route has been selected for the Lewis and Clark NHT which retraces as closely as possible the actual route of the famous expedition of 1804-06. In accordance with Section 3(c) of the National Trails System Act, land and water based components of the trail selected on Federal lands are established as initial Federal protection components. Where the route crosses Federal lands, it will be developed in accordance with agreements to be established between the National Park Service and the Federal managing agencies. Non-Federal portions of the trail may be certified as official trail components in accordance with a voluntary certification procedure established by the comprehensive plan.

The authorities of the National Trails System Act provide for three types of components of a National Historic Trail which can be termed trail sites, trail segments, and motor routes. Development of National Historic Trails need not be continuous, making it possible to designate historic sites as trail sites even though there is no opportunity to include them in developed cross-country trail routes. Cross-country trail routes following the historic land or water routes of the Lewis and Clark Expedition make up trail segment components of the National Historic Trail. The final development category, motor routes, utilizes roads and highways that follow closely the historic route. Motor routes serve to connect trail sites and trail segments where the opportunity for cross-country trail development is not possible. Each of these components will be appropriately marked with the official trail marker as they are certified in accordance with the comprehensive management plan.

Selected Trail Route: The following list of sites, segments, and motor routes of the Lewis and Clark National Historic Trail are discussed in greater detail in the Comprehensive Plan for Management and Use and are shown on maps included in the plan. The listing of components which make up the selected trail route begins in St. Louis, Missouri, and follows the outbound route of the expedition to the mouth of the Columbia River. Trail components along the expedition's major return route explorations of 1806 are discussed following the outbound route.

Jefferson National Expansion Memorial National Historic Site, St. Louis, Missouri. The original St. Louis business district, of great importance to the expedition and the postexpedition lives of Captains Lewis and Clark, was located in this area.

Clark Gravesite and Monument, a historic site in St. Louis, Missouri. A monument marks the grave of William Clark in a large family plot in the private Bellefontaine cemetery.

Meriwether Lewis Historic Site, located on the Natchez Trace Parkway, 7 miles southeast of Hohenwald, Tennessee. A broken column monument marks the gravesite of the expedition leader.

Lower Missouri River Segment, a water-based trail along the Missouri River from its mouth to river mile 751, starting at Lewis and Clark State Park, Wood River, Illinois, and ending at Ponca State Park, Ponca, Nebraska. In spite of alterations, the present channel of the Missouri River is served by 84 existing or proposed recreation and historic sites which can support a trail symbolic of the expedition route.

Missouri National Recreational River Segment, a water-based trail along the Missouri River between river miles 751 and 810, beginning at Ponca State Park, Nebraska, and ending at Gavins Point Dam, near Yankton, South Dakota. The last free-flowing stretch of the Missouri

River below its major impoundments, this section was included in the National Wild and Scenic Rivers System in 1978 and exhibits the natural forces encountered by the expedition.

Volcano Hill, a historic site located 4 miles northeast of Newcastle, Nebraska, adjacent to the Missouri National Recreational River segment. This site was visited by Lewis and Clark in 1804.

Spirit Mound, a historic site located 8 miles north of Vermillion, South Dakota, is a conical hill on a level plain. The captains investigated Indian legends at this site in 1804.

Lewis and Clark Lake Segment, a water-based trail on Lewis and Clark Lake between Gavins Point Dam and the confluence of the Niobrara River at Missouri River mile 845. Also, a paralleling land-based trail along the north shore of the lake from Yankton Recreation Area to Running Water Access. Although the impoundment permanently covers the river course traveled by the expedition, it offers a long waterway with frequent recreational access and a narrow perimeter of publicly owned land.

Niobrara/Fort Randall Dam Segment, a water-based trail along the Missouri River mile 845 to 880, beginning at Niobrara State Park, Nebraska, and ending at Randall Creek Recreation Area below Fort Randall Dam, South Dakota. The Missouri River, from Fort Randall Dam in South Dakota downstream to the confluence of the Niobrara River, remains in a free-flowing condition.

Lake Francis Case Segment, a water-based trail from Fort Randall Dam on the Missouri River at river mile 880 to Big Bend Dam, South Dakota, at river mile 987. Twenty-two recreation areas offer recreational access and the opportunity for historical interpretation along Lake Francis Case.

Lake Sharpe Segment, a water-based trail from Big Bend Dam to Antelope Creek Wildlife Area, South Dakota, at Missouri River mile 1055. Also, a land-based trail along Clark's route across the narrows of the Big Bend. Less than 1-mile wide at the point where Clark passed on foot, the landmark river bend took almost 2 days to travel by water.

Pierre Segment, a water-based trail from Antelope Creek Wildlife Area to Downstream Recreation Area below Oahe Dam at Missouri River mile 1072. Also, a land-based trail from Farm Island State Park to Downstream Recreation Area. With the exception of the short reach through the Pierre area, the entire Missouri River north-south crossing of South Dakota is impounded. Although influenced by releases from Oahe Dam above and the fluctuation of Lake Sharpe below, the Missouri River at Pierre retains a near natural condition.

La Verendrye Monument, a historic site at which a stone monument on a bluff overlooking Fort Pierre and the Missouri River valley marks the first recorded exploration into South Dakota. Traveling overland from their post on the Assiniboin River in Canada, the La Verendrye brothers, explorers and traders, buried a lead tablet on the bluff in 1743 claiming the area for France.

Lake Oahe Segment, a water-based trail from Oahe Dam, South Dakota, to Fort Rice Recreation Area, North Dakota, at Missouri River mile 1275. Also paralleling land-based trails incrementally developed to connect west shore recreation areas. Oahe Dam, a few miles north of Pierre, South Dakota, creates one of the world's largest manmade lakes, impounding the Missouri River as far upstream as Bismarck, North Dakota. During average summer fluctuations, the upstream area of the lake begins to resemble riverine conditions in the vicinity of Fort Rice, North Dakota.

Fort Rice/Garrison Segment, a water-based trail from Fort Rice Recreation Area to Garrison Dam, North Dakota, at Missouri River mile 1389. Also, a land-based trail developed along an abandoned railroad right-of-way from Fort Rice Recreation Area to Fort Abraham Lincoln State Park. From Garrison Dam at Pick City, the last remaining free-flowing segment of the Missouri River in North Dakota meanders downstream past Bismarck and into the headwaters of Lake Oahe.

Lake Sakakawea Segment, a water-based trail from Garrison Dam to Williston, North Dakota, at Missouri River mile 1553. Although the actual route and campsites of the expedition have been covered by lake waters, the scenic shoreline and existing recreation areas provide the opportunity for a water trail and historic interpretation.

Middle Missouri Segment, a water-based trail from Williston, North Dakota, to Fort Peck Dam, Montana, at Missouri River mile 1771. At 218 miles in length, this segment from Fort Peck Dam downstream to the U.S. Highway 84 bridge, is the longest remaining free-flowing reach of the Missouri River.

Fort Peck Lake Segment, a water-based trail from Fort Peck Dam to Robinson Bridge (U.S. Highway 191) at Missouri River mile 1920. Unlike the other main stem reservoirs on the Missouri River, recreational development on Fort Peck Lake is limited to a handful of widely separated areas. A water trail will be difficult to travel due to the distance between support facilities, yet the remote near wilderness of the shorelines should enhance any attempt to retrace the expedition.

Upper Missouri River Segment, a water-based trail from Robinson Bridge (U.S. Highway 191) to Fort Benton, Montana, spanning Missouri River miles 1921–2070. In 1976 a 149-mile portion of the Missouri River was included in the National Wild and Scenic River System with administration delegated to the Bureau of Land Management. This reach of the river is highly significant to the Lewis and Clark National Historic Trail since it shows little sign of change from the 1805–06 conditions encountered by the expedition.

Fort Benton Segment, a water-based trail beginning at Fort Benton, Montana, Riverfront Park and ending at Morony Dam at river mile 2105. The Missouri river below Morony Dam is confined within a steep canyon with very little access from the high plains on the canyon rim. This inaccessibility has preserved the river reach in a near historic condition.

Great Falls Portage Segment, a land-based trail from the mouth of Belt Creek below Morony Dam following as closely as possible the Great Falls portage route of the expedition to the historic location of White Bear Islands. This route includes undeveloped historic areas, local roads, and some city streets and commemorates the arduous, month-long, 18-mile portage around the series of falls on the Missouri River.

Great Falls Historic Sites Complex, a collection of historic sites, in the vicinity of Great Falls, Montana, including what remains of a series of falls discovered by the expedition, the springs at Giant Springs State Park, and other sites associated with the expedition's two long stays in the area in 1805 and 1806.

Wolf Creek Canyon Segment, a water-based trail following the Missouri River from Broadwater Bay Park, Great Falls, Montana, to Holter Dam covers river miles 2121–2211. The Missouri River above Great Falls, Montana, flows free through a scenic area despite being paralleled and crossed by State and Interstate Highways.

Mountain Lakes Segment, a series of water-based trails extending from Holter Dam to Townsend, Montana, at Missouri River mile 2279, including Holter, Hauser, and Canyon Ferry Lakes. A series of three dams impound the Missouri River as a string of reservoirs along its deepest canyons through the front ranges of the Rocky Mountains.

Headwaters Rivers Segment, a water-based trail of approximately 175 miles

following the Missouri River to the Three Forks and up the Jefferson and Beaverhead Rivers to Clark Canyon Dam. With the exception of two small diversion dams, the headwaters streams of the Missouri River explored by the expedition remain a free flowing route. Clark Canyon Dam, today, sits at the head of the expedition's Missouri River drainage navigation at the upper limits of the Beaverhead River.

Lemhi Pass Segment, a motor route along County 324 and local roads from Camp Fortunate Overlook on Clark Canyon Lake to Sacagawea Campground east of Lemhi Pass. Then the segment continues as a land-based trail from Sacagawea Campground over Lemhi Pass via low volume road and overland from the west side of the pass to the site of Cameahwait's Shoshoni Camp at the mouth of Sandy Creek on the Lemhi River, Idaho. This 40-mile route follows the expedition's first crossing of the Continental Divide.

Salmon and Bitteroot Valleys Segment, a motor route of 172 miles along Idaho State Route 28 and U.S. Highway 93 from Tendoy, Idaho, over Lost Trail Pass to the site of Travelers Rest near Missoula, Montana. Also, a short land-based trail following the expedition route up Tower Creek and overland to near the mouth of Sheep Creek on the North Fork of the Salmon River in Idaho. U.S. Highway 93 follows the expedition route so closely that marking it as a motor route provides excellent opportunities for retracement of the historic route. Many recreation areas and historic and interpretive sites relating to the expedition are located along the highway.

Lolo Trail Segment, a motor route from U.S. Highway 93 at Travelers Rest up U.S. Highway 12 to Lee Creek Campground, Montana; a land-based trail from Lee Creek Campground over the Bitteroot Mountains to Weippe Prairie Interpretive Area, Idaho; and a motor route from Weippe Prairie Interpretive Area following Idaho State Route 11, local roads, and U.S. Highway 12 to Canoe Campsite Interpretive Area on the Clearwater River. Both the eastbound and westbound expedition crossings of the Bitteroots are included in this segment.

Clearwater/Snake Rivers Segment, a water-based trail from Canoe Campsite Interpretive Area, where the expedition built canoes in 1805, down the Clearwater and Snake Rivers to the mouth of the Snake at Pasco, Washington, a distance of 179 miles. Four U.S. Army Corps of Engineers locks and dams on the Snake River have provided a navigable channel to Clarkston-Lewiston and transformed the River into a series of elongated lakes. Both rivers still provide outstanding scenic experiences as they flow through deep canyons with sides rising 1,600 feet above the river.

Columbia River Segment, approximately 325 miles from the confluence of the Snake and Columbia Rivers to the Pacific Ocean, including: a water-based trail along the entire segment length and along the north and south shores of the Columbia estuary following the water-borne explorations and up Lewis and Clark River to Fort Clatsop National Historic Site, Oregon; a land-based trail from Fort Clatsop National Historic Site to the Salt Cairn at Seaside, Oregon, and over Tillamook Head to Canon Beach, following Clark's route of January 6–10, 1806; and two motor routes in Washington along U.S. Highway 101 and local roads from Lewis and Clark Campsite Roadside to Cape Disappointment and Fort Canby State Park, and along U.S. Highway 197, State Route 14, and local roads from the Dalles to a point east of McNary Dam following the 1806 expedition return route. Both the eastbound and westbound expedition routes and the coastal explorations are covered in this segment.

Wallula to Weippe Return Segment, a motor route from Wallula, Washington, to Kamiah, Idaho, following U.S. Highway 12, Washington State Route 124, Idaho State Routes 7 and 64, and local roads. Also, a land-based trail from Kamiah to Weippe Prairie Interpretive Area, Idaho. This route follows closely the April 27 to June 19, 1806, horseback return route of the expedition and connects with the Lolo Trail Segment at Weippe Prairie.

Blackfoot/Sun Rivers Return Segment, a motor route following U.S. Highway 93, local roads, and Montana State Route 200, from Travelers Rest near Missoula to a point near the confluence of Landers Creek and the Blackfoot River, except for the land-based trail route along the south side of Blackfoot River between the McNamara and Roundup Bridge Crossings of State Route 200; a land-based trail up Landers Creek and over Lewis and Clark Pass to Lewis and Clark County Road 434 near Bean Lake; and a motor route from a point near Bean Lake along County 434, State Routes 21 and 200, and local roads to Great Falls, Montana. This segment retraces the 1806 return route of a small horseback party under command of Captain Lewis as it recrossed the Continental Divide on an Indian road.

Marias River Exploration Sites, a collection of historic and recreation sites along the route of exploration of the Marias by small parties under the direction of Captain Lewis in 1805 and 1806. Included in these sites is Camp Disappointment, the Two Medicine Fight Site, Tiber Reservior recreation areas, and local parks. A connecting motor route has not been determined.

Clark's Big Hold Return Segment, a land-based trail along the unimproved road from Ross' Hole near Sula, Montana, over Gibbons Pass to state Highway 43; or, alternatively, following the USDA-Forest Service Trail from Indian Trees Campground on U.S. Highway 93 to Gibbons Pass and then to State Highway 43; and a motor route along State Highway 43 from Gibbons Pass Road to Wisdom, then along County Road 278 and an unnumbered county road to Grant, Montana. After the expedition divided at Travelers Rest in July 1806, Captain Clark returned from the Bitteroot Valley by this route on his way to explore the Yellowstone River.

Yellowstone River Segment, a motor route along Interstate 90, following the horseback route of the Clark contingent from the Three Forks of the Missouri River over Bozeman Pass and along the Yellowstone River to Park City, Montana, in the vicinity of the canoe-building camp; then, a water-based trail from Buffalo Mirage Access near Park City to the mouth of the Yellowstone River on the Middle Missouri segment in North Dakota.

Dated: July 21, 1983.

Randall B. Pope,

Acting Regional Director.

[FR Doc. 83-20214 Filed 7-28-83; 8:45 am]

BILLING CODE 4310-70-M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

Joint Committee on Agricultural Research and Development of the Board for International Food and Agricultural Development; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act, notice is hereby given of the fifth meeting of the Joint Committee on Agricultural Research and Development (JCARD) of the Board for International Food and Agricultural Development (BIFAD) on August 18 and 19, 1983.

The purpose of the meeting is to assist AID in implementing the components of the Title XII program by providing a two-way communications link for concerns of AID and concerns of the universities. The meeting will be addressing several of the issues

identified in JCARD's "Program of Work Plan for 1983" including Regional strategies for development and the Strengthening Grant Program.

The full JCARD will meet from 9:00 a.m. to 5:00 p.m. on August 18 and from 9:00 a.m. to 12:00 noon on August 19. The Executive Committee will meet from 1:00 to 3:00 p.m. on August 19. The meeting will be held in the Holiday Inn, 1850 N. Fort Myer Drive, Rosslyn, Virginia. The meeting is open to the public. Any interested person may attend, may file written statements with the Committee before or after the meeting, or may present oral statements in accordance with procedures established by the Committee, and to the extent the time available for the meeting permits.

Dr. John Stovall, BIFAD Support Staff, is the designated A.I.D. Advisory Committee Representative at the meeting. It is suggested that those desiring further information write to him in care of the Agency for International Development, BIFAD Support Staff, Washington, D.C. 20523 or telephone him at (202) 632-8532.

Dated: July 25, 1983.

John Stovall,

A.I.D. Advisory Committee Representative, Joint Committee on Agricultural Research and Development, Board for International Food and Agricultural Development.

[FR Doc. 83-20215 Filed 7-28-83; 8:45 am]

BILLING CODE 6116-01-M

INTERSTATE COMMERCE COMMISSION

Motor Carriers; Finance Applications; Decision Notice

As indicated by the findings below, the Commission has approved the following applications filed under 49 U.S.C. 10924, 10926, 10931, and 10932.

We find: Each transaction is exempt from section 11343 of the Interstate Commerce Act, and complies with the appropriate transfer rules.

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.

Petitions seeking reconsideration must be filed within 20 days from the date of this publication. Replies must be filed within 20 days after the final date for filing petitions for reconsideration; any interested person may file and serve a reply upon the parties to the proceeding. Petitions which do not comply with the relevant transfer rules at 49 CFR 1181.4 may be rejected.

If petitions for reconsideration are not timely filed, and applicants satisfy the conditions, if any, which have been imposed, the application is granted and they will receive an effective notice. The notice will recite the compliance requirements which must be met before the tranferee may commence operations.

Applicants must comply with any conditions set forth in the following decision-notices within 20 days after publication, or within any approved extension period. Otherwise, the decision-notice shall have no further effect.

It Is Ordered

The following applications are approved, subject to the conditions stated in the publication, and further subject to the administrative requirements stated in the effective notice to be issued hereafter.

By the Commission.

Agatha L. Mergenovich,

Secretary.

For the following, please direct status inquiries to Team 4 at (202) 275-7669.

[OP4-FC-473]

MC-FC-81484. By decesion of July 20, 1983, issued under 49 U.S.C. 10561 and 10926 and the transfer rules at 49 CFR, the Review Board, Members Joyce, Williams, and Dowell, approved the transfer to EXPRESS CONSOLIDATION SYSTEMS CORP., Fairfield, NJ, of Permit No. FF-96, issued December 23, 1974, to NEW ENGLAND FORWARDING COMPANY, INC., (DEBTOR-IN-POSSESSION), Jersey City NJ, and Certificate No. MC-120477 (Sub-No. 3F), issued January 28, 1981, to INTERNATIONAL TRANSPORT, INC. (DEBTOR-IN-POSSESSION), Boston, MA, the permit authorizes the transportation of commodities generally, between points in that part of the U.S. in and east of ND, SD, NE, KS, OK, and TX, on the one hand, and, on the other, ports on the Atlantic and Gulf coasts of the U.S., subject to container and foreign commerce restrictions, and general commodities (except classes A and B explosives, household goods, unaccompanied baggage, and motor vehicles), between points in AZ, CO, ID, MT, NV, NM, UT, and WY, on the one hand, and, on the other, all ports located on the Atlantic and Gulf coasts of the U.S., and U.S. Great Lakes ports, subject to a foreign commerce restriction; the certificate authorizes the transportation of general commodities (except classes A and B explosives), between points in the commercial zone of New York, NY, restricted to a prior or subsequent movement by water. Representative: William J. Lippman, P.O. Box 6060, Snowmass Village, CO 8161; (303) 923-4565, attorney for applicants.

[FR Doc. 83-20567 Filed 7-28-83; 8:45 am]

BILLING CODE 7035-01-M

Motor Carriers; Permanent Authority Decisions; Decision-Notice

Motor Common and Contract Carriers of Property (fitness-only); Motor Common Carriers of Passengers (fitness-only); Motor Contract Carriers of Passengers; Property Brokers (other than household goods). The following applications for motor common or contract carriage of property and for a broker of property (other than household goods) are governed by Subpart A of Part 1160 of the Commission's General Rules of Practice. See 49 CFR Part 1160, Subpart A, published in the **Federal Register** on November 1, 1982, at 47 FR 49583, which redesignated the regulations at 49 CFR 1100.251, published in the **Federal Register** on December 31, 1980. For compliance procedures, see 49 CFR 1160.19. Persons wishing to oppose an application must follow the rules under 49 CFR Part 1160, Subpart B.

The following applications for motor common or contract carriage of passengers filed on or after November 19, 1982, are governed by Subpart D of the Commission's Rules of Practice. See 49 CFR Part 1160, Subpart D, published in the **Federal Register** on November 24, 1982, at 49 FR 54371. For compliance procedures, see 49 CFR 1160.86. Persons wishing to oppose an application must follow the rules under 49 CFR Part 1160, Subpart E.

These applications may be protested *only* on the grounds that applicant is not fit, willing, and able to provide the transportation service or to comply with the appropriate statutes and Commission regulations.

Applicant's representative is required to mail a copy of an application, including all supporting evidence, within three days of a request and upon payment to applicant's representative 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, or jurisdictional

questions) we find, preliminarily, that each applicant has demonstrated that it 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. This presumption shall not be deemed to exist where the application is opposed. 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 opposition in the form of verified statements filed on or before 45 days from date of publication, (or, if the application later becomes unopposed) appropriate authorizing documents will be issued to applicants with regulated operations (except those with duly noted problems) and will remain in full effect only as long as the applicant maintains appropriate compliance. The unopposed applications involving new entrants will be subject to the issuance of an effective notice setting forth the compliance requirements which must be satified before the authority will be issued. Once this compliance is met, the authority will be issued.

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.

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."

Please direct status inquires about the following to Team 4 at (202) 275-7669.

Volume No. OP4-469

Decided: July 21, 1983.

By the Commission, Review Board, Members: Carleton, Parker and, Joyce.

MC 148487 (Sub-4), filed July 14, 1983. Applicant: HUFFMAN TRUCKING CO., P.O. Box 973, Chatsworth, CA 91311. Representative: Milton W. Flack, 8484 Wilshire Blvd. Suite 840, Beverly Hills, CA 90211 (213) 655-3573. As a *broker of general commodities* (except household goods), between points in the U.S. (except AK and HI).

MC 154787 (Sub-2), filed July 13, 1983. Applicant: PAY JERREL, INC., P.O. Box 69, Miles City, MT 59301. Representative: Charles A. Murray, Jr., 2822 Third Ave., N., Billings, MT 59101 (406) 232-4244. Transporting (1) *general commodities* (except classes A and B explosives and household goods), between points in PA, on the one hand, and, on the other, those points in the U.S. in and west of MI, OH, KY, TN, and MS, and (2) transporting, for or on behalf of the United States Government, *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions), between points in the U.S. (except AK and HI).

Note.—Because this application includes issues subject to a finding of public interest as well as fitness only, it will be published in two volumes of this **Federal Register**. Part (1) will be published in Vol. 468. Part (2) will be published in Vol. 469.

MC 169167, filed July 13, 1983. Applicant: DORIS M. GADZALA d.b.a. GEM LINES, 2200 W. 159th St., Markham, IL 60426. Representative: Eugene T. McHugh (same address as applicant) (312) 596-0711. As a *broker of general commodities* (except household goods), between points in the U.S.

MC 169216, filed July 14, 1983. Applicant: FREIGHT SERVICE BUREAU, INC., 219 Winding Way, Morrisville, PA 19067. Representative: Robert L. Cope, Suite 501, 1730 M St., NW., Washington, DC 20036 (202) 296-2900. As a *broker of general commodities* (except household goods), between points in the U.S. (except AK and HI).

MC 169217, filed July 13, 1983. Applicant: BRYCE ELLIS d.b.a. SNAKE RIVER BROKERAGE, Box 203, Moreland, ID 83256. Representative: Thimothy R. Stivers, P.O. Box 1576, Boise, ID 83701 (208) 343-3071. As a *broker of general commodities* (except household goods), between points in the U.S.

MC 169227, filed July 13, 1983. Applicant: JOED BUS, INC., 2382 Boynton Place, Brooklyn, NY 11223. Representative: Sidney J. Leshin, 3 E. 54th St., New York, NY 10022; (212) 759-3700. Transporting *passengers*, in charter and special operations, between points in the U.S. (except HI).

Note.—Applicant seeks to provide privately-funded charter and special transportation.

MC 169237, filed July 14, 1983. Applicant: CASINO CITY TOURS, INC. t.a. EXECUTIVE LIMOUSINE, P.O. Box 248, Absecon, NJ 08201. Representative: Pasquale J. Cardone, Linwood Professional Plaza, Suite 24, 2021 New Rd., Linwood, NJ 08221; (609) 927-4999. Transporting *passengers*, in charter and special operations, between points in NJ, NY, PA, VA, WV, RI, VT, NH, NC, MA, CT, DE, and MD.

Note.—Applicant seeks privately-funded charter and special transportation.

Volume No. OP4-471

Decided: July 19, 1983.

By the Commission, Review Board, Members: Joyce, Carleton, and Parker.

MC 169186, filed July 12, 1983. Applicant: DARNELL JAMES COLEMAN d.b.a. COLEMAN COACHES, 4040 Poplar St., Fairfax, VA 22030. Representative: P. L. A. Anderson (same address as applicant) (703) 385-0672. Transporting *passengers*, in charter and special operations, between points in the U.S.

Note.—Applicant seeks to provide privately-funded charter and special transportation.

MC 169196, filed July 12, 1983. Applicant: FEDERICK P. McGILLON d.b.a. McGILLION TRANSPORTATION SERVICES, 25906 Robin Circle, Mission Viejo, CA 92691. Representative: Frederick P. McGillion (same address as applicant) (714) 859-3364. As a *Broker of general commodities* (except household goods), between points in the U.S.

Volume No. OP4-475

Decided: July 21, 1983.

By the Commission, Review Board, Members: Parker, Joyce, and Williams.

MC 169236, filed July 15, 1983. Applicant: GOLDEN CHARTER SERVICE, INC., 1910 W. Columbia Ave., Philadelphia, PA 19121. Representative: Alan Kahn, 1430 Land Title Bldg., Philadelphia, PA 19110; (215) 561-1030. Transporting *passengers*, in charter and special operations, between points in the U.S. (except AK and HI).

Note.—Applicant seeks to provide privately-funded charter and special transportation.

Please direct status inquiries to Team 1, (202) 275-7992.

Volume No. OP-1-302.

Decided: July 22, 1983.

By the Commission, Review Board Members Parker, Williams, and Dowell.

MC 169131, filed July 11, 1983. Applicant: WESTINGHOUSE TRANSPORT LEASING CORP., 290 Leger Rd., North Huntingdon, PA 15642. Representative: John A. Vuono, 2310 Grant Bldg., Pittsburgh, PA 15219. As a *broker*, of *general commodities* (except household goods), between points in the U.S.

MC 169190, filed July 11, 1983. Applicant: DALE MURRAY ENTERPRISES, INC., 4401 W. Panola Rd., Ellenwood, GA 30049. Representative: Hughan R. H. Smith, 26 Kenwood Pl., Lawrence, MA 01841; (617) 657-6071. Transporting *food and other edible products and byproducts intended for human consumption* (except alcoholic beverages and drugs), *agricultural limestone and fertilizers, and other soil conditioners* by the owner of the motor vehicle in such vehicle, between points in the U.S. (except AK and HI).

MC 169191, filed July 11, 1983. Applicant: S & L EQUIPMENT, INC., d.b.a. S & L BROKERAGE SERVICES, 247 Dixie Highway North, South Bend, IN 46637. Representative: Paul D. Borghesani, Suite 300, Communicana Bldg., 421 South Second St., Elkhart, IN 46516; (219) 293-3597. As a *broker* of *general commodities* (except household goods), between points in the U.S. (except AK and HI).

MC 169201, filed July 11, 1983. Applicant: CISCO BROKERS, INC., Route 4 North, Carlinville, IL 62626. Representative: Edward G. Bazelon, 135 South LaSalle St., Suite 2106, Chicago, IL 60603; (312) 236-9375. As a *broker*, of *general commodities* (except household goods), between points in the U.S.

Please direct status inquiries about the following to Team 3 at (202) 275-5223.

Volume No. OP3-388A

Decided: July 21, 1983.

By the Commission, Review Board Members Carleton, Parker, and Krock.

MC 164984 (Sub-1), filed June 27, 1983. Applicant: KRAPF'S COACHES, INC., R.D. #2 Springton Rd., Glen Moore, PA 19343. Representative: D. Mark Thomas, 212 Locust St., P.O. Box 999, Harrisburg, PA 17108 (717) 255-7600. Transporting *passengers*, in charter and special operations, beginning and ending at points in PA, DE, NJ and MD and extending to points in the U.S. (except AK and HI).

Note.—Applicant seeks to provide privately-funded charter and special transportation.

MC 168975, filed June 28, 1983. Applicant: MINNIKO, INC., P.O. Box 34, Vancouver, WA 98611. Representative: C. Jack Pearce, 1000 Connecticut Ave., N.W., Suite 1200, Washington, D.C. 20036 (202) 785-0048. As a *broker* of *general commodities* (except household goods), between points in the U.S. (except AK and HI).

Volume No. OP3-339

Decided: July 19, 1983.

By the Commission, Review Board Members Williams, Carleton, and Krock.

MC 169084, filed July 7, 1983. Applicant: DISTRIBUTION FREIGHT SYSTEMS, INC., 2840 Headley Street, Philadelphia, PA 19137. Representative: Larry R. McDowell, 1200 Avenue of the Arts Bldg., Philadelphia, PA 19107 (215) 735-3090. As a *broker* of *general commodities* (except household goods), between points in the U.S. (except AK and HI).

MC 169085, filed July 5, 1983. Applicant: B & B BUS LINES, INC., 232 Sycamore Rd., Linthicum, MD 21090. Representative: Jeremy Kahn, Suite 733 Investment Bldg., 1511 K St., N.W., Washington, DC 20005 (202) 783-3525. Transporting *passengers*, in charter and special operations, between points in the U.S. (except HI).

Note.—Applicant seeks to provide privately-funded special and charter transportation.

MC 169094, filed July 8, 1983. Applicant: ENTERPRISE MANAGEMENT CONSULTANTS, INC., 4120 N. Rosemead Blvd., Rosemead, CA 91770. Representative: Milton W. Flack, 8484 Wilshire Blvd., Suite 840, Beverly Hills, CA 90211; (213) 655-3573. As a *broker of general commodities* (except household goods), between points in the U.S. (except AK and HI).

Volume No. OP3-344

Decided: July 22, 1983.

By the Commission, Review Board Members Carleton, Williams, and Krock.

MC 7205 (Sub-9), filed July 13, 1983. Applicant: POZZI BROTHERS TRANSPORTATION, INC., 21441 76th, S., P.O. Box 776, Kent, WA 98031. Representative: Michael A. Jonson, 300 Central Bldg., Seattle, WA 98104; (206) 624-2521. Transporting, for or on behalf of the United States Government, *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions), between points in the U.S. (except AK and HI).

MC 45414 (Sub-6), filed June 29, 1983. Applicant: HUB BUS LINES, INC., 321 Washington St., Somerville, MA 02143. Representative: Arthur M. White, 281 Pleasant St., P.O. Box 2547, Framingham, MA 01701; (617) 879-5000. Over *regular routes*, transporting *passengers*, Between Hartford, CT, and Logan International Airport, Boston, MA: From Hartford over Interstate Hwy 84 to junction Interstate Hwy 86, then over Interstate Hwy 86 to junction Interstate Hwy 90/MA Turnpike, then over Interstate Hwy 90/MA Turnpike to junction Interstate Hwy 93, and then over Interstate Hwy 93 to Logan International Airport, and return over the same route, serving all intermediate points.

Note.—Applicant seeks to provide regular-route service only in interstate or foreign commerce.

MC 165574 (Sub-1), filed July 5, 1983. Applicant: SFO AIRPORTER, INC., 923 Folsom St., San Francisco, CA 94107. Representative: Daniel W. Baker, 100 Pine St., Suite 2550, San Francisco, CA 94111; (415) 986-1414. Transporting *passengers*, in charter and special operations, between points in the U.S.

Note.—Applicant seeks to provide privately-funded special and charter transportation.

MC 166284 (Sub-1), filed July 15, 1983. Applicant: H. P. TRANSPORT, INC., 51 New Brunswick Ave., Hopelawn, NJ 08861. Representative: Morton E. Kiel, 475 S. Main St., Suite 2B, P.O. Box 489, New City, NY 10956; (914) 638-4007. As a *broker of general commodities* (except household goods), between points in the U.S. (except AK and HI).

MC 169055, filed July 5, 1983. Applicant: TONCHE TRANSIT, INC., Wittenberg Rd., Mt. Tremper, NY 12457. Representative: Glenn R. Every, Suite 302, 1000 Potomac St., N.W., Washington, D.C. 20007; (202) 965-6300. Transporting *passengers*, in charter and special operations, between points in the U.S. (except HI).

Note.—Applicant seeks to provide privately-funded charter and special transportation.

MC 169124, filed July 8, 1983. Applicant: BRONCO BUS CORP., 845 Nepperhan Ave., Yonkers, NY 10703. Representative: Sidney J. Leshin, 3 E. 54th St., New York, NY 10022; (212) 759-3700. Transporting *passengers*, in charter and special operations, between points in the U.S. (except HI). Condition: The person or persons who appear to be engaged in common control of another regulated carrier must either file an application under 49 U.S.C. 11343(a), or submit an affidavit stating why Commission approval is unnecessary, or submit a petition of exemption to the Secretary's Office. In order to expedite issuance of any authority please submit a copy of the affidavit or petition or proof of filing the application(s) for common control to Team 3, Room 2158.

Note.—Applicant seeks to provide privately-funded charter and special transportation.

MC 169134, filed July 8, 1983. Applicant: AFFORDABLE TRANSPORTATION SERVICES, INC., 1225 Central Ave., Albany, NY 12205. Representative: Lewis DeVoe (same address as applicant), (518) 438-7532.

Transporting *passengers*, in charter and special operations, beginning and ending at points in Albany, Saratoga, Rensselaer, and Schenectady Counties, NY, and extending to points in VT, MA, CT, ME, NH, NJ, RI, DE, and PA.

Note.—Applicant seeks to provide privately-funded special and charter transportation.

MC 169195, filed July 13, 1983. Applicant: FLORIDA ALL FREIGHT, INC., d.b.a. FAF, 1725 N. 1st St., Jacksonville Beach, FL 32250. Representative: James G. Keck, 1737 Park Terrace W., Atlantic Beach, FL 32233; (904) 246-7927). As a *broker of general commodities* (except household goods), between points in the U.S. (except AK and HI).

MC 169225, filed July 14, 1983. Applicant: ALBERTO BARBERI, 1307 Mifflin St., Philadelphia, PA 19148. Representative: Alan R. Squires, 900 Two Penn Center Plaza, Philadelphia, PA 19102; (215) 564-3880. Transporting *passengers*, in charter and special operations, between points in the U.S. (except AK and HI.

Note.—Applicant seeks to provide privately-funded charter and special transportation.

MC 169255, filed July 15, 1983. Applicant: CHERYL A. MOSSET, 6500 E. 88th Ave., Space 84, Henderson, CO 80640. Representative: Robert W. Wright, Jr., 5711 Ammons St., Arvada, CO 80002; (303) 424-1761. Transporting *food and other edible products and byproducts intended for human consumption* (except alcoholic beverages and drugs), *agricultural limestone and fertilizers, and other soil conditioners* by the owner of the motor vehicle in such vehicle, between points in the U.S. (except AK and HI).

[FR Doc. 83-20578 Filed 7-28-83; 8:45 am]

BILLING CODE 7035-01-M

Motor Carriers; Permanent Authority Decisions; Decision-Notice

Motor Common and Contract Carriers of Property (except fitness-only); Motor Common Carriers of Passengers (public interest); Freight Forwarders; Water Carriers; Household Goods Brokers. The following applications for motor common or contract carriers of property, water carriage, freight forwarders, and household goods brokers are governed by Subpart A of Part 1160 of the Commission's General Rules of Practice. See 49 CFR Part 1160, Subpart A, published in the **Federal Register** on November 1, 1982, at 47 FR 49583, which redesignated the regulations at 49 CFR 1100.251, published in the **Federal Register** December 31, 1980. For compliance procedures, see 49 CFR 1160.19. Persons wishing to oppose an application must follow the rules under 49 CFR Part 1160, Subpart B.

The following applications for motor common carriage of passengers, filed on or after November 19, 1982, are governed by Subpart D of 49 CFR Part 1160, published in the **Federal Register** on November 24, 1982 at 47 FR 53271. For compliance procedures, see 49 CFR 1160.86. Carriers operating pursuant to an intrastate certificate also must comply with 49 U.S.C. 10922(c)(2)(E). Persons wishing to oppose an application must follow the rules under 49 CFR Part 1160, Subpart E. In addition to fitness grounds, these applications may be opposed on the grounds that the transportation to be authorized is not consistent with the public interest.

Applicant's representative is required to mail a copy of an application, including all supporting evidence, within three days of a request and upon payment to applicant's representative 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 that it 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.

We make an additional preliminary finding with respect to each of the following types of applications as indicated: common carrier of property—that the service proposed will serve a useful public purpose, responsive to a public demand or need; water common carrier—that the transportation to be provided under the certificate is or will be required by the public convenience and necessity; water contrtact carrier, motor contract carrier of property, freight forwarder, and household goods broker—that the transportation will be consistent with the public interest and the transportation policy of section 10101 of chapter 101 of Title 49 of the United States Code.

These presumptions shall not be deemed to exist where the application is opposed. 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 opposition in the form of verified statements filed on or before 45 days from date of publication (or, if the application later becomes unopposed) appropriate authorizing documents will be issued to applicants with regulated operations (except those with duly noted problems) and will remain in full effect only as long as the applicant maintains appropriate compliance. The unopposed applications involving new entrants will be subject to the issuance of an effective notice setting forth the compliance requirements which must be satisfied before the authority will be issued. Once this compliance is met, the authority will be issued.

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.

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." Applications filed under 49 U.S.C. 10922(c)(2)(B) to operate in intrastate commerce over regular routes as a motor common carrier of passengers are duly noted.

Please direct status inquiries about the following to Team 4 at (202) 275-7659.

Volume No. OP4-468

Decided: July 21, 1983.

By the Commission, Review Board, Members: Carlton, Parker, and Joyce

MC 136496 (Sub-5), filed July 13, 1983. Applicant: ALLEN F. SEESHOLTZ, R.D. 3, P.O. Box 3755, Berwick, PA 18603. Representative: Gerald K. Gimmel, 444 N. Frederick Ave., Suite 200, Gaithersburg, MD 20877; (301) 840-8565. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in DE, MD, NJ, NY, OH and PA, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 151407 (Sub-11), filed July 14, 1983. Applicant: T & T TRUCKING, INC., 274 N.W. 37th St., Miami, FL 33127. Representative: D. Paul Stafford, P.O.

Box 45538, Dallas TX 75245; (214) 358-3341. Transporting *food and related products*, between points in the U.S. (except HI).

MC 154787 (Sub-2), filed July 13, 1983. Applicant: RAY JERREL, INC., P.O. Box 69, Miles City, MT 59301. Representative: Charles A. Murray, Jr., 2822 Third Ave., N., Billings, MT 59101; (406) 232-4244. Transporting (1) *general commodities* (except classes A and B explosives and household goods), between points in PA, on the one hand, and, on the other, those points in the U.S. in and west of MI, OH, KY, TN, and MS, and (2) transporting, for or on behalf of the United States Government, *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions), between points in the U.S. (except AK and HI).

Note.—Because this application includes issues subject to a finding of public interest as well as fitness only, it will be published in two volumes of this **Federal Register**. Part (1) will be published in Vol. 468. Part (2) will be published in Vo. 469.

MC 169226, filed July 14, 1983. Applicant: RON CABE, INCORPORATED, 1732 200th NE., Arlington, WA 98223. Representative: Andrew D. Schafer, 1200 IBM Bldg., Seattle, WA 98101; (206) 624-7373. Transporting (1) *lumber and wood products*, and (2) *such commodities* as are dealt in or used by manufacturers, wholesalers and retailers of animal feed between points in WA, OR, ID and MT.

Volume No. OP4-470

Decided: July 19, 1983.

By the Commission, Review Board, Members: Joyce, Carleton, and Parker.

MC 162206, filed July 13, 1983. Applicant: IMPERIAL FREIGHT SERVICES, INC., P.O. Box 53, 740 Lloyd Rd., Matawan, NJ 07747. Representative: Robert B. Pepper, 168 Woodbridge Ave., Highland Park, NJ 08904; (201) 572-5551. Transporting *paper and paper products, plastic products, food and related products, chemicals and related products, metal products, wire, time pieces, and clay, concrete, glass, or stone products*, between New York, NY, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 169187, filed July 11, 1983. Applicant: EARL L. and JOYCE L. RODEN d.b.a. E & J TRUCKING, P.O. Box 1144, 1538 Poplar, Roseburg, OR 97470. Representative: Earl L. Roden (same address as applicant) (503) 672-5605. Transporting *general commodities* (except classes A and B explosives and household goods), between points in the U.S., under continuing contract(s) with R & R Truck Brokers, Inc., of Central Points, OR.

MC 169206, filed July 13, 1983. Applicant: JERRY McCLURE, P.O. Box 72, Cooter, MO 63839. Representative: James T. Darby, 1021 Irving Ave., Colonial Beach, VA 22443; (804) 224-0773. Transporting *lumber and wood products*, between points in AL, AR, MO, IL, TN, LA, MS, TX, IA, WI, IN, and KY.

Volume No. OP4-472

Decided: July 8, 1983.

By the Commission, Review Board, Members: Dowell, Joyce and Fortier.

MC 160767 (Sub-10), filed June 30, 1983. Applicant: LADD TRANSPORTATION, INC., #1 Plaza Center, Box HP 3, High Point, NC 27261. Representative: Beverly C. Davis (same address as applicant) (919) 889-0333. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S., (except AK and HI), under continuing contract(s) with Ralston Purina Company, of St. Louis, MO, Interstate Paper Company, of Riceboro, GA, American Backhaulers Corporation, of Chicago, IL, Vertac Chemical Company, of Vicksburg, MS, Great Southwest Warehouses, Inc., of Houston, TX, Chairs LTD, of High Point, NC and Union Camp Corporation, of Wayne, NJ.

Volume No. OP-474

Decided: July 21, 1983.

By the Commission, Review Board, Members: Parker, Joyce, and Williams.

MC 102616 (Sub-1041), filed July 13, 1983. Applicant: COASTAL TANK LINES, INC., 250 N. Massillon Rd., Akron, OH 44319. Representative: Fred H. Daly, 2555 M St., NW., Suite 100, Washington, DC 20037; (202) 293-3204. Transporting *commodities in bulk*, between points in the U.S. (except AK and HI), under continuing contract(s) with persons who are engaged in the manufacture, distribution, sale, or transportation of commodities in bulk.

MC 121507 (Sub-12), filed July 13, 1983. Applicant: PERISHABLE DELIVERIES, INC., 1520 Beason St., Baltimore, MD 21230. Representative: Dixie C. Newhouse, 1329 Pennyslvania Ave., P.O. Box 1417, Hagerstown, MD 21740; (301) 797-6060. Transporting *food and related products*, between points in the U.S. (except AK and HI).

MC 128427 (Sub-4), filed July 5, 1983. Applicant: COOK MOVING SYSTEMS, INC., 1845 Dale Rd., Buffalo, NY 14225. Representative: B. W. LaTourette, Jr., 11 S. Meramec, Suite 1400, St. Louis, MO 63105; (314) 727-0777. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in the U.S., under continuing contract(s) with International Business Machines Corporation (IBM), of Armonk, NY.

MC 148517 (Sub-4), filed June 16, 1983. Applicant: CENTRAL MICHIGAN TRUCKING, INC., 3801, 36th St., SE., Grand Rapids, MI 49508. Representative: Michael P. Zell, 110 Ionia Ave., NW., Suite 7000, Grand Rapids, MI 49503; (616) 774-0400. Transporting *general commodities* (except classes A and B explosives, and commodities in bulk), between points in the U.S. (except AK and HI).

MC 150987 (Sub-5), filed July 15, 1983. Applicant: DYSART'S TRANSPORTATION, INC., MRC 156, Bangor, ME 04401. Representative: John F. O'Donnell, 60 Adams St. P.O. Box 238, Milton, MA 02187; (617) 698-1660. Transporting *general commodities* (except classes A and B explosives, and household goods) between points in the U.S. (except AK and HI).

MC 155957 (Sub-1), filed July 15, 1983. Applicant: NATIONWIDE DRIVEWAY, INC., 3400 S. Federal Blvd., Denver, CO 80110. Representative: J. Albert Sebald, 1700 Western Federal Bldg., Denver, CO 80202; (303) 825-5111. Transporting *motor vehicles*, between points in OK, KS, NE, ND, SD, WY, MT, ID, UT, and NM.

MC 165067 (Sub-1), filed July 15, 1983. Applicant: DASH TRANSPORTATION INC., 3950 Park Ave., Bronx, NY 10457. Representative: Arthur Wagner, 342 Madison Ave., New York, NY 10173; (212) 755-9500. Over regular routes, transporting *passengers*, between New York, NY and The Meadowlands Sports Complex at or near Rutherford, NJ: (A) from New York, NY over city streets and highways to junction George Washington Bridge, then over George Washington Bridge to junction Interstate Hwy 95 (New Jersey Turnpike), then over Interstate Hwy 95 to The Meadowlands Sports Complex at or near Rutherford, NJ, and return over the same route, serving all intermediate points, and (B) from New York, NY over city streets and highways to junction Lincoln Tunnel, then through Lincoln Tunnel to junction Interstate Hwy 495, then over Interstate Hwy 495 to junction NJ Hwy 3, then over NJ Hwy 3 to The Meadowlands Sports Complex at or near Rutherford, NJ, and return over the same route, serving all intermediate points.

Note.—Applicant seeks to provide regular-route service in interstate or foreign

commerce and in intrastate commerce under 49 U.S.C. 10922(c)(2)(B) over the same route.

MC 169157, filed July 11, 1983. Applicant: SEVEN-D TRUCKING, INC., Cleveland Rd. E, Rte. 20, P.O. Box 204, Norwalk, OH 44857. Representative: James Duvall, 2515 W. Granville Rd., Worthington, OH 43085, (614) 889-2531. Transporting *general commodities* (except classes A and B explosives and household goods), between points in the U.S. (except AK and HI).

MC 169246, filed July 15, 1983. Applicant: A-A-A LINES, 1740 Crestline Dr., Lincoln, NE 68506. Representative: Max H. Johnston, P.O. Box 6597, Lincoln, NE 68506, (402) 488-4841. Transporting *such commodities* as are dealt in or used by institutional and food service businesses, between points in the U.S. (except AK and HI), on the one hand, and, on the other, points in Lancaster County, NE.

Please direct status inquiries about the following to Team Three (3) at (202) 275-5223.

Volume No. OP3-337

Decided: July 21, 1983.

By the Commission, Review Board Members Carleton, Parker, and Krock.

MC 113855 (Sub-553), filed June 28, 1983. Applicant: INTERNATIONAL TRANSPORT, INC., 2450 Marion Rd., S.E., Rochester, MN 55903. Representative: Leonard L. Bennett (same address as applicant), (507) 288-3331. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with Lake Shore, Inc., of Iron Mountain, MI.

MC 121214 (Sub-2), filed June 27, 1983. Applicant: JOHN A. HANSON CO., INC., 365 Dorchester Ave., South Boston, MA 02127. Representative: George C. O'Brien, 342 Wild Harbor Rd., North Falmouth, MA 02556, (617) 563-9345. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in ME, NH, VT, MA, RI, CT, NY and NJ.

MC 135924 (Sub-40), filed June 29, 1983. Applicant: SIMONS TRUCKING CO., INC., 3851 River Rd., Grand Rapids, MN 55744. Representative: Samuel Rubenstein, P.O. Box 5, Minneapolis, MN 55440, (612) 542-1121. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between Chicago, IL, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 146944 (Sub-6), filed June 28, 1983. Applicant: LYKES TRANSPORT, INC., P.O. Box 97, Dade City, FL 33525. Representative: Ansley Watson, Jr., P.O. Box 1531, Tampa, LF 33601, (813) 223-2411. Transporting *general commodities* (except classes A and B Explosives, household goods and commodities in bulk), between points in the U.S. (except AK and HI).

MC 168855, filed June 23, 1983. Applicant: GREGORY S. EDWARDS, R.D. 1, Box 73, West Finley, PA 15377. Representative: David W. Donley, 610 Smithfield St., Suite 400, Pittsburgh, PA 15222, (412) 471-6272. Transporting *building materials, ores and minerals, coal, chemicals, scrap,* and *metal products,* between points in MI, OH, PA, and WV.

MC 168974, filed June 28, 1983. Applicant: WW TRANSPORT, INC., RR #1, Box 98B, Foreston, MN 56330. Representative: James E. Ballenthin, 1016 Conwed Tower, 444 Cedar St., St. Paul, MN 55101, (612) 227-7731. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S. (except AK and HI).

MC 169054, filed July 5, 1983. Applicant: TALLY-HO TRUCKING, INC., 1121 Boyce Rd., Pittsburgh, PA 15241. Representative: Arthur J. Diskin, 402 Law & Finance Bldg., Pittsburgh, PA 15219, (412) 281-9494. Transporting (1) *petroleum products* and (2) chemicals and related products, between points in the U.S. (except AK and HI), under continuing contract(s) with Petromax, Ltd., and Petromark, Inc., both of McKees Rocks, PA.

Volume No. OP3-338

Decided: July 19, 1983.

By the Commission, Review Board Members Williams, Carleton, and Krock.

MC 2934 (Sub-162), filed July 1, 1983. Applicant: AERO MAYFLOWER TRANSIT COMPANY, INC., 9998 N. Michigan Rd., Carmel, IN 46032. Representative: W. G. Lowry (same address as applicant), (317) 875-1000. Transporting *household goods,* between points in the U.S. under continuing contract(s) with Storage Technology Corporation, of Louisville, Co.

MC 167395, filed June 23, 1983. Applicant: P. SAWCHUK TRUCKING LTD., 12345 90 Street, Edmonton, Alberta, Canada T5B 3Z6. Representative: Peter Sawchuk (same address as applicant), (403) 474-0671. Transporting (1) *building products,* between points of entry on the International boundary line between the U.S. and Canada in ID and MT, on the one hand, and, on the other, points in CA, WA, OR, NV, ID, AZ, and UT, under continuing contract(s) with Building Products of Canada Ltd, Edmonton, Alberta, Canada, (2) *glass spheres,* between port of entry on the International Boundary line between the U.S. and Canada in ID and MT, on the one hand, and, on the other, points in CA, WA, OR, ID, NV, and AZ, under continuing contract(s) with Canasphere Industries (Alta) Ltd., Calgary, Alberta, Canada, (3) *truck and trailer parts and components,* between port of entry on the International boundary line between the U.S. and Canada in ID and MT, on the one hand, and, on the other, points in CA, WA, OR, NV, ID, and AZ, under continuing contract(s) with McCoy Bros. Group, Edmonton, Alberta, Canada, (4) *lumber,* between point of entry on the International boundary line between the U.S. and Canada in ID and MT, on the one hand, and, on the other, points in CA, WA, OR, NV, ID, and AZ, under continuing contract(s) with (a) Spruceland Millworks, Ltd., Spruce Grove, Alberta, Canada, and (b) Sunchild Forest products Ltd., of Winterburn, Alberta, Canada, and (5) *office furniture,* between port of entry on the International boundary line between the U.S. and Canada in ID, and MT, on the one hand, and, on the other, points in CA,WA, OR, TX, and ID, under continuing contract(s) with Superior Steel Desk (MFG) Ltd., Edmonton, Alberta, Canada.

MC 169045, filed July 5, 1983. Applicant: DLM TRANSPORTATION SERVICES, 961 Fairway Dr., City of Industry, CA 91789. Representative: Raleigh Millspaugh (same address as applicant), (213) 332-5242. Transporting *general commodities* except classes A and B explosives, household goods, and commodities in bulk), between points in CA.

MC 169074, filed July 7, 1983. Applicant: N.B.N. TRANSPORTATION SERVICES CO., 340 South Stiles Street, Linden, NJ 07036. Representative: Michael R. Werner, 241 Cedar Lane, Teaneck, NJ 07666, (201) 836-1144. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in the U.S. on and east of a line beginning at the mouth of the Mississippi River, and extending along the Mississippi River to its junction with the western boundary of Itasca County, MN, thence northward along the western boundaries of Itasca and Koochiching Counties, MN, to the

international boundary line between the United States and Canada.

MC 168965, filed June 28, 1983. Applicant: MARK FRANCIS SMITH, d.b.a. ANIMALS IN MOTION, Box 141, Centreville, MD 21617. Representative: (Same as applicant), (301) 556-7700. Transporting *wild animals*, between points in the U.S.

Volume No. OP3-351

Decided: June 30, 1983.

By the Commission, Review Board Members Carleton, Parker and Joyce.

MC 147524 (Sub-11), filed June 20, 1983. Applicant: SINED LEASING, INC., Wrightstown-Cookstown Rd., Wrightstown, NJ 08562. Representative: Daniel J. Sweeney, 1750 Pennsylvania Ave., N.W., Washington, D.C. 20006, (202) 393-5710. Transporting (1) *farm products* and (2) *food and related products*, between points in the U.S. (except AK and HI), under continuing contract(s) with shippers or manufacturers of farm products and food and related products.

Volume No. OP3-345

Decided: July 22, 1983.

By the Commission, Review Board Members Carleton, Krock, and Dowell.

MC 1305 (Sub-2), filed July 13, 1983. Applicant: SELECTIVE TRANSPORTATION CORPORATION, 560 60th St., West New York, NJ 07093. Representative: George A. Olsen, P.O. Box 357, Gladstone, NJ 07934, (201) 234-0301. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in the U.S. (except AK and HI).

MC 2934 (Sub-165), filed July 13, 1983. Applicant: AERO MAYFLOWER TRANSIT COMPANY, INC., 9998 N. Michigan Rd., Carmel, IN 46032. Representative: W. G. Lowry (same address as applicant), (317) 875-1000. Transporting *household goods*, between points in the U.S. (except AK and HI), under continuing contract(s) with Armstrong World Industries, Inc., of Lancaster, PA.

MC 102295 (Sub-48), filed July 8, 1983. Applicant: GUY HEAVENER, INC., 480 School Lane, Harleysville, PA 19438. Representative: Maxwell A. Howell, 2554 Massachusetts Ave., N.W., Washington, DC 20008, (202) 483-8633. Transporting *general commodities* (except classes A and B explosives and household goods), between points in the U.S. (except HI), under continuing contract(s) with Heavener Transportation, Inc., of Harleysville, PA.

MC 113855 (Sub-554), filed July 13, 1983. Applicant: INTERNATIONAL TRANSPORT, INC., 2450 Marion Rd., SE., Rochester, MN 55903. Representative: Leonard L. Bennett (same address as applicant), (507) 288-3381. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in the U.S. (except HI), under continuing contract(s) with Cincinnati Milacron Marketing Company, of Cincinnati, OH.

MC 133655 (Sub-235), filed July 12, 1983. Applicant: TRANS-NATIONAL TRUCK, INC., P.O. Box 809072, Dallas, TX 75380. Representative: Thomas E. Vandenberg, P.O. Box 2545, Green Bay, WI 54306, (414) 498-7689. Transporting *such commodities* as are dealt in or used by manufacturers and distributors of containers and related products, between points in the U.S. (except AK and HI), under continuing contract(s) with manufacturers and distributors of containers and related products.

MC 144724 (Sub-5), filed July 15, 1983. Applicant: WALTER J. SHEETS & SONS, INC., 100 Bittles Cove, Lewisburg, WV 24901. Representative: Walter J. Sheets (same address as applicant), (304) 497-2175. Transporting *building materials* and *farm products*, between points in IL, TN, WV, VA, KY, NC, SC, PA, GA, OH, MD, DE, NJ, NY, and IN.

MC 149145 (Sub-5), filed July 15, 1983. Applicant: NATIONAL TRANSPORTATION SYSTEMS, INC., 1315 Directors Row, Suite 10A, Fort Wayne, IN 46808. Representative: Thomas E. Vandenberg, P.O. Box 2298, Green Bay, WI 54306, (414) 498-7689. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with Montgomery Ward & Co., its subsidiaries and affiliates, of Chicago, IL.

MC 152935 (Sub-13), filed July 13, 1983. Applicant: HILL-ROM COMPANY, INC., Highway 46, Batesville, IN 47006. Representative: Steve A. Oldham (same address as applicant), (812) 934-7169. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with Highway Transport Services, Inc., of Atlanta, GA.

MC 156645 (Sub-2), filed July 13, 1983. Applicant: FLEET CARRIERS, INC., 3158 Des Plaines Ave., Des Plaines, IL 60018. Representative: Thomas M. O'Brien, 180 North Michigan Ave., Suite 1700, Chicago, IL 60601, (312) 263-1600. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in the U.S. (except AK and HI).

MC 162424 (Sub-1), filed July 14, 1983. Applicant: BEN MASSIE, d.b.a. TRANSPORTATION DEL NORTE, P.O. Box 483, Pine River, MN 56474. Representative: Robert N. Maxwell, P.O Box 2471, Fargo, ND 58108, (701) 237-4223. Transporting *building materials*, between points in IL, IN, IA, MN, MO, NE, ND, SD, and WI, on the one hand, and, on the other, points in the U.S. (except AK and HI).

Please direct status inquiries to Team 1 (202) 275-7992.

Volume No. OP1-301

Decided: July 22, 1983.

By the Commission, Review Board Members Parker, Williams, and Dowell.

MC 460 (Sub-12), filed July 5, 1983. Applicant: OKLAHOMA TRANSPORTATION COMPANY, 1206 Exchange Ave., Oklahoma City, OK 73108. Representative: Curtis M. Long, 510 Oklahoma Natural Bldg., Tulsa, OK 74119, (918) 585-8141. Transporting *passengers*, between Enid, OK, and Woodward, OK, over OK Hwy 15, serving all intermediate points.

Note.—Applicant seeks to provide regular-route service in interstate or foreign commerce and in intrastate commerce under 49 U.S.C. 10922(c)(2)(B) over the same route.

MC 43381 (Sub-2), filed July 13, 1983. Applicant: J. SUPOR & SON TRUCKING & RIGGING CO., INC., 2 Bergen St., Harrison, NJ 07029. Representative: George A. Olsen, P.O. Box 357, Gladstone, NJ 07934, (201) 234-0301. Transporting *general commodities* (except classes A and B explosives and household goods), between points in the U.S. (except AK and HI).

MC 108531 (Sub-28), filed July 5, 1983. Applicant: BLUE BIRD COACH LINES, INC., 502-504 N. Barry St., Olean, NY 14760. Representative: Ronald W. Malin, Key Bank Bldg., 4th Fl., Jamestown, NY 14701, (716) 664-5210. Transporting *passengers*, between Buffalo, NY, and New York, NY, serving all intermediate points, from Buffalo, NY, over Interstate Hwy 90 to junction Interstate Hwy 490, then over Interstate Hwy 490 to junction Interstate Hwy 90, then over Interstate Hwy 90 to Syracuse, NY, then over Interstate Hwy 81 to Binghamton, NY, then over NY Hwy 17 to the NY-NJ State line, then over NJ Hwy 17 to junction NJ Hwy 4, then over NJ Hwy 4, to New York, NY, and return over the same route. NOTE: Applicant seeks to provide regular-route service in interstate or foreign commerce and in intrastate

commerce under 49 U.S.C. 10922(c)(2)(B) over the same route. Condition: The person or persons who appear to be engaged in common control of another regulated carrier must either (1) state that a petition has been filed under 49 U.S.C. 11343(e) seeking an exemption from the requirements of 49 U.S.C. 11343, (2) file an application under 49 U.S.C. 11343(A), or (3) submit an affidavit indicating why such approval is unnecessary to the Secretary's office. In order to expedite issuance of any authority, please submit a copy of this filing to Team 1, Room 2379.

MC 125551 (Sub-31), filed July 13, 1983. Applicant: K & W TRUCKING CO., INC., 101 Cooper Avenue North, P.O. Box 1415, St. Cloud, MN 56302. Representative: E. Lewis Coffey (same address as applicant), (612) 255-7474. Transporting *general commodities* (except classes A and B explosives and household goods), between points in the U.S. (except HI), under continuing contract(s) with Willners Fuel Distributors, of Fairbanks, AK.

MC 141871 (Sub-30), filed July 5, 1983. Applicant: WNI, INC., 8560 S. W. Salish Lane, Wilsonville, OR 97070. Representative: Thomas E. Vandenberg, P.O. Box 2298, Green Bay, WI 54306, (414) 498-7689. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with Montgomery Ward & Co., and its subsidiaries and affiliates, of Chicago, IL.

MC 146300 (Sub-6), filed July 11, 1983. Applicant: J-LOR TRUCKING, INC., P.O. Box 5908, Kent, WA 98031. Representative: R. D. Kleinz, 625 Strander Blvd., Suite C, Seattle, WA 98188, (206) 575-0493. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in WA, ID, OR, CA, MT, WY, NV, AZ and CO.

MC 148840 (Sub-5), filed July 5, 1983. Applicant: SHANE INDUSTRIES, INC., 2724 East Annadale Ave., Fresno, CA 93706. Representative: Ellis Ross Anderson; 100 Bush St., Suite 410, San Francisco, CA 94104, (415) 421-6743. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), (A) Over Regular Routes, (1) between San Clemente, CA, and junction U.S. Hwy 101 and CA Hwy 1, near Leggett, CA, over CA Hwy 1, (2) between the CA/OR State line and Los Angeles, CA, over U.S. Hwy 101, (3) between junction Interstate Hwy 5 and ports of entry on the international boundary line between the U.S. and Mexico, and junction the CA/OR State line, over Interstate Hwy 5, (4) between junction CA Hwy 99 and Interstate Hwy 5, near Mettler, CA, and Red Bluff, CA, over CA Hwy 99, (5) between junction Interstate Hwy 15 and U.S. Hwy 395 near Hesperia, CA, and the NV/CA State line near Colville, CA, over U.S. Hwy 395, (6) between the OR/CA State line and the NV/CA State line near Vinton, CA, over U.S. Hwy 395, (7) between junction CA Hwys 49 and 70 at or near Vinton, CA, and Oakhurst, CA, over CA Hwy 49, (8) between junction CA Hwy 89 and Interstate Hwy 5 near Mount Shasta, CA, and junction CA Hwy 89 and U.S. Hwy 395 near Topaz, CA, over CA Hwy 89, (9) between junction CA Hwys 29 and 20 at or near Upper Lake, CA, and Vallejo, CA, over CA Hwy 29, (10) between junction CA Hwy 70 and Interstate Hwy 5 near Sacramento, CA, and junction CA Hwy 70 and U.S. Hwy 395 near Chilcoot, CA, over CA Hwy 70, (11) between Santa Cruz, CA, and San Rafael, CA, over CA Hwy 17, (12) between San Jose, CA and junction Interstate Hwys 680 and 80 near Cordelia, CA, over Interstate Hwy 680, (13) between Yosemite Village, CA and Fresno, CA, over CA Hwy 41, (14) between junction CA Hwys 99 and 65 near Bakersfield, CA, and junction CA Hwys 65 and 198 near Visalia, CA, over CA Hwy 65, (15) between junction CA Hwy 14 and Interstate Hwy 5 near San Fernando, CA and junction CA Hwy 14 and U.S. Hwy 395 near Little Lake, CA, over CA Hwy 14, (16) between San Diego, CA and the NV/CA State line, over Interstate Hwy 15, (17) between Calexico, CA and junction Interstate Hwy 10 and CA Hwy 86 near Indio, CA, over CA Hwy 86, (18) between San Diego, CA and the AZ/CA State line near Winterhaven, CA, over Interstate Hwy 8, (19) between Santa Monica, CA and the AZ/CA State line near Blythe, CA, over Interstate Hwy 10, (20) between junction Interstate Hwys 15 and 40 and the AZ/CA State line near Needles, CA, over Interstate Hwy 40, (21) between junction CA Hwy 198 and U.S. Hwy 101 near San Lucas and junction Interstate Hwy 5 and CA Hwy 198, over CA Hwy 198, (22) between Watson, CA and junction CA Hwys 152 and 99 near Fairmead, CA, over CA Hwy 152, (23) between Hayward, CA and junction Interstate Hwys 205 and 5 near Banta, CA, from Hayward over Interstate Hwy 580 to junction Interstate Hwy 205, then over Interstate Hwy 205 to junction Interstate Hwy 5, and return over the same route, (24) between junction Interstate Hwy 5 and CA Hwy 120 near Banta, CA, and junction CA Hwys 120 and 140 near Yosemite Village, CA, over CA Hwy 120, (25) between Hercules, CA and junction CA Hwys 4 and 89 near Markleeville, CA, over CA Hwy 4, (26) between San Francisco, CA and the NV/CA State line near Truckee, CA, over Interstate Hwy 80, (27) between Sacramento, CA and the NV/CA State line near South Lake Tahoe, CA, over U.S. Hwy 50, (28) between Noyo, CA and junction CA Hwy 20 and Interstate Hwy 80 near Emigrant Gap, CA, over CA Hwy 20, (29) between Arcata, CA and Alturas, CA, over CA Hwy 299, (30) between Bakersfield, CA and Barstow, CA, over CA Hwy 58, and (31) between Merced, CA and Mariposa, CA, over CA Hwy 140, serving all intermediate points on routes (1) through (31) above and serving all other points in CA as off-route points, and (B) Over Irregular Routes, between points in CA.

MC 153410 (Sub-1), filed June 23, 1983, and previously noticed in the **Federal Register** issue of July 12, 1983. Applicant: DEBRYNNT McDUFFIE, d.b.a. McDUFFIE'S MOVING SERVICE, P.O. Box 6378, New Orleans, LA 70174. Representative: Marshall Kragen, 1919 Pennsylvania Ave., N.W., Suite 300, Washington, DC 20006, (202) 466-3778. Transporting *household goods,* between points in the U.S. (except AK and HI) under continuing contract(s) with persons as defined in Section 10923 of the Motor Carrier Act of 1980 who are individual shippers, commercial shippers, or government bill of lading shippers.

Note—.The purpose of this republication is to show the correct contracting shippers.

MC 154801 (Sub-1), filed July 13, 1983. Applicant: A. L. OWENS TRUCKING, INC., Old Hwy. 99 N., Box 28A, Glendale, OR 97442. Representative: William D. Taylor, 100 Pine St., #2550, San Francisco, CA 94111, (415) 986-1414. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in OR, WA, ID, NV, AZ, and CA, under continuing contract(s) with Pirate Express, Inc., of Glendale, OR.

MC 162730, filed July 14, 1983. Applicant: CASEY CARTAGE, INC., 4631 South Racine Ave., Chicago, IL 60609. Representative: Stephen H. Loeb, Suite 4, 2777 Finley Road, Downers Grove, IL 60515. Transporting *general commodities (except classes A and B explosives, household goods and commodities in bulk), between* Chicago, IL, and Detroit, MI, on the one hand, and, on the other, points in IL, IN, IA, MI, MN, OH, and WI.

MC 169080, filed July 8, 1983. Applicant: UNITED STATES LINES TRUCKING, INC., 27 Commerce Drive, Cranford, NJ 07016. Representative: Harry J. Jordan, Suite 200, 1090 Vermont Ave., N.W., Washington, DC 20005, (202) 783-8131. Transporting *general commodites*, between points in the U.S. Condition: To the extent that this certificate authorizes the transportation of classes A and B explosives, it shall expire 5 years from the date of issuance.

Note.—This application is directly-related to a petition for exemption application filed July 13, 1983, and docketed MC-F-15359.

MC 169151, filed July 11, 1983. Applicant: HIS TRANSPORT SERVICE, INC., 5904 N W Lincoln Ave., Vancouver, WA 98663. Representative: Harold M. Moore (same address as applicant), (206) 695-9079. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with HIS Construction Company, of Vancouver, WA

MC 169210, filed July 13, 1983. Applicant: AEROMECH, INC., Benedum Airport, P.O. Box 2550, Clarksburg, WV 26301. Representative: Albert E. Gensel (same address as applicant), (304) 842-5403. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between Pittsburgh, PA, and points in WV, on the one hand, and, on the other, those points in the U.S. in and east of MN, IA, MO, OK, and TX.

MC 169211, filed July 12, 1983. Applicant: ATLANTIC PACIFIC EXPRESS, INC., P.O. Box 2545, Green Bay, WI 54306. Representative: Thomas E. Vandenberg, P. O. Box 2298, Green Bay, WI 54306, (414) 498-7689. Transporting *general commodities* (except classes A and B explosives, and household goods), between points in the U.S. (except AK and HI). Condition: The person or persons who appear to be engaged in common control of another regulated carrier must either (1) state that a petition has been filed under 49 U.S.C. 11343(e) seeking an exemption from the requirements of 49 U.S.C. 11343, (2) file an application under 49 U.S.C. 11343(A), or (3) submit an affidavit indicating why such approval is unnecessary, to the Secretary's office. In order to expedite issuance of any authority please submit a copy of this filing to Team 1, Room 2379.

[FR Doc. 83-20577 Filed 7-28-83; 8:45 am]
BILLING CODE 7035-01-M

Motor Carriers; Proposed Exemptions

AGENCY: Interstate Commerce Commission.

ACTION: Notices of proposed exemptions.

SUMMARY: The motor carriers shown below seek exemptions pursuant to 49 U.S.C. 11343(e), and the Commission's regulations in Ex Parte No. 400 (Sub-No. 1), *Procedures for Handling Exemptions Filed by Motor Carriers of Property Under 49 U.S.C. 11343*, 367 I.C.C. 113 (1982), 47 FR 53303 (November 24, 1982).

DATES: Comments must be received within 30 days after the date of publication in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Warren C. Wood, (202) 275-7977.

SUPPLEMENTARY INFORMATION: Please refer to the petition for exemption, which may be obtained free of charge by contacting petitioner's representative. In the alternative, the petition for exemption may be inspected at the offices of the Interstate Commerce Commission during usual business hours.

Decided: July 25, 1983.

By the Commission, Hebert P. Hardy, Director, Office of Proceedings.

Agatha L. Mergenovich,

Secretary.

Volume OP 3-352

[No. MC-F-15350]

Carolina Freight Corporation—Control Exemption—G. I. Trucking Company

Carolina Freight Corporation (Carolina Freight) (a non-carrier), which controls Carolina Freight Carriers Corporation (CFCC) (No. MC-2253) and Cardinal Freight Carriers, Inc. (Cardinal) (No. MC-154105), seeks an exemption from the requirement under section 11343 of prior regulatory approval for the acquisition of control through purchase of stock of Summit Companies, Inc. (Summit) (a non-carrier), which controls G. I. Trucking Company (G. I. Trucking) (No. MC-99685). Carolina Freight's proposed purchase of all the issued and outstanding stock of Summit would give Carolina Freight control of G. I. Trucking, thus bringing the proposed transaction within the purview of section 11343(a)(5), "acquisition of control of a carrier [G. I. Trucking] by a person that is not a carrier [Carolina Freight] but that controls any number of carriers [CFCC and Cardinal]".* Send comments to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, D.C. 20423

(2) Carolina Freight's representatives:

Palmer E. Huffstetler, Esq., General Counsel, Carolina Freight Corporation, P.O. Box 697, Cherryville, NC 28021

John A. Vuono, Esq., Vuono, Lavelle & Gray, 2310 Grant Building, Pittsburgh, PA 15219

(3) Summit's representatives:

Robert R. Burge, Esq., Sheppard, Mullin, Richter, & Hampton, Suite 500, 4000 MacArthur Boulevard, Newport Beach, CA 92660

Donald Murchison, Esq., Murchison & Associates, 2029 Century Park E., Suite 4150, Los Angeles, CA 90067

Comments should refer to No. MC-F-15350.

Volume OP3-353

[No. MC-F-15326]

Seward Motor Freight, Inc.—Purchase Exemption—Hayes Truck Line, Inc.

Seward Motor Freight, Inc. (No. MC-85718) and Hayes Truck Line, Inc. (No. MC-9644) seek an exemption from the section 11343 requirement of prior regulatory approval for the acquisition by Seward from Hayes of Certificate No. MC-9644 (Sub-No. 14X), issued April 30, 1982, and the underlying (Sub-No. 13), issued February 4, 1982.

Send comments to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, D.C. 20423

and

(2) Petitioners' representatives: Michael J. Ogborn (Seward Motor Freight), P.O. Box 82028, Lincoln, NE 68501

and

Larry D. Knox, 600 Hubbell Building, Des Moines, IA 50309-3596

Comments should refer to No. MC-F-15326.

[FR Doc. 83-20568 Filed 7-28-83; 8:45 am]
BILLING CODE 7035-01-M

Motor Carriers; Intent To Engage in Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named

* The fact that G. I. Trucking controls two freight forwarders—Hawaiian Pacific Freight Forwarding (No. FF-588) and H-PAC (No. FF-277)—is of no consequence here. Section 11343(a) applies to certain "transactions involving carriers providing transportation subject to the jurisdiction of the Interstate Commerce Commission under" subchapters I, II, or III of chapter 105 of Title 49, U.S. Code, whereas a freight forwarder provides transportation subject to the jurisdiction of the Commission under subchapter IV of chapter 105, see 49 U.S.C. 10561.

corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

1. Parent corporation and address of principal office: American Cyanamid Company, One Cyanamid Plaza, Wayne, NJ 07470.

2. Wholly-owned subsidiaries which will participate in the operations, and State(s) of incorporation:

(i) Cyanamid Canada, Inc., an Ontario Canada corporation.

(ii) Cyanamid Inter-America Corporation, a Delaware corporation.

(iii) Cyanamid International Sales Corporation, a New Jersey Corporation.

(iv) Cyanamid Overseas Corporation, a Delaware corporation.

(v) Cyanamid Plastics Corporation, a New Jersey corporation.

(vi) Davis & Geck, Inc., a New Jersey corporation.

(vii) Formica Corporation, a Delaware corporation.

(viii) Glendale Optical Company, Inc., a New York corporation.

(ix) Jacqueline Cochran, Inc., a New Jersey corporation.

(x) La Prairie, Inc., a New Jersey corporation.

(xi) Lederle Parenterals, Inc., a New Jersey corporation.

(xii) Lederle Piperacillin, Inc., a New Jersey corporation.

(xiii) Shulton, Inc., a New Jersey corporation.

(xiv) Shulton Canada, Inc., an Ontario, Canada corporation.

(xv) Toiletries, Inc., a New Jersey corporation.

(1) Parent corporation and address of principal office: General Foods Ccorporation (a Delaware corporation), 800 Westchester Avenue, Rye Brook, New York (mailing address—250 North Street, White Plains, New York 10625).

(2) Wholly-owned subsidiaries which will participate in the operations, and States of incorporation:

(a) Birds Eye, Inc. (Delaware)

(b) Brisk Transportation Inc. (Delaware)

(c) Don's Prize, Inc. (Ohio)

(d) General Foods Caribbean Manufacturing Corporation (Delaware)

(e) General Foods Domestic International Sales Company Inc. (Delaware)

(f) General Foods Inc. (Puerto Rico)

(g) General Foods Manufacturing Corporation (Delaware)

(h) General Pectin Manufacturing Corporation (Delaware)

(i) General Foods Overseas Development Corporation (Delaware)

(j) Vict. Th. Engwall & Co., Inc. (Delaware)

(k) General Foods Trading Company (Delaware)

(l) Hudson Commercial Corporation (Delaware)

(m) Italsalumi, Inc. (Illinois)

(n) Kohrs Packging Company (Illinois)

(o) Oscar Mayer & Co. Inc. (Delaware)

(p) Oscar Mayer Export, LTD (Wisconsin)

(q) Oscar Mayer Foods, Corporation (Delaware)

(r) Maxwell House, Inc. (Delaware)

(s) Quality Industrial Plastics, Co., Inc. (Delaware)

(t) Birds Eye de Mexico, S.A. de C.V. (Mexico)

(u) Franklin Baker Company of the Philippines (Philippines)

(v) General Foods, Inc. (Canada)

(w) Hostess Food Products Limited (Ontario, Canada)

(x) Entenmann's, Inc. (Delaware)

(y) Entenmann's Bakery of Florida, Inc. (Florida)

(z) Entenmann's Frozen Foods, Inc. (Florida)

(aa) Otto Roth & Company, Inc. (New York)

(bb) Monterey Cheese Co. (California)

(cc) O. R. Corporation (Pennsylvania)

(dd) Specialty Pre-Cut Cheese Co., Inc. (New Jersey)

(ee) Peacock Foods Incorporated (California)

1. Parent corporation and address of principal office: HON INDUSTRIES, Inc., 414 East Third Street, Muscatine, Iowa 52761.

2. Wholly-owned subsidiaries which will participate in the operations together with their States of incorporation:

(a) Corry Jamestown Corporation, Iowa,

(b) Heatilator Inc., Iowa,

(c) Hiebert, Inc., Iowa,

(d) Hiebert East, Inc., Iowa,

(e) Holga Metals Products Corporation, Iowa,

(f) The HON Company, unincorporated,

(g) Murphy-Miller Co., Iowa,

(h) Norman Bates Inc., Iowa, and

(i) The Prime-Mover Co., Iowa.

1. Parent corporation and address of principal office: S. C. Johnson & Son, Inc., 1525 Howe Street, Racine, Wisconsin 53403.

2. Wholly-owned subsidiaries which will participate in the operations and States of incorporation: Porelon, Inc., Delaware; Under Sea Industries, Inc., Delaware; Micro-Gen Equipment Corp., Delaware; Johnson Camping, Inc., Delaware; Johnson Wax Associates, Inc., Delaware; Johnson Fishing, Inc., Delaware; Stim-U-Plant, Inc., Delaware; Old Town Marine, Inc., Delaware; Northern Laboratories, Delaware; Johnson Creative Arts, Inc., Delaware; Hydro Rubber, Inc., California; Johnson Diversified of Canada, Ltd., Canada.

1. Parent corporation and principal office: Smith & Loveless, Inc., 14040 Santa Fe Trail Dr., Lenexa, KS 66215.

2. Wholly-owned subsidiary which will participate in the operation, and State of incorporation: Smith & Loveless Transportation & Supply, Inc. (a Kansas corporation), 14040 Santa Fe Trail Dr., Lenexa, KS 66215.

Agatha L. Mergenovich,

Secretary

[FR Doc. 83-20575 Filed 7-28-83; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-6 (Sub-150)]

Rail Carriers; Burlington Northern Railroad Company—Abandonment—In Polk, Clay and Norman Counties, MN; Findings

The Commission has issued a certificate authorizing Burlington Northern Railroad Company (BN) to abandon its line of railroad between milepost 44.95 near Fertile and milepost 13.50 near Ulen, a distance of 31.45 miles, in Polk, Clay and Norman Counties, MN. The abandonment certificate will become effective 30 days after this publication unless the Commission also finds that (1) a financially responsible person has offered financial assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and the applicant no later than 10 days from publication of this Notice. The following notation shall be typed in bold face on the lower lefthand corner of the envelope containing the offer: "Rail Section, AB-OFA." Any offer previously made must be remade within this 10 day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR Part 1152.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 83-20570 Filed 7-28-83; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-6 (Sub-151)]

Rail Carriers; Burlington Northern Railroad Company—Abandonment—and Discontinuance of Service—Over Union Pacific Railroad Company in Sarpy and Douglas Counties, NE; Findings

The Commission has issued a certificate authorizing the Burlington Northern Railroad Company to abandon its line of railroad extending from milepost 4.94 near Pappio to milepost 8.35, at Gilmore Junction, and to discontinue trackage rights from Union Pacific Railroad Company milepost 10.90 at Gilmore Junction to milepost 6.40, near South Omaha, a total distance of 7.91 miles, in Sarpy and Douglas Counties, NE. The abandonment certificate will become effective 30 days after this publication unless the Commission also finds that: (1) a financially responsible person has offered financial assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and served concurrently on the applicants, with copies to Mr. Louis E. Gitomer, Room 5417, Interstate Commerce Commission, Washington, DC 20423, no later than 10 days from publication of this Notice. Any offer previously made must be remade within this 10 day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR 1152.27.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 83-20572 Filed 7-28-83; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-83 (Sub-4)]

Rail Carrier; Maine Central Railroad Company—Abandonment in Somerset County, ME; Findings

The Commission has issued a certificate authorizing the Maine Central Railroad Company to abandon its 8.60-mile line between milepost 102.45 near Pittsfield and milepost 111.05 near Hartland in Somerset County, ME. The abandonment certificate will become effective 30 days after this publication unless the Commission also finds that: (1) A financially responsible person has offered financial assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and served the applicant, no later than 10 days from publication of this Notice. The following notation shall be typed in boldface on the lower left-hand corner of the envelope containing the offer: "Rail Section, AB-OFA." Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR 1152.27.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 83-20571 Filed 7-28-83; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-3 (Sub-36)]

Rail Carriers; Missouri Pacific Railroad Company—Abandonment in Alexander County, IL; Findings

The Commission has issued a certificate authorizing Missouri Pacific Railroad Company to abandon its 24.2-mile rail line known as the Cairo Subdivision between milepost 120.7 near Cairo Junction to the end of the line at Cairo, milepost 144.9 in Alexander County, IL. The abandonment certificate will become effective 30 days after this publication unless the Commission also finds that: (1) A financially responsible person has offered financial assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and the applicant no later than 10 days from publication of this Notice. The following notation shall be typed in bold face on the lower left-hand corner of the envelope containing the offer: "Rail Section, AB-OFA." Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR Part 1152.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 83-20569 Filed 7-28-83; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Privacy Act of 1974; Modified System of Records

[AAG/A Order No. 10-83]

Pursuant to the provisions of the Privacy Act of 1974 (5 U.S.C. 552a), notice is hereby given that the Department of Justice proposes to modify a system of records maintained by the Office of the Deputy Attorney General.

The United States Judge and Department of Justice Presidential Appointee Records, JUSTICE/DAG-010, is a system of records for which public notice was published in the **Federal Register** on December 9, 1981 (46 FR 60310) consistent with provisions of 5 U.S.C. 552(e)(4). However, the system will be amended to automate certain data in existing manual files. Selected data identified under "Categories of Records in the System" will be stored on computer diskettes for the purpose of automatically reviewing the data in connection with the Department's responsibility to assist the President in selecting appointees for certain Presidential positions. The following sections of the notice have been revised to reflect and incorporate this change: "Categories of records in the system," "Storage," and "Safeguards." In addition, editorial changes have been made to the "Retrievability" section of the notice to achieve clarity.

The Office of Management and Budget (OMB), which has oversight responsibility under the Act, requires a 60-day period in which to review the proposal to partially automate this system. Therefore, OMB, the Congress, and the public are invited to submit written comments on this system. Comments should be addressed to Vincent A. Lobisco, Assistant Director, Administrative Services Staff, Justice Management Division, Department of Justice, Room 6314, 10th Street and Constitution Avenue NW., Washington, D.C. 20530. If no comments are received from either the public, OMB, or the Congress within 60 days from the date of publication of this notice (September 27, 1983), the proposed modification will be implemented without further notice in the **Federal Register**.

A report of the proposed system has been provided to the Director, OMB, the President of the Senate, and the Speaker of the House of Representatives.

Dated: June 27, 1983.

Kevin D. Rooney,

Assistant Attorney General for Administration.

JUSTICE/DAG-010

SYSTEM NAME:

United States Judge and Department of Justice Presidential Appointee Records.

SYSTEM LOCATION:

Office of the Deputy Attorney General; United States Department of Justice; 10th and Constitution Avenue, N.W.; Washington, D.C. 20530.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system encompasses all United States Judges and all Department of Justice Presidential Appointees.

CATEGORIES OF RECORDS IN THE SYSTEM:

A. 1. Card index relating to United States Judges which includes name, salary, Congress of appointment, state of birth, political party (if known), religion (if known), and American Bar Association rating.

2. Information on the above mentioned card index, except religion, is also maintained on word processing equipment.

B. Cross index of judges' names and districts.

C. Roster of districts showing the dates of duty of district court judges and Department of Justice Presidential Appointees, indexed alphabetically by name.

D. Book of commissions of United States Judges and Department of Justice Presidential Appointees in order by date of appointment and indexed alphabetically by name.

E. Nominatin book showing the name of the nominated Judge or Department of justice Presidential Appointee, the date the proposed nomination was sent to the White House, the date the nomination was made to the Senate, the date of confirmation, the date of appointment, and the date of entrance on duty. This book is in chronological order, and is indexed alphabetically by name of the nominee.

AUTHORITY FOR MAINTENACE OF THE SYSTEM:

These records are maintained pursuant to 5 U.S.C. 301.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records are maintained to make responses to public inquiries regarding these individuals noted in Categories of Individuals (the political party and religion of an appointee is not released), and for Department internal purposes.

Release of information to the new media: Information permitted to be released to the news media and the public pursuant to 28 CFR 50.2 may be made available from systems of records maintained by the Department of Justice unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

Release of information to Members of Congress. Information contained in systems of records maintained by the Department of Justice, not otherwise required to be released pursuant to 5 U.S.C. 552, may be made available to a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Release of information to the National Archives and Records Service: A record from a system of records may be disclosed as a routine use to the National Archives and Records Service (NARS) in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are kept on cards, in folders, in books, or on diskettes.

RETRIEVABILITY:

Information is retrieved by those data elements identified in the "Categories of Records in the System" section of this notice.

SAFEGUARDS:

Biographical sketches and diskettes are kept in a locked safe. All other information is kept in cabinets or card files.

RETENTION AND DISPOSAL:

This information is maintained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Associate Deputy Attorney General, Office of the Deputy Attorney General, United States Department of Justice, 10th and Constitution Avenue, N.W., Washington, D.C. 20530.

NOTIFICATION PROCEDURE:

Same as the above.

RECORD ACCESS PROCEDURES:

A request of access to these records should be directed orally or in writing to the System Manager. When requests are in writing the envelope and letter should clearly be marked "Privacy Access Request."

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should direct their request to the System Manager, stating clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment(s) to the information.

RECORD SOURCE CATEGORIES:

Information contained in this system is obtained from the individuals who are the subjects of the records and from other Department of Justice records.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 83-20664 Filed 7-28-83; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Forms Under Review by the Office of Management and Budget (OMB)

Background

The Department of Labor, in carrying out its responsibility under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the proposed forms and recordkeeping requirements that will affect the public. LIST OF FORMS UNDER REVIEW: On each Tuesday and/or Friday, as necessary, the Department of Labor will publish a list of the Agency forms under review by the Office of Mangement and Budget (OMB) since the last list was published. The list will have all entries grouped into new forms, revisions, extensions (burden change), extensions (no change), or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of any particular revision they are interested in. Each entry will contain the following information:

The Agency of the Department issuing this form.

The title of the form.

The Agency form number, if applicable.

How often the form must be filled out.

Who will be required to or asked to report.

Whether small business or organizations are affected.

The standard industrial classification (SIC) codes, referring to specific respondent groups that are affected.

An estimate of the number of responses.

An estimate of the total number of hours needed to fill out the form.

The number of forms in the request for approval.

An abstract describing the need for and uses of the information collection.

Comments and Questions

Copies of the proposed forms and supporting documents may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, Telephone 202-523-6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue, N.W., Room S-5526, Washington, D.C. 20210. Comments should also be sent to the OMB reviewer, Arnold Strasser, Telephone 202-395-6880, Office of information and Regulatory Affairs, Office of Management and Budget, Room 3208, NEOB, Washington, D.C. 20503.

Any member of the public who wants to comment on a form which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

New

Employment and Training Administration
Service Delivery Area Job Training Plan Appeal
On occasion
Local Governments
SIC: 944
25 responses; 50 hours

The information collected will be used to determine whether Job Training Partnership Act recipients' final disapproval of service delivery areas' job training plans are in conformance with the Act.

Reinstatement

Employment and Training Administration
Test Record Card for NonReading Aptitude Test Battery & Basic Occupational Literacy Test; Test Record Card for General Aptitude Test Battery, Interest Inventory & Proficiency Tests
ETA 723; ETA 749
Recordkeeping
State or Local Governments
SIC: 944
830,000 responses; 66,400 hours

These cards are maintained in employment service testing units as official records of applicants' test results. They are consulted and used for decisions on referral to job openings & transmittal to other organizations for use in counseling & job placement.

Signed at Washington, D.C. this 26th day of July, 1983.

Paul E. Larson,

Departmental Clearance Officer.

[FR Doc. 83-20655 Filed 7-28-83; 8:45 am]

BILLING CODE 4510-30-M

Employment and Training Administration

Federal-State Unemployment Compensation Program; Extended Benefits; Ending of Extended Benefit Period in the State of Mississippi

This notice announces the ending of the Extended Benefit Period in the State of Mississippi, effective on July 16, 1983.

Background

The Federal-State Extended Unemployment Compensation Act of 1970 (26 U.S.C. 3304 note) established the Extended Benefit Program as a part of the Federal-State Unemployment Compensation Program. The Extended Benefit Program takes effect during periods of high unemployment in a State, to furnish up to 13 weeks of entended unemployment benefits to eligible individuals who have exhausted their rights to regular unemployment benefits under permanent State and Federal unemployment compensation laws. The Act is implemented by State unemployment compensation laws and by Part 615 of Title 20 of the Code of Federal Regulations (20 CFR Part 615).

Extended Benefits are payable in a State during an Extended Benefit Period, which is triggered "on" when the rate of insured unemployment in the State reaches the State trigger rate set in the Act and the State law. During an Extended Benefit Period individuals are eligible for a maximum of up to 13 weeks of benefits, but the total of Extended Benefits and regular benefits together may not exceed 39 weeks.

The Act and the State unemployment compensation laws also provide that an Extended Benefit Period in a State will trigger "off" when the rate of insured unemployment in the State is no longer at the trigger rate set in the law. A benefit period actually terminates at the end of the third week after the week for which there is an off indicator, but not less than 13 weeks after the benefit period began.

An Extended Benefit Period commenced in the State of Mississippi on January 17, 1982 and has now triggered off.

Determination of "off" Indicator

The head of the employment security agency of the State named above has determined that the rate of insured unemployment in the State for the period consisting of the week ending on June 25, 1983, and the immediately preceding twelve weeks, fell below the State trigger rate, so that for that week there was an "off" indicator in the State.

Therefore, the Extended Benefit Period in the State terminated with the week ending on July 16, 1983.

Information for Claimants

The State employment security agency will furnish a written notice to each individual who is filing claims for Extended Benefits of the end of the Extended Benefit Period and its effect on the individual's right to Extended Benefits. 20 CFR 615.13(d)(3).

Persons who wish information about their rights to Extended Benefits in the State named above should contact the nearest State employment service office or unemployment compensation claims office in their locality.

Signed at Washington, D.C. on July 20, 1983.

Albert Angrisani,

Assistant Secretary of Labor.

[FR Doc. 83-20555 Filed 7-28-83; 8:45 am]

BILLING CODE 4510-30-M

Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period July 18, 1983-July 22, 1983.

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 or 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 the 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-13,884; Print Fashions, Inc., Bethlehem, PA
TA-W-14,486; Kerr-McGee Nuclear Corp., Ambrosia Lake, NM
TA-W-14,481; Block Industries, Downtown Plant, Benson, NC
TA-W-13,985; U.S. Steel Corp., U.S.S. Fabrication Div., Ambridge, PA

In the following cases the investigation revealed that criterion (3) has not been met. Increased imports did not contribute importantly to workers separations at the firm.

TA-W-13,912; American Motors Corp., Southfield, MI
TA-W-13,913; American Motors Corp., Detroit, MI
TA-W-13,949; American Motors Corp., Stone Mountain, GA
TA-W-13,950; American Motors Corp., Westwood, MA
TA-W-13,951; American Motors Corp., Mansfield, MA
TA-W-13,952; American Motors Corp., Elk Grove Village, IL
TA-W-13,953; American Motors Corp., Cincinnati, OH
TA-W-13,954; American Motors Corp., Dallas, TX
TA-W-13,955; American Motors Corp., Denver, CO
TA-W-13,956; American Motors Corp., Southfield, MI
TA-W-13,957; American Motors Corp., Detroit, MI
TA-W-13,958; American Motors Corp., Overland Park, KS
TA-W-13,959; American Motors Corp., El Segundo, CA
TA-W-13,960; American Motors Corp., Carson, CA
TA-W-13,961; American Motors Corp., Minneapolis, MN
TA-W-13,962; American Motors Corp., Elmsford, NY
TA-W-13,963; American Motors Corp., Deptford, NJ
TA-W-13,964; American Motors Corp., Warrendale, PA
TA-W-13,965; American Motors Corp., Warrendale, PA
TA-W-13,966; American Motors Corp., Portland, OR
TA-W-13,967; American Motors Corp., McLean, VA
TA-W-13,968; American Motors Corp., Milwaukee, WI

In the following cases the investigation revealed that criterion (3) has not been met for the reasons specified.

TA-W-13,906; Sargent-Welch Scientific Co., Skokie, IL

Aggregate U.S. imports of vacuum pumps did not increase as required for certification.

TA-W-13,889; Ford Motor Co., Predelivery Service Corp., Houston, TX

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

Affirmative Determinations

TA-W-14,592; McKeesport Connecting Railroad Co., McKeesport, PA

A certification was issued covering all workers separated on or after April 7, 1982.

TA-W-14,474; Cedar Bluff Manufacturing, Inc., Harbour Road Div., Cedar Bluff, AL

A certification was issued covering all workers separated on or after February 15, 1982.

TA-W-14,475; Hers Apparel Industries, Inc., Harbour Road Div., Carterville, GA

A certification was issued covering all workers separated on or after February 15, 1982.

TA-W-13,977; B.F. Goodrich Co., Miami, OK Plant

A certification was issued covering all workers engaged in employment related to the production of inner tubes for tires separated on or after November 11, 1981.

TA-W-13,975; Goodyear Tire & Rubber Co., Gadsden, AL

A certification was issued covering all workers separated on or after November 11, 1981.

TA-W-13,994; Inland Steel Co., Indiana Harbor Works, East Chicago, IN

A certification was issued covering all workers separated on or after November 7, 1981.

TA-W-14,425; Huntingdon Apparel Manufacturing Co., Huntingdon, PA

A certification was issued covering all workers separated on or after September 30, 1982.

TA-W-14,427; Luzerne Apparel Mannfacturing Corp., Elysburg, PA

A certification was issued covering all workers separated on or after September 30, 1982.

TA-W-14,428; Luzerne Apparel Manufacturing Corp., Berwick, PA

A certification was issued covering all workers separated on or after September 30, 1982.

I hereby certify that the aforementioned determinations were issued during July 18, 1983–July 22, 1983. Copies of these determinations are available for inspection in Room 9120, U.S. Department of Labor, 601 D Street NW., Washington, D.C. 20213 during normal business hours or will be mailed to persons who write to the above address.

Dated: July 26, 1983.

Marvin M. Fooks,
Director, Office of Trade Adjustment Assistance.

[FR Doc. 83-20657 Filed 7-28-83; 8:45 am]
BILLING CODE 4510-30-M

Investigations Regarding Certifications of Eligiblity 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, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. 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.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than August 8, 1983.

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 August 8, 1983.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street, N.W., Washington, D.C. 20213.

Signed at Washington, D.C. this 25th day of July 1983.

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
Armco, Inc., Electrical Steel Div. (Butler Armco Independent Union).	Butler, PA	7/18/83	7/11/83	TA-W-14,843	Stainless steel and sheets, coal rolled-non oriented steel, oriented electrical steel.
Belmont Manufacturing Co. (workers)	Plumsteadville, PA	7/19/83	7/13/83	TA-W-14,844	Industrial workloads (cotton work gloves).
Kane Industries, A Div. of Chromalloy (ILGWU)	Smith Grove, KY	7/13/83	7/5/83	TA-W-14,845	Clothing—blouses, skirts, etc.
Tiffin General Electric Appliance and Hermetic Motor Dept. (IUE).	Tiffin, OH	7/19/83	7/12/83	TA-W-14,846	Rotors and stators hermetically motor parts for air-conditions.
U.S. Fuel Co. (UMWA)	Hiawatha, UT	7/18/83	7/12/83	TA-W-14,847	Mine coal.
General Motors Corp., Fisher Body Div. (UAW)	Euclid, OH	7/18/83	7/12/83	TA-W-14,848	Fabricated trim.
General Motors Corp., Fisher Body Div. (UAW)	Grand Rapids, MI	7/18/83	7/12/83	TA-W-14,849	Do.
General Motors Corp., Fisher Body Div. (UAW)	Livonia, MI	7/18/83	7/12/83	TA-W-14,850	Do.
General Motors Corp., Fisher Body Div. (UAW)	Tecumseh, MI	7/18/83	7/12/83	TA-W-14,851	Do.
General Motors Corp., Fisher Body Div. (UAW)	Columbus, OH	7/18/83	7/12/83	TA-W-14,852	Fabricated hardware.
General Motors Corp., Fisher Body Div. (UAW)	Detroit-Fort St., MI	7/18/83	7/12/83	TA-W-14,853	Do.
General Motors Corp., Fisher Body Div. (UAW)	Elyria, OH	7/18/83	7/12/83	TA-W-14,854	Do.
General Motors Corp., Fisher Body Div. (UAW)	Flint, Coldwater Rd, MI	7/18/83	7/12/83	TA-W-14,855	Do.
General Motors Corp., Fisher Body Div. (UAW)	Syracuse, NY	7/18/83	7/12/83	TA-W-14,856	Do.
General Motors Corp., Fisher Body Div. (UAW)	Trenton, NJ	7/18/83	7/12/83	TA-W-14,857	Do.
General Motors Corp., Fisher Body Div. (UAW)	Chicago, IL	7/18/83	7/12/83	TA-W-14,858	Press and metal fabricating.
General Motors Corp., Fisher Body Div. (UAW)	Cleveland-Coit Rd, OH	7/18/83	7/12/83	TA-W-14,859	Do.
General Motors Corp., Fisher Body Div. (UAW)	Grand Blanc, MI	7/18/83	7/12/83	TA-W-14,860	Do.
General Motors Corp., Fisher Body Div. (UAW)	Grand Rapids, MI	7/18/83	7/12/83	TA-W-14,861	Do.
General Motors Corp., Fisher Body Div. (UAW)	Hamilton, OH	7/18/83	7/12/83	TA-W-14,862	Do.
General Motors Corp., Fisher Body Div. (UAW)	Kalamazoo, MI	7/18/83	7/12/83	TA-W-14,863	Do.
General Motors Corp., Fisher Body Div. (UAW)	Lordstown, OH	7/18/83	7/12/83	TA-W-14,864	Do.
General Motors Corp., Fisher Body Div. (UAW)	Mansfield, OH	7/18/83	7/12/83	TA-W-14,865	Do.
General Motors Corp., Fisher Body Div. (UAW)	Marion, IN	7/18/83	7/12/83	TA-W-14,866	Do.
General Motors Corp., Fisher Body Div. (UAW)	Pittsburgh, PA	7/18/83	7/12/83	TA-W-14,867	Do.
General Motors Corp., Fisher Body Div. (UAW)	Fleetwood-Detroit, MI	7/18/83	7/12/83	TA-W-14,868	Auto assembly plant.
General Motors Corp., Fisher Body Div. (UAW)	Flint, MI	7/18/83	7/12/83	TA-W-14,869	Auto assembly.
General Motors Corp., Fisher Body Div. (UAW)	Lansing, MI	7/18/83	7/12/83	TA-W-14,870	Do.
General Motors Corp., Fisher Body Div. (UAW)	Pontiac, MI	7/18/83	7/12/83	TA-W-14,871	Do.
General Motors Corp., Fisher Body Div. (UAW)	Detroit-Central, MI	7/18/83	7/12/83	TA-W-14,872	Do.

[FR Doc. 83-20656 Filed 7-28-83; 8:45 am]

BILLING CODE 4510-30-M

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance; Correction

This document corrects the appendix of the notice of investigations published February 22, 1983 (48 FR 7520) FR Doc. 83-4413 with respect to the date received (February 7, 1983) and date of petition (January 31, 1983) of TA-W numbers (14,396 and 14,397).

The corrected appendix for lines 6 and 7 should read as shown in the attachment.

Signed at Washington, D.C., this July 13, 1983.

Robert O. Deslongchamps,

Director, Office of Legislation and Actuarial Services, UIS.

APPENDIX

Petitioner: Union/workers or former workers of—	Location	Date received	Date of petition	Petition No.	Articles produced
* * * *	* *	*	*	*	*
Mushroom Distribution Center (company)	Columbus, Ohio	9/20/82	9/13/82	TA-W-13,830A	Warehousing.
Barry of Canal Winchester (company)	Canal Winchester, OH	9/20/82	9/13/82	TA-W-13,830B	Soles.
* * * *	* *	*	*	*	*

[FR Doc. 83-20658 Filed 7-28-83; 8:45 am]

BILLING CODE 4510-30-M

Office of Workers' Compensation Programs

Report on Computer Matching Project Involving Certain Beneficiaries Under the Federal Employees' Compensation Act

SUMMARY: The Department of Labor, Employment Standards Administration, Office of Workers' Compensation Programs (OWCP), announces a computer match to be performed by New York, Missouri and Pennsylvania of the names and Social Security Numbers of beneficiaries under the Federal Employees' Compensation Act, who receive compensation for total disability on the periodic roll and have mailing addresses in or near those states, and the wages record files maintained by the State Employment Security Agency. In New York the match will be made with the agency's benefit history file.

a. *Authority:* The Federal Employees' Compensation Act (FECA) 5 U.S.C. 8101, et. seq.)

b. *Description of Match:* Among the responsibilities of the OWCP in the administration of the FECA is to assure that benefit payments are proper and to prevent fraud or abuse. The computer matching program is an efficient and nonintrusive method of determining the propriety of program beneficiaries receiving compensation for total disability.

The matching effort will compare the name and Social Security number of the beneficiary receiving compensation for total disability having a mailing address in or near a state taking part in this pilot program, with the wage record file or benefit history file of the State Employment Security Agency.

The intent of the match will be to identify those beneficiaries who, while receiving compensation for total disability on the periodic roll, had earnings which were not reported to the OWCP.

The organizations in the match are the State Employemt Security Agencies of New York, Missouri and Pennsylvania, and the Office of Workers' Compensation Programs of the Department of Labor. The OWCP will provide to the State Agency, on computer tape, the name and the Social Security number of the selected beneficiaries. The states will match their wage record or benefit history information against these files. The period covered by the match will be the six most recent quarters.

The "raw hits" resulting from the cross match will be submitted to the OWCP (along with the source material) for validation and editing against case files in the OWCP system of records. After editing, OWCP will determine which cases shall be further processed or investigated to ascertain whether the individual actually had earnings which should have been reported to the OWCP. Action will be taken to assure that benefits are not being paid in those cases in which there is no entitlement. Certain findings may be submitted to the Department of Justice through the USDOL/OIG for prosecution. The state agency will not use the material from the match for any purpose. The sole beneficiary of the match will be the OWCP. Although scheduled as a pilot study, recommendations for periodic and/or ongoing matches and additions to the number of participating states are anticipated as a result of anlysis of this study.

Consideration will be given to the cost and benefits as part of the future recommendations.

c. *Description of Federal Records to be Matched:* DOL/ESA-13 Office of Workers' Compensation Programs, Federal Employees' Compensation Act file (47 FR 134, pg 30382, July 1, 1982; as amended in 48 FR 27, pg. 5826, February 8, 1983) will be the source of the information being furnished to the state agencies.

d. *Period of the Match:* The first match should begin on or about July 1, 1983 with the final match by the end of July. Follow-up procedures may extend through the calendar year.

e. *Security:* The personal privacy of individuals identified is protected by strict compliance with the Privacy Act (Pub. L. 93-579) and OMB Circular A-108. Information from the match will be used only for official purposes and "raw hit" information will not be released to the public.

No source meterials or information contained therein or any hit information will be duplicated or disseminated within or without the matching agency of the state; and personnel of the matching agency will have access to the material or password only for the purpose of furthering the matching program. The source information and the information contained therein will not be used for any purpose other than the match described above. The source and hit information will be protected while in the possession of the state either by being put into locked files or cabinets or protected by computer password, if in the computer. The matching file (source information) supplied by the OWCP and any hits resulting from the match will be returned directly by the state to the OWCP. It is understood that the source material remains the property of the OWCP.

f. *Disposition of the Records:* As indicated above, all records sent to the states as well as records of hits will be returned to the OWCP. The hits will be edited, using information contained in OWCP's file. Where there is a question of the entitlement of the claimant to receive compensation or compensation at a particular level, the case will be set up for investigation. There will be no payment discontinued solely becaue the name appears as a "hit". The original source material will be destroyed or expunged and the "raw hit listing" will not be kept after editing. However, "hits" which are further processed or investigated along with the results of the investigation will be made part of the case file of the beneficiary.

g. *Other Comments:* The match is being performed solely for the purpose of the OWCP by the states without any use of the information by them. The actual amount of compensation being received will not be in the source material furnished to the states.

Signed at Washington, D.C. this 19th day of July 1983.

William C. Jacobs,

Director, Office of Workers' Compensation Programs.

[FR Doc. 83-20556 Filed 7-28-83; 8:45 am]

BILLING CODE 4510-27-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Humanities Panel Meeting

AGENCY: National Endowment for the Humanities.

ACTION: Notice of Meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, as amended), notice is hereby given that the following meeting of the Humanities Panel will be held at 1100 Pennsylvania Avenue, NW., Washington, D.C. 20506

DATE: August 18, 1983.

Time: 8:30 a.m. to 5:30 p.m.

Room: 415.

Program: This meeting will review Fellowships for College Teachers applications in Religion and Philosophy of Religion, submitted to the Division of Fellowships and Seminars, for projects beginning after January 1, 1984.

The proposed meeting is for the purpose of Panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. Because the proposed meeting will consider information that is likely to disclose: (1) Trade secrets and commercial or financial information obtained from a person and privileged or confidential; (2) information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; and (3) information the disclosure of which would significantly frustrate implementation of proposed agency action; pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings, dated January 15, 1978, I have determined that

this meeting will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Further information about this meeting can be obtained from Stephen J. McCleary, Advisory Committee Management Officer, National Endowment for the Humanties, Washington, D.C. 20506, or call (202) 786-0322.

Victor J. Loughnan,

Advisory Committee Management Officer.

[FR Doc. 83-20654 Filed 7-28-83; 8:45 am]

BILLING CODE 7536-01-M

Amendment to Panel Meeting

This is to announce an Amendment to the Panel Meeting published in the **Federal Register** on July 18, 1983 at page 32704. The Panel Meeting dated August 18, 1983 has been amended due to the large number of applications received in Philosophy and Religion, the meeting previously scheduled will review Philosophy applications only.

Victor J. Loughnan,

Advisory Committee Management Officer.

[FR Doc. 83-20653 Filed 7-28-83; 8:45 am]

BILLING CODE 7536-01-M

Humanities Panel Meeting; Change of Subject

This is to announce a change in the Humanities Panel meeting to be held on August 11, 1983 at the National Endowment for the Humanities, 1100 Pennsylvania Avenue, NW., Washington, D.C. Notice was published in the **Federal Register** on July 18, 1983 at page 32704. The purpose of the meeting has been changed to review *Independent Study and Research Applications in European History to 1815.* The previous announcement stated Summer Stipends. Date, Time and Room remains the same.

Victor J. Loughnan,

Advisory Committee Management Officer.

[FR Doc. 83-20652 Filed 7-28-83; 8:45 am]

BILLING CODE 7536-01-M

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements; Office of Management and Budget Review

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the Office of Management and Budget review of information collection.

SUMMARY: The Nuclear Regulatory Commission has recently submitted to the Office of Management and Budget (OMB) for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

1. Type of submission, new revision or extension: New.
2. The title of the information collection: 10 CFR 50.44(c), Hydrogen Control Requirements.
3. The form number if applicable: Not applicable.
4. How often the collection is required: One time only.
5. Who will be required or asked to report: NRC Licensees.
6. An estimate of the number of responses: 6.
7. An estimate of the total number of hours needed to complete the requirement or request: 9,000.
8. An indication of whether Section 3504(h), Pub. L. 96-511 applies: Not applicable.
9. Abstract: The proposed rule would require improved hydrogen control systems for certain types of reactors, and a demonstration that certain important safety systems would function during and after a hydrogen burn, for other types of reactors.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 1717 H Street NW., Washington, D.C. 20555.

Comments and questions should be directed to the OMB reviewer Jefferson B. Hill, (202) 395-7340.

NRC Clearance Officer is R. Stephen Scott, (301)492-8585.

Dated at Bethesda, Maryland this 28th day of July 1983.

For the Nuclear Regulatory Commission.

Patricia G. Norry,

Director, Office of Administration.

[FR Doc. 83-20645 Filed 7-28-83; 8:45 am]

BILLING CODE 7590-01-M

Documents Containing Reporting or Recordkeeping Requirements; Office of Management and Budget Review

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the Office of Management and Budget review of information collection.

SUMMARY: The Nuclear Regulatory Commission has recently submitted to the Office of Management and Budget (OMB) for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

1. Type of submission, new, revision or extension: Extension.
2. The title of the information collection: 10 CFR Part 34, "Licenses for Radiography and Radiation Safety Requirements for Radiographic Operations."
3. The form number if applicable: Not applicable.
4. How often the collection is required: Required reports are collected and evaluated on a continuing basis as events occur. Applications for new licenses or amendments may be submitted at any time. Applications for renewal of licenses are submitted every five years.
5. Who will be required or asked to report: Persons holding or applying for a license for the use of byproduct material for purposes of industrial radiography.
6. An estimate of the number of responses: 400.
7. An estimate of the total number of hours needed to complete the requirement or request: 54,482.
8. An indication of whether Section 3504(h), Pub. L. 96-511 applies: Not applicable.
9. Abstract: 10 CFR Part 34 establishes rules governing the domestic licensing of byproduct material for use in industrial radiography.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 1717 H Street NW., Washington, DC 20555.

Comments and questions should be directed to the OMB reviewer, Jefferson B. Hill, (202) 395-7340.

The NRC Clearance Officer is R. Stephen Scott, (301) 492-8585.

Dated at Bethesda, Maryland, this 21st day of July 1983.

For the Nuclear Regulatory Commission.

Patricia G. Norry,

Director, Office of Administration.

[FR Doc. 83-20646 Filed 7-28-83; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-387]

Pennsylvania Power and Light Co. and Allegheny Electric Cooperative, Inc.; Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF-14, issued to Pennsylvania Power & Light Company and Allegheny Electric Cooperative, Inc. (the licensees), for

operation of the Susquehanna Steam Electric Station, Unit 1 located in Luzerne County, Pennsylvania.

The amendment would change Technical Specification 3.2.2 and Tables 2.2.1–1 and 3.3.6–2 to allow the expansion of the operating region of the power/flow map for the initial fuel cycle in accordance with the licensee's application for an amendment dated February 3, 1983.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The proposed change to allow the expansion of the operating region of the power/flow map for the initial fuel cycle of Susquehanna Steam Electric Station Unit 1 may result in some increase to the probability or consequences of a previously analyzed accident or may reduce in some way a safety margin, but the results of the change are clearly within all acceptable criteria with respect to the system specified in the Standard Review Plan. One of the examples of actions involving no significant hazards consideration, example vi, applies to such a change (48 FR 14871).

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Comments should be addressed to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, ATTN: Docketing and Service Branch.

By August 29, 1983, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any other which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and state comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attn: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room 1717 H Street, NW., Washington, D.C. by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325–6000 (in Missouri (800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to A. Schwencer: Petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Executive

Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to Jay Silberg, Esquire, Shaw, Pittman, Potts & Trowbridge, 1800 M Street, NW., Washington, D.C. 20036, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or request for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., and at the Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701.

Dated at Bethesda, Maryland, this 25th day of July 1983.

For the Nuclear Regulatory Commission.

A. Schwencer,

Chief, Licensing Branch No. 2, Division of Licensing.

[FR Doc. 83-20643 Filed 7-28-83; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-387]

Pennsylvania Power and Light Co. and Allegheny Electric Cooperative, Inc.; Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF-14, issued to Pennsylvania Power & Light Company and Allegheny Electric Cooperative, Inc. (the licensees), for operation of the Susquehanna Steam Electric Station, Unit 1 located in Luzerne County, Pennsylvania.

The amendment would approve Revision 2 to the Susquehanna Steam Electric Station Fire Protection Review Report and change License Condition 2.C.(6) of Facility Operating License No. NPF-14 to require the licensee to maintain and implement the provisions of such approved Fire Protection Review Report in accordance with the licensee's application for amendment dated January 31, 1983. The bulk of the proposed changes in Revision 2 to the Fire Protection Review Report are administrative in nature and were proposed to achieve consistency with the Technical Specifications and with the as-built condition of the plant and to correct editorial and nomenclature errors. The other changes in Revision 2 to the Fire Protection Review Report involve minor hardware and procedural changes to the plant fire extinguishing and detecting systems.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The Commission has provided guidance concerning application of these standards by providing examples. (48 FR 14871). One of the examples of actions involving no significant hazards considerations relates to license amendments which are administrative in nature in order to achieve consistency throughout the Technical Specifications, to correct errors or to change nomenclature. On this basis, the staff proposes to determine that those changes in Revision 2 to the Fire Protection Review Report which are administrative in nature (to correct editorial and nomenclature errors and achieve consistency with the Technical Specifications and as-built plant conditions) involve no significant hazards considerations. The staff proposes to determine that the other changes involved in this license amendment involve no significant hazards considerations on the basis that the changes do not affect reactor operations or accident analyses and have no radiological consequences, and therefore, clearly do not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibliity of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in the margin of safety.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Comments should be addressed to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attn: Docketing and Service Branch.

By August 29, 1983, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the

first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and state comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attn: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-6000 (in Missouri (800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to A. Schwencer: Petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to Jay Silberg, Esquire, Shaw, Pittman, Potts & Trowbridge, 1800 M Street NW., Washington, D.C. 20036, attorney for the license.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or request for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., and at the Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701.

Dated at Bethesda, Maryland the 25th day of July 1983.

For the Nuclear Regulatory Commission.

A. Schwencer,

Chief, Licensing Branch No. 2, Division of Licensing.

[FR Doc. 83-20644 Filed 7-28-83; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-389]

Florida Power and Light Company, et al.; Consideration of Issuance of Amendment to Facility Operating License and Proposed no Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF-16, issued to Florida Power and Light Company (FP&L), Orlando Utilities Commission of the City of Orlando, Florida and Florida Municipal Power Agency (the Licensees), for operation of the St. Lucie Plant, Unit 2 located in St. Lucie County, Florida.

The amendment would change the natural circulation cooldown and boron mixing tests to be performed at first refueling instead of at the completion of startup testing in accordance with the licensee's application for amendment dated July 7, 1983, and received on July 15, 1983. It should be noted that testing would only be performed if a similar test to be performed at the San Onofre 2 plant is found not to be applicable to St. Lucie 2. This is required per license condition 2.C.7.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The Commission has provided guidance for the application of these criteria by providing examples of amendments that are considered not likely to involve a significant hazards consideration (48 FR 14870). One such example (see example (vi) of 10 CFR 50.92) is a change which either may result in some increase to the probability or consequences of a previously-analyzed accident or may reduce in some way a safety margin, but

where results of the change are clearly within all acceptable criteria with respect to the system or component specified in the Standard Review Plan (SRP). The change being proposed by the licensee is within all acceptable criteria with respect to the systems specified in the SRP.

The issue pertaining to the natural circulation and boron mixing tests of the St. Lucie Plant Unit 2 was first identified and addressed in the SER (October 1981). The staff documented in the SER the acceptability of the Florida Power and Light (FP&L) commitment to perform the tests during their power escalation program if the data from a similar test at San Onofre 2 was not applicable.

When delays in the San Onofre 2 tests occurred, FP&L formally requested in an October 8, 1982 letter approval to change their commitment to prior to exceeding fifty percent of rated thermal power. The staff found this acceptable and documented it in SER 3 (April 1983).

Again, when additional delays in the San Onofre tests occurred, FP&L formally requested in a June 9, 1983 letter approval to reschedule meeting their commitment to the end of start-up testing. The staff documented their acceptability of this commitment in SER 4 (June 1983).

Further delays in the San Onofre 2 tests have occurred. FL&P has submitted by letter dated July 7, 1982 a request for approval to extend their commitment to prior to restart following the first refueling.

The staff considers that none of these changes involve a safety concern. The implementation of the San Onofre 2 or St. Lucie 2 tests primarily serve to confirm the results of the analysis which the staff has reviewed, evaluated, found acceptable and documented in the SER and SSER. The previously specified dates that were documented in the SER and SER for these tests were selected only to provide timely confirmation. While the test results should be provided in a timely manner, they are not required prior to completing the startup test program in order to assure safe operation of the facility. Furthermore, the natural circulation cooldown event which occurred at St. Lucie Unit 1 in 1977 demonstrated that the reactor coolant system can be promptly borated and the plant shutdown without endangering the health and safety of the public. St. Lucie Unit 2 is essentially identical to St. Lucie Unit 1; therefore, it is considered that the plant procedures and systems are such that similar results would be expected on St. Lucie Unit 2. The staff is also confident that the test scheduled to be performed at San Onofre 2 will be applicable to St. Lucie 2, and therefore, would not require the test to be performed by FP&L. It is for these reasons the staff finds acceptable that the St. Lucie demonstration be performed no later than first refueling. Based on the above it is determined that this amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing. Comments should be addressed to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, ATTN: Docketing and Service Branch.

By August 29, 1983, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFP Part 2. If a request for a hearing or petition for leave to intervene is filed by the above ate, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The

final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-6000 in (Missouri (800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to George W. Knighton: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to Harold F. Reis, Esq., Lowenstein, Newman, Reis, Axelrad & Toll, 1025 Connecticut Avenue, NW., Washington, D.C. 20036, attorney for the licensees.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR 2.714(a)(1) (i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., and at the Indian River Community College Library, 3209 Virginia Avenue, Ft. Pierce, Florida 33450.

Dated at Bethesda, Maryland, this 27th day of July, 1983.

For the Nuclear Regulatory Commission.

George W. Knighton,

Chief, Licensing Branch No. 3, Division of Licensing.

[FR Doc. 83-20729 Filed 7-28-83; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF PERSONNEL MANAGEMENT

Federal Prevailing Rate Advisory Committee; Open 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, September 1, 1983
Thursday, September 8, 1983
Thursday, September 15, 1983
Thursday, September 22, 1983
Thursday, September 29, 1983

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. 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).

William B. Davidson, Jr.,

Chairman, Federal Prevailing Rate Advisory Committee.

July 25, 1983.

[FR Doc. 83-20548 Filed 7-28-83; 8:45 am]

BILLING CODE 6325-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-20001; File No. 4-281]

Receipt and Temporary Summary Effectiveness of an Amendment to Establish Non-Professional Fees: Consolidated Quotation Plan

July 22, 1983.

On July 18, 1983, the participants in the Consolidated Quotation Plan ("CQ Plan") submitted to the Commission, pursuant to Rule 11Aa3-2 under the securities Exchange Act of 1934 ("Act"), an amendment ot the CQ Plan governing the operation of the consolidated quotation system.[1] The amendment establishes low monthly flees which permit small investors, for the first time, to receive quotation information relating to listed securities on a real-time basis.

Description of Amendment

The amendment establishes a new "non-professional" category of subscriber to quotation information provided by the CQ Plan.[2] Pursuant to

[1] The 1980 CQ Plan was approved in securities Exchange Act Release No. 16518 (January 22, 1980), 45 FR 6521.

[2] The classification of "non-professional" will be governed by guidelines adopted by the CQ Plan; generally, however, the "non-professional" category is intended to apply to individual investors not using market information as part of their normal occupation.

the amendment, this non-professional category of subscriber is charged substantially lower fees for quotation information than are professional subscribers ($7.50 per interrogation unit for non-professionals as compared to $63.50 for the first interrogation unit and $6.05 for subsequent units for professional subscribers). In addition, separate contract arrangements allow non-professional subscribers to contract solely with the vendor providing the market data service, rather than with the vendor and the CQ Plan participants, as is required of other categories of subscribers.[3] The amendment also gives the New York Stock Exchange, as Network A Plan administrator, discretion regarding the timing of implementation of these contractual arrangements and fees. These new contractual arrangements and fees are intended to lower the cost of current market information to the public investor, and thus to enable vendors using various newly developing services aimed at the individual investor, such as videotext cable television, telephone inquiry devices, personal computers, and pocketsized radio receivers, to offer current market information to a broader range of investors than even before.

II. Temporary Summary Effectiveness of Amendment

The Commission believes that the CQ Plan amendment represents a significant milestone in improving the dissemination of quotation information to the investing public. The proposed contractual arrangements and new "non-professional" subscriber category appear likely to broaden substantially the access of individual investors to current market information, consistent with the statutory goal of ensuring the"availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities" expressed in Section 11A(a)(1)(c)(ii) of the Act. Previously, the level of quotation information fees effectively excluded investors that had only a casual or occasional interest in current market information from subscribing to vendor services providing this information on a real-time basis. Similarly, for formalities of contracting directly with the CQ plan participants as well as the vendor of quotation information may have deterred some investors from obtaining this information. Because this amendment enables a substantially wider dissemination of market information, as sought by the Act, the Commission believes that it is appropriate to expedite the effectiveness of this amendment.

The Commission, therefore, finds that granting this amendment summary effectiveness is in furtherance of the purposes of the Act, in the public interest, and appropriate for the protection of investors. Accordingly, the Commission hereby orders that this amendment take effect, for a period of 60 days, upon publication of notice thereof in the **Federal Register.**[4]

III. Request for Comment

Publication of the amendment is expected to be made in the **Federal Register** during the week of July 25, 1983. Pursuant to Rule 11Aa3-2(c)(3) under the Act, the fees portion of the amendment became effective upon filing with the Commission. In order to assist the Commission in determining whether to require further review of the amendment, as permitted under Rule 11Aa3-2, or whether to approve permanently the amendment, interested persons are invited to submit written data, views, and arguments concerning the submission within 21 days from the date of publication in the **Federal Register.** Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. All Communications should refer to File No. 4-281. Copies of the submission, including all amendments, all written statements with respect to the amendment which are filed with the Commission, and all written communications relating to the amendment between the Commission and any person, other that those which may be withheld from the public[5] will be available for inspection and copying at the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, D.C. 20549.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.[6]

George A. Fitzsimmons

Secretary.

[FR Doc. 83-20587 Filed 7-28-83 8:45 am]

BILLING CODE 8010-01-M

[3] Thus, vendors can execute subscriber agreements with their non-professional subscribers on behalf of the CTA Plan participants, and pay the fees for these subscribers.

[4] Paragraph(c)(4) of Rule 11Aa3-2 provides that a plan amendment put into effect upon publication of its notice shall be effective only on a temporary basis not to exceed 120 days. The Commission expects to determine whether to approve this amendment on a permanent basis within 60 days from the date that notice of this amendment is published in the **Federal Register.**

[5] 17 CFR 240.24b-2.

[6] *See* Pub. L. No. 87-592, 76 Stat. 394 (15 U.S.C. 78d-1); 17 CFR 200.30-3(a)(29).

[Release No. 34-20002; File No. S7-433]

Receipt and Temporary Summary Effectiveness of an Amendment To Establish Nonprofessional Fees; Consolidated Tape Association

July 22, 1983.

On July 18, 1983, the participants in the Consolidated Tape Association ("CTA") submitted to the Commission, pursuant to Rule 11Aa3-2 under the Securities Exchange Act of 1934 ("Act") an amendment to the Restated and Amended Plan governing the operation of the consolidated transaction reporting system ("CTA Plan").[1] The amendment establishes low monthly fees which permit small investors, for the first time, to receive last-sale information relating to listed securities on a real-time basis.

I. Description of Amendment

The amendment establishes a new "non-professional" category of subscriber to last-sale information provided by the CTA.[2] Pursuant to the amendment, this non-professional category of subscriber is charged substantially lower fees for last-sale information than are professional subscribers ($7.50 per interrogation unit for non- professionals as compared to $63.50 for the first interrogation unit and $6.05 for subsequent units for professional subscribers). In addition, separate contract arrangements allow non-professional subscribers to contract solely with the vendor providing the market data service, rather than with the vendor and the CTA, as is required of other categoris of subscribers.[3] The amendment also gives the New York Stock Exchange, as Network A Plan administrator, discretion regarding the timing of implementation of these contractual arrangements and fees.

[1] The 1980 Restatement and Amendment of the CTA Plan was approved in Securities Exchange Act Release No. 16983 (July 16, 1980), 45 FR 49414.

[2] The classification of "non-professional" will be governed by guidelines adopted by the CTA; generally, however, the "non-professional " category is intended to apply to individual investors not using market information as part of their normal occupation.

[3] Thus, vendors can execute subscriber agreements with their non-professional subscribers on behalf of the CTA Plan participants, and pay the fees for these subscribers.

These new contractual arrangement and fees are intended to lower the cost of current market information to the public investor, and thus to enable vendors using various newly developing services aimed at the individual investor, such as videotext cable television, telephone inquiry devices, personal computers, and pocket-sized radio receivers, to offer current market information to a broader range of investors than ever before.

II. Temporary Summary Effectiveness of Amendment

The Commission believes that the CTA amendment represents a significant milestone in improving the dissemination of last-sale information to the investing public. The proposed contractual arrangements and new "non-professional" subscriber category appear likely to broaden substantially the access of individual investors to current market information, consistent with the statutory goal of ensuring the "availability to brokers, dealers and investors of information with respect to quotations for and transactions insecurities" expressed in Section 11A(a)(1)(c)(ii) of the Act. Previously, the level of last-sale information fees effectively excluded investors that had only a casual or occasional interest in current market information from subscribing to vendor services providing this information on a real-time basis.[4] Similarly, the formalities of contracting directly with the CTA as well as the vendor of last-sale information may have deterred some investors from obtaining this information. Because this amendment enables a substantially wider dissemination of market information, as sought by the Act, the Commission believes that it is appropriate to expedite the effectiveness of this amendment.

The Commission, therefore, finds that granting this amendment summary effectiveness is in furtherance of the purposes of the Act, in the public interest, and appropriate for the protection of investors. Accordingly, the Commission hereby orders that this amendment take effect, for a period of 60 days, upon publication of notice thereof in the **Federal Register.**[5]

III. Request for Comment

Publication of the amendment is expected to be made in the **Federal Register** during the week of July 25, 1983. Pursuant to Rule 11Aa3-2(c)(3) under the Act, the fees portion of the amendment became effective upon filing with the Commission. In order to assist the Commission in determining whether to require further review of the amendment, as permitted under Rule 11Aa3-2, or whether to approve permanently the amendment, interested persons are invited to submit written data, views, and arguments concerning the submission within 21 days from the date of publication in the **Federal Register.** Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. All communications should refer to File No. S7-433. Copies of the submission, including all amendments, all written statements with respect to the amendment which are filed with the Commission, and all written communications relating to the amendment between the Commission and any person, other than those which may be withheld from the public[6] will be available for inspection and copying at the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.[7]

George A. Fitzimmons,

Secretary.

[FR Doc. 83-20586 Filed 7-28-83; 8:45 am]

BILLING CODE 8010-01-M

[4] Investors who were interested in receiving last-sale information during the trading day and who did not wish to pay, or could not afford, the fees charged to market professionals, were limited to the receipt of information on a 15/minute delay basis.

[5] Paragraph (c)(4) of Rule 11Aa3-2 provides that a plan amendment put into effect upon publication of its notice shall be effective only on a temporary basis not to exceed 120 days. The Commission expects to determine whether to approve this amendement on a permanent basis within 60 days drom the date that notice of this amendement is published in the **Federal Register.**

[6] 17 CFR 240.24b-2.

[7] *See* Pub. L. No. 87-592, 76 Stat. 394 (15 U.S.C 78d-1); 17 CFR 200.30-3(a)(29).

[Release No. 34-19994; File No. SR-CSE-83-3]

Self-Regulatory Organizations; Proposed Rule Change by The Cincinnati Stock Exchange Relating to Increase in Listing Fees

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 July 15, 1983, The Cincinnati Stock Exchange (the "Exchange") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. The Cincinnati Stock Exchange's Statement of the Terms of Substance of the Proposed Rule Change

The following is the text of a proposed amendment to the Listing Fee Schedule of The Cincinnati Stock Exchange (the "Exchange") with deleted words bracketed and new wording in italic:

Listing Fee Schedule

[$250.00] *$500.00* for the first 25,000 shares of each class of stock of an initial listing of securities by a corporation or [$250.00] *$500.00* for the first $1,000,000.00 par value of each issue of bonds initially listed and [$50.00] *$100.00* for each additional 10,000 shares of each class of stock or each additional $1,000,000.00 par value of each issue of bonds or any part thereof with a maximum fee of [$1,000.00] *$2,000.00* for an initial listing of a single class of stock or issue of bonds. [For a corporation initially listing at one time more than one class of stock or issue of bonds a maximum fee of $500.00 will be charged for each such additional listing.]

In the event that a listed corporation increases any class of its listed securities through the declaration of a stock dividend, splitting of its shares, or if a public offering of additional stock is made of an issue previously listed, such company will be required to list same paying a listing fee [of $100.00 for the first 10,000 shares or any part thereof and $25.00 for each additional 10,000 shares or any part thereof but not more than $1,000.00 for the listing at one time of such additional shares of a single class of securities. For a corporation listing at one time such additional shares of more than one class of securities a maximum fee of $500.00 will be charged for each listing of shares of each such additional class. In the event such additional shares are issued by a corporation whose stock is dually listed on another national registered securities exchange, the listing fee for the additional shares shall be as stated above or the fee charged by the other national registered securities exchange for such additional shares, whichever is less] *as computed above*

In the event that a corporation, whose securities are listed on the Exchange, is reorganized or a new charter is taken out or organizes a subsidiary company and desires to list the securities of

either, it shall be considered as a new corporation and will be required to proceed as a new applicant.

In addition to the listing fee, all corporations having their securities listed shall be required to pay to the Exchange on December 15th an annual service fee of [$100.00] *$250.00* for the current calendar year. However, no service fee shall be charged a corporation in any year in which it has been required to pay a listing fee for listing securities on the Exchange.

II. A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The Board of Trustees determined that administrative expenses and operational expenditures warrant an increase in listing fees. The statutory basis for the proposed rule change is Section 6(b)(4) of the Securities Exchange Act of 1934 (the "Act") which explicitly permits the rules of the Exchange to provide for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its services.

B. Self-Regulatory Organization's Statement of Burden on Competition

The amended Listing Fee Schedule will apply uniformly to all issuers which list securities on the Exchange and the amount of the charge will be directly related to the number of securities so listed. The Exchange believes that the proposed changes impose no burden on competition, and that the charges are reasonable and equitably allocated.

C. Self-Regulatory Organization's Statement on Comments Received From Members, Participants or Others on Proposed Rule Change

Comments were solicited by the Board of Trustees. No negative comments were received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** 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 reason for so finding or (ii) as to which the 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.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Avenue, NW., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 5th Street, NW., 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 in the caption above and should be submitted within 21 days after the date of this publication. For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: July 21, 1983.

George A. Fitzsimmons,

Secretary.

[FR Doc. 83-20579 Filed 7-28-83; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 19999; File No. SR-OCC-83-7]

Options Clearing Corp.; Order Approving Proposed Rule Change

July 21, 1983.

I. Introduction

On April 15, 1983, The Options Clearing Corporation ("OCC") filed with the Commission pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), (the "Act") and Rule 19b-4 thereunder, a proposed rule change that would authorize OCC to modify its formula for calculating Clearing Members' required contributions to OCC's Stock and Non-Equity Securities Clearing Funds.

Notice of the proposed rule change, together with the terms of substance of the proposed rule change, was given by publication of Securities Exchange Act Release No. 19728 (May 4, 1983), 48 FR 21403 (May 12, 1983). No letters of comment were received by the Commission.

II. Description

The proposed rule change, among other things, would amend the formulae by which OCC determines Clearing Members' required contributions to OCC's Stock and Non-Equity Securities [1] Clearing Funds under OCC Rule 1001 (a), (b) and (c). Under the proposal, each Clearing Member's required contribution to the Clearing Funds would be the greater of its minimum requirement [2] or such Member's "proportionate share of an amount equal to 5%, or such greater percentage as the Board of Directors shall from time to time prescribe by resolution, of the average daily aggregate margin requirement in respect of [the stock option or non-equity securities option contracts, as the case may be] outstanding during the preceding calendar month" ("maintenance contribution").[3]

OCC's proposal amends OCC's maintenance contribution formulae for the Stock and Non-Equity Securities Clearing Funds in three important ways. First, each Clearing Member's maintenance contribution, which has been based in the past on such Member's proportionate share [4] of the average daily open interest value,[5] now

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[1] The proposed rule change includes a technical amendment that would redesignate OCC's "Debt Securities Clearing Fund" the "Non-Equity Securities Clearing Fund." The redesignation reflects the recent creation of several new options products, e. g., options on stock indices and on foreign currencies, that are unrelated to options on debt securities.

[2] Each Stock Clearing Member must contribute at least $10,000 to the Stock Clearing Fund. Each Non-Equity Securities Clearing Member must contribute at least $100,000 to the Non-Equity Securities Clearing Fund. The proposal does not change these minimum contribution levels.

The proposed formulae would be applied in the following manner: The total average daily margin requirement in a particular month would be multiplied by the maintenance contribution formula percentage to arrive at a figure that represents the aggregate Clearing Fund amount. That figure then would be allocated *pro rata* to Clearing Fund Members based on their individual open interest as a percentage of total open interest. Thus, if a Clearing Member's individual open interest was 2% of total open interest, its proportionate share of the Clearing Fund contribution would be determined by multiplying the aggregate Clearing Fund total by .02.

[4] A Clearing Member's "proportionate share" currently is equal to the proportion represented by that Clearing Member's average daily number of contracts in open long and short positions over the aggregate average number of such contracts held by all Clearing Members.

[5] Pursuant to current OCC Rule 1001(c), average daily open interest value, for purposes of Clearing Fund contribution calculations, is equal to the average sum of the daily options marking prices of all short positions maintained with OCC. The term "daily options marking price" is defined in OCC Rule 601 (c) and (f).

will be based on the Member's proportionate share of the average daily aggregate OCC margin requirement. For the purposes of the proposed rule, the "average daily aggregate margin requirement" would be calculated by determining for each business day in the calculation time period the sum of all daily OCC margin required to be deposited by all OCC Clearing Members,[6] adding those amounts and dividing that sum by the aggregate number of business days during the calculation period. Second, OCC would use a 30-day calculation time period, rather than the current 90-day period. Third, the current maintenance contribution formula's minimum percentage of 7% would be reduced to 5%.[7]

III. OCC's Rationale

In its filing, OCC states that the proposal is designed to relate more closely the size of the Stock and Non-Equity Securities Clearing Funds to OCC's potential financial exposure. OCC believes that the most significant defect in its current formulae is that Clearing Fund contributions are calculated on the basis of open interest value rather than aggregate OCC margin requirements. Because of the recent unprecedented trading volume and significant increases in underlying stock prices, the Clearing Funds' aggregate totals (and individual Clearing Member required contribution levels) based on open interest value, in OCC's view, have become very sizeable.[8] As a result, Clearing Fund aggregate totals and individual Clearing Member contributions have become both disproportionate to OCC's financial exposure and burdensome to OCC's Clearing Members.[9] Indeed, OCC's aggregate Stock Clearing Fund increased from about $90.5 million in July 1982 to $454 million in January 1983 (the "January level"). Moreover, OCC states in its filing that some Clearing Members' required Clearing Fund contribution have been substantially greater that the Members' required net capital under Rule 15c3-1.[10]

OCC believes that those contributions and aggregate Clearing Fund totals result exceed the totals needed for the protection of OCC, because open interest value does not reflect accurately OCC's and its Clearing Members' potential financial risks. Under the current formulae, a Clearing Member's Clearing Fund contribution, based on open interest value, is determined with reference to its proportionate share of all outstanding contracts, *i.e.*, open long and short position. Because some of the positions represented by aggregate open interest value are either riskless (notably, offsetting long and short positions) or of limited risk (*e.g.*, spread positions in different option series), OCC believes that the current formulae inaccurately measure OCC's potential financial exposure from participant insolvency. Rather, OCC believes that its financial risk is better measured by OCC margin levels.[11]

Those margin levels are determined primarily with respect to Clearing Member's net short positions, since it is those positions that create OCC's primary financial exposure.[12] Moreover, because OCC's Clearing Funds is designed to indemnify OCC in the event of insufficiency or unavailability of a defaulting Clearing Member's margin deposit,[13] OCC believes that the proposed link between Clearing Fund contributions and margin deposits more logically and accurately reflects OCC's potential financial risk.[14]

Although OCC believes that the revised Clearing Fund formulae will alleviate unnecessary financial burdens on Clearing Members, OCC believes, at the same time, that the Clearing Funds will remain at levels sufficient to protect OCC. While OCC notes that the proposal will decrease significantly both the aggregate size of the Clearing Members' Funds and, in many cases, individual Clearing Members' Clearing Fund contributions, OCC believes that the resulting lower contribution levels will remain substantially larger than required to cover OCC's likely potential liabilities.[15]

OCC also proposes to calculate each Clearing Member's required Clearing Fund contribution on a 30-day, rather than a 90-day, cycle. OCC believes that this change will keep current the size of the Clearing Funds and individual Clearing Member contributions.

Finally, OCC states that because the proposed rule change will relate more closely required Clearing Fund contributions to OCC's potential financial risk, the proposal is consistent with Sections 17A(b)(3) (A) and (F) of the Act in that the proposal assures the safeguarding of securities and funds of

[6] In general, OCC's margin requirements are equal to open interest value increased by a certain amount to cover daily fluctuations in market value and decreased by an amount reflecting the value of other security held by OCC covering Clearing Member's obligations. Margin deposit requirements for OCC Clearing Members are determined pursuant to Chapter VI of OCC's Rules, including Rules 601, 602, and 609.

[7] OCC's proposed rule change would add an Interpretation and Policy to OCC Rule 1001 continuing in effect the minimum percentage of 7%, rather than the proposed rule's 5% figure. This Interpretation would help phase-in the new formula. OCC, however, would retain the authority to increase or decrease this percentage as circumstances and financial exposure require. OCC has similar authority to adjust the percentage use in calculating participants' margin contributions. *See* OCC Rule 601.

[8] In previous proceedings, the Commission approved OCC's determination that the current Clearing Fund formulae be calculated on open interest value. *See* File No. SR-OCC-78-2, Securities Exchange Act Release No. 15189 (September 25, 1978), 43 FR 49598 (October 24, 1978). The Commission affirmed the use of open interest value as the basis for OCC Clearing Fund contributions when it approved a more recent proposed rule change by OCC which, among other things, created the Debt Securities Clearing Fund. *See* File No. SR-OCC-81-2, Securities Exchange Act Release No. 18015 (August 6, 1981), 46 FR 40849 (August 12, 1981).

[9] OCC's recent experience has shown that the current Clearing Fund formulae now result in very high contribution levels. For example, OCC informed the Commission that the present Stock Clearing Fund formula resulted in a $454 million Stock Clearing Fund in January 1983. That figure was appoximately three times the required margin deposit of the second largest Clearing Member and approximately thirty times the required margin deposit (approximately $15 million) of an average-sized Clearing Member.

[10] 17 CFR 240.15c3-1.

[11] While OCC's margin requirements are related to open interest value, *see* note 6 *supra*, that relationship is imperfect. Margin requirements may be reduced as a result of using trading strategies that involve offsetting long and short positions or the escrow or specific deposit of underlying securities or treasury bills for applicable short positions. *See* OCC Rules 604, 610, 612, and 613.

[12] OCC's basic guarantee pertains to the performance of option writers' obligations. To the extent that OCC has secondary exposure related to exercised option contracts, particularly in new product options, OCC's margin requirements include margin for those long positions.

[13] For example, in connection with bank letters of credit issued for OCC margin purposes, issuing banks may delay for three days honoring OCC's request to draw down the credits respecting an inSolvent Clearing Member. Thus, until the credits respecting an insolvent are honored, OCC might need to use Clearing Fund assets to satisfy outstanding obligations of the defaulting Clearing Member. *See* OCC By-law, Art. VIII, section 5(a).

[14] OCC's primary safeguards against financial exposure are its margin program and its prompt close-out procedures; the Clearing Funds are back-up systems. A suspended Clearing Member's Clearing Fund contribution generally is to be used by OCC only when that Clearing Member's margin deposit, following close-out activity, is insufficient to meet that Member's outstanding financial obligations. *See infra*, note 18.

[15] OCC *pro forma* calculations based on margin levels in December 1982 indicated that the proposed Stock Clearing Fund formula, at the 5% level, would have produced a Stock Clearing Fund of $150 million in January 1983. At that level, the Stock Clearing Fund would have amounted to less than half the actual January level under the existing formulae. OCC asserts that at the 5% level, the projected Stock Clearing Fund would have been sufficient to cover the margin deposit of the average Stock Clearing Member approximately ten times. At the 7% level retained for the present through the Interpretation and Policy, OCC calculates that the Stock Clearing Fund would have been approximately $175-$200 million—about 13 times the average margin deposit.

OCC's custody or control or for which it is responsible.

IV. Discussion

Although the Commission recognizes that implementation of OCC's proposal will likely reduce OCC's Clearing Fund levels, the Commission believes that the proposal, on balance, will not adversely affect OCC's safeguarding system. For the reasons discussed below, the Commission believes that the proposed rule change is consistent with Section 17A(b) of the Act and should be approved.

Sections 17A(b)(3) (A) and (F) of the Act, in general, require registered clearing agencies to safeguard securities and funds in their custody or control or for which they are responsible. The Commission's Division of Market Regulation has published Registration Standards concerning those Sections of the Act, which require registered clearing agencies "to establish, by rule, an appropriate level of clearing fund contributions based, among other things, on [the clearing agencies'] assessment of the risk to which [they are] subject." [16]

The central purpose of Clearing Funds in general and of OCC's Stock and Non-Equity Securities Clearing Funds in particular is to provide a pool of highly liquid assets to be applied against liabilities incident to clearance and settlement activities. The most likely source of financial liabilities lies in participant default.[17] OCC's experience indicates, however, that its current Clearing Fund formulae now result in contribution levels that are disproportionately high in relation to OCC's financial exposure.[18] As a result, OCC believes that its proposal to calculate Clearing Fund requirements by reference to margined positions appears to meet the objectives of the Act and the Division's Registration Standards.

a. *Margin as Basis for Clearing Fund Contributions.* The Commission agrees with OCC that, under the proposal, OCC's Clearing Funds will relate more closely to OCC's participant default related risk because Clearing Fund contributions will be calculated in reference to required OCC margin deposits. In simplest terms, OCC's net financial exposure in the event of default is attributable preliminary to aggregate uncovered unpaired short positions. It is those positions, primarily, that OCC margins. Accordingly, margin is a more logical basis to which the Clearing Funds contribution formulae should be tied.[19] OCC's open interest value, on the other hand, does not reflect either the exception from margin that is available for covered short positions or the margin credit that is provided for long positions that are part of a legitimate spread. For that reason, open interest value overstates the potential exposure associated with participant default. Accordingly, by adjusting maintenance contribution levels in each of the Stock and Non-Equity Securities Clearing Funds to relate to margin rather than open interest value, the Commission believes that OCC's proposed rule change will correlate more accurately the size of the Clearing Funds with OCC's potential exposure. Furthermore, by calculating such margin-based Clearing Fund contributions on monthly margin averages, rather than on quarterly open interest value averages, the Clearing Funds should be more responsive to fluctuations in potential exposure. The shortened periods for calculating these averages, and the concomitant increase in the frequency of recalculating Clearing Fund contributions, are further assurances of a closer correlation between Clearing Fund contributions and OCC's risk.

b. *Appropriate Level of OCC Clearing Fund Contributions.* OCC's proposal reflects OCC's legitimate concern for maintaining reasonably sufficient Clearing Fund levels to protect OCC and its Clearing Members against potential losses or liabilities incident to the clearance and settlement of options transactions. At the same time, the Commission agrees with OCC that its Clearing Fund formulae should be adjusted to reflect changing circumstances. Although the application of the proposed formulae, in all probability, will result in decreased aggregate Clearing Fund contributions and, in many cases, decreased individual Clearing Member Clearing Fund contributions, the Commission believes that OCC has designed its formulae in a manner consistent with regulatory requirements.

In January 1983, OCC's Stock Clearing Fund was approximately $454 million. That total was approximately thirty times the required margin deposit (approximately $15 million) of an average-sized Clearing Member. At that level, the Stock Clearing Fund could cover the simultaneous insolvency of thirty Clearing Members, whose positions could not be closed out without heavy losses and whose individual margin deposits were simultaneously unavailable to OCC. In contrast, under the proposal's 5% level (of the average daily aggregate margin requirement), the aggregate Stock Clearing Fund would have been approximately $150 million—nearly ten times the required margin deposit of an average-sized Clearing Member.[20] Moreover, OCC has authority to call for additional clearing fund deposits from its participants in amounts equal at least to 100% of the current fund requirement. While the Commission believes that the particular size of Clearing Funds is, within a range of reasonableness, a matter properly within the exercise of OCC's regulatory judgment, the Commission has considered two factors important in connection with reviewing OCC's proposal.

First, it is extremely unlikely that OCC simultaneously would face multiple participant insolvencies, dramatic market crises, and unavailable

[16] *See* Securities Exchange Act Release No. 16900 (June 17, 1980), 45 FR 41920 (June 23, 1980), at 41929. *See also* the Commission's Order approving National Securities Clearing Corporation's ("NSCC") proposed rule change amending NSCC's clearing fund rule and requiring NSCC's bank participants to comply fully with NSCC's financial and operational standards, including contributions to NSCC's clearing fund. File No. SR-NSCC-81-7, Securities Exchange Act Release No. 19230 (November 10, 1982), 47 FR 51969 (November 18, 1982).

[17] As noted, OCC's clearing fund provides a secondary source of protection. Its margin deposits and close-out procedures provide the primary line of protection against losses incident to participant default. When a writer-Clearing Member defaults on its contractual obligations, OCC ordinarily suspends it from OCC membership. OCC takes custody on most of the Member's assets pledged to OCC, including margin and Clearing Fund deposits, and places them in a "liquidating settlement account." *See* OCC Rule 1104. After buy-ins and sell-outs in the best available market, pursuant to OCC Rules 910 and 911, the outstanding liabilities of the suspended Clearing Member are satisfied from that Member's liquidating settlement account. OCC first charges liabilities against the suspended Clearing Member's margin deposit. If the margin deposits are exhausted, then the Member's Clearing Fund assets are charged, first to that Fund to which the deficiency relates and then to the other Clearing Fund if the Clearing Member contributed to both OCC Clearing Funds. If there is still a deficiency after assessing the suspended Member's liquidating settlement account, OCC may, in its discretion, elect to charge the deficiency, in whole or in part, to OCC's current earnings. Alternatively, OCC, among other things, can pledge or draw down solvent Clearing Members' Clearing Fund contributions on a *pro rata* basis. *See* OCC By-law, Art. VIII, § 5 (c), (e) and (f).

To date, OCC has not needed to rely on Clearing Fund assets of suspended Clearing Members or solvent Clearing Members, despite several participant insolvencies.

[18] *See* note 9 *supra*.

[19] OCC monitors routinely Clearing Members for potential financial or operational deterioration. OCC can place a troubled Member on closer surveillance and require further assurances such as special variation margin to cover increased risk to OCC. *See* OCC Rule 609.

[20] Although these particular figures refer to stock options and the Stock Clearing Fund, OCC believes and the Commission agrees, that the current formulae for both the Clearing Funds are subject to the same inherent problems.

margin.[21] Second, OCC has been able to limit its financial exposure by closely surveilling troubled Clearing Members, by requiring further assurances of financial responsibility and operational capability from financially or operationally distressed members,[22] and by using its closeout authority promptly and effectively. Accordingly, the Commission believes that the anticipated decrease in Clearing Fund levels will ease the financial burden on Clearing Fund Members [23] without affecting OCC's or its participants' safety adversely.

V. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to registered clearing agencies and, in particular, the requirements of Section 17A of the Act. Specifically, the Commission finds that the proposed rule change is consistent with Sections 17A(b)(3) (A) and (F) of the Act because it assures the safeguarding of securities and funds in OCC's custody or control or for which it is responsible.

Accordingly, it is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR-OCC-83-7) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

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[21] The maintenance margin on those positions should be sufficient to cover, at least, all potential liabilities of OCC up to the date the Clearing Member failed to meet its obligations. Thus, the clearing fund primarily provides a back-up for those one-day market moves which increase OCC's liability after suspension of the Clearing Member.

[22] *See, e.g.*, OCC Rule 609.

[23] Reduced Clearing Fund contribution levels also should enable Clearing Members to channel capital freed from Clearing Funds to other areas, which should permit more efficient individual allocation of resources by Clearing Fund Members. Furthermore, reduced contribution levels may encourage some registered broker-dealers to participate directly in OCC when, in the past, such broker-dealers may have chosen to clear and settle options transactions through a correspondent OCC Clearing Member.

[Release No. 19995; File No. SR-Philadep-83-4]

Filing of Proposed Rule Change by the Philadelphia Depository Trust Co.

July 21, 1983.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on May 23, 1983, the Philadelphia Depository Trust Company ("Philadep") submitted to the Commission a proposed rule change that would amend Philadep by-laws and rules. The proposed amendments would either update or conform certain Philadep by-laws and rules to certain Division of Market Regulation Standards for the Registration of Clearing Agencies that concern Sections 17A(b)(3) (A)-(I) of the Act.[1]

The proposed rule change would amend Articles V and XI of Philadep's by-laws to provide for notice of rule changes and by-law amendments, respectively, to be sent to all participants and other registered clearing agencies prior to the effective date of those amendments. The proposed rule change also would amend Article VI of Philadep's by-laws to provide for one or more vice presidents, conforming the by-laws to existing practice. Article VI would be amended further to provide the president with the authority to appoint the officers provided for in the by-laws and such other officers as the president deems necessary for efficient management. In addition, the amendment to Article VI would enable the president to determine the duties, responsibilities, and terms of office of those officers whom he has appointed.

Article XII of Philadep's by-laws, as amended, would authorize Philadep to make it services available to entities that qualify for membership in accordance with its rules and to decline an application for membership, to cease to act for a participant, to condition, limit or terminate a participant's activities or reinstate a disciplined participant, according to Philadep's rules and procedures. In accordance with Philadep's rules, applicants and participants will have the right to appeal from any of those actions. New Philadep by-law Artilcle XIII would authorize the Board of Directors to enact or repeal rules dealing with disciplinary hearings and participant appeals from decisions imposing sanctions or limiting access to Philadep services.

The proposed rule change would amend several Philadep rules. Amended Philadep Rule 6 would authorize Philadep to participate in tender offers on behalf of its participants. Amended Philadep Rule 15 would require timely distribution to participants of Philadep's financial statements. Amended Philadep Rule 29 would establish Philadep's standard of care to its participants in safeguarding participant securities. Finally, new Philadep Rule 18 would establish an audit committee composed only of non-management directors.

Philadep believes the proposed by-laws and rule changes discussed above are consistent with the Act, including Section 17A(b)(3)(A) of the Act. In its filing Philadep notes that the proposed rule change would permit Philadep to be organized and to have the capacity to comply with the provisions of Section 17A and to enforce compliance by its participants with Philadep's rules. In addition, Philadep asserts that the proposed rule change would authorize Philadep to discipline participants in accordance with Section 17A(b)(5)(A) of the Act.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Person making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section.

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 in the caption above and should be submitted within 21 days after the date of this publication.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

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[1] *See* Securities Exchange Act Release No. 16900 (June 17, 1980), 45 FR 41920 (June 23, 1980).

[Release No. 19997; File No. SR-Philadep-83-5]

Filing of Proposed Rule Change by the Philadelphia Depository Trust Co.

July 21, 1983.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on June 2, 1983, the Philadelphia Depository Trust Company ("Philadep") submitted to the Commission a proposed rule change that

would amend certain Philadep By-laws and Rules to either update them or conform them to certain Division of Market Regulation Standards for the Registration of Clearing Agencies that concern Sections 17A(b)(3)(A)–(I) of the Act.[1] The amendments include: (i) revising Philadep's procedures for nominating and electing its Board of Directors; (ii) changing the structure and composition of Philadep's Board of Directors; and (iii) enabling individuals to participate in Philadep.

The proposed rule change would amend Article III of Philadep's By-laws to provide for a nominating committee and independent nominations for Directors by written petition from participants. Article III would be amended further to provide that Philadep shareholders, in voting for Philadep's Directors, must give due consideration to the fair representation of Philadep participants. In addition, the proposed rule change would amend Article IV of Philadep's By-laws to provide for between 15 and 17 Directors, a majority of whom will be governors of the parent Exchange and, through one or more dual member directors, a majority of whom will be Philadep participants. Article IV also would be amended to provide for an Audit, Executive, Finance, Marketing, Nominating and Operations Committee. Philadep believes that these amendments are consistent with Section 17A(b)(3)(C) of the Act because these amendments assure Philadep shareholders and participants fair representation in the selection of Philadep's directors and administration of Philadep's affairs.

Furthermore, the proposed rule change would amend Philadep Rule 2, to enable sole proprietors to qualify for membership in Philadep. With respect to this amendment, Philadep believes the proposed rule change is consistent with Section 17A(b)(3)(B) of the Act in that it would permit "any registered broker or dealer," including a sole proprietor, to become a Philadep participant.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section. 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 in the caption above and should be submitted within 21 days after the date of this publication.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 83-20561 Filed 7-28-83; 8:45 am]

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[1] *See* Securities Exchange Act Release No. 16900 (June 17, 1980), 45 FR 41920 (June 23, 1980)

[Release No. 19998, File No. SR-SCCP-83-5]

Filing of Proposed Rule Change by the Stock Clearing Corporation of Philadelphia

July 21, 1983.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on May 23, 1983, the Stock Clearing Corporation of Philadelphia ("SCCP") submitted to the Commission a proposed rule change that would amend SCCP by-laws and rules. The proposed amendments would either update or conform SCCP's by-laws and rules to certain Division of Market Regulation Standards for the Registration of Clearing Agencies that concern Sections 17A(b)(e)(A)–(I) of the Act.[1]

The proposed rule change would amend Articles V and XI of SCCP's by-laws to require timely notice to all SCCP participants and other registered clearing agencies of any changes to SCCP's rules and by-laws to enable interested persons to submit comments. Amended Article VI would preclude the same person from holding the offices of president and treasurer. Amended Article XII would require SCCP to make its services available to entities that qualify for membership and to permit SCCP in accordance with SCCP's rules, to decline an application for membership, cease to act for, or condition, limit or terminate the privilege of a participant. Applicants and participants would be afforded the right to appeal from any of those actions and SCCP's board of directors, on its own motion, would be authorized to admit or reinstate applicants or participants adversely affected by corporate decisions.

The proposed rule change would also add several new Articles to SCCP's by-laws. New Article VII would enable SCCP to indemnify past and present SCCP officers and directors against liabilities and expenses to the fullest extent of state law. New Article X would require the president and board of directors to present a statement of SCCP's affairs at the annual meeting of shareholders. Article XVI, which establishes the Contingency Reserve Account, would authorize the board of directors to set the amount of the funds in the Account, from time to time. The Account could be used by SCCP to offset financial exposure to SCCP and its participants arising from SCCP's clearance and settlement activities. Finally, new Article XVII would authorize the board to enact or repeal rules dealing with disciplinary action, sanctions, and to adopt procedures for conducting disciplinary hearings and reviews.

The proposed rule change also makes several substantive changes to SCCP's rules. SCCP Rule 8 would be amended to provide that all deliveries of Philadep-eligible securities must be made via deposits to a Philadep account. SCCP Rule 17 would provide that SCCP must terminate a participant if SCCP determines that the participant does not meet certain specified criteria. New SCCP Rule 19 states that any participant for whom SCCP has ceased to act can be reinstated by a majority vote of the board of directors. SCCP Rule 29 would require SCCP to maintain appropriate insurance coverage and to advise participants and the Commission of any material reduction in the amount of that coverage. New SCCP Rule 30 would authorize SCCP to disclose to participants SCCP's financial statement within certain time frames. New SCCP Rules 31 and 32 would provide, respectively, that SCCP must have an audit committee composed of non-management directors and that SCCP will apply a uniform standard of care in its obligations to participants. SCCP believes that these amendments are consistent with Sections 17A(b)(3)(A)–(I) of the Act.

New SCCP rule 24, concerning the right of appeal, would strengthen the due process afforded to applicants denied membership in SCCP and disciplined participants. Section 4 of this Rule would require that an independent committee of the Board hear the appeals

[1] *See* Securities Exchange Act Release No. 16900 (June 17, 1980), 45 FR 41920 (June 23, 1980).

and that such committee not include any person responsible for the specific decision from which the appeal is taken. SCCP believes the amendments are consistent with Section 17A(b)(3)(H) of the Act because these amendments will strengthen the fairness of, and procedural protections afforded applicants and participants affected by SCCP proceedings to deny membership and impose disciplinary sanctions or otherwise to limit participant access to SCCP services, respectively.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submission should file six copies thereof with the Secretary, Securities Exchange Commission, 450 Fifth Street, N.W. Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section. 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 in the caption above and should be submitted within 21 days after the date of this publication.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 83-20580 Filed 7-28-83; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 20000; File No. SR-MSTC-83-8]

Filing and Immediate Effectiveness of Proposed Rule Change by the Midwest Securities Trust Co.

July 21, 1983.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on July 1, 1983, the Midwest Securities Trust Company ("MSTC") filed with the Securities and Exchange Commission the proposed rule change as described herein. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

The proposed rule change would require that National Institutional Delivery System ("NIDS") trades between two MSTC participants be affirmed by the standard trade date plus three, as is required for NIDS trades via the depository interface. Previously, NIDS trades between MSTC participants could be affirmed until trade date plus four. The purpose of the proposed rule change is to provide uniformity of depository processing for institutional trade information. MSTC believes the proposed rule change is consistent with Section 17A of the Act by providing uniform standards and procedures for the clearance and settlement of securities transactions.

The foregoing change has become effective, pursuant to Section 19(b)(3)(A) of the Act and subparagraph (e) of Securities Exchange Act Rule 19b-4. At any time within 60 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 Act.

Interested persons are invited to submit written data, views and arguments concerning the submission within 21 days after the date of publication in the **Federal Register.** Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 450 5th Street, NW., Washington, D.C. 20549. Reference should be made to File No. SR-MSTC-83-8.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Room, 450 5th Street, NW., Washington, D.C. Copies of the filing and of any subsequent amendments also will be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization.

For the Commission, by the Division of Market Regulation Pursuan to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 83-20582 Filed 7-28-83; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 19996; File No. SR-SCCP-83-6]

Filing of Proposed Rule Change by the Stock Clearing Corporation of Philadelphia

July 21, 1983.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on June 2, 1983, the Stock Clearing Corporation of Philadelphia ("SCCP") submitted to the Commission a proposed rule change that would amend certain SCCP by-laws and rules. The proposed amendments would either update or conform SCCP's by-laws and rules to certain Division of Market Regulation Standards for the Registration of Clearing Agencies that concern Sections 17A(b)(3)(A)-(I) of the Act.[1]

The proposed rule change would amend Article III of SCCP's by-laws to provide for a nominating committee and independent nominations for Directors by written petition from participants. Article III would be amended further to provide that SCCP shareholders, in voting for SCCP's Directors, must give due consideration to the fair representation of SCCP participants. In addition, the proposed rule change would amend Article IV of SCCP's by-laws to provide for between 15 and 17 Directors, a majority of whom will be governors of the Philadelphia Stock Exchange and, through one or more dual member directors, a majority of whom will be SCCP participants. Article IV also would be amended to establish Audit, Executive, Finance, Marketing, Nominating and Operations Committees of the Board of Directors. SCCP believes that these amendments are consistent with Section 17A(b)(3)(C) of the Act by assuring fair representation of its shareholders and participants in the selection of its directors and in the administration of its affairs.

Furthermore, the proposed rule change would amend SCCP Rule 2 to enable sole proprietors to qualify for membership in SCCP. SCCP believes this amendment is consistent with Section 17A(b)(3)(B) of the Act because

[1] *See* Securities Exchange Act Release No. 16900 (June 17, 1980), 45 FR 41920 (June 23, 1980).

it would permit "any registered broker or dealer," including a sole proprietor, to become a SCCP participant.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in, the Commission's Public Reference Section. 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 be submitted within 21 days after the date of this publication.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,
Secretary.

[FR Doc. 83-20584 Filed 7-28-83; 8:45 am]
BILLING CODE 8010-01-M

[Release No. 13398; 812-5500]

Aggressive Growth Shares, Inc., et al.; Filing of Application

July 21, 1983.

Notice is hereby given that Aggressive Growth Shares, Inc. ("Aggressive Growth"), Bullock Fund, Ltd., Canadian Fund, Inc., Dividend Shares, Inc., Monthly Income Shares, Inc., Nation-Wide Securities Company, Inc. ("Funds"), High Income Shares, Inc. ("High Income"), Bullock Tax-Free Shares, Inc. ("Tax-Free") and Money Shares, Inc. ("Money Shares"), each of which is registered as an open-end, diversified, management investment company under the Investment Company Act of 1940 ("Act"), and Calvin Bullock, Ltd. ("Bullock"), principal underwriter for Aggressive Growth, Funds, High Income, Tax-Free and Money Shares (Bullock, Aggressives Growth, Funds, High Income, Tax-Free and Money Shares are collectively referred to hereinafter as "Applicants") filed an application on March 18, 1983, and an amendment thereto on July 14, 1983, for an order of the Commission: (1) pursuant to Section 11(a) of the Act, (a) permitting Aggressive Growth and Bullock to offer to exchange shares of High Income for shares of Aggressive Growth on a basis other than their relative net asset values at the time of exchange; (b) permitting Aggressive Growth and Bullock to offer to exchange shares of Tax-Free for shares of Aggressive Growth on a basis other than their relative net asset values at the time of the exchange; (c) permitting Aggressive Growth and Bullock to offer to exchange shares of Money Shares acquired in a prior exchange at net asset value of shares of High Income, for shares of Aggressive Growth on the basis other than their relative net asset values per share at the time of the exchange; (d) permitting Aggressive Growth and Bullock to offer to exchange shares of Money Shares acquired in a prior exchange at net asset value of shares of Tax-Free, for shares of Aggressive Growth on a basis other than their relative net asset values; and (e) permitting any registered investment company primarily distributed by Bullock (including Aggressive Growth, the Funds, High Income and Tax-Free) (referred to hereinafter as a "Bullock Fund"), either one which is presently in existence or one which may be created in the future, to exchange its shares for shares of any other Bullock Fund, on a basis other than relative net asset value per share at the time of the exchange; and (2) pursuant to Section 6(c) of the Act, granting exemptions from Section 22(d) of the Act in connection with such exchanges. 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, and to the Act for the complete text of the provisions of the Act from which Applicants seek exemptions.

Applicants represent that Bullock, as principal underwriter, maintains a continuous public offering of the shares of Aggressive Growth, the Funds, High Income and Tax-Free at their respective net asset values, plus a sales charge, and of Money Shares at net asset value without a sales charge. Applicants state that the sales charges applicable to sales of Aggressive Growth and the Funds are identical, and that those applicable to High Income and Tax-Free vary from those of the Funds and each other.

It is further stated that certain exchanges of shares at their relative net asset values are permitted under Section 11(a) of the Act and are currently available to shareholders of Aggressive Growth, the Funds, High Income, Tax-Free and Money Shares (see Investment Company Act Release No. 11534, January 5, 1981). In addition, Applicants state that, pursuant to an order of the Commission (Investment Company Act Release No. 9676, March 14, 1977), shares of Tax-Free acquired otherwise than by exchange of shares of any of the Funds, or though reinvestment of dividends or distributions on Tax-Free, may be exchanged for shares of any of the Funds at relative net asset value plus a sales load equal to the difference between the sales load described in the prospectus of the applicable Fund and the sales load originally paid on the purchase of the Tax-Free shares being exchanged. Applicants represent further that, pursuant to another order of the Commission (Investment Company Act Release No. 10724, June 11, 1979), the Funds and Bullock are permitted to offer to exchange shares of the Funds for shares of Money Shares acquired in a prior exchange, at net asset value, of shares of Tax-Free, on a basis other than relative net asset value per share at the time of the exchange. Lastly, Applicant states that, pursuant to a third order of the Commission (Investment Company Act Release No. 11534, February 4, 1981), (i) shares of High Income may be exchanged for shares of any of the Funds on a basis other than their relative net asset values at the time of the exchange; (ii) shares of Tax-Free may be exchanged for shares of the Funds on a basis other than their relative net asset values at the time of the exchange, such shares of Tax-Free having been acquired in a prior exchange at ralative net asset value for shares of High Income; (iii) shares of Money Shares may be exchanged for shares of the Funds on a basis other than their relative net asset values at the time of the exchange, such shares of Money Shares having been acquired in a prior exchange at relative net asset value for shares of High Income; (iv) shares of Money Shares may be exchanged for shares of the Funds on a basis other than their relative net asset value at the time of the exchange, such shares of Money Shares having been acquired in a prior exchange at relative net asset values for shares of Tax-Free, which in turn had been acquired in a prior exchange at relative net asset value for shares of High Income; (v) shares of Tax-Free may be exchanged for shares of High Income on a basis other than relative net asset value; and (vi) shares of Money Shares may be exchanged for shares of High Income on a basis other than their relative net asset value at the time of the exchange, which shares of Money Shares had been

acquired in a prior exchange at relative net asset value for shares of Tax-Free. Finally, it is stated that shares of Money Shares acquired for cash (other than reinvested shares) may not be exchanged for shares of any of Aggressive Growth, Funds, High Income, or Tax-Free. It is stated that it is Bullock's present intent to place exchanges involving any future Bullock Fund which does not charge a sales load on the same terms as exchanges in which shares of Money Shares may be exchanged.

Applicants further state that Aggressive Growth, the Funds and Bullock propose to offer to shareholders of High Income, Tax-Free, and Money Shares (other than those shareholders of Money Shares who acquired their shares for cash) the right to exchange their shares for shares of Aggressive Growth or any of the Funds on the basis of relative net asset value, plus the difference in the applicable sales charges described in the current prospectuses of the companies the shares of which are the subject of the exchange. This privilege, it is also stated, would be made available on the same terms to shareholders of any Bullock Fund, subject in every case to the condition that shares to be exchanged have a net asset value of at least $500 or the minimum initial amount required for investment, whichever is greater. No service charge will be imposed on any such transfers, it is stated. Applicants note that a shareholder acquiring shares of Aggressive Growth or any of the Funds through any combination of exchanges or purchases of shares of High Income, Tax-Free and Money Shares (other than shares of Money Shares acquired for cash) would in accordance with the proposed exchange privilege, pay the same overall sales charge as a proportion of net asset value (or of the public offering price) that he would have paid had he directly purchased shares of Aggressive Growth or one of the Funds with the same net asset value, and that the same consequence would apply to an exchange at other than net asset value involving any Bullock Funds.

Applicants represent that Bullock intends to notify dealers of the availability of the exchange privileges described herein, but does not currently intend to provide advice to dealers as to the suitability of investment in any Bullock Fund in connection with the proposed exchange offers, or to solicit any of the exchanges which it proposes to offer.

Applicants submit that purpose of the proposed exchange plan is to permit a shareholder of a Bullock Fund who changes his investment objective to change his investment to an investment company with different investment objectives, remaining within the Bullock group of funds, but without paying the full sales charge otherwise applicable.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than August 15, 1983, at 5:30 p.m., do so by submitting a written request setting forth the nature of his/her interest, the reasons for his/her request, and the specific issues, if any, or fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicants at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. Persons who request a hearing will receive any notices and orders issued in this matter. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,
Secretary.

[FR Doc. 83-20589 Filed 7-28-83; 8:45 am]
BILLING CODE 8010-01-M

[Release No. 871; 803-31]

Coldwell Banker Real Estate Advisory Services, Inc.; Filing of an Application

July 21, 1983.

Notice is hereby given that Coldwell Banker Real Estate Advisory Services, Inc., 533 Freemont Avenue, Los Angeles, California, 90071, a California corporation which will register as an investment adviser under the Investment Advisers Act of 1940 ("Act"), filed an application on June 15, 1983, for an order of the Commission, pursuant to Section 206A of the Act, exempting its proposed incentive fee arrangements with clients investing in real estate and real estate-related investments from the provisions of Section 205(1) or 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. Such persons are also referred to the Act and the rules thereunder for the complete text of the provisions referred to herein.

According to the application, Applicant is a wholly-owned subsidiary of Coldwell Banker Commercial Group, Inc., ("CBCG"), which in turn is a wholly-owned subsidiary of Coldwell, Banker and Company ("Coldwell Banker"). Coldwell Banker, a subsidiary of Sears, Roebuck and Co., is among the nation's largest real estate service companies.

Applicant proposes to establish pooled investment funds for the purpose of investing directly or indirectly in real estate and real estate-related investments. These funds will be organized either as limited partnerships or group or common trusts, with Applicant serving as the general partner or investment adviser to the trustee, respectively. In addition to these limited partnerships and group or common trusts, Applicant intends to serve as investment manager of individually managed accounts which will invest in real estate and real estate-related investments (hereafter each of the foregoing forms of organization, including the individually managed accounts, referred to as "funds(s) unless otherwise indicated). Where the limited partnership form is used, Applicant, as general partner, will itself contribute at least 1% of the invested capital. Applicant will not be an equity participant in the trusts or individually managed accounts.

Applicant represents that regardless of the form or organization of each fund, the investment policies and practices of and Applicant's role as investment adviser to the funds will be essentially the same.

Applicant states that, as with prior limited partnership funds managed by CBCG, with substantially similar investment objectives of obtaining operating income and capital appreciation through the management and development of income-producing real estate, future funds will invest substantially in direct equity interests in real property and in convertible loans. However, Applicant states that in order to offer investors a more attractive real estate investment vehicle, the present demands of the real estate market dictate that these funds pursue a greater diversity of real estate and real estate-related investments. Applicant represents that, while some of the real estate-related investments may be "passive" in nature, the proposed funds will not participate primarily in passive investments. The proposed funds will also invest temporarily in U.S. Government or agency securities, bankers' acceptances, bank certificates of deposit and commercial paper. It is represented that such short term investments will be interim in nature,

pending identification by Applicant of acceptable real estate-related investments. Applicant anticipates that, except where development properties are involved, such interim investments would not normally continue in any significant amounts beyond one year from the inception of a particular fund.

Applicant represents that future funds will be marketed and sold only to sophisticated institutional investors. According to Applicant, each investor in the proposed funds will, either alone or with its representative, possess such knowledge and experience in financial and business matters that it is capable of evaluating the merits and risks of the proposed method of compensation. In addition, all investors will be required to have a net worth of at least $20 million, and each fund will require a minimum investment of $1 million per investor. Applicant expects that most, if not all, investors will substantially exceed these minimums. Applicant represents that neither investment companies nor business development companies as defined in the Investment Company Act of 1940 will invest in the proposed funds nor will the proposed funds be investment companies under such Act.

Applicant states that the precise nature of the services which it will provide to the funds may vary somewhat from fund to fund. However, in general Applicant will provide two types of management services to the funds—specialized real estate and other services which are normally provided and compensated separately on a fee basis, and various types of acquisition and fund management services. There are three principal components in the compensation that Applicant will receive with respect to these basic acquisition and fund management services: an acquisition reimbursement fee, a management fee, and an incentive fee. Applicant believes that the three basic components of its compensation are commonly accepted in the real estate industry. Applicant states that the incentive fee is intended to afford it an opportunity to share in the fund's success. The incentive fee consists of an agreed-upon percentage of the amount by which total cash distributions (including incentive fee distributions) to investors from inception of the fund, less any return of capital, exceed a specified percentage (currently proposed to be 10%) annual non-compounded preferred return to the fund's participants. Applicant explains that the incentive fee can be analyzed as having two separable components: (1) a fee based entirely upon the cash distributions from the operating income of the fund (which includes income from short term investments); and (2) a fee realized upon the cash distributions from the sale or refinancing of the fund's properties. According to Applicant, the first component of the incentive fee is related solely to the operating income of the fund and does not have as its basis a share of the capital gains upon or capital appreciation of the assets of the fund. The second component of the incentive fee relates to the sale or refinancing of the fund's properties and compensates the adviser for capital gains upon appreciation of the capital assets of the funds. However, subject to the exceptions described below, it is nevertheless also wholly dependent upon actual cash distributions to the fund's participants in excess of their preferred return. Furthermore, with respect to this component, the fee is payable only after a total return of invested capital to the investors.

Applicant states that the foregoing description of its incentive fee is subject to two qualifications. First, for individually managed accounts of institutional investors, Applicant will be eligible to earn an incentive fee with respect to the distribution of proceeds on sales or refinancings of each property in the account after the investment in that particular property is recovered, even though capital invested in other properties in the same managed account has not yet been recovered. However, for purposes of calculating the fee, cash distributions attributable to gain on the sale of a particular property or properties will be offset by the amount of any unrealized losses on other assets remaining in the account. Second, the governing documents of each pooled fund will provide that after the tenth year of operation—and thereafter at the end of every fifth year—the fund's participants must vote either to liquidate the fund and terminate the relationship or to continue the fund. If the fund's participants elect to continue the fund, Applicant will be entitled to an incentive fee based upon a constructive sale of the fund's assets at that time. Similarly, if at the end of the tenth full calendar year, or any fifth year thereafter, an asset of an individually managed account has not been sold, Applicant will be entitled to an incentive fee based upon a constructive sale of that asset. The incentive fee will be based upon the same formula used to determine the annual incentive fee, except the cash distribution will be constructive only. Applicant states that the appraised value in such circumstances becomes the "cost" of the properties in the fund for purposes of determining any future incentive fees. However, Applicant also states that should the fund be liquidated at less than the appraised value, the incentive fee earned, if any, upon the constructive sale is not returned. In the circumstances described above, the value of assets for purposes of determining the incentive fee will be based upon an independent appraisal or appraisals. Applicant represents that for future funds and managed accounts the agreed-upon annual preferred return to investors will not be less than 5% of invested capital; and that the agreed-upon percentage of excess thereof payable to Applicant as an incentive fee will not exceed 20% of cash distributions, less return of capital. Applicant recognizes that it would be theoretically possible for it to earn an incentive fee from two or more separate funds or managed accounts based on the return from a single investment if, for example, a managed account were to invest in a fund managed by Applicant. Applicant represents, however, that it will take steps, including representations to the investors in the fund documentation, to asssure that it will not receive more than one incentive fee by virtue of the return on a single investment. Should the situation arise, the mechanics for assuring that Applicant does not receive and incentive fee twice with respect to the same property will be resolved on a case-by-case basis, subject to the review of an independent "advisory committee" whose primary purpose will be to review the fees paid by the funds for services other than acquisitions and fund management services.

Section 206A of the Act provides that the Commission, by order upon application, may conditionally or unconditionally exempt any person or transaction, or any class or classes of persons or transactions, from any provision or provisions of the Act, if and to the extent that the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicant states that it believes that its proposed incentive fee satisfies the foregoing policies, and that the application describes an appropriate instance for the exercise of the Commission's exemptive powers pursuant to Section 206A.

Applicant argues that, despite the possibility that the proposed funds will invest in "securities", they are principally intended as real estate investment vehicles which will invest

primarily in non-securities, specifically, equity interests in real estate and, in fact, except for temporary, interim investments, all of the investments managed by Applicant will constitute somr form of interest in underlying real estate assets. Applicant asserts that because they are reasonably illiquid, long-term in nature, and secured— by the underlying real estate assets, real estate-related "securities" whether debt instruments or limited partnership interests—are generally no more susceptible to fluctuations in value due to "speculative" trading or external factors than are direct investments in real property. To a great extent, therefore, the funds' investments in real estate-related debt and other instruments represent no greater risk to investors than would direct investments in real estate equity, and, it is asserted, the dangers anticipated by Section 205(1) of the Act are no more implicated. Applicant states that advisers with respect to direct equity investments in real estate are not subject to the Act by virtue of that activity, since they are not advising as to "securities". Accordingly, it is argued, it should not be necessary to impose the protections of Section 205(1) of the Act with respect to investments that are similar, in essential characteristics relevant to the purposes of that section, to such direct investments in real estate.

Applicant states that there are further protections inherent in its incentive fee structure. First, it is argued that because Applicant does not realize any incentive fee based upon appreciation of assets or capital gains unless all of the investors have received a return equal to 100% of their capital investment plus a pre-determined non-compounded annual return on capital as well, it is virtually impossible for the investment manager to do well until all of the funds' investors have themselves done well. Second, until after the tenth year, if at all, the performance-based aspect of Applicant's compensation is not predicated on any subjective valuation of the underlying real estate assets. Rather, the incentive fee is calculated on the cash flow of the fund. Other than the constructive sale exception which may occur only at the investors' choice after the tenth year of operation of the fund, Applicant states that it does not and cannot realize any fee upon unrealized appreciation in real property. Third, Applicant's proposed funds will be attractive and available only to sophisticated investors who seek long-term appreciation, are willing to commit their capital for a significant period of time, and are willing and able to accept the potential risks of investing in real property.

Notice is further given that any interested person may, not later than August 15, 1983, 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 herein will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 83-20591 Filed 7-28-83; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 13397; 812-5504]

Guaranty Savings' Tax-Free Money Market Fund; Filing of Application

July 21, 1983.

Notice is hereby given that Guaranty Savings' Tax-Free Money Market Fund ("Applicant"), 2100 66th Street North, St. Petersburg, Florida 33710, an open-end, diversified management investment company registered under the Investment Company Act of 1940 (the "Act"), filed an application on March 21, 1983, and an amendment thereto on May 18, 1983, requesting an order of the Commission, pursuant to Section 6(c) of the Act, exempting Applicant from the provisions of Section 2(a)(41) of the Act and Rules 2a-4 and 22c-1 thereunder to the extent necessary to permit it to compute its net asset value per share using the amortized cost method of valuing portfolio securities. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act for the text of the provisions from which an exemption is being sought.

Applicant states that it is a "money market fund", intended to suit the needs of investors who wish to make an investment in a portfolio of short-term debt obligations the interest from which is exempt from federal income tax. Applicant states that its investment objective is to seek high current income that is exempt from federal income tax, while maintaining liquidity and safety of capital. Applicant represents that it seeks this objective by investing in a portfolio that consists of short-term debt obligations issued by the states, territories and possessions of the United States and by the District of Columbia, and their political subdivisions, duly constituted authorities and corporations, provided that the income from these obligations is wholly exempt from federal income tax, in the opinion of bond counsel to the issuer.

According to the application, Applicant will invest in municipal bonds having a maturity at the time of purchase of one year or less. Applicant intends to maintain a dollar-weighted average portfolio maturity not to exceed 120 days.

Applicant states that it may also invest in municipal notes, including such instruments issued at a discount, frequently referred to as "municipal commercial paper", provided such notes have a maturity at the time of purchase of one year or less.

Applicant represents that it will limit its investments to obligations that at the time of purchase are of "high quality", which means: (1) In the case of municipal bonds, obligations which have been rated Aaa or Aa by Moody's Investors Service, Inc. ("Moody's") or AAA or AA by standard & Poor's Corporation ("S&P"), or, if not rated, are of comparable quality as determined by Applicant's Board of Trustees; or (2) in the case of municipal notes, obligations which have been rated MIG-1 or MIG-2 by Moody's or, if appropriate, Prime-1 by Moody's or A-1 by S&P, or, if not rated, have been issued by an issuer having outstanding debt securities rated not lower than Aa by Moody's or AA by S&P or are of comparable quality in the judgment of Applicant's Board of Trustees; or (3) obligations which depend directly or indirectly on the credit of the government of the United States.

Applicant states that it expects to invest in "variable rate" notes and "variable rate" loan participations. Applicant represents that these instruments generally have rates of interest that are renegotiated at least every 60 days, so that the value of the instrument is equivalent to par value on each interest rate adjustment date. Applicant maintains that the interest rate on variable rate notes is ordinarily determined by reference to or is a percentage of the 90-day Treasury Bill rate, a bank's prime rate, or some similar objective standard.

Applicant submits that variable rate loan participations are similar to variable rate notes, except that they are made available through a commercial bank which arranges the loan participation. Applicant states that such variable rate notes and variable rate loan participations also frequently contain an unconditional demand feature, which allows an institutional investor such as Applicant to demand prepayment of the principal amount of the instrument upon a prescribed notice period, not to exceed five business days. Applicant believes that the variable rate feature together with the demand feature of such obligations will cause the obligations to be freely marketable at all times at a price approximately equal to the value assigned to the instrument under the amortized cost method.

Applicant represents that its investments in variable rate instruments will be limited to those which are of "high quality", either as a result of being within the two highest ratings assigned by the major rating services or as a result of being supported by an irrevocable, unconditional bank letter of credit to insure the issuer's ability to repay principal upon demand. Applicant further represents that its purchases and valuation of variable rate instruments will be made in accordance with proposed Rule 2a-7 under the Act (Investment Company Act Release No. 12206, 1983).

Applicant may, at the time it purchases a municipal bond or note, purchase the right to resell such bond or note to the seller at an agreed-upon price or yield within a specified period prior to the maturity of the bond or note. According to the application, such a right to resell is commonly known as a "put", and the aggregate amount paid for a bond or note with a put is greater than the amount that would be paid for such bond or note without a put.

Applicant believes that it is critical to the success of its method of distribution of its securities that it be able to meet same-day settlements for the redemption of its shares required to satisfy the debit balance in a shareholder's account with Guaranty Savings & Loan Association. Applicant states that, unless prior arrangements assuring immediate liquidity have been made, the negotiation of same-day settlements on sales of portfolio securities within the brief time available is frequently impossible or may require Applicant to receive a less favorable execution price on the sale even though the securities sold have a short remaining maturity.

Applicant maintains that it anticipates the need for immediate liquidity in making purchases of when-issued and delayed delivery securities. Applicant further maintains that since it is unable to enter into repurchase agreements, because income in respect thereof would be taxable, and since same day sales of portfolio securities may be disadvantageous, immediate liquidity is an important factor in the ability to make when-issued or delayed delivery commitments. Applicant represents that its investment policies will permit the acquisition of puts solely to facilitate portfolio liquidity.

Applicant states that the puts it acquries will have the following features: (1) They will be in writing and will be held by Applicant's custodian; (2) they will be exercisable by Applicant at any time prior to the underlying security's maturity; (3) they will be entered into only with banks which have been approved by Applicant's Board of Trustees and determined to present a minimal risk of default; (4) Applicant's right to exercise them will be unconditional and unqualified; (5) although they will not be transferable, the municipal obligations purchased subject to them could be sold to a third party at any time, even though the commitment was outstanding; and (6) their exercise price will be (i) Applicant's acquisition cost of the underlying municipal obligations (excluding any accrued interest which Applicant paid on their acquisition), less any amortized market premium or plus any amortized market or original issue discount during the period Applicant owned the securities, plus (iii) all interest accrued on the securities since the last interest date during the period the securities were owned by Applicant.

Applicant represents that the Internal Revenue Service has issued a revenue ruling describing the circumstances under which the holder of a put will be considered the owner of the securities subject to the put, and Applicant intends to meet the conditions described in the revenue ruling so that the interest it earns from municipal bonds and notes subject to puts will be exempt from federal income tax. Applicant believes that, should it exercise puts from time to time, its business relationships with the sellers of such puts would not be adversely affected. Applicant states that it intends to purchase puts only from banks, unless it obtains an order of the Commission permitting it to purchase puts from broker-dealers.

Applicant expects to pay for puts in cash, but because of the difficulty of evaluating the likelihood of use or the potential benefit of the put, Applicant expects its Trustees to determine that the "fair value" of puts will be zero. Accordingly, the cost of "puts " will be reflected as unrealized depreciation for the period during which "puts" are held. Applicant represents that, in addition, the total amount paid for outstanding puts held in its portfolio will not exceed ½ of 1% of its total assets calculated immediately after any put is acquired.

Applicant submits that the proposed acquisition of puts will not affect its net asset value per share for purposes of sales and redemptions and will not pose new investment risks, but rather will improve its liquidity and ability to pay redemption proceeds the same day. Applicant believes that its reliance upon the credit of the banks from which it purchases puts will be supported to the extent of the value of the underlying municipal securities subject ot the commitment. Therefore, Applicant believes that a put represents less risk than any other bank obligation and will be qualitatively no greater than the risk of loss faced by any investment company which is holding securities pending settlement after having agreed to sell the securities to a dealer in the ordinary course of business. For these reasons as well as Applicant's policy of purchasing puts only from banks which have been determined by its Trustees to present minimal credit risk, Applicant believes that the acquisition of puts will not meaningfully expose its assets to the entrepreneurial risks of the investment banking business, nor require it to evaluate the credit of dealers in determining its net asset value.

Applicant states that prior to the filing of the application, the Commission expressed its view that, among other things, (1) Rule 2a-4 under the act requires portfolio instruments of "money market" funds be valued with reference to market factors, and (2) it would be inconsistent, generally, with the provisions of Rule 2a-4 for a "money market" fund to value its portfolio instruments on an amortized cost basis (Investment Company Act Release No. 9786, May 31, 1977).

Section 6(c) of the Act provides, in pertinent part, that the Commission, by order upon application, may conditionally or unconditionally exempt any person, security, or transaction or any class or classes of persons, securities, or transactions, from any provision of the Act or 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.

Applicant believes that the relief requested is appropriate in the public interest and consistent with the protection of investors.

Applicant states that it has been the experience of its manager in managing another "money market" fund that, in order to attract investors and retain shareholders, it is essential that Applicant be able to maintain a constant net asset value. Accordingly, in order to meet the needs and expectations of investors and to offer them relative stability of principal and a steady flow of predictable income at current competitive rates, Applicant intends to price its portfolio using the amortized cost method of valuation.

Applicant states further that its policy of investing only in instruments of high quality having a remaining maturity of one year or less with an average portfolio of 120 days combined with a stable price of $1.00 per share will provide both of the attributes of stability of principal and a steady flow of investment income.

Applicant states further that its Trustees have determined in good faith based on a full consideration of all material factors that, in light of the characteristics of Applicant described above, absent unusual or extraordinary circumstances, the amortized cost method of valuing portfolio securities will fairly reflect the value of each shareholder's interest in Applicant. Applicant submits that it will continue to use such method only so long as its Board of Trustees believes that it fairly reflects the value of each shoreholder's interest.

Applicant consents to the following conditions to any order granting the requested exemptions:

1. In supervising Applicant's operations and delegating special responsibilities involving portfolio management to Applicant's investment adviser, Applicant's Board of Trustees undertakes—as a particular responsibility within the overall duty of care owed to its shareholders—to establish procedures reasonably designed, taking into account current market conditions and Applicant's investment objective, to stabilize Applicant's net asset value per share as computed for the purpose of distribution, redemption and repurchase, at $1.00 per share.

2. Included within the procedures to be adopted by the Board of Trustees of Applicant shall be the following:

(a) Review by the Board of Trustees as it deems appropriate and at such intervals as are reasonable in light of current market conditions, to determine the extent of deviation, if any, of the net asset value per share determined by using available market quotations from Applicant's $1.00 amortized cost price per share and maintenance of records of such review. To fulfill this condition, Applicant intends to use actual quotations or estimates of market value reflecting current market conditions chosen by the Board of Trustees in the exercise of its discretion to be appropriate indicators of value, which may include, *inter alia*, (1) Quotations or estimates of market value for individual portfolio instruments, or (2) values based on market quotations for investments of similar type, yield and maturity.

(b) In the event that such deviation from Applicant's $1.00 amortized cost price per share exceeds ½ of 1 percent, a requirement that the Board of Trustees will promptly consider what action, if any, should be initiated.

(c) Where the Board of Trustees believes that the extent of any deviation from Applicant's amortized cost price per share may result in material dilution or other unfair results to investors or existing shareholders, it shall take such action as it deems appropriate to eliminate or to reduce to the extent reasonably practicable such dilution or unfair results, which action may include: redeeming shares in kind; selling portfolio instruments prior to maturity to realize capital gains or losses, or to shorten Applicant's average portfolio maturity; withholding dividends; or utilizing a new asset value per share as determined by using available market quotations.

3. Applicant will maintain a dollar-weighted average portfolio maturity appropriate to its objective of maintaining a stable net asset value per share; provided, however, that Applicant will not (a) purchase any instrument with a remaining maturity of greater than one year, or (b) maintain a dollar-weighted average portfolio maturity which exceeds 120 days. In fulfilling this condition, if the disposition of a portfolio instrument results in a dollar-weighted average portfolio maturity in excess of 120 days, Applicant will invest its available cash in such a manner as to reduce the dollar-weighted average portfolio maturity to 120 days or less as soon as reasonably practicable.

4. Applicant will record, maintain and preserve permanently in an easily accessible place a written copy of the procedures (and any modifications thereto) described in condition 1 above, and Applicant will record, maintain and preserve for a period of not less than six years (the first two years in an easily accessible place) a written record of the Board of Trustees' considerations and actions taken in connection with the discharge of its responsibilities, as set forth above, to be included in the minutes of the Board of Trustees' meetings. The documents preserved pursuant to this condition shall be subject to inspection by the Commission in accordance with Section 31(b) of the Act as though such documents were records required to be maintained pursuant to rules adopted under Section 31(a) of the Act.

5. Applicant will limit its portfolio investments to those U.S. dollar-denominated instruments which the Board of Trustees determines present minimal credit risks, and which are of "high quality" as determined by any major rating service, or, in the case of an instrument that is not rated, of comparable quality as determined by the Board of Trustees.

6. Applicant will include in each quarterly report, as an attachment to Form N-1Q, a statement as to whether any action pursuant to condition 2(c) was taken during the preceding fiscal quarter, and, if any such action was taken, will describe the nature and circumstances of such action.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than August 15, 1983, at 5:30 p.m., do so by submitting a written request setting forth the nature of his/her interest, the reasons for his/her request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. Persons who request a hearing will receive any notices and orders issued in this matter. After said date, an order disposing of the application will be issued unless the Commission orders

a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 83-20590 Filed 7-28-83; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 13393; File No. 812-5415]

Washington National Insurance Co. et al.; Filing of Application

Notice is hereby given that Washington National Insurance Company ("WNIC") 1630 Chicago Avenue, Evanston, Illinois, 60201, Separate Account I of WNIC (which is registered under the Investment Company Act of 1940 ("Act") as an open-end, diversified management investment company and will fund certain variable annuity contracts) ("Account"); and Washington National Equity Company, the principal underwriter for the Account (collectively, "Applicants") filed an application on December 30, 1982, and amendments thereto on June 17, 1983, and July 13, 1983, for an order pursuant to Section 6(c) of the Act granting exemptions from provisions of the above referenced sections of the Act and rules thereunder to the extent necessary to permit the transactions described in the application, as amended. All interested persons are referred to the application and amendments on file with the Commission for a statement of Applicants' representations, which are summarized below, and are referred to the Act and the rules thereunder for a statement of the relevant provisions.

Applicants request relief from sections 2(a)(32), 2(a)(35), 22(c), 27(a)(3), 27(c)(1), 27(c)(2), and 27(d) of the Act, and Rule 22c-1 thereunder to the extent necessary to impose a contingent deferred sales charge of 6% on certain withdrawals of purchase payments made under the contracts and on application of purchase payments to certain settlement options.

Applicants request relief from sections 2(a)(32), 22(c), 27(c)(1), 27(c)(2) and 27(d), and Rule 22c-1 to the extent necessary to impose a $30 contract maintenance charge yearly and upon full withdrawal or annuitization of contract values. Applicants also request relief from section 27(c)(2) to the extent necessary to impose a daily charge for financial accounting services, equal on an annual basis to approximately .35% of the average net assets of the Account. Applicants represent that they do not expect to profit from these charges, and that these charges were set at a level not greater than that needed to cover only the actual cost of the services to be provided to the Account.

Applicants request relief from section 27(c)(2): to impose a daily charge for investment management services to be provided to the Account equal on an annual basis to approximately .50% of the average net assets of the Account; to assess against contract values the amount of any premium taxes lawfully imposed in connection with the contracts at the time of such imposition; and to impose an annuity rate guarantee charge on a daily basis which will on an annual basis equal approximately .80% of the current asset value of the Account. Applicants assert that this latter charge is reasonable and that it compares favorably to charges of separate accounts issuing comparable annuity contracts, and the basis for this assertion is reflected in documents on file with the Applicants.

Applicants acknowledge that the sales charge may not be sufficient to fully recover expenses incurred in connection with sale of the contracts, in which case such expenses would be borne by the general account of WNIC, which might include profits (if any) derived from the annuity rate guarantee charge. Applicants therefore request relief from section 12(b) and rule 12b-1, and in this regard represent that WNIC has determined that the proposed sales financing arrangement has a reasonable likelihood of benefiting the Account and owners of contracts funded thereby. WNIC represents that it will maintain at its home office, and make available to the Commission, a memorandum setting forth the basis for this representation. Applicants further represent that the Account, which is presently governed by a board of directors with a majority of disinterested members, will have a board with a disinterested majority formulate and approve any plan under Rule 12b-1 to finance sales expenses.

Applicants request an exemption from the requirements of section 27(c)(2) to the extent necessary to permit the proceeds of all payments under the contracts to be held by WNIC on a temporary basis until such proceeds are invested in securities or similar investments and, once such proceeds are so invested, to permit the Account to hold such securities or similar investments in its own custody and deposit them for safekeeping with a bank having the qualifications prescribed in section 26(a)(1) pursuant to a safekeeping agreement satisfying the provisions of section 26(a) (2) and (3).

Applicants request an exemption from the provisions of section 17(f)(3) and rule 17f-2 to the extent necessary to permit not more than five officers or responsible employees of WNIC, as designated by the board of directors of the Account, to have access to the securities and similar investments of the Account under appropriate conditions, and request an exemption to permit verification of assets of the Account by an independent public accountant retained either by the Account or on its behalf by WNIC.

Applicants request an exemption from section 27(c)(2) to the extent necessary to permit the Account to make use of "securities depositories" pursuant to the provisions of rule 17f-4. Applicants also request an exemption from sections 27(c)(2) and 17 to the extent necessary to permit investment in time deposits issued in book-entry form. Applicants represent that, in connection with its investment in book-entry time deposits: (1) The Account will have in existance at all times a system that is reasonably designed to prevent unauthorized officer's instructions as provided in Rule 17f-4(c)(1); (2) any transactions for the purchase or sale of book-entry time deposits by the Account will be entered into only with banks having the qualifications prescribed in Section 26(a)(1) (or with similarly qualified savings and loan associations) and such transactions will be recorded by such banks and savings and loans associations in book-entry form in the name of the safekeeper for the Account (or a description to that effect); (3) such banks and savings and loan associations will be advised to send written confirmations of any such transactions to the Account; (4) the Account will not forward payment to such banks and savings and loan associations until written confirmations have been received; (5) upon the sale or maturity of any book-entry time deposit, the proceeds thereof will be paid directly to the safekeeper of the assets of the Account; and (6) the board of directors of the Account has adopted resolutions approving the foregoing arrangements and such arragements will be reviewed at least annually.

Finally, Applicants request an exemption from sections 22(e), 27(c)(1), and 27(d) to the extent necessary to permit issuance of contracts to participants in the Texas Optional Retirement Program in conformance with the requirements of Texas law, as interpreted by the Texas attorney general.

Section 6(c) of the Act authorizes the Commission to exempt any person,

security or transaction from the provisions of the Act and rules promulgated 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.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than August 11, 1983, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Wasington, D.C. 20549. A copy of the request should be served personally or by mail upon the Applicant to the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. Persons who request a hearing will receive any notices and orders issued in this matter. After said date an order disposing of the Application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 83-20588 Filed 7-28-83 8:45 pm]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

Region VI Advisory Council; Meeting

The Small Business Administration Region VI Advisory Council located in the geographical area of New Orleans, will hold a public meeting at 10:00 a.m., on Friday, August 26, 1983 at the Small Business Administration office, 1661 Canal Street (second floor), New Orleans, Louisiana, to discuss such matters as may be presented by members, staff of the Small Business Administration, or others present.

For further information, write or call T. A. Aboussie, District Director, U.S. Small Business Administration, 1661 Canal Street, 2nd Floor, New Orleans, Louisiana 70112, (504) 589-2744.

Jean M. Nowak,

Director, Office of Advisory Councils.

June 22, 1983.

[FR Doc. 83-20624 Filed 7-28-83; 8:45 am]

BILLING CODE 8025-01-M

Maximum Annual Cost of Money to Small Business Concerns

13 CFR 107.301(c) sets forth the SBA Regulations governing the maximum annual cost of money to small business concerns for Financing by small business investment companies.

Section 107.301(c)(2) requires that SBA publish from time to time in the **Federal Register** the current Federal Financing Bank (FFB) rate for use in computing the maximum annual cost of money pursuant to § 107.301(c)(1). It is anticipated that a rate notice will be published each month.

13 CFR 107.301(c) does not supersede or preempt any applicable law that imposes an interest ceiling lower than the ceiling imposed by that regulation. Attention is directed to new subsection 308(i) of the Small Business Investment Act, added by section 524 of Pub. L. 96-221, March 31, 1980 (94 Stat. 161), to that law's Federal override of State Usury ceilings, and to its forfeiture and penalty provisions.

Effective August 1, 1983, and until further notice, the FFB rate to be used for purposes of computing the maximum cost of money pursuant to 13 CFR 107.301(c) is 11.535% per annum.

Dated: July 25, 1983.

Edwin T. Holloway,

Associate Administrator for Finance and Investment.

[FR Doc. 83-20625 Filed 7-28-83; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF STATE

Office of the Secretary

[Public Notice 873]

Delegation to Assistant Secretary for African Affairs; Delegation of Authority No. 153

By virtue of the authority vested in me as Secretary of State, including the authority of Section 4 of the Act of May 26, 1949 (22 U.S.C. 2658), the certification function vested in the Secretary of State by Section 2(b)(8)(c) of the Export-Import Bank Act of 1945, as amended (12 U.S.C. 635(b)(8)(c)) is hereby delegated to the Assistant Secretary of State for African Affairs.

Notwithstanding the provisions of this delegation of authority, the Secretary of State or the Deputy Secretary of State may at any time exercise the function hereby delegated.

Dated: July 18, 1983.

George P. Shultz,

Secretary of State.

[FR Doc. 83-20616 Filed 7-28-83; 8:45 am]

BILLING CODE 4710-07-M

[Public Notice CM-8/644]

Integrated Services Digital Network (ISDN) Working Party of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT); Meeting

The Department of State announces that the ISDN Working Party of the U.S. Organization for the International Telegraph and Telephone Consultative Committee will meet at 10:00 a.m. on August 15, 1983 in Room 1207, Department of State, 2201 C Street, NW., Washington, D.C. This Working Party deals with the evolution of ISDN as it is being considered by CCITT Study Group XVIII.

The agenda for the meeting is as follows:

1. Report on the June 1983 meeting of CCITT Study Group XVIII on ISDN matters;

2. Consideration of contributions to Study Group XI/6 Rapporteurs Meeting in Tokyo (Q. 910, 920 and 930);

3. Identification of areas where further contributions are needed for the work of the ISDN Group of Experts.

Members of the general public may attend the meeting and join in the discussion, subject to the instructions of the Chairman. Admittance of public members will be limited to the seating available. In that regard, entrance to the Department of State building is controlled and entry will be facilitated if arrangements are made in advance of the meeting. It is suggested that prior to August 15, all persons planning to attend the meeting should contact Mr. Dexter Anderson, Office of International Communications Policy, Department of State, Washington, D.C. 20520, telephone (202) 632-6583. All attendees must use the C Street entrance to the building. Entrance will be facilitated 15 minutes before and after the meeting begins.

Dated: July 19, 1983.

Earl S. Barbely,

Director, Office of International Communications Policy.

[FR Doc. 83-20612 Filed 7-28-83; 8:45 am]

BILLING CODE 4710-07-M

[Public Notice CM-8/645]

Message Handling Systems Working Party of Study Group D of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT); Meeting

The Department of State announces that the Message Handling Systems Working Party of Study Group D of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT) will meet on August 22-24, 1983 at the Hyatt Regency Austin Hotel, Austin, Texas. Meetings will begin at 9:00 a.m. each day.

Study Group D deals with telecommunication matters relating to the development of international digital data transmission services; the Message Handling Systems Working Party considers standards dealing with the exchange of message-oriented communications such as electronic mail, facsimile transmission, etc.

The agenda for the meeting will include:

1. Report of June Message Handling Systems Rapporteurs Meeting in Geneva;
2. Consideration of contributions on message handling services and facilities for upcoming meeting of Working Party 1 of CCITT Study Group VII in Geneva;
3. Preparation for meeting of Message Handling Systems Rapporteurs in Brighton in October;
4. Any other business.

Members of the general public may attend the meeting and join in the discussion, subject to the instructions of the Chairman. Admittance of public members will be limited to the seating available. Requests for further information may be directed to Mr. T. de Haas, Chairman of U.S. Study Group D, National Telecommunications and Information Administration, Department of Commerce, Boulder, Colorado 80303; telephone (303) 497-3728.

Dated: July 20, 1983.

Earl S. Barbely,

Director, Office of International Communications Policy.

[FR Doc. 83-20613 Filed 7-28-83; 8:45 am]

BILLING CODE 4710-07-M

[Public Notice CM-8/647]

Shipping Coordinating Committee; Meeting

The Shipping Coordinating Committee (SHC) will conduct an open meeting at 1300 on August 31, 1983, in room 3201 of the Coast Guard Headquarters Building, 2100 2nd Street, SW., Washington, D.C. 20593.

The purpose of the meeting will be to discuss the agenda for the fifty-first session of the International Maritime Organization (IMO) Legal Committee which will be held September 19 to 23, 1983 in London. Major items on the agenda are:

—Revision of the 1969 Civil Liability and 1971 Fund Conventions concerning liability and compensation for pollution damage from incidents involving seagoing tankers, and
—Consideration of the Draft Convention on Liability and Compensation in connection with the Carriage of Noxious and Hazardous Substances by Sea.

Members of the public may attend the meeting up to the seating capacity of the room.

For further information contact Captain Frederick F. Burgess, Jr., Chief, Maritime & International Law Division, U.S. Coast Guard Headquarters (G-LMI), 2100 Second Street, SW., Washington, D.C. 20593, Tel: (202) 426-1527.

Dated: July 21, 1983.

Samuel V. Smith,

Executive Secretary, Shipping Coordinating Committee.

[FR Doc. 83-20615 Filed 7-28-83; 8:45 am]

BILLING CODE 4710-07-M

[Public Notice CM-8/646]

Study Group D of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT); Meeting

The Department of State announces that Study Group D of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT) will meet on August 18, 1983 at 9:00 a.m. in Room 1205, Department of State, 2201 C Street, NW., Washington, D.C. This Study Group deals with matters in telecommunications relating to the development of international digital data transmission.

The agenda for the meeting will include the following:

1. Report of the June 1983 meeting of Working Parties 3 and 5 CCITT Study Group VII;
2. Consideration of contributions for the August meeting of Working Parties 1, 2 and 4 of CCITT Study Group VII;
3. Any other business.

Note.—U.S. contributions on the subject of message handling facilities will be approved at the meeting of U.S. Study Group D Message Handling Systems Working Party, August 22 through 24, 1983, in Austin, Texas.

Members of the general public may attend the meeting and join in the discussion, subject to the instructions of the Chairman. Admittance of public members will be limited to the seating available. In that regard entrance to the Department of State building is controlled and entry will be facilitated if arrangements are made in advance of the meeting. It is suggested that prior to August 18, all persons planning to attend the meeting should contact Mr. Dexter Anderson, Department of State, Washington, D.C. 20520; telephone (202) 632-6583. All attendees must use the C Street entrance to the building. Entrance will be facilitated 15 minutes before and after the meeting begins.

Earl S. Barbely,

Director, Office of International Communications Policy.

July 20, 1983.

[FR Doc. 83-20614 Filed 7-28-83; 8:45 am]

BILLING CODE 4710-07-M

[Public Notice 874]

Agency Forms Submitted for OMB Review

AGENCY: Department of State.

ACTION: In accordance with the provisions of the Paperwork Reduction Act of 1980, the Department has submitted two proposed collections of information to the Office of Management and Budget for review.

Purpose

(A) Consular officers of the Department of State are required by 22 CFR 72.1-8 to report the deaths of all United States citizens abroad occurring in their consular districts except as otherwise provided in § 72.2

Summary: The following summarizes the information collection proposal submitted to OMB:

(1) Type of request—existing collection in use without an OMB number.

(2) Title of information collection—Report of the Death of an American Citizen Abroad.

(3) Form number—Optional Form 180.

(4) Originating office—Bureau of Consular Affairs.

(5) Frequency—On occasion.

(6) Respodents—Local authorities, relatives of deceased.

(7) Estimated number of responses—7,000.

(8) Estimated total number of hours needed to respond—7,000.

(B) By authority of 22 U.S.C. 1173 and 22 CFR 82.12, consular officers abroad may take protests from American ship

captains concerning incidents which have occurred during a voyage.

Summary: The following summarizes the information collection proposal submitted to OMB:

(1) Type of request—existing collection in use without an OMB number.

(2) Title of information collection—Marine Note of Protest.

(3) Form number—FS-281d.

(4) Originating office—Bureau of Consular Affairs.

(5) Frequency—On occasion.

(6) Respondents—Ship captains, masters, crew, passengers and merchants.

(7) Estimated number of responses—200.

(8) Estimated total number of hours needed to respond—16.66.

Section 3504(h) of Pub. L. 96-511 does not apply.

FOR FURTHER INFORMATION CONTACT: Copies of the proposed form and supporting documents may be obtained from Gail J. Cook, Departmental Clearance Officer (202) 632-3602. Comments and questions should be directed to (OMB) Francine Picoult (202) 395-7231.

Dated: July 14, 1983.

Thomas M. Tracy,

Assistant Secretary for Administration.

[FR Doc. 83-20607 Filed 7-28-83; 8:45 am]

BILLING CODE 4710-24-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

On July 26, 1983 the Department of the Treasury submitted the following public information collection requirement(s) to OMB (listed by submitting bureaus), for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of these submissions may be obtained from the Treasury Department Clearance Officer, by calling (202) 634-2179. Comments regarding these information collections should be addressed to the OMB reviewer listed at the end of each bureau's listing and to the Treasury Department Clearance Officer, Room 309, 1625 "I" Street, NW., Washington, D.C. 20220.

U.S. Customs Service

OMB Number: 1515-0076
Form Number: CF 3124
Title: Application for Customhouse Broker's License
OMB Number: 1515-0090
Form Number: None
Title: Exporters Summary of Exportation

OMB Reviewer: Judy McIntosh (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503.

Internal Revenue Service

OMB Number: 1545-0091
Form Number: 1040X
Title: Amended U.S. Individual Income Tax Return
OMB Number: 1545-0132
Form Number: 1120X
Title: Amended U.S. Corporation Income Tax Return
OMB Number: 1545-0068
Form Number: 2441
Title: Credit for Child & Dependent Care Expenses
OMB Number: 1545-0184
Form Number: 4797
Title: Supplemental Schedule of Gains and Losses
OMB Number: 1545-0188
Form Number: 4868
Title: Application for Automatic Extension of Time to File U.S. Individual Income Tax Return
OMB Number: 1545-0224
Form Number: 6248
Title: Annual Information Return of Windfall Profit Tax
OMB Number: 1545-0227
Form Number: 6251
Title: Alternative Minimum Tax Computation

OMB Reviewer: Norman Frumkin (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503.

Rita A. DeNagy,

Departmental Reports, Management Office.

July 26, 1983.

[FR Doc. 83-20216 Filed 7-28-83; 8:45 am]

BILLING CODE 4810-25-M

Public Information Collection Requirements Submitted to OMB for Review

On July 26, 1983 the Department of Treasury submitted the following public information collection requirement(s) to OMB (listed by submitting bureaus), for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of these submissions may be obtained from the Treasury Department Clearance Officer, by calling (202) 634-2179. Comments regarding these information collections should be addressed to the OMB reviewer listed at the end of each bureau's listing and to the Treasury Department Clearance Officer, Room 309, 1625 "I" Street, NW., Washington, D.C. 20220.

Internal Revenue Service

OMB Number: 1545-0071
Form Number: 2120
Title: Multiple Support Declaration
OMB Number: 1545-0519
Form Number: 4188B
Title: IMF/BMF General Purpose CP Notice Forms
OMB Number: 1545-0219
Form Number: 5884
Title: Jobs Credit
OMB Reviewer: Norman Frumkin (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503

Rita A. DeNagy,

Departmental Reports Management Office.

July 26, 1983.

[FR Doc. 83-20210 Filed 7-28-83; 8:45 am]

BILLING CODE 4810-25-M

Internal Revenue Service

Solicitation for Draft Regulations

AGENCY: Internal Revenue Service, Treasury.

ACTION: Solicitation for draft regulations.

SUMMARY: The Department of the Treasury and the Internal Revenue Service are soliciting fully annotated sets of draft regulations on certain federal tax projects from interested individuals and organizations.

DATES: Draft regulations with respect to any project should be sumbitted by the date specified for that project in this document.

ADDRESS: Director, Legislation and Regulation Division, Attention: George H. Bradley CC:LR:T, Internal Revenue Service, Room 4429, Washington, D.C. 20224.

FOR FURTHER INFORMATION CONTACT: George H. Bradley, 202-566-3486 (not a toll-free number).

SUPPLEMENTARY INFORMATION: On May 21, 1983, John E. Chapoton, Assistant Secretary (Tax Policy), announced that the Treasury Department and the Internal Revenue Service would invite professional organizations, law and accounting firms, companies, and interested individuals, to submit fully annotated sets of draft regulations. These draft regulations are intended to assist the Treasury Department and the Internal Revenue Service during the formative period of the regulatory process. Assistant Secretary Chapoton also announced that there would be published a list of regulation projects on which submission of drafts would be

invited. The initial list of projects is set forth below; this list may be revised from time to time.

Draft regulations (or suggestions for possible regulation provisions for any issue) with respect to any project should be submitted by the date specified for that project in the list below so that the attorneys responsible for developing the regulations may have the benefit of the material submitted. The Treasury Department and the Internal Revenue Service will not delay the development of regulations to await the submission of drafts. Pre-submission communications with respect to any project will be limited to matters of procedure.

All material submitted will be available for public inspection and copying.

The following is a list of the regulations projects for which draft regulations are being solicites:

Code section and file number	Subject	Latest date for submission
§§ 44G, 404(i), 409A, 46(a)(2), EE-151-81	Employee Stock Ownership Plans (ERTA 1981, secs. 331, 332)	11/30/83.
§ 57; LR-209-78	Intangible Drilling Costs	11/30/83.
§ 103(b)(6) LR-264-81	Clarification of the Definition of the Term "Issue" and Conformance of such definition to sec. 214(a) of TEFRA 1982	01/31/84.
§ 103(b)(10); LR-219-82	Local district Heating and Cooling Facilities (TEFRA 1982, sec. 217(a))	01/31/84.
§ 291; LR-234-82	Special Rules Relating to Corporate Preference Items (TEFRA 1982, sec. 204)	11/30/83.
§§ 304, 306, 351; LR-190-82	Extension of Anti-Bailout Provisions to Corporations Formed or Availed of to Avoid These Provisions (TEFRA 1982, sec. 226).	12/15/83.
§ 338(e), (f), (i); LR-192-82	Deemed Election, the Consistency Requirement, and Anti-Avoidance Rules as Applied to Foreign Corporations (TEFRA 1982, sec. 224).	12/15/83.
§ 401(0); EE-112-82	Nondiscriminatory Coordiantion of Defined Contribution Plans with OASDI (TEFRA 1982, sec. 249)	12/30/83.
§ 404A; EE-14-81	Deducation for Certain Foreign Deferred Compensation Plans	11/30/83.
§§ 416, 401(a) (1))(B), 414(b), (C), (m)(4); EE-109-82.	Top-heavy Plans (TEFRA 1982, sec. 240)	11/30/83.
§ 936; LR-194-82, 195-82 and 196-82	Possession Tax Credit: Questions and Answers	11/3083
§§ 1092, 6653, 26t3(g), 1256, 1212, 1236, 1234A; LR-187-81.	Tax Straddles (ERTA 1981, secs. 501-509)	11/30/83.
§ 1256; LR-52-83	Foreign Currency Contracts (Technical Corrections Act 1982, sec. 105)	11/30/83.
§ 1232B; LR-223-82	Tax Treatment of Stripped Bonds	10/31/83.
§ 1366; LR-261-'82	Pass-Thru of Items to Shareholders	12/30/83.
§§ 1367, 1368; LR-264-82	Basis of Stock of Shareholders and Distribution of Property by S Corporations	01/31/84.
§ 1371; LR-265-82	Application of Subchapter C Rules to S Corporation in Conformance to Technical and Other Amendments	10/31/83.
§§ 1372, 1373, 613A, 4996, 48; LR-266-82	Treatment of S Corportion as Partnershp for Purposes of Certain Provisions	01/31/84.
§ 6411; LR-45-79	Tentative Refund of Tax Under Claim of Right Adjustment (Revenue Act 1978, sec. 504)	11/30/83.

James I. Owens,

Acting Commissioner of Internal Revenue.

John E. Chapoton,

Assistant Secretary of the Treasury.

[FR Doc. 83-20795 Filed 7-20-83; 10:55 am]

BILLING CODE 4830-01-M

Sunshine Act Meetings

Federal Register
Vol. 48, No. 147
Friday, July 29, 1983

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONTENTS

	Items
Consumer Product Safety Commission	1
Nuclear Regulatory Commission	2
Occupational Safety and Health Review Commission	3, 4
National Transportation Safety Board	5
Parole Commission	6
Railroad Retirement Board	7

1

CONSUMER PRODUCT SAFETY COMMISSION

Commission Meeting

TIME AND DATE: 10 a.m., Wednesday, August 3, 1983.

LOCATION: Third Floor Hearing Room, 1111 18th Street, NW., Washington, D.C.

STATUS: Open to the public.

MATTER TO BE CONSIDERED:

1. *Emissions From Unvented Gas-Fired Space Heaters*
   The staff will brief the Commission on the potential for adverse health effects associated with use of unvented gas-fired space heaters. This is part of the priority project called Indoor Air Quality—Fuel-fired Appliances.

Closed to the Public

2. *Enforcement Matter (OS #4801)*
   The staff will brief the Commission on Enforcement Matter OS #4801.

For a recorded message containing the latest agenda information: call 301-492-5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Wesbard Ave., Bethesda, Md. 20207 301-492-6800.

[S-1096-83; Filed 7-27-83; 9:16 am]

BILLING CODE 6355-01-M

2

NUCLEAR REGULATORY COMMISSION

DATE: Week of July 25, 1983 (Revised) and Week of August 1, 1983.

PLACE: Commissioners' Conference Room, 1717 H Street NW., Washington, D.C.

STATUS: Open and closed.

MATTERS TO BE DISCUSSED: *Thursday, July 28:*

2:00 p.m.:
Discussion of Regulatory Reform Task Force—Administrative Proposals—Revisions to Part 2 (Public Meeting) (As Announced)

3:30 p.m.:
Affirmation/Discussion and Vote (Public Meeting) (*Postponed* from July 21)
a. Final Rule on Immediate Notification of Significant Events at Operating Reactors
b. Review of Director's Denial
c. Review of ALAB-724 (Tentative)

Friday, July 29:

2:00 p.m.:
Discussion of Management-Organization and Internal Personnel Matters (Closed—Exemptions 2 and 6) (As Announced)

Monday, August 1:

2:00 p.m.:
Discussion of Budget (Public Meeting) (Tentative)

Tuesday, August 2:

2:00 p.m.:
Briefing on Integrated Scheduling Concept—Duane-Arnold (Public Meeting)

Wednesday, August 3:

2:00 p.m.:
Briefing on Amendments to 10 CFR Part 50 Related to ATWS Events (Public Meeting)

Thursday, August 4:

10:00 a.m.:
Briefing by Ad Hoc Committee on Their Fourth Report: Administrative Reform Proposals (Public Meeting)

3:30 p.m.:
Affirmation/Discussion and Vote (Public Meeting)
a. Dismissal of Self-Powered Lighting Proceeding
b. Revision to 10 CFR Part 51 and Related Conforming Amendments
c. Amendments to 10 CFR Part 50 Related to ATWS Events (if needed)

ADDITIONAL INFORMATION:

Discussion of Midland Adjudication scheduled for July 20, 1983, *cancelled.*

Affirmation/Discussion and Vote on Uranium Mill Tailings Regulations scheduled for July 25, *cancelled.*

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 INFORMATION: Walter Magee, (202) 634-1410.

Dated: July 25, 1983.

Walter Magee,
Office of the Secretary.

[S-1095-85 Filed 7-26-83; 4:39 pm]

BILLING CODE 7590-01-M

3

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

TIME AND DATE: 10 a.m., August 11, 1983.

PLACE: Suite 316, 1825 K Street NW., Washington, D.C.

STATUS: Because of the subject matter, it is likely that this meeting will be closed.

MATTERS TO BE CONSIDERED: Discussion of specific cases in the Commission adjudicative process.

CONTACT PERSON FOR MORE INFORMATION: Mrs. Patricia Bausell, (202) 634-4015.

Dated: July 27, 1983.

[S-1100-83 Filed 7-27-83; 2:16 pm]

BILLING CODE 7600-01-M

4

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

TIME AND DATE: 10 a.m., August 25, 1983.

PLACE: Suite 316, 1825 K Street NW., Washington, D.C.

STATUS: Because of the subject matter, it is likely that this meeting will be closed.

MATTERS TO BE CONSIDERED: Discussion of specific cases in the Commission adjudicative process.

CONTACT PERSON FOR MORE INFORMATION: Mrs. Patricia Bausell (202) 634-4015.

Dated: July 27, 1983.

[S-1101-83 Filed 7-27-83; 2:16 pm]

BILLING CODE 7600-01-M

5

NATIONAL TRANSPORTATION SAFETY BOARD

[NM-83-16]

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 48 FR 32908, July 19, 1983.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 9 a.m., Tuesday, July 26, 1983.

CHANGE IN MEETING: A majority of the Board determined by recorded vote that

the business of the Board required revising the agenda of this meeting and that no earlier announcement was possible. The following item was deleted from the agenda:

4. *Order on Petitions for Reconsideration:* Application of Catskill Airways, Inc., Stephen C. Low, and Granville C. Bentley for attorney fees and other expenses, NTSB No. 2-EAJA; disposition of petitions for reconsideration filed by Catskill Airways and the Administrator.

CONTACT PERSON FOR MORE INFORMATION: Sharon Flemming (202) 382-6525.

July 26, 1983.

[S-1097-83 Filed 7-27-83; 11:06 am]

BILLING CODE 4910-58-M

6

PAROLE COMMISSION

[3P0401]

National Commissioners (the Commissioners presently maintaining offices at Chevy Chase, Maryland, (Headquarters))

TIME AND DATE: 10 a.m., Friday, July 29, 1983.

PLACE: Room 420-F, One North Park Building, 5550 Friendship Blvd., Chevy Chase, Maryland 20815.

STATUS: Closed pursuant to a vote to be taken at the beginning of the meeting.

MATTER TO BE CONSIDERED: Referrals from Regional Commissioners of approximately 4 cases in which inmates of Federal prisons have applied for parole or are contesting revocation of parole or mandatory release.

CONTACT PERSON FOR MORE INFORMATION: Linda Wines Marble, Chief Case Analyst, National Appeals Board, United States Parole Commission (301) 492-5987.

[S-1098-83 Filed 7-27-83; 12:38 pm]

BILLING CODE 4410-01-M

7

RAILROAD RETIREMENT BOARD:

TIME AND DATE: 10 a.m., August 4, 1983.

PLACE: Board's meeting room, eighth floor, headquarters building, 844 Rush Street, Chicago, Illinois 60611.

STATUS: The entire meeeting will be open to the public.

MATTERS TO BE CONSIDERED:

(1) Tax collection procedures respecting coverage decisions.

(2) Bureau of Audit and Investigation and Bureau of Unemployment and Sickness Insurance project options in fiscal years 1983, 1984, and 1985.

(3) Procedures for Board approvals.

(4) Merit Pay Progam (appeals and cash awards procedures).

CONTACT PERSON FOR MORE INFORMATION: Beatrice Ezerski, COM No. 312-751-4920, FTS No. 387-4920.

[S-1099-83 Filed 7-27-83; 1:19 pm]

BILLING CODE 7905-01-M

federal register

Friday
July 29, 1983

Part II

Department of Health and Human Services

Food and Drug Administration

New Animal Drugs for Use in Animal Feeds; Definitions and General Considerations; Revised Procedures Re Medicated Feed Applications

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 207, 210, 225, 226, 501, 510, 514, and 558

[Docket No. 77N-0076]

New Animal Drugs for use in Animal Feeds; Definitions and General Considerations; Revised Procedures re Medicated Feed Applications

AGENCY: Food and Drug Administration.

ACTION: Tentative final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a tentative final rule proposing the revision of the current procedures and requirements concerning conditions of approval for the manufacture of animal feeds containing new animal drugs. This tentative final rule incorporates significant revisions to the agency's proposal published in the **Federal Register** of January 9, 1981 (46 FR 2456) and is based upon an evaluation of comments received. The rule would not become effective until after consideration of comments submitted in response to this notice.

DATE: Comments by October 27, 1983.

ADDRESS: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: George Graber, Bureau of Veterinary Medicine (HFV-220), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4438.

SUPPLEMENTARY INFORMATION:

A. Background

This tentative final rule has resulted from a number of agency initiatives, the first of which was the publication of a proposal in the **Federal Register** of January 17, 1978 (43 FR 2526), to revise the definitions of articles used in the manufacture of medicated animal feeds. This 1978 proposal, among other things, would have more precisely defined the difference between a new animal drug requiring an application to be approved under section 512(c) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360(c)) and a regulation to be published under section 512(i) of the act (21 U.S.C. 360b(i)), and an animal feed containing a new animal drug requiring an application to be approved under section 512(m) (2) of the act (21 U.S.C. 360(m) (2)). It also proposed to change the conditions for approval of an intermediate premix from a new animal drug application (NADA) to a medicated feed application on the basis that such articles are animal feeds as defined in section 201(x) of the act (21 U.S.C. 321(x)) because they include a substantial quantity of nutrients.

In June 1978, FDA formed a Medicated Feed Task Force to examine the existing medicated feed program and to explore and recommend ways to employ agency resources more efficiently. The Task Force was composed of members representing the Bureau of Veterinary Medicine, Executive Director of Regional Operations, Associate Commissioner for Regulatory Affairs, and Office of the General Counsel. It concluded that the current medicated feed program lacks focus and recommended, among other things, that regulatory control of feeds containing new animal drugs that pose a potential risk to human beings from residues be strengthened, and control of feeds containing drugs that pose little risk to human beings be reduced, thereby better utilizing the limited resources of the agency.

The Task Force recommended that the need for approved medicated feed applications be based upon the degree of risk from use of the drug, either in terms of the toxicity of the drug itself or the concentration of the drug in a feed; and that FDA approve such applications only after the applicant firms pass directed inspections demonstrating their ability to manufacture feeds in compliance with current good manufacturing practice regulations (21 CFR Part 225). The Task Force presented its report, entitled "Second Generation of Medicated Feeds," to the Commissioner of Food and Drugs, who announced its availability in the **Federal Register** of December 15, 1978 (43 FR 58634).

Following the Commissioner's decision to implement the recommendations of the Task Force by restructuring the medicated feed program, the agency announced in the **Federal Register** of March 6, 1979 (44 FR 12208) that it was postponing action on the 1978 definitions proposal.

Based upon the recommendations of the Task Force and comments received in response to the report of the Task Force, FDA published an additional and more comprehensive proposal in the **Federal Register** of January 9, 1981 (46 FR 2456). The purpose of the 1981 publication was to:

1. Propose revisions in the current procedures and requirements concerning conditions of approval for the manufacture of animal feeds containing new animal drugs on the basis of the recommendations of the Task Force.

2. Propose terms defining the various medicated feed articles produced.

3. Respond to comments on the 1978 feed definitions proposal.

4. Respond to comments on the Task Force report.

5. Announce the compliance (directed inspection) program.

6. Explain the implementation process and schedule of the new program.

7. Propose good manufacturing practice regulations for firms producing medicated feeds not requiring an approved medicated feed application.

Approximately 570 comments were received on the 1981 proposal. The overwhelming majority of comments were from representatives of the commercial feed industry. Other comments were from livestock and poultry producers, mixer-feeders (i.e., those manufacturing medicated feeds for their own animals), State and Federal agencies, trade associations, and farmer cooperatives. As a result of an evaluation of all comments received, FDA has made significant changes in the January 9, 1981 proposal. The following is a discussion of those revisions and responses to the comments.

B. Revised Procedures

1. *Drug Categories.*

The January 9, 1981 proposal provided for three categories of drugs based upon their potential for unsafe residues in the edible products of treated animals—the greater the potential for drug residues, the more restrictive the permitted levels of the drug in the subsequent manufacture of a medicated feed. This tentative final rule embodies the same concept, but would provide for two drug categories rather than three.

Category I—This category is unchanged from the 1981 proposal and would consist of drugs that require no withdrawal period at the lowest continuous use level in each species for which they are approved.

Drugs in this category include: Aklomide, ammonium chloride, amprolium with or without ethopabate, bacitracin (from bacitracin methylene disalicylate or zinc bacitracin), bambermycins, buquinolate, chlortetracycline, coumaphos, decoquinate, dichlorvos, erythromycin (thiocyanate salt), ethylenediamine dihydriodide, iodinated casein, nequinate, nystatin, oleandomycin, oxytetracycline, penicillin, penicillin with streptomycin, poloxalene, salinomycin, tylosin, virginiamycin, and zoalene.

Category II—This category includes Categories II and III of the 1981 proposal and would consist of drugs that: (1) Require a withdrawal period at the lowest continuous use level for at least one species for which they are approved; or (2) that are regulated on a "no-residue" basis or with a "zero" tolerance because of a carcinogenic concern, regardless of whether a withdrawal period is required.

Drugs in this category include: Arsanilate sodium, arsanilic acid, butynorate, carbadox, carbarsone, clopidol, dimetridazole, famphur, furazolidone, hygromycin B, ipronidazole, lasalocid, levamisole, lincomycin, melengestrol acetate, monensin, morantel tartrate, neomycin, nicarbazin, nitarsone, nitrofurazone, nitromide, novobiocin, phenothiazine, piperazine, pyrantel tartrate, robenidine, ronnel, roxarsone, sulfadimethoxine-ormetoprim, sulfaethoxypyridazine, sulfamethazine, sulfamerazine, sulfanitran with aklomide, sulfaquinoxaline, sulfathiazole, and thiabendazole.

2. *Definitions.*

First, the definitions would clearly distinguish between those medicated feed articles that constitute new animal drugs subject to approval under section 512(c) of the act and animal feeds containing new animal drugs subject to approval under section 512(m)(2) of the act. Second, they would distinguish between the kinds of medicated feeds subject to approval under section 512(m) of the act.

Type A medicated articles would be regulated as new animal drugs. Type B and Type C medicated feeds would be regulated as animal feeds containing new animal drugs.

Type A Medicated Article. The definition included in the January 9, 1981 proposal is retained without change. A Type A medicated article would be a standardized product intended for use in the manufacture of a medicated animal feed. It is limited to use solely in accordance with its published regulation. It contains one or more new animal drugs for use in the manufacture of a medicated animal feed and is subject to the requirements for approval under section 512(b) of the act. It usually includes a diluent (carrier substance), and must be further mixed to produce either another Type A article or a Type B or Type C medicated feed.

Type B Medicated Feed. The definition in the 1981 proposal has been revised to take into account changes in drug categories. A Type B medicated feed is an animal feed bearing or containing a new animal drug that is intended solely for further manufacturing of other Type B or Type C medicated feeds. A Type B medicated feed consists of one or more new animal drugs approved under the requirements of section 512(b) of the act, and nutrients. A Type B medicated feed conforms to the definition of animal feed in section 201(x) of the act. Before the article can be fed to animals, however, it would have to be substantially diluted with one or more nutrients to produce a Type C medicated feed.

For the purpose of defining the dividing line between a Type A article and a Type B medicated feed, the criteria previously proposed are retained. Thus, the maximum permitted concentration of a Type B medicated feed would be 200 times the highest continuous use level for Category I drugs, and 100 times the highest continuous use level for Category II drugs. Above those concentrations, the product would be a Type A medicated article. The "highest continuous use level" means the highest dosage at which a drug is approved for continuous use (14 days or more) or, if a drug is not approved for continuous use, the highest level used for disease prevention or control. If a drug is approved for multiple species at different use levels, the highest level would govern under this definition.

Type C medicated feed. FDA has revised the proposed definition of a Type C medicated feed to reflect changes in drug categories. A Type C medicated feed is a medicated animal feed bearing or containing a new animal drug. It is produced by substantially diluting a Type A medicated article or Type B medicated feed with other feed ingredients to a level for use that is covered by an approved NADA. A Type C feed may be offered as a complete feed, or when permitted under 21 CFR Subchapter E, it may be fed top dressed or offered free-choice in conjunction with other animal feed to supplement the animal's total daily ration.

Type A medicated articles and Type B and C medicated feeds have different requirements for approval, manufacture, and registration. These requirements are described in the following sections.

3. *New Animal Drug Applications.*

All Type A medicated articles are new animal drugs. Their manufacture requires an approved NADA under section 512(c) of the act and § 514.105(a) of the regulation (21 CFR 514.105(a)). This tentative final rule would not change existing requirements.

4. *Medicated Feed Applications.*

As stated above, the primary focus of the program would be to place the greatest control where the potential for unsafe residues in edible products from treated animals is greatest. FDA has reviewed the 1981 proposal in light of that focus and has revised it accordingly.

The 1981 proposal would have required an approved medicated feed application for any use of a Type A medicated article in the subsequent manufacture of a Type B or Type C medicated feed.

Upon reevaluation of drugs listed in Category I, FDA believes that it is highly unlikely that the use of these drugs in feed would result in drug residues in the edible products of food-producing animals, even under conceivable conditions of misuse. Therefore, FDA concludes that the submission of a medicated feed application for the manufacture of a Type B or Type C medicated feed from a Type A medicated article, or the manufacture of a Type B or Type C medicated feed from a Type B medicated feed, is unnecessary. FDA would exempt Category I drugs from the requirements of section 512(m) of the act for a medicated feed application to be submitted and approved. Seven drugs for which an approved medicated feed application is currently required and 17 drugs that are currently exempt from the requirement of an approved medicated feed application would be in this category.

For Category II drugs, the tentative final rule set forth below would waive the requirements of section 512(m) of the act for submission of a medicated feed application for the manufacture of a Type B or Type C medicated feed using a Type B medicated feed. The requirement for the submission and approval of a medicated feed application for any manufacturing use of a Type A medicated article is not changed from the 1981 proposal.

5. *Current Good Manufacturing Practice (CGMP).*

The manufacture of a Type A medicated article would be subject to the existing CGMP regulations in Part 226 covering the manufacture of medicated premixes. The manufacture of a Category II Type B or Type C medicated feed from a Type A medicated article would be subject to existing §§ 225.1 through 225.115 in Part 225. These sections provide current good manufacturing practice for the production of medicated feeds from Type A medicated articles. New §§ 225.120 through 225.202 would provide CGMP regulations for the manufacture of medicated feeds for which the requirements of section 512(m) of the act have been waived.

6. *Registration*

Under the authority of section 510(g)(4) of the act, the agency would exempt from registration under section 510(b) of the act those firms manufacturing medicated feeds for which the requirements for submission and approval of medicated feed applications have been waived. Thus, registration would be required only for all firms manufacturing medicated feeds from Category II Type A articles.

C. Comments on the 1981 Proposal

The agency has given careful consideration to the approximately 570 comments received. The issues raised and the agency's responses are as follows:

1. *Criteria For Exemption From Section 512(m) of the Act.*

a. A number of comments stated that drugs that have been marketed for a considerable period of time without the requirement of an approved medicated feed application before they could be used in feed should continue to be exempt.

The agency does not agree. The history of the current medicated feed program is one of inconsistency and changing status of drugs. Prior to 1958 some new drugs for animals were informally declared not new drugs based on criteria in the 1938 law, thereby removing them from the preclearance requirements of the act for new drugs used in feed. The declaration of their not new drug status was typically made in letters from a bureau official to the drug's sponsor. Following enactment of the Drug Amendments of 1962, codified in section 505 of the act, all drugs, including drugs for use in animals, initially placed on the market under the 1938 act were required to be shown to be effective as well as safe. The information submitted for some of these drugs failed to demonstrate their effectiveness, thereby making them no longer generally recognized as safe and effective and, consequently new drugs. Other of these drugs were combined with one another, making the combinations new drugs. New information obtained on still other drugs cast doubt upon their safety and/or effectiveness and resulted in their once again becoming new drugs.

In 1954, certifiable antibiotic drugs subject to section 507 of the act were exempted by regulation (now 21 CFR 510.515) from certification for use in animal feed under specified conditions and were not otherwise subject to preclearance requirements, including the requirement for an approved application for their use in feed. The regulation was published as a notice in the **Federal Register** of May 11, 1954 (19 FR 2696). This category of exempted antibiotic drugs accounts for a sizeable segment of the drugs used in feed. Upon passage of the 1968 Animal Drug Amendments, these antibiotics became new animal drugs, although the requirement for a medicated feed application was not reintroduced at that time. The agency realized that it did not have the resources to handle the number of applications that would have been submitted if these drugs did not continue to be exempted from the requirement of section 512(m) of the act and that, from a public health perspective, it was unnecessary to do so.

Subsequent to 1968, three other categories of exemptions arose. The first consisted of drugs that were exempted from the requirements of section 512(m) of the act under the so-called "Fairness Doctrine" (treating similarly situated firms and drugs in the same way). Another category of exempted drugs involved approved antibacterials used continuously at low levels in animal feeds. When questions arose about the safety of such use, the agency requested data to demonstrate continued safety. Many firms used these drugs in intermediate premixes, for which an approved NADA rather than a medicated feed application was required, but the agency only intended the basic premix manufacturers to develop and submit safety data. Therefore the agency exempted intermediate premixes containing these drugs from the requirements for an approved NADA, thereby removing them from the requirements for a medicated feed application. This was done by notice and comment rulemaking. A proposal was published for comment in the **Federal Register** of February 1, 1972 (37 FR 2444); it was published as a final rule on April 20, 1973 (38 FR 9811). An additional proposal was published in the **Federal Register** of August 6, 1974 (30 FR 28393); it was published as a final rule on February 25, 1976 (41 FR 8282). The exemptions are currently codified in 21 CFR 558.15(g). The third category of post-1968 exemptions is discussed in C.1.b. below.

Thus, the fact that some drugs once enjoyed exemptions does not mean that they did not subsequently become new animal drugs subject to the requirements for approved medicated feed applications before they could be used in feed. Nor does the fact that some drugs currently enjoy exemptions mean that they should continue to do so. The inconsistencies in the current program have resulted largely from retaining past exemptions based upon historical circumstances. As discussed above, under the current program some drugs having a wide margin of safety are subject to greater regulatory control than others having a narrower margin of safety. Thus, if the revised program is to provide a reasoned and consistent basis for regulation, a number of drugs currently subject to stringent controls must have their restrictions on use reduced. Conversely, those drugs having a narrower margin of safety and currently subject to little or no control must be brought under more stringent controls. To do otherwise would be contrary to the concept of the revised program and perpetuate the problems that the Task Force sought to correct.

The agency will reexamine the status of drugs as requested on a case-by-case basis.

b. A third category of exemptions arose following the enactment of the Animal Drug Amendments of 1968. Beginning in the early 1970's, the Bureau of Veterinary Medicine began developing consistent criteria for granting exemptions from the requirements of section 512(m) of the act for the initial dilution of a premix. (Other exemptions continued to be granted for various reasons for some subsequent dilutions for some drugs.) The premix criteria, enunciated in a 1971 memorandum, were adopted on an interim basis and first used in 1975. Between 1975 and 1982 nine supplemental NADA's have been approved in which the first dilution of a drug premix was also exempted from the requirements of section 512(m) of the act: Lincomycin (December 5, 1975; 40 FR 26855), Erythromycin Thiocyanate (February 4, 1976; 41 FR 5094), Pyrantel Tartrate (October 25,1977; 42 FR 56325), Bambermycins (November 21, 1978; 43 FR 54240), Nicarbazine (December 8, 1978; 43 FR 57600), Coumaphos (September 21, 1979; 44 FR 54697), Decoquinate (September 19, 1980; 45 FR 62425), Virginiamycin (May 11, 1982; 47 FR 20112), and Tylosin-sulfamethazine (May 28, 1982; 47 FR 23445). Each **Federal Register** notice stated that the drug had met the 1971 criteria for an administrative waiver of the requirements of section 512(m) of the act and listed the criteria outlined in the 1971 memorandum. The notices also stated:

> The foregoing criteria established in the 1971 memorandum constitute an interim agency policy, which is under review. The Bureau of Veterinary Medicine is preparing a proposed regulation, based on the criteria listed in the memorandum, governing waiver of the registration of the facility that prepares the finished feed. This proposed regulation

will be published in the **Federal Register** for comment in the near future.

Some comments contended that these exemptions published in the **Federal Register** announcing approval of a drug constitute part of the conditions of approval of a new animal drug application, and therefore that revocation of the exemptions must be proposed under the section 512(e) of the act, which provides opportunity for a formal evidentiary hearing.

The agency does not agree. The exemptions published in the **Federal Register** regulations announcing approval of supplemental new animal drug applications were not granted under section 512(c) of the act. Rather thay were exemptions from the requirement in section 512(m) for an approved medicated feed application. Therefore, their revocation is not subject to the withdrawal procedures of section 512(e) of the act. Moreover, as noted above, the **Federal Register** documents stated that the policy under which the exemptions were granted was interim and under review, and that a proposed regulation would be published. This statement put affected sponsors on notice that the waivers were subject to revision in the rulemaking proceeding.

c. Several comments suggested that the exemption for a drug be based upon its "intended use," rather than the concentation of the drug in feed or its toxicity. This would enable a drug intended solely for on-farm use or for a single species to be subject to less regulatory control than a drug used in feed manufactured in a commercial feedmill and intended to be sold and used in several species. These comments questioned the rationale for the proposed regulatory scheme, saying that no evidence established that the higher the dilution of a drug, the less likelihood there would be for unsafe residues.

As stated above, the agency has concluded that the sole criterion for determining the degree of regulatory control to which a drug would be subject should be the potential of that drug to produce unsafe residues. The agency agrees that, under the act, exemptions could be based on intended use rather than on drug toxicity and concentration. However, the agency believes that the dilution factor is a more valid basis on which to determine the safety of a drug used in feed than intended use. The more concentrated the source of the drug, the greater would be the impact of error in manufacturing. Consequently, the greater the drug concentration, the more precise the measuring and mixing equipment must be. A slight variation in the measurement of a concentrated drug may result in a wide deviation from the prescribed level of drug concentration in the finished feed. That potential for that variation does not depend on whether a feed was produced on the farm by a mixer-feeder, at a fish hatchery, at a commercial feedmill, or by a veterinarian.

d. A comment suggested that all feed mixing establishments be exempt from registration under section 510 of the act. The comment suggested that the submission of medicated feed applications under section 512(m)(1) of the act should be sufficient for establishment identification.

The agency does not agree. The agency must have an accurate and current establishment inventory for designing and implementing its field inspection program. Annual registration under section 510 of the act would provide that information. Medicated feed applications are submitted only when a firm begins mixing a drug in feed. Conceivably, some firms might not have new medicated feed applications to submit each year. If the agency depended only on applications for identification of firms, its list would be neither accurate nor current. Under this tentative final rule, only firms manufacturing feeds using Category II Type A articles would be required to register.

e. Two comments stated that Type A articles should be available to veterinarians without the requirement of an approved medicated feed application.

As discussed in C.l.c. above, FDA believes that the same criteria should apply to all persons.

f. Two comments stated that the agency has no more authority to exempt Type B and Type C feeds from the provisions of section 512(m) of the act than to exempt Type A medicated articles from these same provisions of the act.

The agency agrees. As discussed in B. above, the agency would waive the requirements of section 512(m) of the act for the use of Category I Type A articles.

g. Several comments requested that the program exempt Federal fish hatcheries from the requirements of medicated feed applications because they manufacture only small quantities of medicated feed at a time and frequently adjust the quantity of drug according to the size of fish treated. The comments also stated that the assay requirements would be costly.

FDA believes that the same criteria should apply to all persons because all manufacturers may make mistakes in measuring a concentrated drug, no matter how much or how little feed is manufactured. Furthermore, Federal fish hatcheries, like others, have the option to use as sources of drugs those Type A articles and Type B and Type C medicated feeds for which the requirements of section 512(m) of the act would be waived. Furthermore, the agency is not aware of any reasonable basis to provide such preferential treatment.

h. Two comments suggested that, in lieu of the system of applications for manufacture of medicated feeds, the agency provide a licensing procedure for users of Type A articles.

The Task Force liked this idea but could not recommend it because existing law provides for applications for medicated feeds rather than licenses for manufacturers. FDA reaffirms that conclusion.

2. *Comments Regarding Mixer-Feeders.*

a. One comment questioned the need for mixer-feeders to obtain approved medicated feed applications for use of Category I Type A articles since such articles have a "long track record of safety."

FDA agrees. As discussed in B. above, this tentative final rule would exempt Category I Type A articles from the requirements of section 512(m) of the act.

b. Some comments requested that mixer-feeders be exempt from the requirement of an approved medicated feed application on the basis that mixer-feeders are not engaged in the commerical production and distribution of medicated feeds, but are solely concerned with the production of livestock. Some of these comments stated that the exemption scheme and conditions of approval unfairly discriminate against mixer-feeders because they will encourage producers to purchase feed from commerical mills rather than mix feed for themselves in order to avoid Federal regulation.

The regulatory scheme of the tentative final rule is based entirely upon the potential for a drug to produce unsafe residues. The same potential exists regardless of whether the drug is used by an on-farm mixer-feeder or a commerical feedmill. FDA believes the same criteria should apply to all facilities. The agency does not believe that exercising control over potentially unsafe drugs constitutes discremination so long as the same requirements would apply regardless of the nature of the firm.

c. A number of comments stated that the revised program would tend to be inflationary because, to remain exempt

from the requirements of approved medicated feed applications and drug registration, drugs would have to be purchased in more dilute form, resulting in the purchase of increased tonnage of feed concentrates and increased cost of storage and transportation.

Although the extent of regulation of certain drugs would be increased over current levels in the proposed program, each drug would have some concentration levels at which the drug would enjoy an exemption from requirements of section 512(m) for use in feed. In addition, the proportion of drugs with less regulation under these revisions exceeds the proportion with more regulation, both by number and by sales volume. Thus, the agency estimates that the aggregate impact of the program would be an overall decrease in regulation, with some savings to commercial and some on-farm feed manufacturers.

d. Four comments stated that under the revised program the agency would be unable to maintain its inspectional obligations because of the large number of mixer-feeders that would elect to use drugs that would require the submission and approval of approved medicated feed applications, thereby making the mixer-feeders subject to registration under section 510 of the act.

The program as revised by this tentative final rule is expected to provide an incentive for firms to use only drugs or certain drug concentrations that do not require the submission of medicated feed applications. Therefore, the agency believes that the net effect of the program would be to reduce the number of firms registered.

3. *Definitions.*

a. Two comments suggested that there be only one drug category, because basing drug categories on the need for a withdrawal period is not rational.

FDA does not agree. The requirement of a withdrawal period for a drug is evidence of its potential to produce unsafe residues in food-producing animals if the withdrawal period is not followed. For example, unsafe drug residues could result from drug carryover in manufacturing equipment if a Category II drug contaminates a subsequently manufactured batch of unmedicated feed. Therefore, the agency believes that drugs with a potential for causing unsafe residues should be subject to more stringent regulatory control.

b. One comment requested that a drug's category be determined by the particiular labeled use for the drug, so that if the labeled use did not require a withdrawal period, the use would be placed in Category I.

The agency does not agree. The potential for unsafe residues in not based upon a particular labeled use, but rather on the drug's capability of producing unsafe residues at its lowest continuous use level.

c. Fifteen comments requested that the definitions provide for the manufacture of a Type B feed from a bulk drug (drum-run material).

The agency believes that all medicated feeds should be manufactured from standardized premixes. Bulk or drum-run material may be used for the manufacture of Type B or Type C medicated feeds so long as an NADA providing for such manufacture has been approved under section 512(c) of the act.

d. Four comments requested that the difference between a Type A article and a Type B feed in the definitions be based only upon drug concentration rather than upon both drug concentration and nutrient content.

FDA does not agree. The proposed definition takes into account nutrient content as well as drug concentration because section 201(x) of the act defines an animal feed as an article that, in part, is intended for use a substantial nutrient source.

e. Seven comments requested that FDA adopt the definitions of the Association of American Feed Control Officials (AAFCO) or of the National Research Council for the terms "nutrients" and "nutritional ingredients," which appear in the proposed definitions of a Type A medicated article and Type B and Type C medicated feeds.

The agency does not believe that it is necessary to limit nutrient sources by reference to any particular compendium. Compendia lists of nutritive sources are not exhaustive, and some recognized feed ingredients are not considered to be nutritive sources.

f. Five comments requested that the program be flexible enough to permit drug levels of Type B feeds to exceed 200 times the highest continuous use level.

FDA has added flexibility in the revised program by exempting Category I Type A articles from the requirements for a medicated feed application for subsequent manufacturing. In addition, by merging proposed Category III into Category II, the maximum permitted drug levels of the Type B feeds for those Category III drugs would be doubled. The agency does not agree, however, that drug concentrations in Type B feeds should exceed 200 times the highest continuous use level, as those drug levels need to be subject to the more stringent regulations governing current good manufacturing practice for Type A medicated articles.

g. One comment suggested that a 25 percent dilution of a Type A medicated article with nutrient ingredients be adequate to meet the definition of a Type B feed.

The agency agrees that a minimum of 25 percent of the weight of the Type B article may be sufficient to fall within the definition of a Type B article, provided the nutrient ingredients in the Type B feed are present in sufficient quantity to contribute significantly to the nutritional content of the Type C feed prepared therefrom.

h. Nine comments requested that the definition for Type C feed given in proposed § 558.3(b)(3) be revised to conform to the definition given in the preamble to the proposal.

The agency agrees and has revised the definition accordingly.

i. One comment requested a clarification of the term "continuous use (14 days or more)" as a number of drugs are approved for use for 14 days. The comment questioned whether these uses would be considered continuous use.

For the purpose of these regulations a 14-day administration would be "continuous use."

4. *Current Good Manufacturing Practice.*

a. Nearly 50 comments stated that the number of assays required for Type B feeds was excessive and would be unduly expensive. The comments requested that the existing language in § 225.58(b)(1) and (2) be retained.

The agency agrees that the proposed assay requirement for Type B medicated feeds would entail costs that would not be commensurate with public health benefits. Therefore, the schedule of assays in the current regulations will be retained.

b. One comment stated that assay requirements for the manufacture of a Type B feed from a Type A article should be no more stringent than for the manufacture of a Type C feed from a Type A article.

The agency agrees, and has revised the proposal accordingly.

c. Five comments opposed the proposed requirement of three consecutive assays following receipt of results of a sample that is not within required limits because the results of assays would be of little value in correcting problems as they occur.

FDA agrees and has deleted this requirement from the tentative final rule.

d. One comment requested that the results of assays by State feed control

officials be counted toward the total annual assay requirement.

The agency agrees and has revised the tentative final rule accordingly.

e. Six comments requested that reduced inspectional requirements be applied to mixer-feeders. One comment requested that there be no requirements for current good manufacturing practice for those manufacturing feeds from Type B and Type C medicated feeds.

The agency does not agree that mixer-feeders should be subject to reduced inspectional requirements. FDA believes that the same criteria should apply to all persons who manufacture medicated articles and feeds.

Section 501(a)(2)(B) of the act requires that a drug be manufactured in conformity with current good manufacturing practice (GMP). Because medicated feeds contain drugs, medicated feeds are also subject to that statutory requirement. The tentative final rule would establish three tiered GMP's, with different requirements for manufacture of Type A articles and different types of medicated feed.

f. Two comments requested deletion of the word "safety" in proposed § 225.130 *Equipment* because the equipment will not of itself influence the safety of the feed.

The agency agrees and has revised the tentative final rule accordingly.

g. Seven comments requested that, in proposed § 225.135 *Work and storage areas*, the next to the last word "medicated" be replaced with the word "animal."

The agency agrees and has made the change.

h. Thirty-nine comments opposed the requirement in proposed § 225.142 that an inventory control be maintained on a daily basis for each drug component. The comments stated that the proposed section would apply to high volume Type B and Type C medicated feeds, and that maintaining a daily inventory would not be practical because of the manner in which those feeds are processed, stored, and marketed.

The agency agrees with the concerns raised regarding the feasibility of maintaining a meaningful daily inventory of Type B and Type C medicated feeds and has deleted the requirement. However, the agency is retaining such an inventory requirement for all Type A articles.

i. Two comments opposed proposed § 225.158, which would require that assay results for drug components, including results of assays performed by state feed control officials, be maintained on the premises for one year. The comments stated that in-house assays that may be done voluntarily by the firm should not come under the purview of the regulation.

The agency believes that voluntary in-house assays, as well as those required by regulation or performed by State feed control officials, should fall under the purview of the regulation. To require otherwise may lead to the retaining of only favorable assay results.

j. Thirty-seven comments opposed the limits provided for analytical variation in the assay of Type B medicated feeds. The comments stated that limits were too narrow to be met by the available methods of analysis.

Because of the lack of data on specific assays for Type B medicated feeds, the agency proposed the same limits for Type B feeds as for Type A articles, but invited the submission of data to serve as the basis for establishing intermediate limits between those for Type A articles and Type C medicated feeds. No new data were submitted. But comments argued that because of the wide range of potency of Type B feeds, the proposed limits of analytical variation are too narrow to be met reasonably. The agency agrees and has revised the tentative final rule to apply the Type C medicated feed assay limits to Type B medicated feeds.

k. Seven comments requested that § 225.165 *Equipment clean-out procedures* be revised by deleting the words "clean-out" because procedures are available for avoiding unsafe contamination. Three comments requested that the regulation include a reference to sequencing, which is an accepted industry practice for minimizing the adverse effects of drug carryover between subsequently manufactured batches of medicated feeds.

The agency believes that the regulation need not reference any particular procedure so long as it is clear that the intent of the section is to sanction the use of any procedures that are appropriate to minimize unsafe contamination. Therefore, FDA is not limiting this section to clean-out procedures and has deleted the words "clean-out" in the text of the proposed regulation.

1. Nine comments opposed § 225.202 *Formula, production, and distribution records*, which would require inventory records to be maintained in a manner that would permit reconciling drug usage against inventory. The comments stated that with bulk medicated feed processing and storage, a meaningful inventory is not possible.

The agency agrees and has deleted that part of the regulation requiring reconciliation of drug component usage and inventory.

5. *Applications.*

a. Three comments stated that stability data should not be required for both Type B and Type C medicated feeds, as proposed in § 514.1(b)(5)(x).

FDA agrees that stability data need not be required on a routine basis. However, the agency reserves the option to require stability data under unusual circumstances, such as for liquid supplements.

b. Two comments requested that proposed § 514.2(b)(4) cross-reference existing § 510.515 and proposed § 558.20 as permitted premix sponsors and permitted premix levels.

Proposed § 514.2(b)(4) would require that a medicated feed application identify the drugs or Type A medicated articles used by name, potency, and manufacturer. For the purpose of the regulation, FDA believes that the requested cross-referencing is unnecessary. Specific reference to approved applications and sponsors in § 558.20 is beyond the scope of this rulemaking.

c. One comment opposed the use of the term "mash" to refer to a physical form of feed, and suggested use of the term "meal" instead.

The term "mash" is widely recognized and understood throughout the feed industry. The Official Publication of the Association of American Feed Control Officials defines mash as a physical form of feed.

d. One comment opposed the proposed requirement that a medicated feed application identify the manufacturer of the premix. The comment stated that the source of premix should not be limited by the application.

The agency believes that information in the medicated feed application should permit it to determine whether the drug ingredients used are being obtained from an approved source. An applicant may identify more than one source of drug ingredients in an application.

e. Two comments suggested that proposed § 514.2(b)(7), which would require a medicated feed application to identify whether the feed is packaged in bag or bulk, is not necessary because the feed tags will bear that information.

The agency agrees and has deleted this provision from the tentative final rule.

f. Eight comments requested revision of proposed § 514.2(b)(10) by deleting reference to the source of Type B medicated feed. The comments suggested that this information is not necessary because medicated feed applications would not be required to

manufacture a Type C medicated feed from a Type B medicated feed.

The agency agrees and has revised § 514.2(b)(9) of the tentative final rule accordingly.

g. Eight comments requested that, in proposed § 514.2(b)(14), the word "value" be inserted following the word "assay" for clarity.

The agency agrees and had made the requested change in § 514.2(b)(13) of this tentative final rule.

6. *Implementation Program.*

a. One comment stated that the preinspection program would be wasteful since a large proportion of currently registered mills would no longer be registered and subject to directed inspection.

The agency acknowledges that it is not possible to determine which firms will relinquish their registrations and use only sources of drug ingredients that would not require the submission of medicated feed applications. Because thoses firms would remain subject to inspections under section 704 of the act (21 U.S.C. 374), the agency does not believe that the preinspection program would be wasteful.

b. One comment stated that a request for reinspection should become part of the record and that the request should be honored within 60 or 90 days.

Any written request for reinspection becomes part of the establishment inspection file and thus becomes a part of the record. Because FDA schedules reinspections as permitted by the agency's resources, a time commitment is not practical.

c. Seven comments requested adequate implementation time to permit use of existing stocks and permit the processing of applications. One comment suggested that submitted applications be processed by stages to assure equal treatment of all applicants. It suggested that applications be processed in turn by drug category.

Under the revised program the number of medicated feed applications actually submitted is expected to be reduced substantially. In addition, after publication of a final rule based upon this tentative final rule, FDA will provide a delayed effective date of one year. FDA believes that would provide sufficient time for the orderly processing of applications and for the use of existing stocks.

7. *Miscellaneous Comments.*

a. Several comments requested that the proposal not be made final at this time. One comment referred to legislation currently before the Congress that would amend Section 512(m) of the act; another stated that considerable revision would be needed before a final could issue.

The agency does not believe that it should curtail its efforts to revise and improve the current medicated feed requirements on the basis of pending legislation. Early enactment of legislation regarding medicated feed requirements is uncertain. Because of considerable revision of the proposal published January 9, 1981, these revisions are being published as a tentative final rule for additional comment.

b. Ten comments opposed codification of the definitions of production classes of animals in § 510.3(m), because of the agency's statement in the preamble to the 1981 proposal that these definitions would only constitute guidelines. One comment requested that the term "capon" be included as part of the definition for roasting chickens.

FDA has deleted the definitions from the tentative final rule and will handle them as guidelines. The agency recognizes that a capon is a particular variety of roasting chicken.

c. A number of comments showed some confusion over the appropriate section in Part 207 in which exemptions from drug listing and registration requirements are codified.

Part 207 was published and recodified in the **Federal Register** of June 6, 1980 (45 FR 38043). The proposal correctly addressed amendment of § 207.10(f), formerly § 207.65(f).

d. Several comments requested an explanation and clarification of proposed § 514.112 *Return of applications for animals feeds bearing or containing new animal drugs.* One comment requested that the section include a statement that the applicant would be informed of all reasons for incompleteness of an application.

Section 514.112 is not new. This section is a revision and updating of current § 558.4, which was initially published in the **Federal Register** of July 2, 1968 (33 FR 9609). The purpose of the section was to discourage the submission of medicated feed application before publication of the regulation approving the new animal drug application upon which the application relied. FDA has further revised the section to provide for notification of an applicant of all ways in which an application is incomplete.

e. A number of comments requested that animal drugs that are not new animal drugs be exempt from the requirements of section 512(m) of the act, and not be included in proposed § 558.20.

The agency agrees that section 512(m) of the act does not apply to other than new animal drugs. Each of the animal drugs named in proposed § 558.4(c) is a new animal drug within the meaning of section 201(w) of the act and thus subject to the requirements of section 512(m) of the act. The drugs listed in § 558.20 would be deemed to be new animal drugs because they are not generally recognized as safe and effective by current standards.

f. A comment requested that § 501.110 be revised to provide for the use of collective names in the labeling of Type A articles.

The agency agrees and has revised the section accordingly. Collective names have previously been permitted to be used in the labeling of what would become Type A articles.

g. One comment requested the deletion of proposed § 558.4(c), which lists drug categories, maximum Type B drug levels, and assay limits. It suggested that this information appear instead in sections describing the conditions of approval of each drug.

The agency recognizes that there is an advantage in having all of the information about drug's approval and use in its own section. However, to place the information throughout 71 different entries in the regulations would create a greater potential for error and make the regulations more difficult to utilize as an efficient reference.

h. Two comments stated that there was no evidence to show that drug residues result from improper mixing. The comments stated that the usual source of drug residues is contaminated transportation and delivery systems.

The agency does not believe that any single cause has been identified as the usual source of contamination. The entire manufacturing process of medicated feeds must be considered as a potential source of unsafe drug residues.

i. One comment stated that § 510.7 *Consignees of new animal drugs for use in the manufacture of animal feed* did not require a change in paragraph (b)(2) to provide exemptions for shipment of a new animal drug for use in the manufacture of an exempt medicated feed.

The agency agrees and has retained the existing text.

j. A comment noted "changes in the specifications of certain drugs" that were not addressed in the preamble to the 1981 proposal.

The comment is correct to the extent that certain specifications were deleted from the regulations and the preamble failed to address the reasons for the deletions. FDA proposed the deletions as part of its overall effort to reduce

unnecessary text from the regulations. Because in each case the drugs are adequately identified in official compendia, the inclusion of specifications in the regulations is not necessary. The deletions are not intended to be substantive changes.

k. A comment noted that approvals for tylosin premixes at 10 grams per pound or less has been deleted. The comment opposed the conversion of these approvals from approved new animal drug applications to approved medicated feed applications.

The agency agrees and has retained the existing text. Previously granted approvals should not be changed unless, among other reasons, the holder of the approved application so requests and justifies the request.

1. Several comments contended that the program would increase regulation and adversely affect consumer prices. Two comments stated that an economic impact analysis is required.

The agency has completed a threshold analysis, as required by Executive Order 12291. That analysis, a summary of which follows, shows that the revised program is expected to have no significant impact on costs to feed producers. Any effect on consumer prices would be negligible.

D. Legal Authority

Section 512(m) of the act requires an approved medicated feed application "with respect to any intended use or uses of an animal feed bearing or containing a new animal drug." Since each drug may be used in several different feeds—prestarter, starter, grower, and finisher—several applications may be required for each drug used in each feed manufacturing establishment.

As discussed in C.1.a. and b. above, FDA has a long history of exempting drugs or certain concentration levels of drugs for use in feed from the requirements of an approved application under section 512(m) of the act. The U.S. Court of Appeals for the District of Columbia Circuit has upheld an agency's authority inherent in the administrative process to create general exemptions to statutory requirements. *Alabama Power Company* v. *Costle*, 636 F.2d 323 (1980). *See also Environmental Defense Fund* v. *Environmental Protection Agency*, 636 F.2d 1267 (1980). Among the grounds for exemptions are administrative necessity and *de minimis* circumstances.

1. *Administrative Necessity.* FDA has not in the past formally commented on the administrative impossibility of enforcing section 512(m) of the act as written and without exemptions. However, it recently made a projection demonstrating the administrative impracticality of implementing section 512(m) of the act without exemptions.

It is estimated that there are approximately 12,000 commercial establishments manufacturing medicated feeds. Each plant is estimated to manufacture 40 different feeds (concentrates, supplements, and complete feeds). Thus the number of applications to be processed from this segment of the industry would be 480,000 (12,000 × 40). Additionally, it is estimated that 60,000 farms (predominantly cattle and swine) of the more than a million farms that engage in livestock production in the United States are manufacturing on an average five different feeds each. Thus the number of applications to be processed from this segment of the industry would be 300,000 applications (60,000 × 5). In total, this amounts to 780,000 applications that would have been processed since 1968—six times more than the actual number of applications that have been processed as a result of exemptions that have been granted.

Under section 512(m) of the act, certain information must be submitted in each application, including a full statement of the composition of the animal feed and a full description of the methods used in, and the facilities and controls used for, the manufacturing, processing, and packing of the animal feed. In practice this information has not been required since 1969, thereby substantially decreasing the amount of time required for reviewing each application. Even without this information, it is estimated that it requires 1½ hours to review and process each application. Thus since 1968, 1,170,000 hours would have been directed to the review of applications submitted under section 512(m) of the act if there had been no exemptions, accounting for 693 person years (at 1,688 hours/person year), or 49 people per year for each of the 14 years since 1968.

In fact, the medicated feed branch of FDA's Bureau of Veterinary Medicine has never been staffed with more than eight people per year and, because of exemptions, only 132,000 applications have been received and processed in the last 20 years—less than one sixth the number that would have been submitted if no exemptions had been granted.

For the past five years, FDA has received approximately 10,000 applications per year. These are processed by eight persons. Without exemptions, the agency would have received over 60,000 applications and required 48 people to process them.

Under the proposed medicated feed program, the agency expects to review only 5,000 to 6,000 applications per year (requiring five people for reviewing and processing).

2. *De Minimis Circumstances.* Nearly every one of the 68 to 72 animal drugs approved for use in feed enjoys an exemption at some concentration level or in some species. Thus the total number of exemptions might appear to be more than could be characterized as *de minimis*. But from a public health perspective, the exemptions to be granted in the proposed medicated feed program are truly *de minimis* because they exempt drugs and drug concentration levels that enjoy a wide margin of safety and do not need to be subject to approved medicated feed applications.

The District of Columbia Circuit cautioned that an agency's authority to exempt *de minimis* situations from a statutory requirement "is not an ability to depart from the statute, but rather a tool to be used in implementing the legislative design." 636 F.2d at 360. The Senate Committee Report on the Animal Drug Amendments of 1968 stated that the purpose of the legislation was to

> * * * coordinate and consolidate the applicable provisions governing drugs, feed additives, and antibiotics for animal use into one logical coordinated system that, without removing any of the stringent requirements for premarket clearances, would assist this clearance * * *.
>
> (S. Rep. No. 136, 90th Cong., 2d Sess., 3.)

As discussed in C.1.a. above, at the time of enactment of the 1968 Amendments the agency had already exempted some drugs as "not new drugs" from the new drug preclearance requirements, including requirements for use of the drugs in feed. It had also exempted by regulation certifiable antibiotics subject to section 507 of the act. Thus the continued exemption of drugs or drug levels enjoying a wide margin of safety for use in feed is within the legislative design of the Congress in 1968. More recently, in the section-by-section analysis of S. 1442, the Food Safety Amendment of 1981 (97th Cong., 1st Sess.), FDA's current program of exemptions and the continuation and extension of those exemptions in the proposed medicated feed program is acknowledged with approval. See 127 Cong. Rec. Vol. II S7146 (June 25, 1981).

E. Summary of Economic Impact Analysis

The reordering of the basis upon which the manufacture of a medicated feed may be exempt from the requirement of an approved medicated

feed application is expected to have differing cost impacts on the various sectors of the industry. However, the agency anticipates that no sector would experience a significant economic impact.

Most small livestock and poultry farms do not manufacture the medicated feeds that they use, and hence would not be affected. Thus, the changes would affect larger farms, and even there the impacts would be small. A large cattle feedlot or intergrated chicken farm could save an average of about $550 annually (a total of $440,000) because the drugs most commonly used would be subject to less regulation. An average large hog producer could have added annual costs of about $45 (a total of $1.3 million), if the drugs in current use continue their popularity under the revised program. FDA was unable to estimate the impact on turkey producers, but anticipates that total impact to be smaller than either of the amounts cited above.

The agency believes that there may be some shifting among drugs by livestock producers (particularly the hog producers) if it becomes economically advantageous to substitute deregulated drugs for Category II drugs. While such shifts could not be projected, they would serve to mitigate any added costs.

A commercial feed mill may achieve annual savings of about $55 (a total $545,000) under the revised program. Further, as many as 2,000 commercial feed mills may choose to use only those drugs for which medicated feed applications would not be required and would thereby incur a lower level of regulation. No significant net impact is expected for animal drug manufacturers, although some shifts in market shares are possible.

For each of the industry sectors analyzed, any costs imposed by this revision of the proposed medicated feed program would be well below the thresholds that signify a major rule according to the criteria specified in Executive Order 12291. Thus, the agency has determined that the tentative final rule does not constitute a major rule.

FDA has considered the effect that this tentative final rule would have on small entities, including small businesses, and certifies in accordance with section 605(b) of the Regulatory Flexibility Act that no significant economic impact on a substantial number of small entities will result.

The agency has determined under 21 CFR 25.24(d)(6) (proposed December 11, 1979; 44 FR 71742) that the action of this tentative final rule 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.

Sections 225.202, 514.1, 514.2, and 558.20 of this tentative final rule contain information collection requirements. As required by section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 35), FDA has submitted a copy of this tentative final rule to the Office of Management and Budget (OMB) for its review of these information collection requirements. Other organizations and individuals desiring to submit comments on the information collection requirements should direct them to FDA's Dockets Management Branch (address above) and to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., Rm. 3208, Washington, DC 20503, ATTN: Richard Eisinger.

List of Subjects

21 CFR Part 207

Drug listing, Drug registration.

21 CFR Part 210

Packaging and containers.

21 CFR Part 225

Animal drugs, Animal feeds, Labeling, Packaging and containers.

21 CFR Part 226

Animal feed premixes, Labeling, Packaging and containers.

21 CFR Part 501

Animal foods, Labeling, Packaging and containers.

21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting requirements.

21 CFR Part 514

Administrative practice and procedure, Medical research.

21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 501, 512, 701(a), 52 Stat. 1049–1050 as amended, 1055, 82 Stat. 343–351 (21 U.S.C. 351, 360b, 371(a))) and under 21 CFR 5.11 as revised (see 47 FR 16010; April 14, 1982), it is proposed that Parts 207, 210, 225, 226, 501, 510, 514, and 558 be amended as follows:

PART 207—REGISTRATION OF PRODUCERS OF DRUGS AND LISTING OF DRUGS IN COMMERCIAL DISTRIBUTION

1. Part 207 is amended in § 207.10 by revising paragraph (f) to read as follows:

§ 207.10 Exemptions for domestic establishments.

* * * * *

(f) Persons who manufacture Type B or Type C medicated feed using Category I Type A medicated articles and Type B medicated feeds, and Category II Type B medicated feeds.

PART 210—CURRENT GOOD MANUFACTURING PRACTICE IN MANUFACTURING, PROCESSING, PACKING, OR HOLDING OF DRUGS; GENERAL

2. Part 210 is amended by revising the title of the part as set out above and in § 210.3 by revising paragraph (b) (13) and (14) to read as follows:

§ 210.3 Definitions.

* * * * *

(b) * * *

(13) The term "medicated feed" means any Type B or Type C medicated feed as defined in § 558.3 of this chapter. The feed contains one or more drugs as defined in section 201(g) of the act. The manufacture of medicated feeds is subject to the requirements of Part 225 of this chapter.

(14) The term "medicated premix" means a Type A medicated article as defined in § 558.3 of this chapter. The article contains one or more drugs as defined in section 201(g) of the act. The manufacture of medicated premixes is subject to the requirements of Part 226 of this chapter.

* * * * *

PART 225—CURRENT GOOD MANUFACTURING PRACTICE FOR MEDICATED FEEDS

3. Part 225 is amended:

a. In § 225.1 by revising paragraph (b), to read as follows:

§ 225.1 Current good manufacturing practice.

* * * * *

(b)(1) The provisions of this part set forth the criteria for determining whether the manufacture of a medicated feed is in compliance with current good manufacturing practice. These regulations shall apply to all types of facilities and equipment used in the production of medicated feeds, and they shall also govern those instances in which failure to adhere to the

regulations has caused nonmedicated feeds that are manufactured, processed, packed, or held to be adulterated. In such cases, the medicated feed shall be deemed to be adulterated within the meaning of section 501(a)(2)(B) of the act, and the nonmedicated feed shall be deemed to be adulterated within the meaning of section 402(a)(2)(D) of the act.

(2) The regulations in §§ 225.10 through 225.115 apply to facilities manufacturing one or more medicated feeds for which an approved medicated feed application is required. The regulations in §§ 225.120 through 225.202 apply to facilities manufacturing solely medicated feeds for which approved medicated feed applications are not required.

b. In § 225.58 by revising (c), to read as follows:

§ 225.58 Laboratory controls.

* * * * *

(c) The originals or copies of all results of assays, including those from State Feed Control Officials and any other governmental agency, shall be maintained on the premises for a period of not less than 1 year after distribution of the medicated feed. The results of assays performed by State Feed Control Officials may be considered toward fulfillment of the periodic assays requirements of this section.

c. By adding new Subpart F consisting of §§ 225.120, 225.130, and 225.135, to read as follows:

Subpart F—Facilities and Equipment

Sec.
225.120 Building and grounds.
225.130 Equipment.
225.135 Work and storage areas.

Authority: Secs. 501, 512, 701(a), 52 Stat. 1049–1050 as amended, 1055, 82 Stat. 343–351 (21 U.S.C. 351, 360b, 371(a)).

Subpart F—Facilities and Equipment

§ 225.120 Buildings and grounds.

Buildings used for production of medicated feed shall provide adequate space for equipment, processing, and orderly receipt and storage of medicated feed. Areas shall include access for routine maintenance and cleaning of equipment. Buildings and grounds shall be constructed and maintained in a manner to minimize vermin and pest infestation.

§ 225.130 Equipment.

Equipment shall be capable of producing a medicated feed of intended potency and purity, and shall be maintained in a reasonably clean and orderly manner. Scales and liquid metering devices shall be accurate and of suitable size, design, construction, precision, and accuracy for its intended purpose. All equipment shall be designed, constructed, installed, and maintained so as to facilitate inspection and use of cleanout procedure(s).

§ 225.135 Work and storage areas.

Work areas and equipment used for the production or storage of medicated feeds or components thereof shall not be used for, and shall be physically separated from, work areas and equipment used for the manufacture of fertilizers, herbicides, insecticides, fungicides, rodenticides, and other pesticides unless such articles are approved for use in the manufacture of animal feed.

d. By adding new Subpart G consisting of §§ 225.142, 225.158, and 225.165, to read as follows:

Subpart G—Product Quality Assurance

Sec.
225.142 Components.
225.158 Laboratory assays.
225.165 Equipment clean-out procedures.

Authority: Secs. 501, 512, 701(a), 52 Stat. 1049–1050 as amended, 1055, 82 Stat. 343–351 (21 U.S.C. 351, 360b, 371(a)).

Subpart G—Product Quality Assurance

§ 225.142 Components.

Adequate procedures shall be established and maintained for the receipt, labeling, storage, and use of all medicated feed articles intended for use in manufacturing medicated feeds to aid in assuring their identity, strength, and purity. All drug components must be used in accord with the labeled directions for use. Packaged drugs in the storage areas shall be stored in their original closed containers. Bulk drugs shall be identified and stored in a manner such that their identity, strength, quality, and purity will be maintained.

§ 225.158 Laboratory assays.

Where the results of laboratory assays of drug components, including assays by State Feed Control Officials, indicate that the medicated feed is not in accord with the permissible limits specified in this chapter, investigation and corrective action shall be implemented immediately and such records shall be maintained on the premises for a period of one year.

§ 225.165 Equipment clean-out procedures.

Adequate procedures shall be established and used for all equipment used in the production and distribution of medicated feeds to avoid unsafe contamination of medicated and nonmedicated feeds.

e. By adding new Subpart H consisting of § 225.180, to read as follows:

Subpart H—Labeling

§ 225.180 Labeling.

Medicated feed for commercial distribution is subject to labeling provisions found in Parts 201, 501, 505, and 558 of this chapter.

f. By adding new Subpart I consisting of § 225.202, to read as follows:

Subpart I—Records

§ 225.202 Formula, production, and distribution records.

Where applicable, records after the last date of shipment of the medicated feed identifying the formulation, date of mixing and distribution of the medicated feed shall be maintained for one year. Such records shall be adequate to facilitate the recall of specific batches of medicated feed that have been distributed.

PART 226—CURRENT GOOD MANUFACTURING PRACTICE FOR TYPE A MEDICATED ARTICLES

4. Part 226 is amended by changing the term "medicated premixes" to "Types A medicated article(s)" wherever it appears.

PART 501—ANIMAL FOOD LABELING

5. Part 501 is amended in § 501.110 by revising paragraph (a)(1) to read as follows:

§ 501.110 Animal feed labeling; collective names for feed ingredients.

(a) * * *

(1) The article is a Type A medicated article or is a Type B or Type C medicated feed as defined in § 558.3 of this chapter and is intended solely for animal use.

* * * * *

PART 514—NEW ANIMAL DRUG APPLICATIONS

6. Part 514 is amended:

a. In § 514.1 by revising paragraphs (b)(3)(v)(*b*) and (vii)(*a*) and (b)(5)(x), to read as follows:

§ 514.1 Applications

* * * * *

(b) * * *

(3) * * *

(v) * * *

(*b*) Representative labeling proposed to be used for Type B and Type C medicated feeds containing the new animal drug.

* * * * *

(vii) * * *

(*a*) A description of practicable methods of analysis of adequate sensitivity to determine the amount of the new animal drug in its final dosage form including Type B and Type C medicated feeds and in drinking water should also be included. Methods should be included for any Type A medicated article. Where two or more active ingredients are included, methods should be quantitative and specific for each active ingredient.

* * * * *

(b) * * *

(5) * * *

(x) A complete description of, and data derived from, studies of the stability of the new animal drug, including information showing the suitability of the analytical methods used. A description of any additional stability studies underway or planned. Stability data for the finished dosage form of the new animal drug in the container in which it is to be marketed, including any proposed multiple dose container, and, if it is to be put into solution at the time of dispensing, for the solution prepared as directed. If the new animal drug is intended for use in the manufacture of Type C medicated feed as defined in § 558.3 of this chapter, stability data be derived from studies in which representative formulations of the medicated feed articles are used. Similar data may be required for Type B medicated feeds to be determined on a case-by-case basis. If the data indicate that an expiration date is needed to preserve the identity, strength, quality, and purity of the new animal drug, the applicant shall propose such expiration date. If no expiration date is proposed, the applicant shall justify its absence.

* * * * *

b. By revising § 514.2, to read as follows:

§ 514.2 Applications for animal feeds bearing or containing new animal drugs.

(a) Applications to be filed under section 512(m) of the act shall be completed, signed, and submitted in triplicate in the form described in paragraphs (b) and (c) of this section.

(b) Each application for a Type B or Type C medicated feed shall include the following information:

(1) The name and address of the applicant.

(2) The registration number assigned pursuant to section 510 of the act and last date of registration of each mill.

(3) Whether the submission is an original or supplemental application.

(4) Identification of the drug(s) or Type A medicated acticle used by generic name, potency, and manufacturer.

(5) The species of animal(s) for which the feed is intended.

(6) The form of feed to be produced, i.e., mash, meal, crumbles, pellets, liquid, or other specified form.

(7) Whether the feed is a Type B or Type C medicated feed.

(8) Whether the feed is for sale or for own use (not for sale).

(9) The generic labeling of the medicated feed and level of the drug(s) in the finished feed, and the amount of Type A article per ton contained therin.

(10) Identification of the regulation(s) in Subchapter E of this chapter on which approval relies.

(11) Sample generic labeling representative of each intended use as stated in the claim. Each generic label shall include the claim, drug level, mixing directions, feeding directions, caution and/or warning statements and any other special directions required by the published regulation. This shall consist of bag labels, invoice copy, bulk labels, and placards when applicable.

(12) A commitment to establish and maintain a program of sampling and assaying consisting of an assay of the first batch manufactured, followed thereafter by two samples at periodic intervals during the calendar year. If a medicated feed contains a combination of drugs, only one of the drugs need be subject to analysis each time, provided the one tested is different from the one(s) previously tested. Reports of assays shall be kept on the premises for not less than 1 year after the last date of shipment of the assayed medicated feed.

(13) A statement of the minimum and maximum assay value permitted from the labeled amount of the drug.

(14) Identification of the agent authorized to act on behalf of applicant.

(15) The applicant's name, responsible individual's title and original signature, and date.

(c) Upon approval, one copy of the application will be signed by an authorized employee of the Food and Drug Administration designated by the Commissioner, and it will be returned to the applicant.

c. By adding new § 514.112, to read as follows:

§ 514.112 Return of applications for animal feeds bearing or containing new animal drugs.

Applications submitted pursuant to § 514.2 will be returned to the applicant if such applications are incomplete or inaccurate or do not contain an identification of the applicable regulation(s). These regulations published pursuant to section 512(i) of the act, are found in Part 558 of this chapter, and are the basis on which approval of the applications relies, as required by § 514.2(b)(11). All reasons for the return of the application will be made known to the applicant.

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

7. Part 558 is amended:

a. By revising § 558.3, to read as follows:

§ 558.3 Definitions and general considerations applicable to this part.

(a) Regulations in this part provide for approved uses of drugs and combinations of drugs in animal feeds. Approved combinations of such drugs are specifically identified or incorporated by cross reference. Unless specifically provided for by the regulations, a combination of two or more drugs is not approved.

(b) The following definitions apply to terms used in this part:

(1) A "Type A medicated article" is intended solely for use in the manufacture of another Type A medicated article or a Type B or Type C medicated feed. It consists of an animal drug(s), with or without carrier (e.g., calcium carbonate, rice hull, corn, gluten) with or without other inactive ingredients. The manufacture of a Type A medicated article requires an application approved under § 514.105(a) of this chapter.

(2) A "Type B medicated feed" is intended solely for the manufacture of other medicated feeds (Type B or Type C). It contains a sustantial quantity of nutrients including vitamins and/or minerals and/or other nutritional ingredients in an amount not less than 25 percent of the weight of the Type A medicated article. It is manufactured by diluting a Type A medicated article or another Type B medicated feed. The maximum concentration of a Type B medicated feed is 200 times the highest continuous use level for Category I drugs and 100 times the highest continuous use level for Category II drugs. The term "highest continuous use level" means the highest dosage at which the drug is approved for continuous use (14 days or more), or, if the drug is not approved for continuous use, it means the highest level used for disease prevention or control. If the drug is approved for multiple species at different use levels, the highest level would govern under this definition. The manufacture of a Type B or Type C medicated feed from a Category II Type A medicated article requires an

application approved under § 514.105(b) of this chapter.

(3) A "Type C medicated feed" is intended as the complete feed for the animal or may be fed top dressed on or offered free-choice in conjunction with other animal feed. It contains a substantial quantity of nutrients including vitamins and/or minerals and/or other nutritional ingredients. It is manufactured by diluting a Type A medicated article or another Type B medicated feed. A Type C medicated feed may be further diluted to produce another Type C medicated feed. The manufacture of a Type C medicated feed from a Type A Category II medicated article requires an application approved under § 514.105(b) of this chapter.

(4) New animals drugs for use in animal feed are placed in two categories as follows:

(i) *Category I*—These drugs require no withdrawal period at the lowest use level in each species for which they are approved.

(ii) *Category II*—These drugs require a withdrawal period at the lowest use level for at least one species for which they are approved.

b. By revising § 558.4, to read as follows:

§ 558.4 Medicated feed applications.

(a) Category I new animal drugs are exempt from the requriement of an approved medicated feed application for the use of a Type A medicated article in the manufacture of Type B or Type C medicated feeds.

(b) Category II new animal drugs require an approved medicated feed application for use of a Type A medicated article in the manufacture of Type B or Type C medicated feeds.

(c) The use to Type B and Type C medicated feeds shall conform to the conditions of use provided for in Subpart B of this Part and in § 510.515, 558.15, and 558.20.

(d) This paragraph identifies each drug by category, the maximum level of drug in Type B medicated feeds, and the assay limits for the drug in Type B and Type C medicated feeds, as follows:

CATEGORY I

Drug	Type B maximum (200 X)	Assay limits Type B and Type C[1]
Aklomide	22.75 g/lb (5.0%)	85-120
Ammonium chloride.	8.0-16.5 oz/lb	85-120
Amprolium with or without Ethopabate.	22.7 g/lb (5.0%)	85-115

CATEGORY I—Continued

Drug	Type B maximum (200 X)	Assay limits Type B and Type C[1]
Bacitracin (from bacitracin methylene or zinc bacitracin.	10.0 g/lb	70-130
Bambermycins.	800 g/ton	70-130
Buquinolate	10 g/lb (2.2%)	85-120
Chlortetracycline.	20 g/lb	70-130
Coumaphos	9.08 g/lb (2.0%)	80-120
Decoquinate.	2.72 g/lb (0.6%)	80-120
Dichlorvos	2.2 g/lb (4.8%)	80-130
Erythromycin (thiocyanate salt).	9.25 g/lb	(2)
Ethylenediamine dihydriodide.	1250 g/ton (0.137%)	60-140
Iodinated casein.	20 g/lb (4.4%)	75-125
Nequinate	1.83 g/lb (0.4%)	80-120
Nystatin	5.0 g/lb	75-125
Oleandomycin.	1.125 g/lb	70-130
Oxytetracycline.	20.0 g/lb	65-135
Penicillin	10.0 g/lb	65-135
Penicillin	1.5 g/lb	65-135
Streptomycin.	7.5 g/lb	70-130
Poloxalene	12.0%	85-115
Salinomycin	6.0 g/lb	80-120
Tylosin	10.0 g/lb	75-125
Virginiamycin.	10.0 g/lb	70-130
Zoalene	4.54 g/lb (1.0%)	85-115

[1] Percent of labeled amount.
[2] 20g/ton 50-150; 20g/ton 75-125.

CATEGORY II

Drug	Type B maximum (100 X)	Assay limits Type B and Type C[1]
Arsanilate Sodium.	4.5 g/lb (1.0%)	75-125
Arsanilic acid.	4.5 g/lb (1.0%)	75-125
Butynorate	17.0 g/lb (3.75%)	85-115
Butynorate	63.45 g/lb (14.0%)	85-115
Piperazine.	49.85 g/lb (11.0%)	85-115
Phenothiazine.	272.9 g/lb (58.0%)	85-115
Carbadox	2.5 g/lb (0.55%)	75-125
Carbarsone	17 g/lb (3.75%)	85-115
Clopidol	11.4 g/lb (2.5%)	80-120
Dimetridazole.	9.1 g/lb (2.0%)	85-120
Famphur	5.5 g/lb (1.21%)	80-120
Furazolidone.	10.0 g/lb (2.2%)	85-115
Hygromycin B.	1200 g/ton	75-125
Ipronidazole	2.8 g/lb (0.624%)	75-125
Lasalocid	5.65 g/ton (1.24%)	75-125
Levamisole	113.5 g/lb (25%)	85-125
Lincomycin	10.0 g/lb	80-130
Melengestrol acetate.	200 g/ton (0.022%)	70-120
Monensin	5.5 g/lb (0.021%)	75-125
Morantel tartrate.	66 g/lb	90-110
Neomycin	7.0 g/lb	70-125
Oxytetracycline.	10.0 g/lb	65-135
Nicarbazine	5.675 g/lb (1.25%)	80-120

CATEGORY II—Continued

Drug	Type B maximum (100 X)	Assay limits Type B and Type C[1]
Nitarsone	8.5 g/lb (1.875%)	85-115
Nitrofurazone.	10.0 g/lb (2.2%)	80-120
Nitromide	11.35 g/lb (2.5%)	85-115
Sulfanitran.	5.65 g/lb (1.25%)	75-125
Nitromide	11.35 g/lb (2.5%)	85-115
Sulfanitran.	5.65 g/lb (1.25%)	75-125
Roxarsone.	2.275 g/lb (0.5%)	85-120
Novobiocin	17.5 g/lb	80-120
Phenothiazine.	66.5 g/lb	85-115
Piperazine	165 g/lb (40.25%)	85-115
Pyrantel tartrate.	9.08 g/lb (2.0%), g/lb (0.01%)	85-115
Robenidine	1.5 g/lb (0.33%)	80-120
Ronnel	6.0%	80-120
Roxarsone	2.275 g/lb (0.5%)	85-120
Roxarsone	2.275 g/lb (0.5%)	85-120
Aklomide	11.35 g/lb (2.5%)	85-120
Roxarsone	2.275 g/lb (0.5%)	85-120
Clopidol	11.35 g/lb (2.5%)	80-120
Bacitracin methylene disalicylate.	5 g/lb	70-130
Roxarsone	2.275 g/lb (0.5%)	85-120
Monensin	5.5 g/lb (1.21%)	75-125
Sulfadimethoxine with Ormetoprim.	5.65 g/lb (1.25%)	75-125
Sulfaethoxypyridazine	50 g/lb (11.0%)	85-115
Sulfamerazine.	10 g/lb (4.0%)	80-120
Sulfamethazine.	5.0 g/lb (1.25%)	80-120
Chlortetracycline.	5.0 g/lb	70-130
Penicillin	2.5 g/lb	65-135
Sulfamethazine.	5.0 g/lb (1.25%)	80-120
Chlortetracycline.	5.0 g/lb	70-130
Sulfamethazine.	5 g/lb (1.25%)	80-120
Tylosin	5 g/lb	75-125
Sulfanitran	13.6 g/lb (3.0%)	75-125
Aklomide	11.29 g/lb (2.5%)	85-120
Sulfanitran	13.6 g/lb (3.0%)	75-125
Aklomide	11.2 g/lb (2.5%)	85-125
Roxarsone.	2.715 g/lb (0.625%)	70-130
Sulfaquinoxaline.	11.2 g/lb (2.5%)	80-120
Sulfathiazole.	5 g/lb (1.25%)	80-120
Chlortetracyline.	5 g/lb	70-130
Penicillin	2.5 g/lb	65-135
Thiabendazole.	45.4 g/lb (10.0%)	85-115

[1] Percent of labeled amount.
[2] 20 g/ton 50-150; 20 g/ton 75-125.

(d) When drugs from more than one category are in combination, the category defining the most restricted use will apply to the combination drug product.

c. In § 558.15 by revising the introductory text of paragraph (g) and paragraph (g)(2), to read as follows:

§ 558.15 Antibiotic, nitrofuran, and sulfonamide drugs in the feed of animals.

* * * * *

(g) The submission of applications and data required by paragraphs (a) and (b) of this section is not required for the continued manufacture of any Type A medicated article which is produced solely from another Type A medicated article that is in compliance with the requirements of this section.

* * * * *

(2) The following is a list of drug combinations permitted when prepared from Type A medicated articles listed in paragraph (g)(1) of this section. Drug combinations listed in Subpart B of this part name their sponsors and are incorporated herein by reference because they are safe and effective by contemporary standards, or such sponsors have been notified of any additional safety of efficacy data required on an individual basis:

* * * * *

d. By adding new § 558.20, to read as follows:

§ 558.20 Drugs used in medicated feeds in use before January 1, 1958 which are not otherwise listed; interim listing.

Applications for animal feeds bearing or containing new animal drugs must contain a reference to a section in the new animal drug regulations where the drug and the intended use is listed. For the purposes of such applications the following list of drugs was compiled. The list identifies drugs which must be the subject of approved medicated feed applications and which are not listed for the indicated uses in other new animal drug regulations. The drugs are not listed elsewhere since they were in use prior to the Food Additives Amendment to the Federal Food, Drug, and Cosmetic Act of January 1, 1958, which amendment required the listing of such drugs in appropriate regulations.

Drug ingredient	Species	Use levels	Indications for use	Limitations
Arsanilate sodium	Swine	0.005 to 0.01 %	Increase rate of gain and improve feed efficiency in growing swine.	Withdraw 5 days before slaughter. As sole source of organic arsenic.
Do	do	0.01%	Control of swine dysentery (hemorrhagic enteritis, bloody dysentery).	Withdraw 5 days before slaughter. Feed continuously as sole source of organic arsenic.
Do	do	0.025 to 0.04%	Treatment of swine dysentery (hemorhagic enteritis, bloody dysentery).	Withdraw 5 days before slaughter. Feed for 5-6 days as sole source of organic arsenic.
Arsanilic acid	do	0.005 to 0.01%	Increase rate of gain and improve feed efficiency in growing swine.	Withdraw 5 days before slaughter. As sole source of organic arsenic.
Do	do	0.01%	Control of swine dysentery (hemorrhagic enteritis, bloody dysentery).	Withdraw 5 days before slaughter. Feed continuously as sole source of organic arsenic.
Do	do	0.25 to 0.04%	Treatment of swine dysentery (hemorragic enteritis, bloody dysentery).	Withdraw 5 days before slaughter. Feed for 5-6 days as sole source of organic arsenic.
Butynorate (dibutylin dilaurate).	Turkeys	0.0375%	As an aid in the prevention of coccidiosis (caused by *E. meleagridis, E. meleagrimitis, E. gallopavonis*)1and hexamitiasis.	Withdraw 7 days before slaughter.
Ethylenediamine dihydriodide.	Chickens and turkeys	¼ lb/ton	An aid in the removal of mucus from upper respiratory tract following treatment for chronic respiratory disease (air sac infection).	Treat birds with caution until tolerance is determined, because of variation in susceptibility to iodides. Treat 5-7 days.
Do	Swine	250 to 500 mg daily	By loosening mucus and congestion, aid in control of respiratory difficulties. Aids in loosening mucus in upper respiratory tract.	Treat animals with caution until tolerance is determined because of variation in susceptibility to iodides. Treat for 7 days.
Do	Sheep	Self-feed at rate to provide 12 mg per head per day.	As an aid in prevention of soft tissue lumpy jaw in sheep.	
Do	Cattle	400 to 500 mg per head daily	Aids in the treatment of foot rot caused by *Spherophorus necrophorus;* aids in treatment of soft tissue lumpy jaw caused by *Actinobacillus lignierisi*.	Treatment animals with caution until tolerance is determined, because of variation in susceptibility to iodides. Not to be administered to dairy cattle in production. Feed for 2-3 weeks.
Do	do	50 mg per head daily in feed continuously	Aids in the prevention of foot rot and soft tissue lumpy jaw.	
Neomycin sulfate	Chickens, turkeys, and ducks	70 to 140 g/ton of complete feed as neomycin base.	For treatment of bacterial enteritis, (nonspecific enteritis, salmonellosis, bluecomb, mud fever).	
Do	Mink	140 g/ton of complete feed as neomycin base.	For treatment of bacterial enteritis and diarrhea.	
Do	Swine calves, cattle, horses, sheep, goats.	70 to 140 g/ton of complete feed as neomycin base.	For treatment of bacterial enteritis (scours, diarrhea, bloody dysentery, vibrionic dysentery, winter dysentery, white scours, coli-bacillosis, salmonellosis; diarrhea caused by *E. coli*, vibrio and salmonella organisms); enterotoxemia in lambs.	
Nitarsone (4-nitrophenyl-arsonic acid).	Chickens and turkeys	0.01875%	As an aid in the prevention of blackhead	Withdraw 5 days before slaughter. As sole source of organic arsenic.
Phenothiazine	Chickens	0.5 g per bird	Removal of cecal worms (*Heterakis gallinarum*).	For 1 day only.
Do	Turkeys	1 g per bird	do	Do.
Do	Swine	5 g up to 25 lb; 6 g, 26 to 50 lb; 10 g, 51 to 100 lb; 20 g, 101 to 200 lb; 30 g, 201 lb and up.	Removes nodular worms (*Oesophagostomum*).	
Do	Sheep and goats	25 to 60 lb body weight, 12.5 g; over 60 lb body weight, 25 g.	Removal of stomach worms (*Haemonchus, Ostertagia,* and *Trichostrongylus* spp.); largemouth bowel worms (*Chabertia* spp.), and hookworms (*Bunostomum* spp.).	Milk from dairy animals which have been treated with phenothiazine should not be used for food for four days following treatment.
Do	do	1g/head/day	Control of stomach worms (*Haemonchus, Ostertagia,* and *Trichostrongylus* spp.); largemouth bowel worms and hookworms (*Chabertia* spp.), (*Bunostomum* spp.).	Do not feed to lactating dairy animals. Feed continuously.

Drug ingredient	Species	Use levels	Indications for use	Limitations
Phenothiazine	Cattle	10 g/100 lb body weight, up to a maximum of 70 g.	Removes common stomach worms (*Haemonchus*), lesser stomach worms (*Ostertagia*), hair worms, bankrupt worms (*Trichostrongylus* spp.), nodular worm (*Oesophagostomum* spp.), and large-mouth bowel worms (*Chabertia* spp.).	Milk from dairy animals which have been treated with phenothiazine should not be used for food for four days following treatment.
Do	do	20 g/100 lb body weight up to a maximum of 80 g. Micronized (2-3 micron size particles)—10 g/100 lb body weight, up to a maximum of 80 g.	Hookworms (*Bunostomum* spp.)	For 1 day only. Milk from dairy animals which have been treated with phenothiazine should not be used for food for four days following treatment.
Do	do	0.25 g/100 lb body weight/day. For adult average dose is 2 g.	Controls common stomach worms (*Haemonchus*), lesser stomach worms (*Ostertagia*), hair worms, bankrupt worms (*Trichostrongylus* spp.), nodular worm (*Oesophagostomum* spp), and large-mouth bowel worms (*Chabertia* spp.).	Do not feed to lactating dairy animals.
Do	Horses and mules	2.5 g/100 lb body weight up to a maximum of 30 g.	Removal of strongyles (*Strongylus* spp.)	For 1 day only.
Do	do	2 g per head per day	do	For continuous use; feed 2 g per head per day for 21 consecutive days then none for 9 days. Repeat the feeding schedule as long as worm control is desired.
Piperazine	Chickens (under 6 weeks of age).	0.2 to 0.4%	Control of infestation of large roundworms (*Ascaris*).	As sole source of feed. For 1 day treatment. Directions for use should assure that the amount of feed consumed will furnish in 1 day 50 mg or piperazine per bird.
Do	Chickens (over 6 weeks of age)	do	do	As sole source of feed. For 1 day treatment. Directions for use should assure that the amount of feed consumed will furnish in 1 day 100 mg of piperazine per bird.
Do	Turkeys (under 12 weeks of age).	do	do	As sole source of feed. For 1 day treatment. Directions for use should assure that the amount of feed consumed will furnish in 1 day 100 mg of piperazine per bird.
Do	Turkeys (over 12 weeks of age)	do	do	As sole source of feed. For 1 day treatment. Directions for use should assure that the amount of feed consumed will furnish in 1 day 100-400 mg of piperazine per bird according to size.

e. By revising § 558.35 to read as follows:

§ 558.35 Aklomide.

(a) [Reserved]

(b) [Reserved]

(c) *Approvals.* Type A medicated article to 017210 in § 510.600(c) of this chapter, as follows:

(1) 50 percent aklomide.

(2) 25 percent aklomide and 20 percent sulfanitran.

(3) 25 percent aklomide, 20 percent sulfanitran, and 5 percent roxarsone.

(4) 50 percent aklomide and 10 percent roxarsone.

(d) [Reserved]

(e) [Reserved]

(f) *Related tolerances.* See § 556.30 of this chapter.

(g) *Conditions of use.* It is used for chickens as follows:

(1) *Amount per ton.* Aklomide, 227 grams (0.025 percent).

(i) *Indications for use.* As an aid in the prevention of coccidiosis caused by *E. tenella* and *E. necatrix.*

(ii) *Limitations.* Not to be fed to birds laying eggs for human consumption.

(2) *Amount per ton.* Aklomide, 227 grams (0.025 percent) with sulfanitran, 181.6 grams (0.02 percent).

(i) *Indications for use.* As an aid in the prevention of coccidiosis caused by *E. tenella, E. necatrix,* and *E. acervulina.*

(ii) *Limitations.* Not to be fed to laying chickens; withdraw 5 days before slaughter.

(3) *Amount per ton.* Aklomide, 227 grame (0.025 percent) with sulfanitran, 181.6 grams (0.02 percent) and roxarsone, 22.7–45.4 grams (0.0025–0.005 percent).

(i) *Indications for use.* As an aid in the prevention of coccidiosis caused by *E. tenella, E. necatrix,* and *E. acervulina;* growth promotion and feed efficiency; improving pigmentation.

(ii) *Limitations.* Not to be fed to laying chickens; withdraw 5 days before slaughter; as sole source of organic arsenic; chickens should have access to drinking water at all times.

(4) *Amount per ton.* Aklomide, 227 grams (0.025 percent) with roxarsone, 22.7–45.4 grams (0.025–0.005 percent).

(i) *Indications for use.* As an aid in the prevention of coccidiosis caused by *E. tenella, and E. necatrix;* growth promotion and feed efficiency; improving pigmentation.

(ii) *Limitations.* Not to be fed to birds laying eggs for human consumption; withdraw 5 days before slaughter; as sole source of organic arsenic; chickens should have access to drinking water at all times.

f. In § 558.45, by removing and reserving paragraphs (a), (b), (d), and (e), and revising paragraph (c), to read as follows:

§ 558.45 Ammonium chloride, feed grade.

(a) [Reserved]

(b) [Reserved]

(c) *Approvals.* Type A medicated article: 99 percent to 011462 in § 510.600(c) of this chapter.

(d) [Reserved]

(e) [Reserved]

* * * * *

g. In § 558.55, by removing and reserving paragraphs (a)(2) and (b) and by revising paragraphs (a)(1) and (c), to read as follows:

§ 558.55 Amprolium.

(a) *Approvals.* (1) Type A medicated article: 25 percent to 000006 in § 510.600(c) of the chapter for use as in paragraph (e)(1) of this section.

(2) [Reserved]

(b) [Reserved]

(c) *Special considerations.* (1) Do not use in Type B or Type C medicated feeds containing bentonite.

* * * * *

h. In § 558.58, by removing and reserving paragraph (b) and by revising paragraphs (a), (c) and (d), and the introductory text of paragraph (e), to read as follows:

§ 588.58 Amprolium and ethopabate.

(a) *Approvals.* Type A medicated article: 25 percent amprolium and 0.8 percent ethopabate; 25 percent amprolium and 8 percent ethopabate; 5 percent amprolium and 0.16 percent ethopabate; 5 percent amprolium and 1.6 percent ethopabate; to 000006 in § 510.600(c) of this chapter.

(b) [Reserved]

(c) *Special considerations.* Do not use in Type B or Type C medicated feeds containing bentonite.

(d) *Related tolerances.* See §§ 556.50 and 556.260 of this chapter.

(e) *Conditions of use.* (1) It is used for chickens as follows:

* * * * *

i. In § 558.60, by removing and reserving paragraphs (a) and (b), and by revising paragraphs (c) and (d) and the introductory text of paragraph (e)(1), to read as follows:

§ 558.60 Arsanilate sodium.

(a) [Reserved]

(b) [Reserved]

(c) *Approvals.* Type A medicated article: 20, 50, or 100 percent arsanilate sodium, to 043731 in § 510.600(c) of this chapter

(d) *Related tolerances.* See § 556.60 of this chapter.

(e) *Conditions of use.* (1) It is used for chickens and turkeys as follows:

* * * * *

j. In § 558.62, by removing and reserving paragraphs (a) and (b) and by revising paragraphs (c) and (d) and the introductory text of paragraph (e)(1), to read as follows:

§ 558.62 Arsanilic acid.

(a) [Reserved]

(b) [Reserved]

(c) *Approvals.* Type A medicated article: 20, 50, or 100 percent arsanilate acid to 043731 in § 510.600(c) of this chapter.

(d) *Related tolerances.* See § 556.60 of this chapter.

(e) *Conditions of use.* (1) It is used for chickens and turkeys as follows:

* * * * *

k. In § 558.76, by removing and reserving paragraph (b) and by revising paragraphs (a), (c) and (d) and the introductory text of paragraph (e)(1), to read as follows:

§ 558.76 Bacitracin methylene disalicylate.

(a) *Approvals.* Type A medicated article: 25, 40, or 50 percent bacitracin methylene disalicylate to 046573 in § 510.600(c) of this chapter.

(b) [Reserved]

(c) *Special considerations.* The quantities of antibiotics are expressed in terms of the equivalent amount of antibiotic standard.

(d) *Related tolerances.* See § 556.70 of this chapter.

(e) *Conditions of use.* (1) It is used as follows:

* * * * *

1. In § 558.78, by removing and reserving paragraph (b) and by revising paragraphs (a), (c), and (d) and the introductory text of paragraph (e)(1), to read as follows:

§ 558.78 Bacitracin zinc.

(a) *Approvals.* (1) Type A medicated article containing 50 grams bacitracin zinc per pound to 046573 in § 510.600(c) of this chapter for use as in paragraph (e)(1)(i) and (ii) only of this section.

(2) Type A medicated article containing 10, 25, 40, and 50 grams of bacitracin zinc per pound to 012769 in § 510.600(c) of this chapter for use as in paragraph (e) of this section.

(b) [Reserved]

(c) *Special considerations.* The quantities of antibiotics are expressed in terms of the equivalent amount of antibiotic standard.

(d) *Related tolerances.* See § 556.70 of this chapter.

(e) *Conditions of use.* (1) It is as follows:

* * * * *

m. In § 558.95, by removing and reserving paragraphs (a), (c), and (d) and by revising paragraph (b) and the introductory text of paragraph (e)(1), to read as follows:

§ 558.95 Bambermycins.

(a) [Reserved]

(b) *Approvals.* (1) Type A medicated articles: 2 and 10 grams of bambermycins activity per pound to 012799 in § 510.600(c) of this chapter for use in paragraph (e)(1) and (e)(2)(i) and (ii) and (3) of this section.

(2) Type A medicated article: 0.4 gram of bambermycins activity per pound to 012799 for use as provided in paragraph (e)(2) of this section.

(c) [Reserved]

(d) [Reserved]

(e) *Conditions of use*—(1) *Broiler chicken.* It is used as follows:

* * * * *

n. In § 558.105, by removing and reserving paragraphs (a) and (c) and by revising paragraphs (b), (d), (e), and the introductory text to paragraph (f), to read as follows:

§ 558.105 Buquinolate.

(a) [Reserved].

(b) *Approvals.* Type A medicated article: 16.5 and 22 percent to 000149 in § 510.600(c) of this chapter.

(c) [Reserved]

(d) *Special considerations.* Do not use in Type B or Type C medicated feeds containing bentonite.

(e) *Related tolerance.* See § 556.90 of this chapter.

(f) *Conditions of use.* It is used as follows:

* * * * *

o. In § 558.115, by removing and reserving paragraph (a) and (c) and by revising paragraphs (b), (d), and (e), and the introductory text of paragraph (f), to read as follows:

§ 558.115 Carbadox.

(a) [Reserved]

(b) *Approvals.* Type A medicated article: 2.2. percent (10 grams per pound) to 000069 in § 510.600(c) of this chapter.

(c) [Reserved]

(d) *Related tolerances.* See § 556.100 of this chapter.

(e) *Special considerations.* Do not use in Type B or Type C medicated feeds containing bentonite.

(f) *Conditions of use.* It is use for swine as follows:

* * * * *

p. In § 558.120, by removing and reserving paragraphs (b) and (c) and by revising paragraphs (a) and (d) and the introductory text of paragraph (e)(1), to read as follows:

§ 558.120 Carbarsone (not U.S.P.).

(a) *Approvals.* (1) Type A medicated article: 37.5 percent carbarsone to 011794 in § 510.600(c) of this chapter.

(2) Type A medicated article: 25 percent carbarsone and 5 grams per pound bacitracin (as bacitracin methylene disalicylate) to 011794.

(b) [Reserved]

(c) [Reserved]

(d) *Related tolerances.* See § 556.60 of this chapter.

(e) *Conditions of use.* (1) It is used for turkeys as follows:

* * * * *

q. In § 558.128, by removing and reserving paragraphs (a) and (b) and by revising paragraphs (c), (d), (e)(1) and (2) and the introductory text of paragraph (e)(3), to read as follows:

§ 558.128 Chlortetracycline.

(a) [Reserved]

(b) [Reserved]

(c) *Approvals.* Type A medicated article: 10 and 50 grams per pound chlortetracycline to 010042 in § 510.600(c) of this chapter; 35 grams

chlortetracycline with 7.7 percent (35 grams) sulfamethazine to 010042.

(d) *Related tolerances.* See § 556.150 of this chapter.

(e) *Conditions of use.* (1) It is used for cockatoos, macaws, and parrots as follows:

(i) *Amount.* 10 milligrams per gram of feed.

(ii) *Indications for use.* Treatment of psittacine birds suspected or known to be infected with psittacosis.

(iii) *Limitations.* As chlortetracycline hydrochloride.

(2) It is used for laboratory mice as follows:

(i) *Amount.* Not less than 100 grams per ton of feed.

(ii) *Indications for use.* As an aid in reducing the incidence of bacterial diarrhea.

(3) It is used as follows:

* * * * *

r. In § 558.145, by removing and reserving paragraphs (a) (2) and (3), (c), and (d) and by revising paragraphs (a) (1), (4), and (5), and (b), to read as follows:

§ 558.145 Chlortetracycline, penicillin procaine, and sulfamethazine.

(a) *Specifications.* (1) The antibiotic substance refers to the antibiotic or feed-grade antibiotic.

(2) [Reserved]

(3) [Reserved]

(4) The antibiotic activities are expressed in terms of the appropriate antibiotic standards.

(5) Type C medicated feed contains in each ton, 100 grams of chlortetracycline, 50 grams of penicillin as penicillin procaine and 100 grams of sulfamethazine.

(b) *Approvals.* Type A medicated article: 20 grams of chlortetracycline per pound, 4.4 percent (20 grams) of sulfamethazine, and penicillin procaine equivalent in activity to 10 grams of penicillin per pound to 000196 and 010042 in § 510.600(c) of this chapter.

(c) [Reserved]

(d) [Reserved]

* * * * *

s. In § 558.155, by removing and reserving paragraphs (a) (2) and (3), (c), and (d) and by revising paragraphs (a)(1), (b), and (e) and the introductory text of paragraph (f), to read as follows:

§ 558.155 Chlortetracycline, penicillin procaine, and sulfathiazole.

(a) *Specifications.* (1) The antibiotic substance refers to the antibiotic or feed-grade antibiotic.

(2) [Reserved]

(3) [Reserved]

(4) The antibiotic activities are expressed in terms of the appropriate antibiotic standards.

(b) *Approvals.* (1) Type A medicated articles: 20 grams of chlortetracycline hydrochloride, 4.4 percent (20 grams) sulfathiazole, and penicillin procaine, equivalent to 10 grams of penicillin per pound, to 025001 in § 510.600(c) of this chapter.

(2) Type A medicated articles: 40 grams of chlortetracycline hydrochloride, 8.8 percent (40 grams) sulfathiazole, and penicillin procaine equivalent to 20 grams of penicillin per pound, to 025001 in § 510.600(c) of this chapter.

(c) [Reserved]

(d) [Reserved]

(e) *Related tolerances.* See §§ 556.150, 556.510, and 556.690 of this chapter.

(f) *Conditions of use.* It is used for swine as follows:

* * * * *

t. In § 558.175, by removing and reserving paragraphs (a), (b)(2), and (c) and by revising paragraph (b) (1) and (3), to read as follows:

§ 558.175 Clopidol.

(a) [Reserved]

(b) *Approvals.* (1) Type A medicated articles: 25 percent to 025700 in §510.600(c) of this chapter.

(2) [Reserved]

(3) Type A medicated article combinations of clopidol 25 percent, roxarsone 10 percent, and bacitracin methylene disalicylate, 4, 10, 15, or 25 grams per pound to 025700 in § 510.600(c) of this chapter.

(c) [Reserved]

* * * * *

u. In § 558.185, by removing and reserving paragraphs (a) and (c) and by revising paragraphs (b) and (d), to read as follows:

§ 558.185 Coumaphos.

(a) [Reserved]

(b) *Approvals.* (1) Type A medicated articles: 1.12, 2.0, 11.2, and 50 percent for use as in paragraph (f) of this section to 000859 in § 510.600(c) of this chapter.

(2) Type A medicated articles: 1.12 and 11.2 percent for use as in paragraph (f)(1)(ii) of this section to 017800.

(c) [Reserved]

(d) *Special considerations.* Warning—Coumaphos is a cholinesterase inhibitor. Do not use this product simultaneously or within a few days before or after treatment with or exposure to cholinesterase-inhibiting drugs, pesticides, or chemicals. Atrophine is antidotal.

* * * * *

v. In § 558.195, by removing and reserving paragraphs (a), (b), and (d) and by revising paragraph (c), to read as follows:

§ 558.195 Decoquinate.

(a) [Reserved]

(b) [Reserved]

(c) *Approvals.* Type A medicated articles: 6 percent to 011801 in § 510.600(c) of this chapter.

(d) [Reserved]

* * * * *

w. In § 558.205, by removing and reserving paragraphs (a) and (c) and by revising paragraph (b), to read as follows:

§ 558.205 Dichlorvos.

(a) [Reserved]

(b) *Approvals.* Type A medicated articles: 9.6 percent to 025001 in § 510.600(c) of this chapter.

(c) [Reserved]

* * * * *

x. In § 558.240, by removing and reserving paragraphs (a) and (c) and revising paragraph (b), to read as follows:

§ 558.240 Dimetridazole.

(a) [Reserved]

(b) *Approvals.* Type A medicated articles: 30 percent to 017210 in § 510.600(c) of this chapter.

(c) [Reserved]

* * * * *

y. In § 558.248, by removing and reserving paragraph (b) and by revising paragraphs (a), (c), and (d), and the introductory text of paragraph (e)(1), to read as follows:

§ 558.248 Erythromycin thiocyanate.

(a) *Approvals.* Use of Type A medicated articles of 2.2, 5, and 10 percent granted to No. 050604 in § 510.600 of this chapter as follows:

(1) 2.2 percent as in paragraph (e) of this section.

(2) 5 and 10 percent as in paragraphs (e)(1) (i) and (iii) of this section.

(b) [Reserved]

(c) *Special considerations.* The levels of antibiotic are expressed in terms of erythromycin master standard. One gram of erythromycin thiocyanate is equivalent to 0.925 gram of erythromycin master standard.

(d) *Related tolerances.* See § 556.230 of this chapter.

(e) *Condition of use.* (1) It is used as follows:

* * * * *

z. In § 558.254, by removing and reserving paragraph (a) and by revising paragraph (b), to read as follows:

§ 558.254 Famphur.

(a) [Reserved]

(b) *Approvals.* Type A medicated articles: 13.2 and 33.3 percent to 010042 in § 510.600(c) of this chapter.

* * * * *

aa. In § 558.262, by removing and reserving paragraphs (a) and (c) and by revising paragraph (b), to read as follows:

§ 588.262 Furazolidone.

(a) [Reserved]

(b) *Approvals.* Type A medicated articles: 10, 50, and 100 grams per pound to 000007 and 011801 in § 510.600(c) of this chapter.

(c) [Reserved]

* * * * *

bb. In § 558.266, by removing and reserving paragraph (a) and by revising paragraph (b), to read as follows:

§ 558.266 Griseofulvin.

(a) [Reserved]

(b) *Approvals.* Type A medicated articles: 35 percent (160 grams per pound) to 000085 in § 510.600(c) of this chapter.

* * * * *

cc. In § 558.274, by removing and reserving paragraphs (b) and (c) and by revising paragraph (a) to read as follows:

§ 558.274 Hygromycin B.

(a) *Approvals.* (1) Type A article of 2.4 and 8 grams per pound granted to sponsor 000986 in § 510.600(c) of this chapter for use in paragraph (e) of this section.

(2) Type A article levels of 2.4 grams per pound granted to sponsors 043733, 011490, 016968, and 018083 in § 510.600(c) of this chapter for use in swine feed as in paragraph (e)(1)(ii) of this section.

(3) Type A article of 1.2 grams per pound granted to sponsor 016968 in § 510.600(c) of this chapter for use in swine as in paragraph (e)(1)(ii) of this section.

(4) Type A article level of 0.6 gram per pound granted to sponsors 016968, 017473, 017591, 017790, 018083, 020275, 022422, 026948, 043733, 050568, and 050782 in § 510.600(c) of this chapter for use in chickens as in paragraph (e)(1)(i) of this section and in swine as in paragraph (e)(1)(ii) of this section.

(5) Type A article levels of 0.48 and 2.4 grams per pound granted to sponsor 026186 in § 510.600(c) of this chapter for use in chickens as in paragraph (e)(1)(i) of this section and in swine as in paragraph (e)(1)(ii) of this section.

(b) [Reserved]

(c) [Reserved]

* * * * *

dd. In § 558.305, by removing and reserving paragraphs (a), (c), and (e), and by revising paragraphs (b) and (d) and the introductory text of paragraph (f), to read as follows:

§ 558.305 Ipronidazole.

(a) [Reserved]

(b) *Approvals.* Type A medicated articles: 12.5 percent to 000004 in § 510.600(c) of this chapter.

(c) [Reserved]

(d) *Related tolerances.* See § 556.340 of this chapter.

(e) [Reserved]

(f) *Conditions of use.* It is used for turkeys as follows:

* * * * *

ee. In § 558.325, by removing and reserving paragraphs (a) and (c) and by revising paragraph (b), to read as follows:

§ 558.325 Lincomycin.

(a) [Reserved]

(b) *Approvals.* (1) Type A medicated articles: 4 grams per pound has been granted to No. 000009 in § 510.600(c) of this chapter for use as provided in paragraphs (f)(1) and (f)(3) of this section.

(2) Type A medicated articles: 20 grams per pound has been granted to No. 000009 in § 510.600(c) of this chapter for use as provided in paragraph (f) (1), (2), and (3) of this section.

(3) Type A medicated articles: 50 grams per pound has been granted to No. 000009 in § 510.600(c) of this chapter for use as provided in paragraph (f) (1) and (2) of this section.

(c) [Reserved]

* * * * *

ff. In § 558.342, by removing and reserving paragraph (b) and by revising paragraph (a), to read as follows:

§ 558.342 Melengestrol acetate.

(a) *Approvals.* Dry Type A medicated article containing 100 or 200 milligrams of melengestrol acetate per pound or liquid premix containing 500 milligrams of melengestrol acetate per pound pound granted to 000009 in § 510.600(c) of this chapter.

(b) [Reserved]

* * * * *

gg. In § 558.355, by removing and reserving paragraph (a) and by revising paragraph (b), to read as follows:

§ 558.355 Monensin.

(a) [Reserved]

(b) *Approvals.* Approvals for Type A medicated articles: containing the specified levels of monensin activity granted to firms identified by sponsor numbers in § 510.600(c) of this chapter for the conditions of use indicated in paragraph (f) of this section are as follows:

* * * * *

hh. In § 558.360, by removing and reserving paragraph (b) and by revising paragraph (a), to read as follows:

§ 558.360 Morantel tartrate.

(a) *Approvals.* Type A medicated article: 88 grams per pound granted to 000069 in § 510.600(c) of this chapter.

(b) [Reserved]

* * * * *

ii. In § 558.365, by removing and reserving paragraphs (a) and (c) and by revising paragraph (b), to read as follows:

§ 558.365 Nequinate.

(a) [Reserved]

(b) *Approvals.* Type A medicated articles: 4 percent nequinate to 017800 in § 510.600(c) of this chapter.

(c) [Reserved]

* * * * *

jj. In § 558.366, by removing and reserving paragraphs (b) and (d) and by revising paragraphs (a) and (c), to read as follows:

§ 558.366 Nicarbazin.

(a) *Approvals.* Type A medicated article: 25 percent nicarbazin to 000006 in § 510.600(c) of this chapter.

(b) [Reserved]

(c) *Related tolerances.* See § 556.445 of this chapter.

(d) [Reserved]

* * * * *

kk. In § 558.367, by removing and reserving paragraph (b) and by revising paragraphs (a), to read as follows:

§ 558.367 Niclosamide.

(a) *Approvals.* Type A medicated articles: 66 percent to No. 000859 in § 510.600(c) of this chapter.

(b) [Reserved]

* * * * *

11. In § 558.369, by removing and reserving paragraphs (b) and (c) and by revising paragraph (a), to read as follows:

§ 558.369 Nitarsone.

(a) *Approvals.* Type A medicated articles: 50 percent to 017210 in § 510.600(c) of this chapter.

(b) [Reserved]

(c) [Reserved]

* * * * *

mm. In § 558.370, by removing and reserving paragraphs (a) and (b) and by revising paragraph (c), to read as follows:

§ 558.370 Nitrofurazone.

(a) [Reserved]

(b) [Reserved]

(c) *Approvals.* Type A medicated articles: 50 grams per pound to 000007 and 011801 in § 510.600(c) of this chapter.

* * * * *

nn. In § 558.376, by removing and reserving paragraphs (a) and (c) and by revising paragraph (b), to read as follows:

§ 558.376 Nitromide and sulfanitran.

(a) [Reserved]

(b) *Approvals.* Type A medicated articles: 25 percent nitromide, 30 percent sulfanitran, with or without 5 percent roxarsone to 017210 in § 510.600(c) of this chapter.

(c) [Reserved]

* * * * *

oo. In § 558.415, by removing and reserving paragraphs (a), (c), and (d) and by revising paragraph (b), to read as follows:

§ 558.415 Novobiocin.

(a) [Reserved]

(b) *Approvals.* Type A medicated articles: 25 grams of novobiocin activity per pound to 000009 in § 510.600(c) of this chapter.

(c) [Reserved]

(d) [Reserved]

* * * * *

pp. In § 558.430, by removing and reserving paragraph (a) and (c) and by revising paragraph (b), to read as follows:

§ 558.430 Nystatin.

(a) [Reserved]

(b) *Approvals.* Type A medicated articles: 20 grams of nystatin activity per pound to 000003 in § 510.600(c) of this chapter.

(c) [Reserved]

* * * * *

qq. In § 558.435, by removing and reserving paragraphs (a) and (c) and by revising paragraph (b), to read as follows:

§ 558.435 Oleandomycin.

(a) [Reserved]

(b) *Approvals.* Type A medicated articles: 5 grams of oleandomycin activity per pound to 000069 in § 510.600(c) of this chapter.

(c) [Reserved]

* * * * *

rr. In § 558.450, by removing and reserving paragraph (b) and by revising paragraphs (a) and (c), to read as follows:

§ 558.450 Oxytetracycline.

(a) *Approvals.* Type A medicated articles equivalent of 10 and 50 grams per pound of oxytetracycline hydrochloride for use as in paragraph (e) of this section, and a Type A medicated article equivalent to 100 grams per pound of oxytetracycline hydrochloride for use as in paragraph (e)(1), table 1, item (v) of this section, granted to 000069 in § 510.600(c) of this chapter.

(b) [Reserved]

(c) *Special considerations.* The amount of oxytetracycline is expressed in terms of an equivalent amount of oxytetracycline hydrochloride.

* * * * *

ss. In § 558.460, by removing and reserving paragraph (b), (c), and (d), and by revising paragraph (a), to read as follows:

§ 558.460 Penicillin.

(a) *Specifications.* As penicillin procaine G or feed grade penicillin procaine.

(b) [Reserved]

(c) [Reserved]

(d) [Reserved]

* * * * *

tt. In § 558.464, by removing and reserving paragraph (a) and by revising paragraph (b), to read as follows:

§ 558.464 Poloxalene.

(a) [Reserved]

(b) *Approvals.* Dry Type A medicated article of 53 percent and liquid Type A medicated article of 99.5 percent to 000007 in § 510.600(c) of this chapter.

* * * *

uu. In § 558.465, by removing and reserving paragraphs (a) and (c) and by revising paragraph (b), to read as follows:

§ 558.465 Poloxalene liquid Type C medicated feed article.

(a) [Reserved]

(b) *Approvals.* Type A medicated feed articles: 99.5 percent to No. 000007 in § 510.600(c) of this chapter.

(c) [Reserved]

* * * * *

vv. In § 558.485, by removing and reserving paragraph (b), by revising the introductory text of paragraph (a), and by revising paragraphs (c) and (d), to read as follows:

§ 558.485 Pyrantel tartrate.

(a) *Approvals.* Type A medicated articles containing pyrantel tartrate to firms indentified by drug labeler codes in § 510.600(c) of this chapter for the specific usage indicated in paragraph(e) of this section:

* * * * *

(b) [Reserved]

(c) *Related tolerances.* See § 556.560 of this chapter.

(d) *Special considerations.* (1) Consult veterinarian before using in severely debilitated animals.

(2) Do not mix in type B or Type C medicated feeds containing bentonite.

* * * * *

ww. In § 558.515, by removing and reserving paragraphs (a) and (c) and by revising paragraph (b), to read as follows:

§ 558.515 Robenidine hydrochloride.

(a) [Reserved]

(b) *Approvals.* Type A medicated articles: 30 grams per pound to 010042 in § 510.600(c) of this chapter.

(c) [Reserved]

* * * * *

xx. In § 558.525, by removing and reserving paragraphs (a) and (c) and by revising paragraph (b), to read as follows:

§ 558.525 Ronnel.

(a) [Reserved]

(b) *Approvals.* (1) Type A medicated feeds: 18 and 40 percent to 025700 in § 510.600(c) of this chapter.

(2) Type C medicated feed: 5.5 percent in mineral mix to 021930 in § 510.600(c) of this chapter.

(c) [Reserved]

* * * * *

yy. In § 558.526, by removing and reserving paragraph (b) and by revising paragraph (a), to read as follows:

§ 558.526 Ronnel liquid Type C medicated feed.

(a) *Approvals.* To 025700 in § 510.600(c) of this chapter, use of 20 percent liquid Type A medicated articles for the manufacture of 0.72 percent liquid Type C medicated feed.

(b) [Reserved]

* * * * *

aaa. In § 558.530, by removing and reserving paragraphs (b) and (c) and by revising paragraph (a), to read as follows:

§ 558.530 Roxarsone.

(a) *Approvals.* (1) Type A medicated articles: levels of 10, 20, and 50 percent to No. 011801 in § 510.600(c) of this chapter for use in making chicken and turkey feeds.

(2) Type A medicated articles: Levels of 10, 20, 50 and 80 percent to No. 017210 in § 510.600(c) of this chapter for use in making chicken, turkey, and swine feeds.

(b) [Reserved]

(c) [Reserved]

* * * * *

bbb. In § 558.550, by revising paragraph (a) to read as follows:

§ 558.550 Salinomycin.

(a) *Approvals.* Type A medicated article: 30 grams of salinomycin sodium activity from salinomycin sodium biomass to 000031 in § 510.600(c) of this chapter.

* * * * *

ccc. In § 558.575, by removing and reserving paragraphs (a) and (c) and by revising paragraph (b), to read as follows:

§ 558.575 Sulfadimethoxine, ormetoprim.

(a) [Reserved]

(b) *Approvals.* Type A medicated articles: 25 percent of sulfadimethoxine and 15 percent of ormetoprim to 000004 in § 510.600(c) of this chapter.

(c) [Reserved]

* * * * *

ddd. In § 558.579, by removing and reserving paragraph (a) and by revising paragraph (b), to read as follows:

§ 558.579 Sulfaethoxypyridazine.

(a) [Reserved]

(b) *Approvals.* Type A medicated articles: 5.5 percent for swine, 5.5 and 11 percent for cattle, to 010042 in § 510.600(c) of this chapter

* * * * *

eee. In § 558.582, by removing and reserving paragraph (a) and by revising paragraph (b), to read as follows:

§ 558.582 Sulfamerazine.

(a) [Reserved]

(b) *Approvals.* Type A medicated articles 99 percent to 010042 in § 510.600(c) of this chapter.

* * * * *

fff. In § 558.615, by removing and reserving paragraphs (a), (b), and (d) and by revising paragraph (c), to read as follows:

§ 558.615 Thiabendazole.

(a) [Reserved]

(b) [Reserved]

(c) *Approvals.* In dry Type A medicated articles: 22, 44.1, 66.1 percent. The 66.1 percent level is solely for the manufacture of cane molasses liquid Type C medicated feed article which is mixed in dry feeds. See 000006 in § 510.600(c) of this chapter.

(d) [Reserved]

* * * * *

ggg. In § 558.625, by removing and reserving paragraphs (a), (c), and (d) and by revising the introductory text of paragraph (b), to read as follows:

§ 558.625 Tylosin.

(a) [Reserved]

(b) *Approvals.* Type A medicated articles levels of tylosin granted to firms as sponsor(s) and identified by drug listing numbers in § 510.600(c) of this chapter for the specific usage indicated in paragraph (f) of this section:

* * * * *

(c) [Reserved]

(d) [Reserved]

* * * * *

hhh. In § 558.630, by removing and reserving paragraphs (a), (c), and (d), and by revising the introductory text of paragraph (b), to read as follows:

§ 558.630 Tylosin and sulfamethazine.

(a) [Reserved]

(b) *Approvals.* Type A medicated articles levels, a combination of equal amounts of tylosin and sulfamethazine, granted to firms as sponsor(s) and identified by drug listing numbers in § 510.600(c) of this chapter for the conditions of use indicated in paragraph (f) of this section:

* * * * *

(c) [Reserved]

(d) [Reserved]

* * * * *

iii. In § 558.635, by removing and reserving paragraphs (a) and (c) and by revising paragraph (b), to read as follows:

§ 558.635 Virginiamycin.

(a) [Reserved]

(b) *Approvals.* Type A medicated articles: 2.2 percent virginiamycin activity (10 grams per pound), 11 percent virginiamycin activity (50 grams per pound), and 50 percent virginiamycin activity (227 grams per pound) to 000007 in § 510.600(c) of this chapter.

(c) [Reserved]

* * * * *

Interested persons may, on or before October 27, 1983, submit to the Dockets Management Branch (address above), written comments regarding this tentative final rule. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Arthur Hull Hayes, Jr.,

Commissioner of Food and Drugs.

Margaret M. Heckler,

Secretary of Health and Human Services.

Dated: June 30, 1983.

[FR Doc. 83-20030 Filed 7-25-83; 8:45 am]

BILLING CODE 4160-01-M

federal register

Friday
July 29, 1983

Part III

Department of Labor

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor specify, in accordance with applicable law and on the basis of information available to the Department of Labor from its study of local wage conditions and from other sources, the basic hourly wage rates and fringe benefit payments which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of the character and in the localities specified therein.

The determinations in these decisions of such prevailing rates and fringe benefits have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 1.1 (including the statutes listed at 36 FR 306 following Secretary of Labor's Order No. 24–70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of part 1 of subtitle A of title 29 of Code of Federal Regulations, Procedure for Predetermination of Wage Rates (37 FR 21138) and of Secretary of Labor's Orders 12–71 and 15–71 (36 FR 8755, 8756). The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in effective date as prescribed in that section, because the necessity to issue construction industry wage determination frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions are effective from their date of publication in the **Federal Register** without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision together with any modifications issued subsequent to its publication date shall be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR, Part 5. The wage rates contained therein shall be the minimum paid under such contract by contractors and subcontractors on the work.

Modifications and Supersedeas Decisions to General Wage Determination Decisions

Modifications and supersedeas decisions to general wage determination decisions are based upon information obtained concerning changes in prevailing hourly wage rates and fringe benefit payments since the decisions were issued.

The determinations of prevailing rates and fringe benefits made in the modifications and supersedeas decisions have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 1.1 (including the statutes listed at 36 FR 306 following Secretary of Labor's Order No. 24–70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of part 1 of subtitle A of title 29 of Code of Federal Regulations, Procedure for Predetermination of Wage Rates (37 FR 21138) and of Secretary of Labor's orders 13–71 and 15–71 (36 FR 8755, 8756). The prevailing rates and fringe benefits determined in foregoing general wage determination decisions, as hereby modified, and/or superseded shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged in contract work of the character and in the localities described therein.

Modifications and supersedeas decisions are effective from their date of publication in the **Federal Register** without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5.

Any person, organization, or governmental agency having an interest in the wages determined as prevailing is encouraged to submit wage rate information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage 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.

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.

Arkansas: AR83-4037	May 13, 1983.
Arizona:	
AZ83-5102; AZ83-5105	Mar. 4, 1983.
AZ83-5107	Mar. 18, 1983.
District of Columbia: DC82-3031	Nov. 12, 1982.
Georgia: GA83-1002; GA83-1003	Jan. 21, 1983.
Indiana: IN83-2026	Mar. 25, 1983.
New Jersey: NJ83-3015; NJ83-3016	June 17, 1983.
Oklahoma: OK83-4011; OK83-4012	Jan. 14, 1983.
Pennsylvania:	
PA81-3027	July 17, 1981.
PA81-3066	Oct. 23, 1981.
Wyoming: WY83-5114	July 15, 1983.
Washington: WA83-5110	June 3, 1983.

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.

Colorado: CO83-5107 (CO83-5115)	Apr. 9, 1982.
Illinois:	
IL82-2038 (IL83-2054)	July 30, 1982.
IL81-2007 (IL83-2056)	Apr. 10, 1981.
IL82-2002 (IL83-2062)	Jan. 29, 1982.
Iowa: IA83-4030 (IA83-4056)	June 18, 1982.
Minnesota:	
MN82-2064 (MN83-2057)	Nov. 26, 1982.
MN82-2069 (MN83-2058)	Dec. 27, 1982.
MN82-2067 (MN83-2059)	Dec. 10, 1982.
Nebraska: NE83-4052 (NE83-4057)	July 22, 1983.
New Jersey: NJ82-3006 (NJ83-3026)	Oct. 9, 1981.
New York: NY81-3024 (NY83-3032)	Apr. 3, 1981.
Puerto Rico: PR80-3063 (PR83-3031)	Oct. 17, 1980.
Virgin Islands: VI79-3023 (VI83-3025)	July 7, 1979.

Signed at Washington, D.C., this 22nd day of July 1983.

Dorothy P. Come,

Assistant Administrator, Wage and Hour Division.

BILLING CODE 4510-27-M

MODIFICATION P. 1

DECISION NO. AZ83-5102 - Mod. #4
(48 FR 9424 - March 4, 1983)
Maricopa County; Arizona

Change:	Basic Hourly Rates	Fringe Benefits
Plumbers and Pipefitters	$19.84	$3.38
Power Equipment Operators:		
Group 1	9.16	2.93
Group 2	11.26	2.93
Group 3	11.75	2.93
Group 4	12.32	2.93
Group 5	13.01	2.93
Group 6	13.69	2.93
Group 7	14.08	2.93
Group 8	14.51	2.93
Group 9	15.29	2.93

DECISION NO. AZ83-5105-
Mod. #3
(48 FR 9426 - March 4, 1983)
Pima County, Arizona

Change:	Basic Hourly Rates	Fringe Benefits
Plumbers and Pipefitters	$19.84	$3.38
Power Equipment Operators:		
Group 1	9.16	2.93
Group 2	11.26	2.93
Group 3	11.75	2.93
Group 4	12.32	2.93
Group 5	13.01	2.93
Group 6	13.69	2.93
Group 7	14.08	2.93
Group 8	14.51	2.93
Group 9	15.29	2.93

DECISION NO. AZ83-5107 - Mod. #4
(48 FR 11605 - March 18, 1983)
Statewide, Ariozna

Change:	Basic Hourly Rates	Fringe Benefits
Power Equipment Operators:		
Area 1:		
Group 1	$11.285	$2.93
Group 2	13.385	2.93
Group 3	13.875	2.93
Group 4	14.445	2.93
Group 5	15.135	2.93
Group 6	15.815	2.93
Group 7	16.205	2.93
Group 8	16.635	2.93
Group 9	17.415	2.93
Area 2:		
Group 1	9.16	2.93
Group 2	11.26	2.93
Group 3	11.75	2.93
Group 4	12.32	2.93
Group 5	13.01	2.93
Group 6	13.69	2.93
Group 7	14.08	2.93
Group 8	14.51	2.93
Group 9	15.29	2.93

MODIFICATION P. 2

DECISION NO. DC82-3031-
MOD. # 12
(47 FR 51304-November 12, 1982)
District of Columbia; Maryland Montgomery & Prince Georges Counties; DC Training School; Virginia-Independent City of Alexandria; Arlington; & Fairfax Ctys.

CHANGE:	Basic Hourly Rates	Fringe Benefits
CARPENTERS	$14.92	1.56
LATHERS	14.92	1.56
RESILIENT FLOOR LAYERS EXCLUDING FAIRFAX COUNTY	14.92	1.56
PAINTERS (EXCLUDING FAIRFAX COUNTY)		
Brush, spray, paperhangers, tapers	16.61	2.49
Steel, sandblasting, swing stage, power brushing	17.11	2.49
OMIT:		
SEWER AND WATER LINE CONSTRUCTION PROJECTS (DISTRICT OF COLUMBIA AND MONTGOMERY COUNTY MARYLAND ONLY)		
LABORERS		
ADD:		
SEWER AND WATER LINE CONSTRUCTION PROJECTS (DISTRICT OF COLUMBIA AND MONTGOMERY COUNTY MARYLAND ONLY)		
WASHINGTON D.C.		
LABORERS:		
GROUP 1: LABORERS: JACKHAMMERS: RAMMERS, & SPADERS	7.00	.56
GROUP 2: PIPELAYERS; AIR TRACK OPERATOR	9.00	.56
GROUP 3: ALL REMAINING CLASSIFICATIONS	8.15	.56
MONTGOMERY COUNTY, MARYLAND		
LABORERS:		
GROUP 1: LABORERS, JACKHAMMER, RAMMERS, & SPADERS	6.50	.56
GROUP 2: PIPELAYERS, AIR TRACK OPERATOR	8.50	.56

DC82-3031 CON'T

	Basic Hourly Rates	Fringe Benefits
GROUP 3; ALL REMAINING CLASSIFICATIONS	$ 7.65	.56
CHANGE:		
WASHINGTON D.C. & MONTGOMERY COUNTY, MARYLAND		
TUNNELS, RAISES, & SHAFT LABORERS (FREE AIR)		
GROUP 1: BRAKEMAN, BULL GANG, DUMPER, TRACKMAN, CONCRETE MAN	9.50	.56
GROUP 2: CHUCK TENDER, POWDERMAN IN PRIME HOUSE FORM SETTERS & MOVERS, NIPPERS, CABLEMAN, HOSEMAN GROUT MAN, BELL OR SIGNAL MAN, TOP OR BOTTOM, VIBRATOR OPERATOR, CAULKERS' HELPER	10.00	.56
GROUP 3: MINERS, RODMAN, RE-BAR UNDERGROUND, CONCRETE OR GUNNITE NOZZLEMAN, POWDERMAN, TIMBER MAN & RE-TIMBER MAN, WOOD, STEEL INCLUDING LINER PLATE OR ANY OTHER SUPPORT MATERIAL, MOTORMAN, CAULKERS, DIAMOND DRILL OPERATORS, RIGGERS, CEMENT FINISHER-UNDERGROUND, WELDERS & BURNERS, SHIELD DRIVER	11.00	.56

MODIFICATION P. 3

DECISION #GA83-1002 - Mod. #4
(48 FR 2930 - January 21, 1983)
Clayton, DeKalb, & Fulton Counties, Georgia:

	Basic Hourly Rates	Fringe Benefits
CHANGE:		
Bricklayers & Stone masons	$12.05	2.55
Carpenters, Drywall hangers, & Resilient floor layers	$12.50	2.02
Cement masons	12.30	1.75
Laborers:		
Group 1	8.70	1.27
Group 2	8.92	1.27
Group 3	9.20	1.27
Group 4	9.45	1.27
Group 5	9.77	1.27
Group 6 (25¢ above rate for classification under which employed)		
Piledrivermen	12.65	2.02
Power Equipment Operators:		
Group A	14.08	2.01
Group A-1	12.64	2.01
Group B	12.33	2.01
Group B-1	8.40	2.01
Group C	10.14	2.01
Group D-1	10.86	2.01
Group D-2	9.41	2.01
Group E	9.61	2.01
Group F	8.40	2.01
OMIT:		
Laborers Classifications Definitions:		
Group 1 - Tenders (all crafts), tool room man, truck spotter dumper, water boy, winch handler (manual), wrecking buildings & miscellaneous structures.		
Group 4 - Tunnel laborers		
ADD:		
Laborers:		
Group 7 - Tunnel laborers	$10.56	1.27
Group 8 - Miner #1	12.41	1.27
Group 9 - Miner #2	11.56	1.27
Group 10 - Shifter	13.41	1.27

DECISION #GA83-1003 - Mod. #4
(48 FR 2931 - January 21, 1983)
DeKalb & Fulton Counties, Georgia

	Basic Hourly Rates	Fringe Benefits
CHANGE:		
Brickmasons	$12.05	2.55
Carpenters	12.50	2.02
Cement masons/finishers	12.30	1.75
Laborers:		
Unskilled	8.70	1.27
Air tool operators (air, electric, or gas powered, such as jackhammer, paving breaker, tamper, vibrator, spade, chipping hammer, & barco tamp) & pipe layers	8.92	1.27
Powderman	9.77	1.27
Tunnel laborers	10.56	1.27
Miners #1	12.41	1.27
Miners #2	11.56	1.27
Piledrivermen	12.65	2.02
Power Equipment Operators:		
Crane	14.08	2.01
Backhoe, mechanic, & mucker	12.64	2.01
Bulldozer, front end loader, & motor grader	12.33	2.01
Oiler/greaser, & pump	9.41	2.01

Decision # IN83-2026
Mod # 4
(48 FR 12642 - March 25, 1983)
Clay, Daviess, Gibson, Greene, Knox, Martin, Parke, Pike, Posey, Putnam, Sullivan, Vanderburgh, Vermillion, & Vigo Counties, Indiana

AREA DESCRIPTIONS:

ROOFERS:
Area 1: Delete Knox Co.
Area 3: Add Knox Co.

MODIFICATION P. 4

DECISION NO. NJ83-3015 - MOD. #4
(48 FR 27991 - June 17, 1983)
Bergen, Essex, Hudson, Hunterdon, Middlesex, Morris, Passaic, Somerset, Sussex, Union and Warren Counties, New Jersey

	Basic Hourly Rates	Fringe Benefits
ADD:		
TRUCK DRIVERS:		
Truck Drivers Zones:		
Zone 1 - Bergen, Hudson, Passaic Cos.		
Zone 2 - Essex, Morris, Sussex, and Union (Remainder of County) Counties		
Zone 3 - Hunterdon, Middlesex, Somerset, Union (up to Wood Ave. south of Cranford), and Warren Counties		
CHANGE:		
LABORERS, BUILDING CONSTRUCTION:		
ZONE 7	$11.85	3.30
PAINTERS:		
ZONE 2:		
Special Rate	13.50	3.42
Regular Rate	14.50	3.42
Premium Rate	15.75	3.42
Wall covering and Paperhanging	15.60	3.42
BRICKLAYERS, CEMENT MASONS PLASTERERS, AND STONEMASONS:		
Zone 7	16.75	2.42
Zone 9	15.53	2.97

DECISION NO. NJ83-3016 - MOD. #4
(48 FR 28003 - June 17, 1983)
Atlantic, Burlington, Camden, Cumberland, Gloucester, Mercer, Ocean and Salem Counties, New Jersey

	Basic Hourly Rates	Fringe Benefits
CHANGE:		
IRONWORKERS--REINFORCING, ORNAMENTAL AND STRUCTURAL:		
Zone 4	$16.20	8.00
BRICKLAYERS, CEMENT MASONS MARBLE MASONS, PLASTERERS, STONEMASONS, TILE LAYERS, AND TERRAZZO WORKERS:		
Zone 1	15.15	3.79
Zone 5	15.30	3.04

MODIFICATION P. 5

DECISION #OK83-4011-MOD.#7 (48 FR 1913-January 14, 1983)	Basic Hourly Rates	Fringe Benefits
Adair, Atoka, Bryan, Coal, Cherokee, Craig, Creek, Delaware, Haskell, Hughes, Leflore, Latimer, McIntosh, Mayes, Muskogee, Nowata, Okfuskee, Okmulgee, Osage, Ottawa, Pawnee, Pittsburg, Pushmataha, Rogers, Tulsa, Sequoyah, Wagoner & Washington Cos., Oklahoma		
CHANGE:		
Asbestos Workers:		
Area 1	17.16	2.76
Area 2	17.76	2.33
Electricians:		
Area 3	15.40	3.8%+ 2.20
Cable Splicers:		
Area 3	15.65	3.8%+ 2.20
Glaziers:		
Area 2	13.84	
Soft Floor Layers:		
Area 1	13.45	2.03
Tile Layers & Terrazzo Workers:		
Area 1	15.84	1.30
Tile Finishers:		
Area 1	12.75	
Area 2	12.26	1.70
Terrazzo Finishers:		
Area 1	13.60	
Area 2	12.26	1.70
Terrazzo Floor Machine:		
Area 1	13.90	
Area 2	12.45	1.70
Terrazzo Base Machine:		
Area 1	14.30	
Area 2	12.78	1.70
Glaziers:		
Area 3	14.68	1.96
Elevator Constructors:		
Area 1:		
Journeymen	15.40	2.69+a
Helpers	10.78	2.69+a
Probationary Helpers	7.70	2.69+a
Plumbers-Pipefitters:		
Area 2	17.25	2.35
Area 3	16.64	2.27
Area 4:		
Mechanical contracts under $150,000	14.00	2.55
Mechanical contracts 150,000 and over	15.50	2.55

DECISION #OK83-4011-MOD.#7 (48 FR 1913-January 14, 1983)	Basic Hourly Rates	Fringe Benefits
Plumbers-Pipefitters (cont'd)		
Area 5	$15.20	$2.25

DECISION #OK83-4012-MOD#6 (48 FR 1916-January 14, 1983)	Basic Hourly Rates	Fringe Benefits
Alfalfa, Beckham, Blaine, Caddo, Canadian, Carter, Cleveland, Comanche, Cotton, Custer, Dewey, Ellis, Garfield, Garvin, Grady, Grant, Greer, Harmon, Harper, Jackson, Jefferson, Johnston, Kay, Kingfisher, Kiowa, Lincoln, Logan, Love, McClain, Major, Marshall, Murray, Noble, Oklahoma, Payne, Pontotoc, Roger Mills, Pottawatomie, Seminole, Stephens, Tillman, Washita, Woods & Woodward Cos., Oklahoma		
CHANGE:		
Asbestos Workers:		
Area 2	17.76	2.33
Area 3	17.16	2.76
Electricians:		
Area 2	15.40	3.8%+ 2.20
Cable Splicers:		
Area 2	15.65	3.8%+ 2.20
Lathers:		
Area 2	13.85	1.64
Soft Floor Layers	13.45	2.03
Ironworkers:		
Area 3	13.90	3.00
Marble Masons, Tile Setters & Terrazzo Workers	15.84	1.30
Marble & Tile Finishers	12.75	
Terrazzo Finishers	13.60	
Terrazzo Floor Machine Man	13.90	
Terrazzo Base Machine Man	14.30	
Plumbers:		
Area 2	16.64	2.27
Area 1:		
Mechanical contracts under $150,000	14.00	2.55
Mechanical contracts $150,000 and over	15.50	2.55

MODIFICATION P. 6

DECISION NO. PA81-3027 MOD. NO. 11 (46 FR - 37212 - July 17, 1981) Franklin County, Pa.	Basic Hourly Rates	Fringe Benefits
CHANGE:		
Ironworkers	$17.265	3.745
Sheet metal workers	15.01	4.13

DECISION NO. PA81-3066 MOD. NO. 8 (46 FR 52082 - October 23, 1981) Dauphin, Cumberland, Perry, Juniata, New Cumberland Depot in York County, Pa.	Basic Hourly Rates	Fringe Benefits
CHANGE:		
Ironworkers:		
Structural, ornamental & reinforcing	17.265	3.745
POWER EQUIPMENT OPERATORS:		
GROUP 1	15.25	25.6%
GROUP 2	14.96	25.6%
GROUP 3	14.09	25.6%
GROUP 4	13.44	25.6%
GROUP 5	12.97	25.6%
GROUP 6	12.06	25.6%
OMIT:		
POWER EQUIPMENT OPERATORS		
GROUP 7	15.10	25.6%
GROUP 7-A	15.35	25.6%
GROUP 7-B	15.59	25.6%

DECISION NO. WY83-5114 - Mod. #1 (48 FR July 15, 1983) Converse, Goshen, Laramie, Natrona, Niobrara and Platte Counties, Wyoming	Basic Hourly Rates	Fringe Benefits
Change:		
Electricians:		
Area 1:		
Electricians; Technicians	$16.25	$1.75+ 3-3/4%

MODIFICATION P. 7

DECISION NO. WA83-5110 - Mod. #2

(48 FR 25108 - June 3, 1983)
Statewide Washington

	Basic Hourly Rates	Fringe Benefits
CHANGE:		
ELECTRICIANS (Area 4):		
Electricians	$20.62	3%+3.385
Cable Splicers	22.68	3%+3.385
ADD:		
POWER EQUIPMENT OPERATORS (SEWER & WATER CONSTRUCTION): Clallam, Chelan, Grays Harbor, Island, Jefferson, King, Kitsap, Kittitas, Lewis, Mason Pierce, Skagit, Snohomish, Thurston, Whatcom, Yakima, Pacific (North of a straight line from the southern boundary of Lewis County extended West to the Pacific Ocean, and the portions of Douglas and Okanogan Counties which lie West of the 120th Meridian		
Group 1		
Backhoe (780 Case type & larger with attachments), Ditching Machine, Side Boom (all Cat, Type D-3 and larger), Dozer (all Cat, Type D-3 and larger), Motor Grader, Back Filler, Front-end Loader (2 yds and over), Mechanic, Clam, Dragline, Crane, Screed, Mechanic Welder, Shovel 3 yds and under	$16.92	4.01
Group 2		
Backhoe (680 Case type and smaller with attachments), Side Boom (any type smaller than Cat D-3), Dozer (any type smaller than Cat D-3), Front-end Loader (under 2yd) Gin Truck, Boring Machine, Bending Machine, Boom Truck (stationary), Pot Firemen (engine operated above 3 bbl) Service Plow, Mechanical Greaser (large grease truck) Drills (Leroi type), Tractair, Well point system, Paving Machines, Rollers and Compactors	16.425	4.01
Group 3		
Oiler, Air Compressor, Pump, Oil-Greaser, Chain Type Ditcher (Ditch Witch Concrete Saw, Welding Machine	14.46	4.01

Basic Hourly Rates	Fringe Benefits

SUPERSEDEAS DECISION

STATE: Colorado

COUNTIES: Delta, Garfield, Gunnison, Mesa, Montrose, and Pitkin

DECISION NUMBER: CO83-5115

DATE: Date of Publication

Supersedes Decision No. CO82-5107 dated April 9, 1982, in 47 FR 15491

DESCRIPTION OF WORK: Building Projects (does not include single family homes and apartments up to and including 4 stories)

	Basic Hourly Rates	Fringe Benefits
ASBESTOS WORKERS	$13.27	$2.98
BOILERMAKERS	14.97	2.575
BRICKLAYERS; Stonemasons:		
Area 1	14.49	2.01
Area 2	12.90	2.00
CARPENTERS:		
Area 1:		
Zone 1	13.57	3.36
Zone 2	14.07	3.36
Zone 3	14.32	3.36
CEMENT MASONS:		
Cement Masons	13.79	2.32
Working with composition materials and color	14.29	2.32
Working on scaffold, swing stage or temporary platform over 25'	14.04	2.32
DRYWALL INSTALLERS	11.72	2.92
ELECTRICIANS:		
Electricians	16.00	1.50+ 4%
Cable Splicers	16.25	1.50+ 4%
ELEVATOR CONSTRUCTORS:		
Mechanics	17.97	2.69+a
Helpers	12.58	2.69+a
Probationary Helpers	8.985	
GLAZIERS	13.80	1.52+b
IRONWORKERS:		
Structural, Ornamental and Reinforcing	14.35	2.71

	Basic Hourly Rates	Fringe Benefits
MARBLE and TILE SETTERS; TERRAZZO WORKERS	$15.53	$2.79
MILLWRIGHTS	14.66	2.39
PAINTERS:		
Brush, Roller and Drywall Finishers	15.01	2.18
Paperhangers, Spray, Swing Stage	15.61	2.18
PLASTERERS	13.44	.01
PLUMBERS; Pipefitters	17.45	2.65
ROOFERS	12.36	1.24
SHEET METAL WORKERS	15.96	2.83+ 3%
SOFT FLOOR LAYERS	13.14	3.23
SPRINKLER FITTERS	16.67	2.83
TILE, MARBLE and TERRAZZO FINISHERS:		
Finishers	9.55	3.00
Floor Grinders	9.70	3.00
Base Grinders	10.25	3.00

DECISION NO. CO83-5115 Page 2

	Basic Hourly Rates ZONE 1	Basic Hourly Rates ZONE 2
LABORERS:		
Group 1	$9.95	$10.45
Group 2	10.23	10.73
Group 3	10.75	11.25
FRINGE BENEFITS: $2.59		
POWER EQUIPMENT OPERATORS (Other than for work in Tunnels, Shafts and Raises):		
Group 1	13.40	14.15
Group 2	13.75	14.50
Group 3	14.10	14.85
Group 4	14.25	15.00
Group 5	14.40	15.15
Group 6	14.55	15.30
(For work in Tunnels, Shafts, and Raises):		
Group 1	13.65	14.30
Group 2	13.90	14.65
Group 3	14.00	14.75
Group 4	14.25	15.00
Group 5	14.40	15.15
Group 6	14.80	15.55
Group 7	14.55	15.30
FRINGE BENEFITS: $3.20		

	Basic Hourly Rates ZONE 1	Basic Hourly Rates ZONE 2
TRUCK DRIVERS:		
Group 1	$12.91	$13.41
Group 2	13.01	13.51
Group 3	13.11	13.61
Group 4	13.16	13.66
Group 5	13.21	13.71
Group 6	13.26	13.76
Group 7	13.31	13.81
Group 8	13.36	13.86
Group 9	13.46	13.96
Group 10	13.51	14.01
Group 11	13.61	14.11
Group 12	13.76	14.26
Group 13	13.81	14.31
Group 14	13.91	14.41
Group 15	14.01	14.51
Group 16	14.11	14.61
Group 17	14.21	14.71
Group 18	14.41	14.91
FRINGE BENEFITS: $2.64		

DECISION NO. CO83-5115 Page 3

WELDERS: Receive rate prescribed for craft performing operation to which welding is incidental

FOOTNOTES:

a. Employer contributes 8% of basic hourly rate for over 5 years' service and 6% of basic hourly rate for 6 months' to 5 years' service as Vacation Pay Credit. Paid Holidays: New Year's Day; Memorial Day; Independence Day; Labor Day; Thanksgiving Day; Friday after Thanksgiving Day; and Christmas Day

b. 15 days Paid Vacation after 1600 hours

AREA DESCRIPTIONS

BRICKLAYERS; Stonemasons:
Area 1: Pitkin County
Area 2: Remaining Counties

CARPENTERS:
Area 1: Post Office basing points in the Cities of Leadville, Fort Collins, Glenwood Springs, Grand Junction, Gunnison and Montrose:
Zone 1: 0-40 miles from nearest basing point
Zone 2: 40-75 miles from nearest basing point
Zone 3: 75 miles and over from nearest basing point

LABORERS:
Zone 1: That area encompassed by 0 to 30 driving miles from the Main Post Office in each of the following Cities:
Aspen, Glenwood Springs, Grand Junction, Gunnison, Montrose, Naturita, Rifle
Zone 2: That area encompassed by 30 or more driving miles from the Main Post Office in the Cities listed in Zone 1

POWER EQUIPMENT OPERATORS and TRUCK DRIVERS:
A. Counties entirely within Zone 1:
Delta, Garfield, Mesa
B. Counties entirely within Zone 2:
Gunnison, Pitkin
C. Legal description of the portion of Montrose County which is included within Zone 1, as follows:
All of Montrose County lying north of the north Line of Ouray County and said North Line extended West to the Township Line between R11W and R12W, said part lying East of said Township Line of the New Mexico Principal Meridian
D. Legal description of the portion of Montrose County which is included within Zone 2, as follows:
All of Montrose County except that part lying north of the North Line of Ouray County and said North Line extended West of said Township Line between R11W and R12W, said point being East of said Township Line of the New Mexico Principal Meridian

LABORERS

Group 1: Building Construction Laborer

Group 2: Laborers - Underpinning and Shoring eight (8) feet or more below working surface. Power Tool Operators of all mechanical air, gas, and electrical tools, including Self-propelled Buggies and Cement Finishers Tenders. Laborers preparing and placing of stone or any other aggregate in sand bed to be used as exposed face of Tilt-up Panels. Burners on Demolition and Welders, Gunnite Nozzleman and Sandblasters

Group 3: Pipelayers on Building Construction. Jackhammer Operator for Underpinning and Shoring over twelve (12) feet below working surface, Bellers and Stemmers on Caisson Work. Tender, Mason and Plaster

POWER EQUIPMENT OPERATORS
(Other than for work in Tunnels, Shafts, and Raises)

Group 1: Air Compressor; Asphalt Screed; Oiler; Brakeman; Drill Operator - smaller than Williams MF and similar; Tender to Heavy Duty Mechanic and/or Welder; Operators of 5 or more light plants, Welding Machines, Generators, single unit conveyor; Pumps; Vacuum Well Point System; Tractor, under 70 HP with or without attachments; Grade Checker; Compressors, 360 C.F.M. or less

Group 2: Conveyor, handling building materials; Ditch Witch and similar Trenching Machine; Fireman or Tank Heater, road; Forklift; Haulage Motor Man; Pugmill; Portable Screening Plant with or without a spray bar; Screening Plants, with classifier; Self-propelled Roller, rubber-tired under 5 tons

Group 3: Asphalt Plant; Backfiller, Bituminous Spreader or Laydown Machine; Cableway Signalman; Caisson Drill; Williams MF, similar and larger; C.M.I. and similar; Concrete Batching Plants; Concrete Finish Machine; Concrete Gang Saws on concrete paving; Concrete Mixer, less than 1 yd.; Concrete Placement Pumps, under 8 inches; Distributors, Bituminous Surfaces; Drill, Diamond or Core; Drill Rigs, Rotary, Churn, or Cable Tool; Elevating Graders, Equipment Lubricating and Service Engineer; Engineer Fireman; Grout Machine; Gunnite Machine; Hoist 1 drum; Hydraulic Backhoes, wheel mounted under 3/4 yd.; Loader, Barber Green, etc.; Loader up to and including 6 cu. yds.; Machine Doctor; Mechanic; Motor Grader/Blade, rough; Road Stabilization Machine; Rollers, self-propelled, all types over 5 tons; Sandblasting Machine; single unit portable Crusher, with or without Washer; Tie Tamper, wheel mounted; Tractor, 70 HP and over with or without attachments; Trenching Machine Operator; Welder; Winch on truck

POWER EQUIPMENT OPERATORS (Cont'd)
(Other than for work in Tunnels, Shafts, and Raises) (Cont'd)

Group 4: Cable operated Crane, truck mounted; Cable operated power Shovels, Draglines, Clamshells, and Backhoes, 5 cu. yds. and under; Concrete Mixer over 1 cu. yd.; Concrete Paver 34E or similar; Concrete Placement Pumps, 8 inches and over; Crane, 50 tons and under; Hoist, 2 drums; Hydraulic Backhoe, 3/4 yd. and over; Loader, over 6 cu. yds.; Mechanic-welder, heavy duty; Mixer Mobile; Motor Grader/blade, finish; Multiple unit Portable Crusher, with or without Washer; Piledriver; Scrapers, single bowl under 40 cu. yds.; Self-propelled Hydraulic Crane; Tractor with sideboom; Truck mounted Hydraulic Crane

Group 5: Cable operated power Shovels, Draglines, Clamshells and Backhoes over 5 cu. yds.; Crane, over 50 tons carrier mounted; Derrick; Electric Rail type Tower Crane; Hoist, 3 drum or more; Quad Nine and similar Push Unit; Scrapers single bowl including Pups 40 cu. yds. and Tandem Bowls and over

Group 6: Cableway; Climbing Tower Crane; Crawler or truck mounted Tower Crane; Wheel Excavator, Tower Crane, truck type

(For work in Tunnels, Shafts and Raises)

Group 1: Brakeman

Group 2: Motorman

Group 3: Compressor (900 CFM and over) serving Tunnels, Shafts and Raises

Group 4: Air Tractors; Grout Machine; Gunnite Machine; Jumbo Form; Mechanic; Welder

Group 5: Concrete Placement Pumps, 8" and over discharge; Mucking Machines and Front End Loaders, underground; Slusher; Mine Hoist Operator

Group 6: Mole

Group 7: Mechanic Welder, heavy duty

DECISION NO. CO83-5115 Page 6

TRUCK DRIVERS

Group 1: Pickups; Tenders; Dumpmen

Group 2: Dump Trucks, to and including 6 cu. yds.; Sweepers; Flat Rack, single axle; Liquid and Bulk Tankers, single axle

Group 3: Dump Trucks, over 6 cu. yds. to and including 14 cu. yds.; Flat Rack, Tandem axle; Battery Men; Mechanics; Tenders; Man Haul Shuttle Truck or Bus

Group 4: Straddle Truck; Lumber Carrier; Liquid and Bulk Tankers, Tandem axle

Group 5: Fork Lift Driver; Fuel Truck; Grease Truck; Combination Fuel and Grease

Group 6: Distributor Truck Driver; Cement Mixer, Agitator Truck to and including 10 cu. yds.; Liquid and Bulk Tankers, semi or combination

Group 7: Multi-purpose Truck; Specialty and Hoisting

Group 8: Dump Trucks, over 14 cu. yds. to and including 29 cu. yds.; High Boy, Low Boy, Floats, Semi; Cab operated Distributor Truck Driver, Semi; Liquid and Bulk Tankers, Euclid, Electric or similar; Truck Drivers, Dumptor type Youngbuggy, Jumbo and similar type equipment

Group 9: Truck Driver, Snow Plow

Group 10: Cement Mixer, Agitator Truck, over 10 cu. yds., to and including 15 cu. yds.

Group 11: Dump Trucks, over 29 cu. yds. to and including 39 cu. yds.

Group 12: Cement Mixer, Agitator Truck, over 15 cu. yds.

Group 13: Dump Trucks, over 39 cu. yds. to and including 54 cu. yds.; Tireman

Group 14: Mechanic

Group 15: Dump Trucks, over 54 cu. yds. to and including 79 cu. yds.

Group 16: Heavy Duty Diesel, Mechanic, Body Men, Welders or Combination Men

Group 17: Dump Trucks, over 79 cu. yds. to and including 104 cu. yds.

Group 18: Dump trucks, over 140 cu. yds.

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: Illinois COUNTIES: *See Below
DECISION NUMBER: IL83-2054 DATE: Date of Publication
Supersedes Decision No. IL82-2038 dated, July 30, 1982 in 47 FR 33045
DESCRIPTION OF WORK: Heavy & Highway Construction Projects

*Alexander, Clay, Crawford, Edwards, Effingham, Fayette, Franklin, Gallatin, Hamilton, Hardin, Jackson, Jasper, Jefferson, Johnson, Lawrence, Marion, Massac, Perry, Pope, Pulaski, Randolph, Richland, Saline, Union, Wabash, Wayne, White, & Williamson

	Basic Hourly Rates	Fringe Benefits
CARPENTERS; PILEDRIVERMEN:		
Area 1	$13.95	2.00
Area 2:		
Carpenters	14.09	2.45
Piledrivermen	14.09	2.45
Area 3:		
Carpenters	13.87	1.88
Piledrivermen	14.37	1.88
Area 4:		
Carpenters	14.09	2.45
Piledrivermen	14.09	2.45
Area 5	15.735	2.65
Area 6:		
Carpenters	13.76	1.99
Piledrivermen	14.26	1.99
Area 7	14.09	2.45
CEMENT MASONS:		
Area 1	15.25	
Area 2	14.60	
Area 3	13.275	.80
Area 4	13.00	1.60
Area 5	13.85	.75
ELECTRICIANS:		
Area 1	18.55	1.86 + 3%
Area 2	17.85	.65+ 8.35%
Area 3	19.20	14.75%
Area 4	18.355	.85+ 9½%
Area 5	18.61	.85+ 14%
IRONWORKERS:		
Area 1	15.05	2.20
Area 2	15.25	4.05
Area 3	15.95	2.23
Area 4	16.80	2.20
LABORERS:		
Area 1	12.95	1.285
Area 2:		
Heavy Construction		
Class 1	14.20	1.85
Class 2	14.45	1.85
Class 3	14.70	1.85
Class 4	15.80	1.85
Highway Construction:		
Class 1	14.20	1.85
Class 2	14.40	1.85
Class 3	14.55	1.85
Class 4	14.80	1.85
Class 5	15.825	1.85
Area 3:		
Heavy Construction:		
Class 1	14.70	1.35
Class 2	14.95	1.35
Class 3	15.20	1.35
Class 4	16.30	1.35
Highway Construction:		
Class 1	14.80	1.35
Class 2	14.90	1.35
Class 3	15.05	1.35
Class 4	15.30	1.35
Class 5	16.325	1.35
Area 4	13.05	1.185
LINE CONSTRUCTION:		
Area 1:		
Linemen	18.02	.65+ 8½%
Groundman Equipment Operator Class 1	16.81	.65+ 8½%
Groundman Truck Driver w/Winch	12.77	.65+ 8½%
Groundman Truck Driver WO/Winch	12.02	.65+ 8½%
Groundman	11.46	.65+ 8½%
Area 2:		
Linemen	15.80	2.58
Groundman Equipment Operator Class 1	13.51	2.27
Groundman Equipment Operator Class 2	12.10	2.09
Groundman	10.09	1.81

DECISION NO. IL83-2054

	Basic Hourly Rates	Fringe Benefits
PAINTERS:		
Area 1:		
Commercial Brush (Old)	12.37	
Commercial Brush (New)	14.15	
Commercial Spray & Sandblast	12.87	
Industrial Brush	15.38	
Industrial Spray & Sandblast	15.88	
Dams; Power Tools; Tanks; & High Line Towers	16.35	
Bridges	18.56	
Area 2:		
Commercial Brush	11.50	1.00
Industrial Brush	11.50	1.00
Bridges; Sandblasting & Spray	12.00	1.00
Area 3:		
Brush up to 30 ft.	14.30	1.00
Brush over 30 ft.	15.10	1.00
Roller up to 30 ft.	15.15	1.00
Roller over 30 ft.	15.95	1.00
Sandblasting up to 30 ft.	15.80	1.00
Sandblasting over 30 ft.	16.60	1.00
Spray up to 30 ft.	15.30	1.00
Spray over 30 ft.	16.10	1.00
Area 4:		
Commercial Brush	15.01	1.85
Commercial Spray & Blast	16.01	1.85
Industrial Brush	15.72	1.85
Industrial Spray & Blast	16.72	1.85
Bridges - Brush	16.72	1.85
Bridges - Spray & Blast	16.97	1.85
Area 5:		
Commercial Brush	9.50	
Commercial Sandblast & Spray	10.50	
Industrial Brush	11.50	
Industrial Sandblast & Spray	12.50	
Area 6:		
Commercial:		
Brush	12.70	.30
Epoxy; Sandblast; & Spray	13.70	.30
Steel	13.20	.30
Industrial:		
Brush	14.45	.30
Epoxy; Sandblast; & Spray	15.45	.30
Steel	14.95	.30
Area 7	10.00	
Area 8:		
Commercial:		
Brush; Roller	11.60	.80
Sandblast; Power Tools	12.50	.80
Industrial:		
Brush; Roller	13.65	.80
Sandblast; Power Tools	14.20	.80
Bridges	14.65	.80
Steeplejacks	14.80	.80
Area 9:		
Commercial:		
Brush	13.25	
Commercial Spray & Blast	14.50	
Industrial:		
Brush	13.75	
Industrial Spray & Blast	15.00	
Area 10:		
Commercial:		
Brush	11.55	
Sandblast; Spray	12.65	
Industrial:		
Brush	12.40	
Sandblast; Spray	13.40	
POWER EQUIPMENT OPERATORS:		
Area 1:		
Class A	16.05	2.10
Class B	14.04	2.10
Class C	14.10	2.10
Class D	13.45	2.10
Class E	12.85	2.10
Area 2:		
Class A	16.65	2.60
Class B	10.50	2.60
Area 3:		
Group 1	16.67	2.48
Group II	13.89	2.48
Group III	13.24	2.48
Group IV	13.14	2.48
Group V	12.89	2.48
Group VI:		
a.	18.82	2.48
b.	19.12	2.48
c.	14.99	2.48
d.	15.49	2.48
TRUCK DRIVERS:		
Group I	14.325	1.15+a
Group II	14.725	1.15+a
Group III	14.925	1.15+a
Group IV	15.175	1.15+a

DECISION NO. IL83-2054

AREA DESCRIPTIONS

CARPENTERS; PILEDRIVERMEN

Area 1: Alexander, Franklin, Gallatin, Hardin, Jackson, Johnson, Massac, Perry, Pope, Pulaski, Union & Williamson Cos.
Area 2: Clay, Edwards, Effingham, Fayette, Hamilton, Jasper, Lawrence Marion (Salem & Vic.), Richland, Wayne, & White Cos.
Area 3: Saline Co.
Area 4: Marion (Centralia & Vic.) Co.
Area 5: Randolph Co.
Area 6: Wabash Co.
Area 7: Jefferson Co.

CEMENT MASONS

Area 1: Alexander, Franklin, Gallatin, Hardin, Jackson, Johnson, Massac, Perry, Pope, Pulaski, Randolph , Saline, Union & Williamson Cos.
Area 2: Clay, Edwards, Effingham, Fayette (except N. part), Hamilton, Jasper, Jefferson, Marion, Richland, Wayne, & White Cos.
Area 3: Crawford (N½ of Co.) Co.
Area 4: Crawford (S½ of Co.), Lawrence, & Wabash Cos.
Area 5: Fayette (N. part) Co.

ELECTRICIANS

Area 1: Crawford, Jasper, Lawrence, & Richland Cos.
Area 2: Effingham (Banner, Bishop, Douglas, Liberty, Lucas, Moccasin, St. Francis, Summit, & Teulopolis Twps.), Fayette (Hurricane, S. Hurricane, Ramsey, Bowling Green, Carson & Loudon Twps.) Cos.
Area 2: Randolph (Red Bud Twp.) Co.
Area 4: Wabash Co.
Area 5: Remaining Cos.

IRONWORKERS:

Area 1: Alexander, Franklin, Gallatin, Hardin, Jackson (exclu. Ava. & Elkville), Johnson, Massac, Pope, Pulaski, Saline (exclu. Vic. of El Dorado & Area NE), Union & Williamson Cos.
Area 2: Clay (exclu. Louisville & S.), Crawford, Effingham (Dexter & E. thereof), Jasper, Lawrence (N ½ of Co., exclu. Lawrenceville,), & Richland (N. of Olney) Cos.
Area 3: Effingham (exclu. Dexter & E. thereof), & Fayette (Avena & N. thereof) Cos.
Area 4: Fayette (S ½ below Brownstown), Jackson (Rem. of Co.), Jefferson (Mt. Vernon & Area W. thereof), Marion, Perry & Randolph Cos.

DECISION NO. IL83-2054

AREA DEFINITIONS (CONT'D)

LABORERS

Area 1: Alexander, Franklin, Gallatin, Hardin, Jackson, Johnson, Massac, Perry, Pope, Pulaski, Saline, Union & Williamson Cos.
Area 2: Randolph (Chester & Vic.) Co.
Area 3: Randolph (Sparta & Vic.) Co.
Area 4: Remaining Cos.

LINE CONSTRUCTION

Area 1: Fayette (Portion N. of Avena) Co.
Area 2: Remaining Counties

PAINTERS

Area 1: Alexander, Johnson, & Pulaski
Area 2: Clay, Edwards, Hamilton, Jefferson, Marion (exclu. Salem city limits), & Wayne Cos.
Area 3: Crawford, Effingham, Jasper, Lawrence, Richland, & Wabash Cos.
Area 4: Fayette
Area 5: Franklin Co.
Area 6: Jackson, Perry, & Randolph Cos.
Area 7: Marion (Salem City limits) Co.
Area 8: Massac Co.
Area 9: Union Co.
Area 10: Williamson (Marion & Vic.) Co.

POWER EQUIPMENT OPERATORS

Area 1: Alexander, Franklin, Gallatin, Hamilton, Hardin, Jackson, Johnson, Massac, Pope, Pulaski, Saline, Union, White & Williamson Cos.
Area 2: Clay, Crawford, Edwards, Effingham, Jasper, Lawrence, Richland, Wabash, & Wayne cos.
Area 3: Fayette, Jefferson, Marion, Perry & Randolph Cos.

DECISION NO. IL83-2054

CLASSIFICATIONS DEFINITIONS

LABORERS - RANDOLPH COUNTY - AREAS 2 & 3

HEAVY CONSTRUCTION

Class 1 - Unskilled

Class 2 - Workmen while cutting & burning with a Torch; Men working on the bottom of Sewer Trenches on the final Grading, laying or caulking of preformed sectional Sanitary or Storm Sewer Pipe, including Reinforced Concrete Tile, but not including Box Culverts, Tin Whistles or Multiplate Culverts

Class 3 - Tender to all Brick & Plaster Masons

Class 4 - Dynamite Men

HIGHWAY CONSTRUCTION

Class 1 - Laborers

Class 2 - Asphalt Raker; Weighman on Asphalt Platform

Class 3 - Men working on the Bottom of Sewer Trenches on the final grading, laying or caulking of preformed sectional Sanitary or Storm Sewer Pipe (including reinforced concrete tile but not including box culverts)

Class 4 - Brickmasons Tenders

Class 5 - Dynamite Men

POWER EQUIPMENT OPERATORS

AREA 1

Class A - APSCO or equal Spreading Machine, Backhoe, Boom or Winch Cat, Bituminous Mixplane Machine, Blacksmith, Bituminous Surfacing Machine, Bulldozer, Crane, Shovel, Dragline, Truck Crane, Pile Driver, Concrete Finishing Machine or Spreader Machine, Concrete Breaker, Concrete or Pumpcrete Pumps, Dinky or Standard Locomotives, Well or Caisson Drills, Elevating Grader, Fork Lifts, Flexplane, Gradall, Hi-Lift, Hoists, Guy-Derricks, Hyster, Mechanic, Motor Patrol, Mixers - 21 cu. ft. or over, Push cats, Pulls, & Scrapers, Two Well Point Pumps, Pulverizer or Tiller, Rugmill, Rubber-Tired Farm Type Tractor with Bulldozer/Blade/Auger or Hi-Lift over ½ yd., Jersey Spreader, Tract Air used with Drill or Hi-Lift, Trenching or Ditching Machines, Wood Chipper w/Tractor, Self-Propelled Roller W/Blade, Equipment Greaser, Self-Propelled Bump Grinder on Con-crete Highway pavement

DECISION NO. IL83-2054

CLASSIFICATION DEFINITIONS (CONT'D)

POWER EQUIPMENT OPERATORS (CONT'D)

AREA 1 (CONT'D)

Class B - Air Compressor W/Valve driving piling, Two Air Compressors (220 cu. ft. capacity or over), Two Airtract Drills, Airtrack Drill w/ Compressor, Automatic Pins or Scales W/Compressor or Generator, Pipeline Boring Machine, Bulk Cement Plant W/ Separate Compressor, Power Operated Bull Float, Hydra-Lift W/Single Motor, Straw Mulcher Blower W/Spout, Self-Propelled Roller/Compactor, Back-End Man on Bituminous Surfacing Machine

Class C - Boom or Winch Truck, Two Conveyors, Self-Propelled Concrete Saw, Self-Propelled Vibrator, any Type Tractor pulling any type Roller or Disc, Rubber Tired Farm Type Tractor W/Blade/Bulldozer/Auger/Hi-Lift ½ yd. or less, Elevator Operator, Self-Propelled Chip Spreader,Form Grader, Truck Crane Oiler

Class D - Air-Track Drill (one), Belt Drag Machine, Power Broom, Mechanical Plasterer Applicator, Trac-Air, Air Compressor (220 cu. ft. or over)One, Air Compressor (under 220 cu. ft.) four, Automatic Bin, Bulk Cement Plant w/Built-in Compressor running off same Motor or Electric Motor, Fireman, Self-Propelled Form Tamper, Light Plants (4), Welding Machine (4), Pumps (4), or Combination of four (4) pumps, Light Plants, Welding Machines, Air-Compressors (under 200 cu. ft.),Mudjacks or Wood Chipper,Mixer - less than 21 cu. ft., Mortar Mixer w/skip or Pump, Pipeline Tract Jack

Class E - One Air Compressor (under 220 cu. ft.), One Conveyor, One Motor Driven Heater, One Light Plant, One Pump, One Welding Machine, One Ulmac oe Equal Spreader, Conveyor Operator on Self-Propelled Chip Spreader, Oiler

CLASSIFICATION DEFINITIONS (CONT'D)

POWER EQUIPMENT OPERATORS (CONT'D)

AREA 2

Class A - Air Compressors (2), Compressors hooked in Manifold, Asphalt Plant Engineer, Auto Grade and/or C.M.I. or similar type Machine, Auto Patrol, Motor Patrol, Power Blade, Apsco Paver, Asphalt Planer, Asphalt Rollers, Asphalt Paver Operator, Milling Machine, Self-Propelled Widemer, Backhoe and/or Pavement Breaker Attachment, Self-Propelled Pavement Breaker, Ballast Regulator (R.R.), Bituminous Mixer, Bituminous Paver, Bituminous Plant Engineer, Bulldozer, One Drum Hoist with Tower or Boom, Cableways, Tower Machine, Backfiller, Boom Tractor, Boom or Winch Truck, Winch or Hydraulic Truck, Boring Machine, Boiler Operator, Bruch Mulcher, Bull Float, Finishing Machine, Power Cranes, Overhead Cranes, Truck Cranes, Piledriver, Skid or Crawler, Guard Rail Post Driver, Tower Cranes, Hydro Crane, Cherry Picker, Draglines, Derricks, Shovels, Clam, Gradalls, Two Drum Machine, Concrete Mixers with Skip Tournamixer, Concrete Pump (Truck or Skid Mounted), Concrete Plant Engineer, Soil Cement Machine, Formless,

DECISION NO. IL83-2054

CLASSIFICATION DEFINITIONS (CONT'D)

POWER EQUIPMENT OPERATORS (CONT'D)

AREA 2 (CONT'D)

Paver, Concrete Spreader, Resco Concrete Saw, Chip Spreader, Mesh Placer, Dredging Equipment or Dredge Engineer or Dredge Operator, Tug Boat Operator, Marine Scoops, Ditching Machine with Dual Attachment, Wtandard Tr Dinkey Locomotives, Drilling Machine, including Well Testing, Caisson, Shaft or any similar type Drilling Machines (Well Point Systems), Mud Cat, Mucking Machine, Sull-Air, Mechanics, Welder, Head Equipment Greaser, Tournapull, Tractor Operating Scoops, Push Tractors, Large Rollers on Earth, Loaders (Track or Rubber mounted), or similar type Machine, Lull, Tournadozer, Scoopmobiles, Elevating Machines, Power Sub Grader, Hydra Ax, Farm Tractor with Attachments, Seaman Tiller, Tree Mover, Stump Remover, Root Rake, Hydra Seeder, Straw Blower, Refrigerating Machine, Freezing Operator, Chair Cart-Self Propelled, Helicopter Crew (3), Ross Carrier or Straddle Buggy or similar Machine, Rock Crusher Plant, Gravel Processing Machine, Pipe Cleaning Machine Pipe Wrapping Machine, Pipe Bending Machine, Pug Mill, Concrete Bump Grinder Machine, Power Curing Spray Machine

Class B - Air Compressor 600 cu. ft. and under, Air Tugger, Air Valves or Steam Valves, Assistant Concrete Plant Engineer, Assistant Asphalt Plant Engineer, Asphalt Plant Fireman, Bulk Cement Plant Equipment Greaser, Concrete Mixers without Skips, Curbing Machine, Concrete Saw (Self-Propelled), Concrete and Blacktop Curb Machine, Conveyors, Cement Blimps, Ditching Machine under 6", Distributor Operator on Trucks, Deck Hands, Elevator when used for hoisting material, Engineer Tenders, Fork Lift, Farm Tractor, Fireman, Fireman on Paint or Dope Pots, Form Tamper, Form Grader, Flex Plane, Generator ((two to four), or Welding Machines or Water Pumps, within 400 feet, Gunite Machine, Greaser Helpers, Machine Mounted Post Hole Digger, Mud Jack, One Drum Machines without Tower or Boom, One Water Pump, Oilers, One Welding Machine, Outboard or Inboard Motor Boat, Power Broom (Self-Propelled), Pull Broom (Power Type), Siphons and Pulsometer, Switchman, Striping and or Painting Machine (motor driven), Slurry Seal Machine, Track Jack, Temporary Heat, Throttle Valve, Tube Float, Tractaire, Wagon Drill, Multiple Tamping Machine (R.R.), Spike Machine (R.R.), Mechanical Heaters, Brush Burner

DECISION NO. IL83-2054

CLASSIFICATION DEFINITIONS ARE (CONt'D)

AREA 3

Group 1 - Cranes, Draglines, Shovels, Skimmer Scoops, Clamshells or Derrick Boats, Pile Drivers, Crane-Type Backhoes, Asphalt Plant Oprs., Plant Opers., Ditching Machines or Backfillers, Dredges, Asphalt Spreading Machines, Heavy Duty Mechanic, Ass't Master Mechanic, All Locomotives, Cableways or Tower Machines, Hoists - 2 Drum or more, Hydraulic Backhoes, Ditching Machines or Backfiller, Cherry Pickers, Overhead Cranes, Roller (Steam or Gas) Concrete Pavers, Excavators, Concrete Breakers, Concrete Pump, Bulk Cement Plants, Cement Pumps, Derricks-Type Drills, Mixers (over 3 bags) and Boat Oprs., (25' & over), Motor graders or Pushcats, Scoops or Tournapulls, Bulldozers, End Loaders or Fork-Lift, Power Blade or Elevating Graders, Winch Cats, Boom Tractors, and Pipe Wrapping or Painting Machines, Drill (other than derrick type), 1 Drum-Hoists, Mud Jacks, Mixers (2 or 3 bags), Conveyors (2), Air Compressors (2), Water Pumps reglardless of size (2), Welding Machines (2) Siphons or Jets (2), Winch Heads or Apparatus (2) and Light Plants (2), Mixers (under 2 bags), all Tractors regardless of size (Straight Tractor Only), Fireman on Stationary Boilers, Automatic Elevators, Form Grading Machines, Finishing Machine, Power-Sub-Grader or Ribbon Machine, Longitudinal Floats, Boat Oprs., (under 25 ft. conveyors (1) Distribution Opers., On Trucks,Siphons or Jets (1) Winch Heads or Apparatuses (1), Light Plant (1) Mixers (under 2 bags)

Group II - Air Compressor (1), Water Pumps regardless of size (1) Welding Machine (1)

Group III - Fireman and Asphalt Spreader Oilers

Group IV - Heavy Equipment Oilers (truck cranes, dredges, monigans, large cranes, etc.)

Group V - Oilers

Group VI:
a. Engineers Operating under air pressure
b. Engineers Operating in air over 10 lbs. pressure
c. Oilers Operating under air pressure
d. Oilers Operating in air over 10 lbs. prssure

TRUCK DRIVERS

Group I - Drivers on 2 Axles hauling less than 9 tons; Air Compressor & Welding Machine incl. those pulled by separate units; Fork Lifts up to 6,000 lbs. cap.; Mechanic Tenders; Pick-ups when hauling materials, tools, or men to and from and on the job site; & Truck Driver Tenders

DECISION NO. IL83-2054

CLASSIFICATION DEFINITIONS (CONT'D)

TRUCK DRIVERS (CONT'D)

Group II - 2 or 3 Axles hauling more than 9 tons, but hauling less than 16 tons; A-Frame Winches; Fork Lifts over 6,000 lbs. cap; 4-axle Combination units; Hydrolifts or similar equipment when used for transportation purposes; & Winches

Group III - 2, 3, or 4 Axles hauling 16 tons or more; Dispatcher; 5-Axles or more combination units; Mechanics & Working Foreman; & Water Pulls

Group IV - Drivers on Oil Distributors; & Drivers on Semi-Lowboys when moving equipment

FOOTNOTE:
a. $51.00 Per Week Per Employee

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: Illinois
COUNTIES: *See Below
DECISION NO. IL83-2056
DATE: Date of Publication
Supersedes Decision No. IL81-2007, dated April 10, 1981 in 46 FR 21554
DESCRIPTION OF WORK: Heavy & Highway Construction Projects

*Bond, Calhoun, Clinton, Greene, Jersey, Macoupin, Madison, Monroe, Montgomery, St. Clair & Washington

	Basic Hourly Rates	Fringe Benefits
CARPENTERS & PILEDRIVERMEN:		
Area 1	$15.185	2.65
Area 2	15.735	2.65
Area 3:		
Carpenters	15.405	3.01
Piledrivermen	15.905	3.01
Area 4:		
Carpenters	15.77	2.61
Piledrivermen	16.27	2.61
CEMENT MASONS:		
Area 1	16.155	2.52
Area 2	18.675	
ELECTRICIANS:		
Area 1	18.61	3.46
Area 2	19.20	2.83
Area 3	17.86	3.44
Area 4	17.32	2.29
Area 5	17.85	2.14
IRONWORKERS:		
Area 1	16.80	2.20
Area 2	15.95	2.23
LINE CONSTRUCTION:		
Area 1:		
Linemen & Digging Operator	15.80	2.58
Groundmen Equipment Op.:		
Class I	13.51	2.27
Class II	12.10	2.08
Groundman	10.04	1.81
Area 2:		
Linemen	19.90	8½%
Groundman Equipment Operator	17.31	8½%
Groundman Truck Drivers	14.12	8½%
Groundman	12.93	8½%
Area 3:		
Linemen	17.86	3.48
Groundman Truck Drivers W/Winch	16.91	3.44
Groundman & Groundman Truck Driver	16.66	3.43
Area 4:		
Linemen	18.02	2.18
Groundman Equipment Op.	16.81	2.08
Groundman Truck Driver W/Winch	12.77	1.74
Groundman Truck Driver WO/Winch	12.02	1.67
Groundman	11.46	1.62

	Basic Hourly Rates	Fringe Benefits
PAINTERS		
Commercial Brush	15.01	1.85
Commercial Spray & Blast	16.01	1.85
Industrial Brush	15.72	1.85
Industrial Spray & Blast	16.72	1.85
Bridges - Brush	15.97	1.85
Bridges - Spray & Blast	16.97	1.85
LABORERS (HEAVY CONSTRUCTION)		
Area 1:		
Class 1	15.60	.45
Class 2	15.85	.45
Class 3	16.10	.45
Class 4	17.20	.45
Area 2:		
Class 1	15.80	.25
Class 2	16.05	.25
Class 3	16.30	.25
Class 4	17.40	.25
Area 3:		
Class 1	14.60	1.60
Class 2	14.85	1.60
Class 3	15.10	1.60
Class 4	16.20	1.60
Area 4:		
Class 1	14.20	1.85
Class 2	14.45	1.85
Class 3	14.70	1.85
Class 4	15.80	1.85
Area 5:		
Class 1	14.20	1.85
Class 2	14.45	1.85
Class 3	14.70	1.85
Class 4	15.80	1.85
Area 6:		
Class 1	15.10	1.05
Class 2	15.35	1.05
Class 3	15.60	1.05
Class 4	16.70	1.05
Area 7:		
Class 1	15.70	.35
Class 2	15.95	.35
Class 3	16.20	.35
Class 4	17.30	.35
Area 8:		
Class 1	15.80	.25
Class 2	16.05	.25
Class 3	16.30	.25
Class 4	17.40	.25

DECISION NO. IL83-2056

	Basic Hourly Rates	Fringe Benefits
LABORERS (HEAVY CONSTRUCTION) CONT'D)		
Area 9:		
Class 1	15.40	.65
Class 2	15.65	.65
Class 3	15.90	.65
Class 4	17.00	.65
Area 10:		
Class 1	15.40	.65
Class 2	15.65	.65
Class 3	15.90	.65
Class 4	17.00	.65
Area 11:		
Class 1	15.75	.30
Class 2	16.00	.30
Class 3	16.25	.30
Class 4	17.35	.30
Area 12:		
Class 1	15.00	1.05
Class 2	15.25	1.05
Class 3	15.50	1.05
Class 4	16.60	1.05
Area 13:		
Class 1	15.50	.55
Class 2	15.75	.55
Class 3	16.00	.55
Class 4	17.10	.55
Area 13:		
Class 1	15.20	.85
Class 2	15.45	.85
Class 3	15.70	.85
Class 4	16.80	.85
Area 15:		
Class 1	13.85	2.65
Class 2	14.10	2.65
Class 3	14.35	2.65
Class 4	15.45	2.65
Area 16:		
Class 1	15.55	.50
Class 2	15.80	.50
Class 3	16.05	.50
Class 4	17.15	.50
Area 17:		
Class 1	14.70	1.90
Class 2	14.95	1.90
Class 3	15.20	1.90
Class 4	16.30	1.90
Area 18:		
Class 1	14.80	1.35
Class 2	14.90	1.35
Class 3	14.95	1.35
Class 4	15.05	1.35

	Basic Hourly Rates	Fringe Benefits
Class 5	15.15	1.35
Class 6	15.25	1.35
Class 7	15.30	1.35
Class 8	15.80	1.35
Class 9	16.325	1.35
Area 19:		
Class 1	14.30	1.85
Class 2	14.40	1.85
Class 3	14.45	1.85
Class 4	14.55	1.85
Class 5	14.65	1.85
Class 6	14.75	1.85
Class 7	14.80	1.85
Class 8	15.30	1.85
Class 9	15.825	1.85
Area 20:		
Class 1	14.00	2.15
Class 2	14.50	2.15
Class 3	14.525	2.15
Class 4	14.275	2.15
Class 5	15.525	2.15
Class 6	14.525	2.15
Area 21:		
Class 1	14.55	1.60
Class 2	15.05	1.60
class 3	15.10	1.60
Class 4	15.85	1.60
Area 22:		
Class 1	15.10	1.05
Class 2	15.20	1.05
Class 3	15.35	1.05
Class 4	15.60	1.05
Class 5	16.625	1.05
Area 23:		
Class 1	14.45	1.65
Class 2	14.70	1.65
Class 3	14.75	1.65
Class 4	14.95	1.65
Area 24:		
Class 1	12.40	1.135
Class 2	12.90	1.139
Class 3	12.65	1.135
Class 4	14.00	1.135
Area 25:		
Class 1	14.25	1.90
Class 2	15.75	1.90
Class 3	14.50	1.90
Area 26:		
Class 1	14.70	1.45
Class 2	14.95	1.45
Class 3	15.55	1.45
Class 4	15.20	1.45

DECISION NO. IL83-2056

LABORERS (HEAVY CONSTRUCTION) CONT'D	Basic Hourly Rates	Fringe Benefits
Area 27:		
Class 1	14.00	2.15
Class 2	14.25	2.15
Class 3	14.26	2.15
Class 4	15.525	2.15
Class 5	14.50	2.15
Class 6	16.60	
Area 28:		
Class 1	14.60	1.60
Class 2	14.85	1.60
Class 3	15.10	1.60
Class 4	16.20	1.60
Area 29:		
Class 1	14.70	1.45
Class 2	14.95	1.45
Class 3	15.55	1.45
Class 4	15.20	1.45
LABORERS (HIGHWAY CONSTRUCTION		
Area 1:		
Class 1	15.70	.45
Class 2	15.80	.45
Class 3	15.95	.45
Class 4	16.20	.45
Class 5	17.225	.45
Area 2 and Area 8:		
Class 1	15.90	.25
Class 2	16.00	.25
Class 3	16.15	.25
Class 4	16.40	.25
Class 5	17.425	.25
Area 3 and Area 29:		
Class 1	14.70	1.45
Class 2	14.80	1.45
Class 3	14.95	1.45
Class 4	15.20	1.45
Class 5	16.225	1.45
Area 4, Area 5, Area 19, and Area 23:		
Class 1	14.30	1.85
Class 2	14.40	1.85
Class 3	14.55	1.85
Class 4	14.80	1.85
Class 5	15.825	1.85
Area 6 and Area 12:		
Class 1	15.10	1.05
Class 2	15.20	1.05
Class 3	15.35	1.05
Class 4	15.60	1.05
Class 5	16.625	1.05
Area 7:		
Class 1	15.80	.35
Class 2	15.90	.35
Class 3	16.05	.35
Class 4	16.30	.35
Class 5	17.325	.35

	Basic Hourly Rates	Fringe Benefits
Area 9 and Area 10:		
Class 1	15.50	.65
Class 2	15.60	.65
Class 3	15.75	.65
Class 4	16.00	.65
Class 5	17.025	.65
Area 11:		
Class 1	15.85	.30
Class 2	15.95	.30
Class 3	16.10	.30
Class 4	16.35	.30
Class 5	17.375	.30
Area 13:		
Class 1	15.60	.55
Class 2	15.70	.55
Class 3	15.85	.55
Class 4	16.10	.55
Class 5	17.125	.55
Area 14:		
Class 1	15.30	.85
Class 2	15.40	.85
Class 3	15.55	.85
Class 4	15.80	.85
Class 5	16.825	.85
Area 15:		
Class 1	13.95	2.20
Class 2	14.05	2.20
Class 3	14.20	2.20
Class 4	14.45	2.20
Class 5	15.475	2.20
Area 16:		
Class 1	15.65	.50
Class 2	15.75	.50
Class 3	15.90	.50
Class 4	16.15	.50
Class 5	17.175	.50
Area 17:		
Class 1	14.80	1.90
Class 2	14.90	1.90
Class 3	15.05	1.90
Class 4	15.30	1.90
Class 5	16.325	1.90
Area 18:		
Class 1	14.80	1.50
Class 2	14.90	1.50
Class 3	15.05	1.50
Class 4	15.30	1.50
Class 5	16.325	1.50
Area 20 and Area 27:		
Class 1	14.00	1.65
Class 2	14.10	1.65
Class 3	14.25	1.65
Class 4	14.50	1.65
Class 5	14.525	1.65

DECISION NO. IL83-2056

LABORERS (HIGHWAY CONSTRUCTION) CONT'D	Basic Hourly Rates	Fringe Benefits
Area 21:		
Class 1	14.55	1.75
Class 2	14.65	1.75
Class 3	14.80	1.75
Class 4	15.05	1.75
Class 5	16.075	1.75
Area 22:		
Class 1	14.35	1.90
Class 2	14.45	1.90
Class 3	14.60	1.90
Class 4	14.85	1.90
Class 5	15.875	1.90
Area 24:		
Class 1	12.45	1.185
Class 2	12.55	1.185
Class 3	12.70	1.185
Class 4	12.95	1.185
Class 5	13.875	1.185
Area 25:		
Class 1	13.60	2.70
Class 2	13.70	2.70
Class 3	13.85	2.70
Class 4	14.10	2.70
Class 5	15.125	2.70

	Basic Hourly Rates	Fringe Benefits
Area 26 and Area 28:		
Class 1	14.70	1.60
Class 2	14.80	1.60
Class 3	14.95	1.60
Class 4	15.20	1.60
Class 5	16.225	1.60
POWER EQUIPMENT OPERATORS:		
Group I	16.67	2.48
Group II	13.89	2.48
Group III	13.24	2.48
Group IV	13.14	2.48
Group V	12.89	2.48
Group VI:		
a.	18.82	2.48
b.	19.12	2.48
c.	14.99	2.48
d.	15.49	2.48
TRUCK DRIVERS:		
Group 1	14.325	1.15 +a
Group II	14.725	1.15 +a
Group III	14.925	1.15 +a
Group IV	15.175	1.15 +a

AREA DEFINITIONS

CARPENTERS & PILEDRIVERMEN

Area 1: Bond, Calhoun, Greene (S. of Apple Creek), Jersey, Macoupin (S 2/3), Madison, & Montgomery (S2/3) Cos.
Area 2: Clinton, Monroe, St. Clair, & Washington Cos.
Area 3: Greene (except S. of Apple Creek) Co.
Area 4: Macoupin (N 1/3), & Montgomery (N 1/3, inclu. Waggoner, Standard City, & North Thereof) Cos.

CEMENT MASONS

Area 1: Bond, Calhoun, Clinton (W. ½, East to but not incl. Carlyle), Greene, Jersey, Macoupin, Madison, Monroe, Montgomery, & St. Clair Cos.
Area 2: Clinton (E ½ incl. Carlyle), & Washington Cos.

ELECTRICIANS

Area 1 - Bond (E ½), Clinton (Huey, Hoffmen & Vic), & Washington (except Venedy Tpw.) Cos.
Area 2: Bond (W ½), Clinton (Rem. of Co.), Macoupin (except Brighton, Athensville, Scottville, Girard & areas N. thereof), Madison (except Alton & Vic.), Monroe, Montgomery (except Portion E. of Butler Grove, Grisham, Hillsboro & Raymond Twp.), St. Clair, & Washington (Venedy Twp.) Cos.
Area 3: Calhoun, Greene, Jersey, Macoupin (Brighton Twp.), & Madison (Alton & Vic.) Cos.

DECISION NO. IL83-2056

AREA DEFINITIONS (CONT'D)

ELECTRICIANS (CONT'D)

Area 4: Macoupin (Athensville, Scottville, Girard & areas N. thereof), & Montgomery (NW part incl. Bois D' Arc, Harvel & Pittman Twps.) Cos.
Area 5: Montgomery (E. of Butler Grove, Grishma, Hillsboro & Raymond Twps.) Cos.

IRONWORKERS

Area 1: Bond, Calhoun, Clinton, Greene (S½), Jersey, Macoupin (Summerville & S. thereof), Madison, Monroe, Montgomery (Litchfield, Hillsboro, & S. thereof), St. Clair, & Washington Cos.
Area 2: Greene (N½), Macoupin (N. of Summerville), & Montgomery (N. of Litchfield & Hillsboro) Cos.

LINE CONSTRUCTION

Area 1: Bond (E ½) & Washington (Okawville & Vendy Twps.) Cos.
Area 2: Bond (W½), Clinton, Macoupin (except N 1/3 & SW Corner), Madison (except E. Alton, Alton, Wood River & Hartford), Monroe, Montgomery (E. of Roundtree, Irving & E. Fork Twps.), St. Clair, & Washington (Okawville & Venedy Twps.) Cos.
Area 3: Calhoun, Greene, Jersey, Macoupin (SW Corner), & Madison (E. Alton, Alton, Wood River & Hartford) Cos.
Area 4: Macoupin (N 1/3) & Montgomery (Rem. of Co.) Cos.

LABORERS

Area 1: Bond Co. (Pocahontus); Macoupin Co. (Gillespie); Washington Co. (Ashley)
Area 2: Macoupin Co. (Carlinville)
Area 3: Clinton Co. (Trenton)
Area 4: Montgomery Co. (Hillsboro)
Area 5: Randolph Co. (Chester)
Area 6: Madison Co. (Glen Carbon)
Area 7: Bond Co. (Greenville); Macoupin Co. (Mt. Olive)
Area 8: Calhoun Co. (Hardin); Madison Co. (Marine)
Area 9: Madison Co. (St. Jacob & Highlands); Washington Co. (Okawville)
Area 10: Macoupin (Stauton)
Area 11: Bond Co. (Sorento); Jersey Co. (Jerseyville)
Area 12: Madison Co. (Troy); Greene Co. (Roodhouse); Montgomery Co. (Litchfield)
Area 13: Madison Co. (Livingston)
Area 14: Washington Co. (Nashville)
Area 15: St. Clair Co. (New Athens)
Area 16: Macoupin Co. (Shipman)
Area 17: Randolph (Sparta)
Area 18: Madison (Alton)
Area 19: Madison Co. (Wood River)
Area 20: Madison Co. (Granite City & Vic.)
Area 21: Madison Co. (Collinsville)
Area 22: Madison Co. (Edwardsville)
Area 23: Monroe Co. (Columbia)
Area 24: St. Clair Co. (Freeburg)

DECISION NO. IL83-2056

AREA DEFINITIONS (CONT'D)

LABORERS (CONT'D)

Area 25: St. Clair Co. (Belleville)
Area 26: St. Clair Co. (Mascoutah)
Area 27: St. Clair Co. (E. St. Louis & Vic)
Area 28: Cinton Co. (Carlyle)
Area 29: St. Clair Co. (O' Fallon)

LABORERS - HEAVY CONSTRUCTION

AREAS 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 17, 13, 14, 15, 16, 17, & 28

Class 1 - General Laborers

Class 2 - Bottom of Sewer Trenches on final Grading, Laying or Caulking of preformed sectional sanitary or storm sewer pipe; (including reinforced concrete tile, but not inclu. box culverts, tin whistles or multiplate culverts); Cutting & Burning w/Torch

Class 3 - Brick, Plaster, Mason Tenders

Class 4 - Dynamite Men

AREA 18 and AREA 19

Class 1 - Common Laborer

Class 2 - Laying Sewer & All Sewer Work; Wrapping Pipe and Handling of Tar & Tar Pots; & Handling Creosote & Creosote Work on Railroad

Class 3 - Open Well Work

Class 4 - Well Digging; Machine & Nozzle Op. on Gunnite; Sandblasting; Rip Rapping Work; Cutting & Welding; High Work - 50 ft. to 100 ft.; Hard Rock Mining

Class 5 - Sandblasting

Class 6 - High Work over 100 ft.

Class 7 - Hooker on Hard Rock Mining; Hod Carrier

Class 8 - Reinforced Concrete Stack Work by Composite Crews, except footing or bases

Class 9 - Handling & Blastng of Dynamite

DECISION NO. IL83-2056

LABORRERS - HEAVY CONSTRUCTION (CONT'D)

AREA 20

Class 1 - General Laborers

Class 2 - Brick, Mason and Plaster Tenders

Class 3 - Oxygen Lancing

Class 4 - Cutting, Burning, & Welding

Class 5 - Dynamiting & Powder Man

Class 6 - Tender w/Dynamiting & Powder Man

AREA 21

Class 1 - General Laborers

Class 2 - Mason Tenders, Plaster Tender

Class 3 - Dynamite Man Tender

Class 4 - Dynamite Man

AREA 22

Class 1 - General Laborers

Class 2 - Men Working on Sewer Work from Building to Main Sewer, Water lines and Conduit Work; Main Sewer Top Men; Asphalt & Mastic Paving

Class 3 - Men Working in Main Sewer Ditch; Men Handling Cutting Torch

Class 4 - Mason & Plasterer Tenders

Class 5 - Dynamite & Powder Men

AREA 23

Class 1 - General Laborer

Class 2 - Air Tools, Cutting Torch & Welding (not inclu. Jackhammer), Bottom of Sewer Trenches on the Final Grading, Laying or Caulking of Preformed Sectional Sewer Pipe, High Work 50 ft. or more, (only where free fall is 50' or more)

Class 3 - Cooking of Mastic, Coal Tar Derivatives, or Handling of Creosoted Materials

Class 4 - Dynamite & Blasting (4 hr. min.); Mason Tender & Plasters' Tender

DECISION NO. IL83-2056

CLASSIFICATION DEFINITIONS (CONT'D)

AREA 24

Class 1 - Common Laborer

Class 2 - Brick, Plaster & Mason Tenders

Class 3 - Workmen Cutting & Burning w/Torch; Men Working on Bottom of Sewer

Class 4 - Dynamite Men

AREA 25

Class 1 - Commom Laborer

Class 2 - Dynamite Men & Powder Man

Class 3 - Burning & Cutting w/Torch; Raking or Luting Asphalt

AREA 26 and AREA 29

Class 1 - Common Laborer

Class 2 - Men Working on Bottom doing Caulking, Laying or Final Grading for sectional sewer pipe

Class 3 - Dynamite Men

Class 4 - Masons & Plasterers' Tenders

AREA 27

Class 1 - General Laborer; Diamond Point Drill Operator

Class 2 - Septic Tanks, Cess Pools or Dry Wells, new or old; Sand-blasting Work; Handling Creosoted Materials, Raking or Luting Asphalt; Burning & Cutting w/ a Torch; Working Labor Foreman; Feeders, Mixers & Nozzle Men on Gunnite

Class 3 - Bottom of Sewer Trenches on the final Grading; Laying or Caulking of Preformed Sewer Pipe

Class 4 - Dynamite & Powder Men

Class 5 - Plasterers Hod Carriers

DECISION NO. IL83-2056

CLASSIFICATION DEFINITIONS (CONT'D

Class 6 - Mason Tender

LABORERS (HIGHWAY CONSTRUCTION)

ALL AREAS

Class 1 - General Laborers

Class 2 - Asphalt Raker; & Applying, Cooking & Heating of all Mastic; Weighman on Asphalt Platform

Class 3 - Men on Bottom of Sewer Trenches on the Final Grading, Laying or Caulking of preformed Pipe (including reinforced concrete tile but not including box culverts), Tin Whistles, Multi-plate Culverts

Class 4 - Brick Mason Tender

Class 5 - Dynamite Men

POWER EQUIPMENT OPERATORS

Group I - Cranes, Draglines, Shovels, Skimmer Scoops, Clamshells or Derrick Boats, Pile Drivers, Crane-Type Backhoes, Asphalt Plant Opers. Plant Opers., Ditching Machines or Backfillers (requiring oilers), Dredges, Asphalt Spreading Machines, Heavy Duty Mechanic, Ass't. Master Mechanic, All Locomotives, Cableways or Tower Machines, Hoists 2 drum or more (where oiler or fireman is required), Hoists-2 drum or more (where oiler or fireman is not required) Hydraulic Backhoes, Ditching Machines or Backfiller (not required oilers) Cherry Pickers, Overhead Cranes, Roller (Steam or Gas) Concrete Pavers, Excavators, Concrete Breakers, Concrete Pumps, Bulk Cement Plants, Cement Pumps, Derrick-Type Drills, Mixers (over 3 bags) and Boats Oprs. (25' & over), Motor Graders or Pushcats, Scoops or Tournapulls, Bulldozers, Endloaders or Fork-Lifts, Power Blade or Elevating Graders, Winch Cats, Boom Tractors, and Pipe Wrapping or Painting Machines, Drills (other than derrick type) 1-drum-hoists, Mud Jacks, Mixers (2 or 3 bags), Conveyors (2), Air Compressors (2), Water Pumps regardless of size (2), Welding Machines (2) Siphons or Jets (2), Winch Heads or Apparatus (2) and Light Plants (2), Mixers (under 2 bags), all Tractors regardless of size (Straight Tractor Only), Firemen on Stationary Boilers, Automatic Elevators, Form Grading Machines, Finishing Machines, Power-Sub-Grader or Ribbon Machine, Longitudinal Floats, Boat Oprs. (under 25 ft., conveyors (1), Distribution Oprs. On Trucks,Siphons or Jets (1) Winches Heads or Apparatuses (1), Light Plants (1) Mixers (under 2 bags)

DECISION NO. IL83-2056

CLASSIFICATIONS DEFINITIONS (CONT'D)

POWER EQUIPMENT OPERATORS (CONT'D)

Group II - Air Compressor (1), Water Pumps regardless of size (1) Welding Machines (1)

Group III - Firemen and Asphalt Spreader Oilers
Group IV - Heavy Equipment Oilers (truck cranes, dredges, monigans, large cranes, etc.)

Group V - Oilers

Group VI:
a. Engineers Operating under air pressure
b. Engineers Operating in air over 10 lbs. pressure
c. Oilers operating under air pressure
d. Oilers operating in air over 10 lbs. pressure

CLASSIFICATION DEFINITIONS (CONT'D)

TRUCK DRIVERS

Group I - Drivers on 2 Axles hauling less than 9 tons; Air Compressor & Welding Machine incl. those pulled by separate units; Fork Lifts up to 6,000 lbs. cap.; Mechanic Tenders; Pick-ups when hauling materials, tools, or men to and from and on the job site; & Truck Driver Tenders

Group II - 2 or 3 Axles hauling more than 9 tons, but hauling less than 16 tons; A-Frame winches; Fork Lifts over 6,000 lbs. cap.; 4-Axle Combination Units; Hydrolifts or similar equipment when used for transportation purposes; & Winches

Group III - 2, 3, or 4 Axles hauling 16 tons or more; Dispatcher; 5-Axles or more combination units; Mechanic & Working Foreman; & Water Pulls

Group IV - Drivers on Oiler Distributors & Drivers on Semi-Lowboys when moving equipment

FOOTNOTE:
a. 51.00 Per Week, Per Employee

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: ILLINOIS COUNTY: WINNEBAGO
DECISION NO.: IL83-2062 DATE: Date of Publication
Supersedes Decision No.: IL82-2002, dated January 29, 1982 in 47 FR 4463
DESCRIPTION OF WORK: Residential Construction Projects consisting of single family homes and apartments up to and including 4 stories

	Basic Hourly Rates	Fringe Benefits	Basic Hourly Rates	Fringe Benefits
BRICKLAYERS; Blocklayers	$15.89	$2.81		
CARPENTERS; Drywall Hangers	13.89	3.22		
CEMENT MASONS	14.97	3.40		
ELECTRICIANS	9.15	3½%+ 1.65		
LABORERS	13.10	2.915		
PAINTERS:				
Repaint	14.39	2.45		
New Work	15.39	2.45		
PLUMBERS; Steamfitters	17.98	2.53		
ROOFERS	16.97	1.68		
SHEET METAL WORKERS	15.93	3.23		
WELDERS - Rate for Craft to which welding is incidental.				

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a) (1) (ii)).

SUPERSEDEAS DECISION

STATE: Iowa COUNTIES: ZONE 1-Black Hawk;ZONE 2-Cerro Gordo;ZONE 3-Clinton;ZONE 4-Des Moines;ZONE 5-Dubuque; ZONE 6-Johnson;ZONE 7-Linn & ZONE 8-Polk

DECISION NO.: IA83-4056 DATE: Date of Publication
Supersedes Decision NO. IA82-4030, dated June 18, 1982, in 47 FR 26537.
DESCRIPTION OF WORK: Building (does not include single family homes & apartments up to & including 4 stories). DOES NOT APPLY TO WATER & SEWER TREATMENT PLANTS.

	Basic Hourly Rates	Fringe Benefits
Asbestos Workers:		
ZONES: 1,3,4,5,6 & 7	$16.86	$2.40
ZONES: 2 & 8	16.17	3.155
Boilermakers	17.345	3.00
Bricklayers & Stonemasons:		
ZONE 1	12.93	2.52
ZONE 2	13.99	1.07
ZONE 3	14.28	1.22
ZONE 4	13.03	1.00
ZONE 5	13.84	.57
ZONE 6 & 7	15.54	.57
ZONE 8	13.60	2.82
Carpenters:		
ZONE 1:		
Carpenters, soft floor layers, piledrivermen	9.00	2.78
Millwrights	9.60	2.78
ZONE 2:		
Carpenters & soft floor layers	10.91	1.65
Millwrights & pile-drivermen	11.16	1.65
ZONE 3:		
Carpenters	12.83	2.71
Piledrivermen	13.33	2.71
Millwrights	16.00	3.70
ZONE 4:		
Remodeling (change appearance or purpose of any type of present existing structures) & renovation (for any work on or replacement of any existing machinery, or structures, or related manufacturing items, within any type of manufacturing complex:		
Carpenters	12.45	2.55
Millwrights	13.15	2.55
All other work:		
Carpenters	13.25	2.55
Millwrights/Pile-drivermen	13.95	2.55

	Basic Hourly Rates	Fringe Benefits
Carpenters (Cont'd):		
ZONE 5:		
Carpenters	12.87	1.04
Piledrivermen	13.27	1.04
Millwrights	13.37	1.04
ZONES 6 & 7:		
Carpenters & soft floor layers	11.74	1.93
Piledrivermen	12.24	1.93
Millwrights	15.00	3.70
ZONE 8:		
Carpenters	12.75	2.20
Millwrights & pile-drivermen	13.10	2.20
Drywall	13.50	2.20
Cement Masons:		
ZONE 1	9.00	2.50
ZONE 2	11.45	
ZONE 3	13.78	1.22
ZONE 4	17.65	
ZONE 5	13.93	
ZONE 6 & 7	11.72	1.00
ZONE 8	13.72	.94
Electricians:		
ZONE 1: Electricians	15.64	.65+ 3-3/4%
Cable Splicers	16.11	.65+ 3-3/4%
ZONE 2	15.26	.65+ 3-3/4%
ZONE 3: Electricians	16.64	1.36+ 8%
Cable Splicers	17.64	1.36+ 8%
ZONE 4	16.72	1.55+ 3-3/4%
ZONE 5	14.95	1.80+ 3-3/4%
ZONE 6 & 7	16.52	2.35+ 3-3/4%
ZONE 8	15.68	2.70+ 3-3/4%
Elevator Constructors:		
ZONES 1,5,6 & 7:		
Mechanics	15.08$	2.69+a
Helpers	70%JR	2.69+a
Helpers (prob.)	50%JR	

	Basic Hourly Rates	Fringe Benefits
Elevator Constructors (Cont'd):		
ZONE 8:		
Mechanics	15.01	2.465 +a
Helpers	70%JR	2.645 +a
Helpers (prob.)	50%JR	
Glaziers:		
ZONES 2 & 8	13.64	1.31+ 4.35% +b
ZONES 3,4,5, 6 & 7	15.71	1.77
Ironworkers:		
ZONE 1	10.70	1.96
ZONE 5 (except S.E. part of Dubuque Co.)	12.26	2.00
ZONES 2 & 8	13.26	2.44
ZONE 3 & S.E. part of Dubuque Co.	16.45	2.785
ZONE 4	16.25	2.15
ZONES 6 & 7	12.26	2.00
Laborers:		
ZONE 1 - Group 1	7.35	1.60
Group 2	7.50	1.60
Group 3	7.70	1.60
ZONE 2 - Group 1	7.99	.70
Group 2	8.24	.70
Group 3	8.49	.70
ZONE 3:		
All jobs totaling over $500,000:		
Group 1	11.63	1.35
Group 2	11.88	1.35
Group 3	11.93	1.35
All jobs totaling $500,000 or less:		
Group 1	8.72	1.35
Group 2	8.97	1.35
Group 3	9.02	1.35
ZONE 4:		
Construction laborer (all projects with a total volume of $200,000 & under) or projects with a total volume of $325,000 & under for remodeling & additions which change the appearance or purpose of any type of present existing structures & renovation for any work or replacement of any existing machinery or structures or related manufacturing items, within any type of manufacturing complex:	10.00	1.70

	Basic Hourly Rates	Fringe Benefits
Laborers (Cont'd):		
ZONE 4 (Cont'd):		
Construction laborer (all other work)	11.00	1.70
Powderman	11.00	1.70
Mason tender	11.16	1.70
Creosote & tarring	11.50	1.70
ZONE 5	10.65	.90
ZONE 6	9.50	1.50
ZONE 7	9.61	1.56
ZONE 8 - Group 1	11.875	1.64
Group 2	11.975	1.64
Group 3	12.00	1.64
Group 4	12.025	1.64
Group 5	12.075	1.64
Group 6	12.175	1.64
Lathers:		
ZONE 1	9.00	2.78
ZONE 3	12.83	2.71
ZONE 5	12.87	1.04
ZONES 6 & 7	11.74	1.93
ZONE 8	13.50	2.20
Line Construction (excluding ZONES 3 & 5):		
Group 1: Lineman; all rigs setting assembled "H" fixtures, steel stansmission structures & transmission concrete structures	15.65	.65+ 7-1/2% +c
Group 2: Blaster	12.52	"
Group 3: Special equipment operations (hole digging machines, all tractors, transmission line pole hauling & setting equipment other than assembled "H" fixtures	12.99	.65+ 7-1/2% +c
Group 4: Groundman	10.17	"
Group 5: Groundman - truck driver	10.33	"
Group 6: Pole treating truck driver	10.02	"
Group 7: Pole treating specialist	12.05	"

	Basic Hourly Rates	Fringe Benefits
Marble, Tile & Terrazzo Workers & Finishers:		
ZONE 1- Tile Setters	12.88	.90
ZONE 3 - Marble Setters	14.28	1.22
ZONE 5 - Marble Setters	13.84	.57
ZONES 6 & 7 - Tile Setters	13.93	.80
ZONE 8:		
Marble, tile & terrazzo workers	14.79	
Marble, tile & terrazzo finishers	12.09	
Painters:		
ZONE 1:		
Brush or roller	12.68	.83
Paper & vinyl hanging	13.28	.83
Sandblasting	13.43	.83
Spray	13.58	.83
ZONE 2:		
Brush or roller	13.55	.80
Spray	14.05	.80
Paper & vinyl hanging sandblasting	14.15	.80
ZONE 3:		
Brush or roller	12.50	3.49
Spray; structural steel; sandblasting; drywall tapers	13.00	3.49
ZONE 4:		
Brush & paperhangers; drywall finishers	13.00	.50
Roller	13.10	.50
Structural steel (over 25 ft.)	13.70	.50
Spray & sandblast	14.00	.50
Sign	13.50	.50
ZONE 5:		
Brush & roller; paperhanging; taping drywall	11.50	1.60
High work & steel; spray	12.05	1.60
ZONES 6 & 7:		
Brush, roller, tapers & finishers	13.50	.03
Paperhangers	13.75	.03
Structural Steel	14.00	.03
Spray	14.00	.03
Sandblasting	14.00	.03
ZONE 8:		
Brush or roller	14.02	.85
Paperhanger	14.27	.85
Sandblaster; spray; swing stage & boatswain chair; structural steel	14.52	.85

	Basic Hourly Rates	Fringe Benefits
Plasterers:		
ZONE 1	11.75	.45
ZONE 2	9.00	
ZONE 3	14.28	1.22
ZONE 4	17.28	
ZONE 5	13.50	
ZONES 6 & 7	16.47	
ZONE 8	13.795	.90
Plumbers & Pipefitters:		
ZONE 1	15.96	3.74
ZONE 2	11.35	1.65
ZONE 3	16.95	2.50
ZONE 4	16.15	2.80
ZONE 5	14.92	1.98
ZONES 6 & 7	16.05	1.87
ZONE 8	15.74	3.15
Power Equipment Operators:		
ZONES 1,2,5,6, 7 & 8:		
Group 1	13.47	2.20
Group 2	13.215	2.20
Group 3	11.52	2.20
Group 4	10.695	2.20
ZONES 3 & 4:		
Group 1	15.25	2.98
Group 2	13.85	2.98
Group 3	12.80	2.98
Roofers:		
ZONE 1	12.76	
ZONE 2	9.52	
ZONE 3	15.60	2.66
ZONE 4	14.13	
ZONE 5	12.16	.50
ZONES 6 & 7	11.95	
ZONE 8	12.25	2.05
Sheet Metal Workers:		
ZONE 1	15.56	1.66
ZONE 2	12.43	1.86
ZONES 3 & 4	16.08	2.98
ZONE 5	14.33	2.98
ZONES 6 & 7	17.20	1.11
ZONE 8	15.56	2.98
Sprinkler Fitters	16.47	2.83
Truck Drivers:		
ZONE 1	7.47	1.88

	Basic Hourly Rates	Fringe Benefits
Truck Drivers (Cont'd): ZONE 8:		
Pickups, dumpsters	$9.83	$96.50 per wk. +e
Winch trucks dumpcrete & scoopmobiles	9.88	96.50 per wk. +e
Semis	9.98	96.50 per wk. +e
Tandem trucks	10.08	96.50 per wk. +e

WELDERS: Receive rate prescribed for craft performing operation to which welding is incidental.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5(a)(1)(ii)).

FOOTNOTES

a - Employer contributes 8% of basic hourly rate for over 5 yrs. service & 6% of basic hourly rate for 6 mos. to 5 yrs. service as Vacation Pay Credit. Also Seven Paid Holidays A thru G.
b - Six Paid Holidays A thru E + G
c - Seven Paid Holidays A thru G
d - 1 week vacation with pay with 1 yr. service; 2 weeks vacation with pay after 2 yrs. service & 3 weeks vacation with pay after 10 yrs. service.
e - All employees accumulating 1 yr. service shall receive & take 1 week vacation with pay. All employees accumulating 3 yrs. or more of service shall receive & take 2 weeks vacation with pay. All employees accumulating 10 yrs. or more of service shall receive & take 3 weeks vacation with pay.

PAID HOLIDAYS - A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-the Friday after Thanksgiving Day; G-Christmas Day

CLASSIFICATION DEFINITIONS

LABORERS-ZONE 1
Group 1 - Common laborers; carpenter tenders; moving, wrecking & demolition
Group 2 - Mason tenders; hod carriers; machine & air tool operators
Group 3 - Powderman

LABORERS-ZONE 2
Group 1 - Construction laborers; tenders; power tools, barco ops.; mortar mixers; concrete saw; sand point setter
Group 2 - Caissons, after 6 ft. depth; dynamite men; gunniting-nozzleman & backup man; laborers working on swinging stage work, wood hoist, towers, scaffolds or ladders at a height of 35 ft. or over
Group 3 - Laborers working on swinging stage work, wood hoist, towers, scaffold or ladders at a height of 75 ft. or over

LABORERS-ZONE 3
Group 1 - Common laborers

LABORERS-ZONE 8
Group 1 - General laborers
Group 2 - Mortar mixers; mortor buggies when pouring concrete; power tool ops. (air tools, concrete, vibrator, gunnite nozzlemen, electric drills & hammers)
Group 3 - Plasterers' tenders
Group 4 - Powdermen
Group 5 - Air tool, power tampers & other similar self-powered tools weighing 50 lbs. & over
Group 6 - Paving breakers weighing 50 lbs. and over

POWER EQUIPMENT OPERATORS - ZONES 1,2,5,6,7 & 8
Group 1 - Cranes, incl. those being used as backhoe, dragline, clamshell, etc.; tower cranes; electric overhead cranes; truck cranes & cherry pickers 12-1/2 ton & over rated capacity; derricks; piledrivers & extractors; caisson rigs; sideboom & winch truck used for erection of structural steel & moving & setting of heavy machinery; 3 drum hoist; welders; mechanics; locomotive; dredge (levermen); mechanic
Group 2 - 1 & 2 drum hoists; air & electric tuggers (on power plants or setting steel or grating); economobiles; plant mixers; farm type tractors (with loaders, backhoes, attachments, etc.); scrapers (tournapull, etc.); endloaders; dredge engineer); sideboom & winch truck other than Group No. 1; motor patrol; bulldozers; push cat; truck cranes & cherry pickers (under 12-1/2 ton); concrete mixers (1 yd. & over); ditching machines (8" & over); fork lifts (on steel erection & machinery moving or hoisting above one complete story); concrete pump; temporary hoist cage operated; second man on locomotive; vibrating concrete spreader (Gomaco, C-450 or equal); working boat (tug, tow, etc.); group greaser

DECISION NO.: IA83-4056 CLASSIFICATION DEFINITIONS - (Cont'd)

POWER EQUIPMENT OPERATORS - ZONES 1,2,5,6,7 & 8 (Cont'd):

Group 3 - Tractors (under 35 HP) with or without attachments; endloaders (under 35 HP) with or without attachments; firemen (boiler); fork lifts (other than Group No. 2); gunnite machine; self-propelled rollers; stump chippers; self-propelled tampers; air & electric tuggers other than above); ditching machine under 8"; pile threader

Group 4 - Mechanical heaters; truck crane drivers; permanent elevators; air compressors (one or a combination of 400 cfm. or more); pumps 3" or over; welding machines 600 amps or combination thereof; conveyors; generator (75 KW & over); dewatering pumps; boat used for personnel transport or as a safety boat

POWER EQUIPMENT OPERATORS - ZONES 3 & 4

Group 1 - All hoists or steel erecting equip.; Crane, Shovel, Clamshell, Dragline, Backhoe, Derrick, Tower Crane, Cableway, Concrete Spreader (servicing 2 pavers), Asphalt Spreader, Asphalt Mixer Plant Engineer, Dipper Dredge Op.; Dipper Dredge Craneman, Dual Purpose Truck (boom or winch), Leverman or Engineman (hydraulic dredge), Mechanic, Paving Mixer with tower attached (2 ops. required), Piledriver, Boom Tractor, Stationary, Portable or Floating Mixing Plant, Trenching Machine (over 40 HP), Building Hoist (2 drums), Hot Paint Wrapping Machine, Cleaning & Priming Machine, Backfiller (throw bucket), Locomotive Engineer, Qualified Welder, Tow or Push Boat, Concrete Paver, Seaman Trav-L-Plant or similar machines, CMI Autograder or similar machines, Slip Form Paver, Caisson Augering Machine, Mucking Machine, Asphalt Heater-Planer Unit, Hydraulic Cranes, Mine Hoists; Athey, Barber-Green, Euclid or Haiss Loader, Asphalt Pug Mill, Fireman & Drier, Concrete Spreader (servicing 1 paver), Bulldozer, Endloader, Log Chippers or similar machines, Elevating Grader, Group Equipment Greaser, LeTourneaupull & similar machines, DW-10, Hyster Winch & similar machines, Motor Patrol, Power Blade, Push Cat, Tractor Pulling Elevating Grader or Power Blade, Tractor operating Scoop or Scraper, Tractor with Power Attachments, Roller on Asphalt or Blacktop, Single Drum Hoist, Jaeger Mix & Place Machine, Pipe Bending Machine, Flexaplane or similar machines, Automatic Curbing Machines, Automatic Cement & Gravel Batch Plant (1 stop set-up), Seaman Pulvi-Mixer or similar machines, Blastholer self-propelled Rotary Drill or similar machines, Work Boat, Combination Concrete Finishing Machine & Float, Self-propelled Sheepsfoot Roller or Compactor (used in conjunction with Grading Spread), Asphalt Spreader Screen Op., Aspco Spreader or similar machine, Slusher, Forklift (over 6000 lbs. capacity or working at heights above 28 ft.), Concrete Conveyors, Concrete Pump

Group 2 - Asphalt Booster, Fireman & pump Op. at Asphalt Plant, Mud Jack, Underground Boring Machine, Concrete Finishing Machines, Form Grader with Roller on Earth, Mixers (3 bag to 16 E), Power Operated Bull Float, Tractor without Power attachment, Dope Pot (agitating motor), Dope Chop Machine, Distributor (back end), Straddle Carrier, Portable Machine Fireman, Hydro-Hammer, Power Winch on Paving Work, Self-propelled Roller or Compactor (other than provided for above), Pump Op. (more than 1 well point pump), Portable Crusher, Trench Machine (under 40 HP), Power Subgrader (on forms) or similar machines, Forklift (6000 lbs. or less capacity), Gypsum Pump, Conveyor over 20 HP, Fuller Kenyon Cement Pump or similar machines; Air Compressors (275 CFM or over), Driver on Truck Crane or similar machines, Light Plant, Mixers (1 or 2 bag), Power Batching Machines (Cement Auger or Conveyor), Boiler (Engineer or Fireman), Water Pumps, Mechanical Broom, Automatic Cement & Gravel Batch Plant (2 or 3 stop set-up), Small Rubber-tired Tractors (not including backhoes or endloaders), Self-propelled curing machine

Group 3 - Oiler, Mechanical Heater (other than steam boiler), Belt Machine, Small Outboard Motor Boat, Engine Driven Welding Machine

SUPERSEDEAS DECISION

STATE: MINNESOTA COUNTIES: *SEE BELOW
DECISION NUMBER: MN83-2057 DATE: Date of Publication
Supersedes Decision No. MN82-2064 dated November 26, 1982 in 47 FR 53622
DESCRIPTION OF WORK: Building (Including Residential) Construction Projects

*COUNTIES: ANOKA, CARVER, DAKOTA, HENNEPIN, RAMSEY, SCOTT, & WASHINGTON

	Basic Hourly Rates	Fringe Benefits
ASBESTOS WORKERS	$18.32	3.65
BOILERMAKERS	17.345	3.00
BRICKLAYERS; Stonemasons	16.88	2.69
CARPENTERS; Millwrights; & Piledrivermen:		
Commercial Building:		
Carpenters & Piledrivermen	15.86	3.62
Millwrights	15.01	3.12
Residential Carpenters	13.06	3.62
Site Preparation, Excavation & Incidental Paving:		
Carpenters & Piledrivermen	17.41	2.05
CEMENT MASONS:		
Building	17.03	2.02
Site Preparation, Excavation & Incidental Paving	17.03	2.02
ELECTRICIANS:		
Anoka (Anoka & Fridley Twps. & the cities of Andover, Anoka, Columbia Heights, Coon Rapids, Fridley, Hilltop, Ramsey & Spring Lake Park), Carver, Hennepin, & Scott Counties:		
Commercial Building:	17.76	
Electricians	17.76	26 3/4%
Cable Splicers	18.26	26 3/4%
Residential Electricians	15.44	20½%
Anoka (Remainder of Co.) & Remaining Counties:		
Commercial Building:		
Electricians	16.80	10½%+ 3.59
Cable Splicers	16.95	10½%+ 3.59
Residential Electricians	13.75	17.5% +.20
ELEVATOR CONSTRUCTORS:		
Mechanic	17.99	2.69+a
Helpers	70%JR	2.69+a
Helpers (Prob.)	50%JR	

	Basic Hourly Rates	Fringe Benefits
GLAZIERS	17.65	1.31
IRONWORKERS	17.10	3.39
LATHERS; Drywall Hangers	14.13	3.46
MARBLE SETTERS	17.30	1.79
MARBLE SETTERS' FINISHERS	11.40	1.12
PAINTERS:		
Dakota, Ramsey & Washington Cos.:		
Brush, Drywall Finisher; & Paperhanger	15.12	1.82
Sandblaster; Spray & Structural Steel	15.82	1.82
Drywall Sander	11.34	1.82
Remaining Cos.:		
Brush; Roller; & Wallpaper	16.06	2.43
Sandblaster; Spray; & Structural Steel	16.81	2.43
Sanders	12.76	1.47
Tapers	17.01	1.47
PIPEFITTERS; Plumbers; & Steamfitters:		
Steamfitters:		
Dakota, Ramsey & Washington Cos.:		
Plumbers	16.52	3.44
Pipefitters; Steamfitters	18.37	3.43
Remaining Cos.:		
Plumbers	14.95	6.85+b
Pipefitters; Steamfitters	17.99	3.81
PLASTERERS:		
Dakota, Ramsey, & Washington Cos.	14.05	3.72
Remaining Cos.	14.90	2.87
ROOFERS	15.28	2.18
SHEET METAL WORKERS:		
Anoka, Dakota, Ramsey & Washington Cos.	19.19	2.27
Remaining Cos.	19.66	2.20
SOFT FLOOR LAYERS:		
Anoka, Carver, Dakota, Hennepin, Ramsey, & Washington Cos.	15.78	3.02

DECISION NO. MN83-2057

	Basic Hourly Rates	Fringe Benefits
SPRINKLER FITTERS:		
Carver Co.	16.47	2.83
Remaining Cos.	16.88	3.28
TERRAZZO WORKERS	18.32	.89
TERRAZZO WORKERS' FINISHERS	17.67	.65
TILE SETTERS	17.25	1.72
TILE SETTERS' FINISHERS	14.65	1.32+c
LABORERS (Excluding Residential of 4 units or less): Landscape & Sodlayers	6.80	1.10
Building Construction:		
Class 1	14.00	2.60
Class 2	14.15	2.60
Class 3	14.40	2.60
Class 4	14.70	2.60
Site Preparation, Excavation & Incidental Paving		
Class 1	13.65	2.60
Class 2	13.80	2.60
Class 3	13.85	2.60
Class 4	14.00	2.60
Class 5	14.10	2.60
Class 6	14.35	2.60
POWER EQUIPMENT OPERATORS:		
Building Construction:		
Class 1	19.34	2.15
Class 2	19.00	2.15
Class 3	18.20	2.15
Class 4	17.59	2.15
Class 5	17.25	2.15
Class 6	17.08	2.15
Class 7	15.57	2.15
Class 8	14.45	2.15
Class 9	13.89	2.15

	Basic Hourly Rates	Fringe Benefits
Site Preparation, Excavation & Incidental Paving:		
Class 1	15.60	2.40
Class 2	15.10	2.40
Class 3	14.93	2.40
Class 4	14.82	2.40
Class 5	12.86	2.40
Class 6	12.15	2.40
TRUCK DRIVERS:		
Building Construction:		
Group 1: Boom Truck Op.	14.90	2.10
Group 2: Ready-Mix; & Tractor Trailer	14.55	2.10
Group 3: Fork Lift Op.; Mechanic; & Tandem or 3 Axle	14.45	2.10
Group 4: Dumpman; Farm Tractor; & Single or 2 Axle	13.60	2.10
Site Preparation, Excavation & Incidental Paving:		
Group 1	10.90	1.30
Group 2	10.45	1.30
Group 3	10.35	1.30
Group 4	10.15	1.30

LABORERS CLASSIFICATIONS:

Building Construction:

CLASS 1: General; Carpenter Tender; Concrete; Damp Proofer below grade; Drill Runner Tender; Dumpman - dirt, asphalt, concrete, cement; Heater Tender; Hot Tar Caulker - corker; Joist Handler; Material Handler - all types Power Buggy; Rebar; Snow Blower Operator; & Tool Crib Checker

CLASS 2: Chain Saw Operator; Concrete Saw, Drill Operator; Concrete Vibrator; Demolition & Wrecking excluding remodeling; Mason Tender; Mortar Mixer - cement or any other substitute material or composition; Pipe Handler; Pneumatic & Electric Tools, Jackhammer, Paving Buster, Chipping Hammer, Tamper Operator, etc.; Swing Stage Line Scaffold (not including "patent" Scaffolding); & Torchman - gas, electric, thermal or similar device

CLASS 3: Caisson Work; Nozzle Operator - Gunite, Cement, Sandblasting; Pipelayer; Refractory Worker; Sheeting Setter & Drivers, Heavy Building Excavation; Underground Work - open ditch or excavation 8' below grade; & Underpinning

CLASS 4: Driller for Blasting purposes; Dynamite Blasters or substitute products Tovex TR, water, gas, gel, bristar, silent Dynamite, etc.

Site Preparation, Excavation & Incidental Paving:

CLASS 1: Unskilled; Bituminous Batcherman (stationary plant); Blacksmith Tenders; Cement Coverman Batch Truck; Cement Handler - Bulk, Bag; Carpenter Tender; Concrete Batcherman; Concrete Handler, Caisson, Footings, Columns, Piling, Slabs, etc.; Concrete Shoveler, Tamper & Puddler (paving); Concrete Longitudinal Floatman (manual bullfloat on paving); Damp Proofer below grade; Drill Runner Tender; Dumpman (dirt, paver, dumping batchtrucks, etc.); Hydrant & Valve Setter; Joint Filler (concrete pavement); Kettleman (bituminous or lead); Labor Wrecking Demolition; Landscape Gardener, sod, etc.; Pipe Derrickman (tripod, manual); Pipe Handler; Power Buggy Operator; Powder Monkey; Reinforced Steel Laborer; Reinforced Steel Setter (paving); Service Connection Maker (water, gas); Squeegeeman; Stablizing Batcherman (stationary plant); Temporary Heater & Blower Tender; Tool Crib Checker; Top Man (sewer, water or gas trench); Winch Handler (manual)

CLASS 2: Bituminous Worker - Shoveler, Raker, Floater, Squeegee, Utility; Brick Tender; Compaction Equipment (hand operated); Conduit Layer; Curb Setter; Mortar Mixer; Sand Cushion Bedmaker; Torchman - gas, electric, thermal or similar device

CLASS 3: Chain Saw; Concrete Drilling; Concrete Mixer Operator; Concrete Sawer; Concrete Vibrator; Ditch & other work more than 8 ft. below starting level of manual work; Formsetter; Joint Sawer, Mortar; Pneumatic Tools, Jackhammer, Paving Buster, Chipping Hammer, etc.; Stone Tender; & Mason Tender

CLASS 4: Bottom Man (sewer, water or gas trench) (more than 8 ft. below starting level of manual work); Brick or Block Paving Setter; Caisson Work; Cofferdam Work; Tunnel Laborer; Underground Laborer; & Underpinning

CLASS 5: Cement Gun Operator (1½" or over); Driller - Air Track or similar; Nozzleman (gunite, sandblasting, cement); & Pipelayer, Laser Beam (sewer, water, gas)

CLASS 6: Blaster Powder Man (dynamite or substitute products); Tunnel Miner (atmospheric); & Tunnel Miner Tender

POWER EQUIPMENT OPERATORS CLASSIFICATIONS:

Building Construction:

CLASS 1 - Helicopter Operator; Truck & Crawler Cranes with 300' of Boom and over, including jib; Tower Crane 300' & over

CLASS 2 - Truck & Crawler Crane w/200' of Boom, up to and not including 300' of Boom, including jib; Tower Crane 250' & over

CLASS 3 - Truck & Crawler Cranes with 150' of Boom, up to and not including 200' of Boom, including jib; Tower Crane 200' & over

CLASS 4 - Traveling Tower Crane; Master Mechanic; Pile Driving Operator; Tower Crane 150' & over

CLASS 5 - Truck & Crawler Cranes up to & not including 150' of Boom, including jib; Derrick (Guy & Stiffleg); Hoist Engineer (3 drums or more); Locomotive Operator; Overhead Crane Operator (Inside Building Perimeter); Tower Cranes - Stationary 100' & over; Tractor Operator with Boom; All Terrain Vehicle Cranes; Fireman, Chief License.

CLASS 6 - Air Compressor Operator, 450 CFM or over, Pump Operator and/or Conveyor Operator (2 or more machines); Hoist Engineer (2 drum); Mechanic or Welder; Pumpcrete or Complaco-type Machine Operator; Forklift; Boom Truck Operator; Concrete Mixer Op.; Drill Rigs - Heavy Rotary or Churn when used for caisson drilling for Elevator Cylinder or Building Construction; Front End Loader Operator; Hoist Engineer (one drum); Straddle Carrier Operator; Power Plant Engineer (100 KW and over on multiples equal to 100 KW and over); Tractor Operator over D2; Well Point Pump Operator

CLASS 7 - Concrete Batch Plant Operator; Fireman, First Class License; Gunite Operator; Tractor Operator D-2 or similar size; Front End Loader Operator, up to 1 cu. yd.

CLASS 8 - Air Compressor Operator, 450 CFM or over, Pump and/or Conveyor Operator; Fireman, Temporary Heat; Brakeman; Pick-up Sweeper (1 cu. yd. and over hopper capacity); Truck Crane Oiler; Welding Machine Operator

CLASS 9 - Mechanical Space Heater (temporary heat); Oiler or Greaser; Elevator Operator

Site Preparation, Excavation & Incidental Paving:

CLASS 1: Helicopter Pilot; Crane with over 135' Boom, excluding jib; Dragline and/or other similar equipment with Shovel-type controls 3 cu. yds. & over Mfg. rated cap.; Pile Driving when 3 Drums are in use

CLASS 2: Cableway; Concrete Mixer, Stationary Plant over 34E; Derrick (Guy or Stiffleg) (Power) (Skids or stationary); Dragline and/or similar equipment with Shovel-type controls, up to 3 cu. yds. Mfg. rated cap.; Dredge or Engineers, Dredge (power) & Engineer; Front End Loader, 5 cu. yds. & over; Grader or Motor Patrol, Finishing Earthwork & Bituminous; Locomotive Crane; Master Mechanic; Mixer (Paving) Concrete Paving, Road; Mole, inclu. Power Supply; Mucking Machine, inclu. Mucking Operations, Conway or similar type; Piledriving; Refrigeration Plant Engineer; Tandem Scraper; Tractor - Boom type; Truck Crane - Crawler Crane; & Tugboat - 100 HP & over

CLASS 3: Dual Tractor; Elevating Grader; Pumpcrete; Scraper - Struck Cap. 32 cu. yds. & over; Self-propelled Traveling Soil Stabilizer

POWER EQUIPMENT OPERATORS CLASSIFICATIONS (CONT'D):

CLASS 4: Air Track Rock Drill; Asphalt Bituminous Stabilizer Plant; Automatic Road Machine (CMI or similar); Backfiller; Batch Plant (Concrete); Bituminous Spreader & Finishing (Power); Boom Truck (Power operated Boom); Cat Tractors with Rock Wagons or similar types; Chip Harvester & Tree Cutter over 150 HP; Concrete Mixer on jobsite over 14S; Concrete Mobile; Crushing Plant (gravel & stone) or Gravel Washing, Crushing & Screening Plant; Curb Machine; Dope Machine (Pipeline); Drill Rigs, Heavy Rotary or Churn or Cable Drill; Fork Lift or Straddle Carrier; Fork Lift or Lumber Stacker; Front End Loader, over 1 cu. yd.; Hoist Engineer (power); Launcherman (Tankerman or Pilot License); Lead Greaser; Locomotive; Mechanic or Welder; Multiple Machines, such as Air Compressors, Welding Machines, Generators, Pumps; Paving Breaker or Tamping Machine (Power Driven) Mighty Mite or similar type; Paving Milling Machine; Pickup Sweeper, 1 cu. yd. & over Hopper cap.; Pipeline Wrapping, Cleaning or Bending Machine; Power Plant Engineer, 100 K.W.H. & over; Power Actuated Horizontal Boring Machine, over 6"; Pugmill; Roller, 8 tons & over; Rubber-tired Farm Tractor, Backhoe Attach.; Sheep Foot Rollers; Slip Form (Power Driven) (paving); Tie Tamper & Ballast Machine; Tractor, over D2, TD6 or similar HP with Power Take-off; Tractor, over 50 HP without Power Take-off; Trenching Machine (sewer, water, gas); Turnapull (or similar type); Well Point Installation, Dismantling or Repair Mechanic; Hydraulic Tree Planter

CLASS 5: Air Compressor, 450 CFM or over; Bituminous Spreader & Bituminous Finishing Machine (Tender) (Power); Concrete Distributor & Spreader Finishing Machine; Longitudinal Float, Joint Machine, & Spray; Concrete Mixer on jobsite 14S & under; Concrete Saw (multiple blade) (power operated); Form Trench Digger (power); Front End Loader, up to & inclu. 1 cu. yd.; Grader (motor patrol); Gunite Gunall; Hydraulic Log Splitter; Loader (Barber Greene or similar type); Payhauler or similar type; Power Actuated Augers & Boring Machine; Power Actuated Jacks; Pump; Roller; Self-propelled Chip Spreader (Flaherty or similar); Shouldering Machine (Power) Apsco or similar type inclu. self-propelled Sand & Chip Spreader; Stump Chipper; Tractor, D2, TD6 or similar HP without power take-off; & Tree Farmer

CLASS 6: Conveyor; Dredge Deck Hand; Fireman or Tank Car Heater; Gravel Screening Plant (portable not crushing or washing); Greaser (Truck or Tractor); Leverman; Mechanic Tender; Mechanic, Space Heater (Temporary Heat); Oiler (Power Shovel, Crane, Dragline); Self-Propelled Vibrating Packer (Pad type) (35 HP & over); Tractor, 50 HP or less w/o Power take-off; & Truck Crane Oiler

TRUCK DRIVERS:

Site Preparation, Excavation & Incidental Paving:

GROUP 1: Truck Driver (Operation of Hand & Power Operated winches); Truck Trains; Mechanic-Welder; Tractor Trailer; & Off Road

GROUP 2: Tri Axle (Inclu. 4 Axles)

GROUP 3: Bituminous Distributor; & Tandem Axle

GROUP 4: Bituminous Distributor Spray Operator (Rear End Oiler); Dumpman; Tank Truck Tender (gas, oil, road oil & water); Teamster & Stableman; Tractor Operator (wheel type used for any purpose); Pilot Car; Self-propelled Packer; Slurry Operator; Single Axle; Dump; Dry Batch Hauler; Boom & "A" Frame; & Ready-Mix Concrete

PAID HOLIDAYS:

A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Day after Thanksgiving; & G-Christmas Day

FOOTNOTES:

a. Employer contributes 8% of regular hourly rate to vacation pay credit for employees who have worked in the business more than 5 years, 6% for employees who have worked in business less than 5 years; 7 Paid Holidays: A through G

b. 1 Paid Holiday: D

c. 2 weeks' paid vacation

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 DECISIONS

STATE: MINNESOTA

COUNTIES: Benton, Sherburne, & Stearns

DECISION NUMBER: MN83-2058

DATE: Date of Publication

Supersedes Decision No. MN82-2069 dated December 27, 1982 in 48 FR 57612

DESCRIPTION OF WORK: Building (Including Residential) Construction Projects

	Basic Hourly Rates	Fringe Benefits
ASBESTOS WORKERS	$18.32	3.65
BOILERMAKERS	17.345	3.00
BRICKLAYERS; Stonemasons	13.24	.50
CARPENTERS:		
Building Construction:		
Benton (Little Rock & Skaja) Co.:		
Carpenters	11.45	
Millwrights	16.86	3.12
Benton (Rem. of Co.), Sherburn (Except Southern Tip), & Stearns Cos.:		
Carpenters; Millwrights; & Pile-drivermen	15.53	.70
Sherburne (Southern Tip) Co.:		
Carpenters; Pile-drivermen	15.86	3.62
Soft Floor Layers	15.78	3.02
Millwrights	16.86	3.12
Residential	13.06	3.62
Site Preparation, Excavation, & Incidental Paving:		
Benton (Northern ¾, exclu. Foley) Co.	16.47	
Benton (Southern 3/4, inclu. Foley), Sherburne (NW 3/4, inclu. Clear Lake & Becker), & Stearns Cos.	15.02	1.45
Sherburne (SE ¼, incl. Big Lake, Elk River & Zimmerman) Co.	17.41	2.05
CEMENT MASONS; Plasterers:		
Building Construction:		
Benton & Stearns Cos.	12.45	.50
Sherburne Co.:		
Cement Masons	17.03	2.02
Plasterers	14.90	2.87
CEMENT MASONS:		
Site Preparation, Excavation & Incidental Paving Sherburne Co.	17.03	2.02

	Basic Hourly Rates	Fringe Benefits
ELECTRICIANS:		
Benton, Sherburne (Haven, Palmer, Santiago, Becker & Clear Lake Twps.), & Stearns Cos.:		
Installations over $75,000	15.75	13.5% +1.32
Installations under $75,000	13.31	13.5% +1.32
Sherburne (Rem. of Co.) Co.:		
Commercial Building:		
Electricians	16.80	10½% +3.59
Cable Splicers	16.95	10½% +3.59
Residential	13.75	17.5% +.20
GLAZIERS:		
Sherburne (S. part, inclu. Big Lake & Elk River) Co.	17.65	1.31
Remaining Area	11.47	.40
IRONWORKERS	17.10	3.39
LABORERS:		
Building Construction:		
Benton & Stearns Cos.:		
General; Demolition & Wrecking; & Concrete Joint Saw Operator	12.80	.95
Power Buggy Operators	12.85	.95
Mortar Mixers; Plasterers' Tenders	12.90	.95
Jackhammer Men	12.95	.95
Underground; Caisson; Cofferdam; & Tunnel Work	13.05	.95
Dynamite Men & Pipelayers	13.10	.95
Sherburne Co.:		
Common; Carpenters-Tenders	14.00	2.60
Wrecking & Demolition; Vibrator Operator; Jackhammermen; & Mortar Mixers	14.15	2.60
Underground Work; Pipelayers; Caisson Work - Underpinning	14.40	2.60

DECISION NO. MN83-2058

	Basic Hourly Rates	Fringe Benefits
LATHERS; Drywall Hangers	$14.13	3.46
MARBLE SETTERS	17.30	1.79
MARBLE SETTERS' FINISHERS	11.40	1.12
PAINTERS:		
Benton, Sherburne (Western 1/3 of Co.), & Stearns Cos.:		
Sanders	9.35	1.59
Brush	12.48	1.59
Spray; Steel	13.48	1.59
Tapers	12.47	1.59
Sherburne (Eastern 2/3) Co.:		
Brush; Paperhangers; & Rollers	16.06	2.43
Sandblasting; Spray; & Steel	16.81	2.43
Sanders	12.76	1.47
Tapers	17.01	1.47
PLUMBERS; Steamfitters:		
Benton, Sherburne (Western ½), & Stearns Cos.	15.62	2.54
Sherburne (Eastern ½) Co.:		
Plumbers	14.95	6.85 +a
Steamfitters; Pipefitters	17.99	3.81
ROOFERS	13.07	1.48
SHEET METAL WORKERS	16.01	1.72
SPRINKLER FITTERS	16.47	2.83
TERRAZZO WORKERS	18.32	.89
TERRAZZO WORKERS' FINISHERS	17.67	.65
TILE SETTERS	17.25	1.72
TILE SETTERS' FINISHERS	14.65	1.32 +b
TRUCK DRIVERS (Building):		
Benton & Stearns Cos.	12.80	
Sherburne Co.:		
Boom Truck Operator	14.90	2.10
Ready-Mix; Tractor Trailer	14.55	2.10
Mechanic; Fork Lift Operator; Tandem or 3 Axle	14.45	2.10
Farm Tractor; Single or 2 Axle, Dumpmen	13.60	2.10
LABORERS (All work, except Residential of 4 units or less):		

	Basic Hourly Rates	Fringe Benefits
Landscape & Sod Layers	6.80	1.10
LABORERS:		
Site Preparation, Excavation, & Incidental Paving:		
Benton & Stearns Cos.:		
Class 1	12.50	2.50
Class 2	12.65	2.50
Class 3	12.70	2.50
Class 4	12.85	2.50
Class 5	12.95	2.50
Class 6	13.20	2.50
Sherburne Co.:		
Class 1	13.65	2.60
Class 2	13.80	2.60
Class 3	13.85	2.60
Class 4	14.00	2.60
Class 5	14.10	2.60
Class 6	14.35	2.60
POWER EQUIPMENT OPERATORS:		
Building Construction:		
Class 1	19.34	2.15
Class 2	19.00	2.15
Class 3	18.20	2.15
Class 4	17.59	2.15
Class 5	17.25	2.15
Class 6	17.08	2.15
Class 7	15.57	2.15
Class 8	14.45	2.15
Class 9	13.89	2.15
Site Preparation, Excavation & Incidental Paving:		
Benton (East of the Western Right-of-Way of Hwy #10), Sherburne (Exclu. area South of the Northern Boundary of T-33-N & East of the Western Boundary of R-27-W), & Stearns (East of the Western Right-of-Way of Minn. Hwy #15) Cos.:		
Group 1	15.08	2.40
Group 2	14.57	2.40
Group 3	14.42	2.40
Group 4	14.30	2.40
Group 5	12.35	2.40
Group 6	11.65	2.40

DECISION NO. MN83-2058

	Basic Hourly Rates	Fringe Benefits
POWER EQUIPMENT OPERATORS (CONT'D)		
Benton (Rem. of Co.) & Stearns (Rem. of Co.) Cos.:		
Group 1	13.42	2.40
Group 2	12.56	2.40
Group 3	12.38	2.40
Group 4	12.28	2.40
Group 5	10.97	2.40
Group 6	10.49	2.40
Sherburne (Rem. of Co.) Co.:		
Group 1	15.60	2.40
Group 2	15.10	2.40
Group 3	14.93	2.40
Group 4	14.82	2.40
Group 5	12.86	2.40
Group 6	12.15	2.40

Basic Hourly Rates	Fringe Benefits

LABORERS CLASSIFICATIONS (Site Preparation, Excavation, & Incidental Paving):

CLASS 1: Unskilled; Bituminous Batcherman (stationary plant); Blacksmith Tenders; Cement Coverman Batch Truck; Cement Handler - Bulk, Bag; Carpenter Tender; Concrete Batcherman; Concrete Handler, Caisson, Footings, Columns, Piling, Slabs, etc.; Concrete Shoveler, Tamper & Puddler (paving); Concrete Longitudinal Floatman (manual bullfloat on paving); Damp Proofer below grade; Drill Runner Tender; Dumpman (dirt, paver, dumping batchtrucks, etc.); Hydrant & Valve Setter; Joint Filler (concrete pavement); Kettleman (bituminous or lead); Labor Wrecking Demolition; Landscape Gardener, sod, etc.; Pipe Derrickman (tripod, manual); Pipe Handler; Power Buggy Operator; Powder Monkey; Reinforced Steel Laborer; Reinforced Steel Setter (paving); Service Connection Maker (water, gas); Squeegeeman; Stablising Batcherman (stationary plant); Temporary Heater & Blower Tender; Tool Crib Checker; Top Man (sewer, water or gas trench); Winch Handler (manual)

CLASS 2: Bituminous Worker - Shoveler, Raker, Floater, Squeegee, Utility; Brick Tender; Compaction Equipment (hand operated); Conduit Layer; Curb Setter; Mortar Mixer; Sand Cushion Bedmaker; Torchman - gas, electric, thermal or similar device

CLASS 3: Chain Saw; Concrete Drilling; Concrete Mixer Operator; Concrete Sawer; Concrete Vibrator; Ditch & other work more than 8 ft. below starting level of manual work; Formsetter; Joint Sawer, Mortar; Pneumatic Tools, Jackhammer, Paving Buster, Chipping Hammer, etc.; Stone Tender; & Mason Tender

CLASS 4: Bottom Man (sewer, water or gas trench) (more than 8 ft. below starting level of manual work); Brick or Block Paving Setter; Caisson Work; Cofferdam Work; Tunnel Laborer; Underground Laborer; & Underpinning

CLASS 5: Cement Gun Operator (1½" or over); Driller - Air Track or similar; Nozzleman (gunite, sandblasting, cement); & Pipelayer, Laser Beam (sewer, water, gas)

CLASS 6: Blaster Powder Man (dynamite or substitute products); Tunnel Miner (atmospheric); & Tunnel Miner Tender

POWER EQUIPMENT OPERATORS CLASSIFICATIONS (Building Construction):

CLASS 1 - Helicopter Operator; Truck & Crawler Cranes with 300' of Boom and over, including jib; Tower Crane 300' & over

CLASS 2 - Truck & Crawler Crane w/200' of Boom, up to and not including 300' of Boom, including jib; Tower Crane 250' & over

CLASS 3 - Truck & Crawler Cranes with 150' of Boom, up to and not including 200' of Boom, including jib; Tower Crane 200' & over

CLASS 4 - Traveling Tower Crane; Master Mechanic; Pile Driving Operator; Tower Crane 150' & over

CLASS 5 - Truck & Crawler Cranes up to & not including 150' of Boom, including jib; Derrick (Guy & Stiffleg); Hoist Engineer (3 drums or more); Locomotive Operator; Overhead Crane Operator (Inside Building Perimeter); Tower Cranes - Stationary 100' & over; Tractor Operator with Boom; All Terrain Vehicle Cranes; Fireman, Chief License.

CLASS 6 - Air Compressor Operator, 450 CFM or over, Pump Operator and/or Conveyor Operator (2 or more machines); Hoist Engineer (2 drum); Mechanic or Welder; Pumpcrete or Complaco-type Machine Operator; Forklift; Boom Truck Operator; Concrete Mixer Op.; Drill Rigs - Heavy Rotary or Churn when used for caisson drilling for Elevator Cylinder or Building Construction; Front End Loader Operator; Hoist Engineer (one drum); Straddle Carrier Operator; Power Plant Engineer (100 KW and over on multiples equal to 100 KW and over); Tractor Operator over D2; Well Point Pump Operator

POWER EQUIPMENT OPERATORS CLASSIFICATIONS (Building Construction) CONT'D:

CLASS 7 - Concrete Batch Plant Operator; Fireman, First Class License; Gunite Operator; Tractor Operator D-2 or similar size, Front End Loader Operator, up to 1 cu. yd.

CLASS 8 - Air Compressor Operator, 450 CFM or over, Pump and/or Conveyor Operator; Fireman, Temporary Heat; Brakeman; Pick-up Sweeper (1 cu. yd. and over hopper capacity); Truck Crane Oiler; Welding Machine Operator

CLASS 9 - Mechanical Space Heater (temporary heat); Oiler or Greaser; Elevator Operator

POWER EQUIPMENT OPERATORS CLASSIFICATIONS (Site Preparation, Excavation, & Incidental Paving):

CLASS 1: Helicopter Pilot; Crane with over 135' Boom, excluding jib; Dragline and/or other similar equipment with Shovel-type controls 3 cu. yds. & over Mfg. rated cap.; Pile Driving when 3 Drums are in use

CLASS 2: Cableway; Concrete Mixer, Stationary Plant over 34E; Derrick (Guy or Stiffleg) (Power) (Skids or stationary); Dragline and/or similar equipment with Shovel-type controls, up to 3 cu. yds. Mfg. rated cap.; Dredge or Engineers, Dredge (power) & Engineer; Front End Loader, 5 cu. yds. & over; Grader or Motor Patrol, Finishing Earthwork & Bituminous; Locomotive Crane; Master Mechanic; Mixer (Paving) Concrete Paving, Road; Mole, inclu. Power Supply; Mucking Machine, inclu. Mucking Operations, Conway or similar type; Piledriving; Refrigeration Plant Engineer; Tandem Scraper; Tractor - Boom type; Truck Crane - Crawler Crane; & Tugboat - 100 HP & over

CLASS 3: Dual Tractor; Elevating Grader; Pumpcrete; Scraper - Struck Cap. 32 cu. yds. & over; Self-propelled Traveling Soil Stabilizer

CLASS 4: Air Track Rock Drill; Asphalt Bituminous Stabilizer Plant; Automatic Road Machine (CMI or similar); Backfiller; Batch Plant (Concrete); Bituminous Spreader & Finishing (Power); Boom Truck (Power operated Boom); Cat Tractors with Rock Wagons or similar types; Chip Harvester & Tree Cutter over 150 HP; Concrete Mixer on jobsite over 14S; Concrete Mobile; Crushing Plant (gravel & stone) or Gravel Washing, Crushing & Screening Plant; Curb Machine; Dope Machine (Pipeline); Drill Rigs, Heavy Rotary or Churn or Cable Drill; Fork Lift or Straddle Carrier; Fork Lift or Lumber Stacker; Front End Loader, over 1 cu. yd.; Hoist Engineer (power); Launcherman (Tankerman or Pilot License); Lead Greaser; Locomotive; Mechanic or Welder; Multiple Machines, such as Air Compressors, Welding Machines, Generators, Pumps; Paving Breaker or Tamping Machine (Power Driven) Mighty Mite or similar type; Paving Milling Machine; Pickup Sweeper, 1 cu. yd. & over Hopper cap.; Pipeline Wrapping, Cleaning or Bending Machine; Power Plant Engineer, 100 K.W.H. & over; Power Actuated Horizontal Boring Machine, over 6"; Pugmill; Roller, 8 tons & over; Rubber-tired Farm Tractor, Backhoe Attach.; Sheep Foot Rollers; Slip Form (Power Driven) (paving); Tie Tamper & Ballast Machine; Tractor, over D2, TD6 or similar HP with Power Take-off; Tractor, over 50 HP without Power Take-off; Trenching Machine (sewer, water, gas); Turnapull (or similar type); Well Point Installation, Dismantling or Repair Mechanic; Hydraulic Tree Planter

CLASS 5: Air Compressor, 450 CFM or over; Bituminous Spreader & Bituminous Finishing Machine (Tender) (Power); Concrete Distributor & Spreader Finishing Machine; Longitudinal Float, Joint Machine, & Spray; Concrete Mixer on jobsite 14S & under; Concrete Saw (multiple blade) (power operated); Form Trench Digger (power); Front End Loader, up to & inclu. 1 cu. yd.; Grader (motor patrol); Gunite Gunall; Hydraulic Log Splitter; Loader (Barber Greene or similar type); Payhauler or similar type; Power Actuated Augars & Boring Machine; Power Actuated Jacks; Pump; Roller; Self-propelled Chip Spreader (Flaherty or similar); Shouldering Machine (Power) Apsco or similar type inclu. self-propelled Sand & Chip Spreader; Stump Chipper; Tractor, D2, TD6 or similar HP without power take-off; & Tree Farmer

CLASS 6: Conveyor; Dredge Deck Hand; Fireman or Tank Car Heater; Gravel Screening Plant (portable not crushing or washing); Greaser (Truck or Tractor); Leverman; Mechanic Tender; Mechanic, Space Heater (Temporary Heat); Oiler (Power Shovel, Crane, Dragline); Self-Propelled Vibrating Packer (Pad type) (35 HP & over); Tractor, 50 HP or less w/o Power take-off; & Truck Crane Oiler

TRUCK DRIVERS CLASSIFICATIONS (Site Preparation, Excavation, & Incidental Paving):

GROUP 1: Truck Driver (Operation of Hand & Power Operated winches); Truck Trains; Mechanic-Welder; Tractor Trailer; & Off Road

GROUP 2: Tri Axle (Inclu. 4 Axles)

GROUP 3: Bituminous Distributor; & Tandem Axle

GROUP 4: Bituminous Distributor Spray Operator (Rear End Oiler); Dumpman; Tank Truck Tender (gas, oil, road oil & water); Teamster & Stableman; Tractor Operator (wheel type used for any purpose); Pilot Car; Self-propelled Packer; Slurry Operator; Single Axle; Dump; Dry Batch Hauler; Boom & "A" Frame; & Ready-Mix Concrete

FOOTNOTES:

a. One Paid Holiday: Labor Day

b. 2 Weeks' Paid Vacation

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) (i) (ii)).

SUPERSEDEAS DECISION

DECISION NO. MN83-2059

PAGE 2

STATE: MINNESOTA
DECISION NUMBER: MN83-2059
Supersedes Decision No. MN82-2067 dated December 10, 1982 in 47 FR 55580
DESCRIPTION OF WORK: Building (Including Residential) Construction Projects

COUNTIES: *SEE BELOW
DATE: Date of Publication

*CARLTON, COOK, ITASCA, KOOCHICHING, LAKE, & ST. LOUIS

	Basic Hourly Rates	Fringe Benefits
ASBESTOS WORKERS	$19.15	$1.46
BOILERMAKERS	17.345	3.00
BRICKLAYERS; Stonemasons:		
Carlton, Cook, Lake, & St. Louis (S. of a line bet. Twp. 54 & 55 to 2 mi. N. of Cotton) Cos.	14.73	1.70
Itasca & St. Louis (Rem. of Co.) Cos.	14.73	1.70
Koochiching Co.	17.45	1.10
CARPENTERS; Millwrights; Piledrivermen; & Soft Floor Layers:		
Building Construction:		
Carlton Co.:		
Carpenters; Piledrivermen; & Soft Floor Layers	15.00	1.60
Millwrights	15.54	1.60
Cook, Lake (S. part), & St. Louis (Alborn, Arnold, Bartlett, Birch, Brookston, Canyon, Culver, Duluth, Floodwood, Cowan Island, Kelsey, Lakewood, Meadowlands, Munger, Palmers, Payne, Prosit, Shaw, & Taft) Cos.:		
Carpenters; Piledrivermen; & Soft Floor Layers	14.65	2.15
Millwrights	15.05	2.15
Itasca (Ball Club, Bass Lake, Bigfork, Blackberry, Bovey, Bowstring, Calumet, Cohasset, Coleraine, Deer River, Dora Lake, Effie, Grand Rapids, Inger, Marble, Marcell, Max, Spring Lake, Square Lake, Talmoon, Warba & Wirt) Co.:		
Carpenters; Soft Floor Layers	14.64	1.40

CARPENTERS (CONT'D):	Basic Hourly Rates	Fringe Benefits
Gheen, Greaney, Hibbing, Kelly Lake, Nett Lake, Orr, Side Lake, Silica, & Toivola) Cos.:		
Carpenters; Piledrivermen; & Soft Floor Layers	$15.04	$1.00
Itasca (Rem. of Co.) Co.:		
Carpenters	15.00	.60
Koochiching & St. Louis (Ashe Lake, Crane Lake, Kabetogama & Kinmount) Cos.:		
Carpenters; Millwrights; & Soft Floor Layers	14.35	.70
Lake (N. part) & St. Louis (Allen Junction, Aurora, Babbitt, Britt, Biwabik, Buyck, Casco, Central Lakes, Cook, Cusson, Ely, Embarrass, Eveleth, Florenton, Forbes, Gilbert, Hoyt Lakes, Indington, Iron Junction, Makinen, Mountain Iron, Sax, Shermans Corner, Sherwood, Skibo, Soudan, Tower, Virginia, Wahlsten, Winton, & Zim) Cos.:		
Carpenters; & Soft Floor Layers	14.49	1.95
Millwrights	17.32	
CARPENTERS; Piledrivermen: Site Preparation, Excavation, & Incidental Paving:		
Carlton Co.	16.13	1.60
Cook, Lake (S ½, inclu. Two Harbors, Isabella, & Finland), & St. Louis (S 1/3, inclu. Fond du Lac, Floodwood, Cotton, & Proctor) Cos.	15.58	2.15
Itasca (Cass Lake & Ball Club) Co.	16.33	1.40
Itasca (E. strip, inclu. Keewatin, & Nashwauk), & St. Louis (W. strip, inclu. Chisholm, Orr, & Greaney) Cos.	16.73	1.00

CARPENTERS (CONT'D):	Basic Hourly Rates	Fringe Benefits
Itasca (W. strip) Co.	$14.37	$.60
Koochiching (SE Corner) Co.	13.97	1.00
Koochiching (Exclu SE Corner) Co.	14.27	.70
Lake (N ½) & St. Louis (NE 2/3 inclu. Cook, Cusson, & Ely) Cos.	15.78	1.95
St. Louis (City limits of Duluth) Co.	15.98	2.15
St. Louis (N. part, inclu. Rainy Lake Area) Co.	17.03	.70
CEMENT MASONS; Plasterers:		
Building Construction:		
Carlton, Cook, Lake, & St. Louis (Exclu. area N. of White Face River) Cos.:		
Cement Masons	12.645	.40
Plasterers	12.50	.85
Itasca & St. Louis (N. of White Face River) Cos.:		
Cement Masons	15.48	.70
Plasterers	12.95	.40
Koochiching Co.:		
Cement Masons	17.10	1.10
ELECTRICIANS:		
Carlton, Cook, Itasca (S. part, inclu. Blackberry, Goodland, & Wawina), Lake, & St. Louis (bounded on the north by the lines of Kelsey Twp. extended East & West) Cos.	15.75	30½%
Itasca (Exclu. section S. of a line extending East & West of the South line of Grand Rapids & Trout Lake Twp.), Koochiching, & St. Louis (Northern part bounded by the South line of Ellsburg Twp. extended East & West) Cos.:		
Excluding Residential installations less than $15,000.00:		
Electricians	15.93	20½%
Cable Splicers	16.48	20½%
Residential installations less than $15,000.00	11.95	20½%

	Basic Hourly Rates	Fringe Benefits
ELEVATOR CONSTRUCTORS:		
Lake & St. Louis Cos.:		
Mechanics	$15.03	$2.69+a
Helpers	70%JR	2.69+a
Helpers (Prob.)	50%JR	
GLAZIERS:		
Itasca Co.	11.47	.40
IRONWORKERS	15.22	3.22
LATHERS:		
Lake & St. Louis Cos.	12.85	.40
MARBLE SETTERS	17.30	1.79
MARBLE SETTERS' FINISHERS	11.40	1.12
PAINTERS:		
Commercial Building:		
Brush	14.61	1.53
Paperhangers; Spray; Steel; & Tapers	15.21	1.53
Residential	10.00	1.53
PLUMBERS; Steamfitters:		
Carlton, Cook (S ½), Lake (S ½), & St. Louis (S ½) Cos.	17.36	3.35
Itasca, Cook (N ½), Lake (N ½), & St. Louis (N ½) Cos.	15.80	3.30
Koochiching Co.	16.90	2.25
ROOFERS:		
Roofers	13.78	3.30
2nd Roofers	13.53	3.30
Kettlemen	13.33	3.30
SHEET METAL WORKERS:		
Carlton, Cook, Lake, & St. Louis (S 1/3) Cos.	16.63	3.78
Itasca, Koochiching, & St. Louis (N 2/3) Cos.	15.57	2.99
SPRINKLER FITTERS	16.47	2.83
TERRAZZO WORKERS	18.32	.89
TERRAZZO WORKERS' FINISHERS	17.67	.65
TILE SETTERS:		
St. Louis (Duluth) Co.	14.93	1.20
Remaining Areas	17.25	1.72
TILE SETTERS' FINISHERS	14.65	1.32+b

	Basic Hourly Rates	Fringe Benefits
TRUCK DRIVERS:		
Building Construction:		
Carlton, Cook, Itasca (E. of T.H. 6), Lake, & St. Louis Cos.:		
Boom Truck Operator	$14.90	2.10
Ready Mix Tractor Trailer	14.55	2.10
Fork Lift Operator; Mechanic; & Tandem or 3 Axles	14.45	2.10
Dumpman; Farm Tractor; & Single or 2 Axles	13.60	2.10
Itasca (Rem. of Co.) & Koochiching Cos.:	10.40	
LABORERS:		
Landscape & Sod Layer for all work, exclu. Residential of 4 units or less	6.80	1.10
Building Construction:		
Carlton, Cook, Lake, & St. Louis (S. of T 55N) Cos.:		
Common	9.85	1.45
Burning Torch-Demolition; Carpenter Tender; Concrete Buster; Concrete Saw - Core Drill; Concrete Vibrator Op.; Damp Proofer - below grade; Handling Creosote; Jackhammer Op.; Mason Tender; Mortar Mixer; Nozzleman on Concrete Pump; & Power Buggy Op.	9.95	1.45
Itasca, Koochiching, & St. Louis (N. of T 55N) Cos.:		
Class 1	10.40	.65
Class 2	10.50	.65
Class 3	10.60	.65
Class 4	10.65	.65
Class 5	10.75	.65
Class 6	10.80	.65

	Basic Hourly Rates	Fringe Benefits
LABORERS:		
Site Preparation, Excavation, & Incidental Paving:		
Carlton, Cook, Lake, & St. St. Louis (S. of T 55N) Cos.:		
Class 1	13.53	2.40
Class 2	13.68	2.40
Class 3	13.73	2.40
Class 4	13.88	2.40
Class 5	13.98	2.40
Class 6	14.23	2.40
Itasca & St. Louis (N. of T 55N) Cos.:		
Class 1	13.98	1.95
Class 2	14.13	1.95
Class 3	14.18	1.95
Class 4	14.33	1.95
Class 5	14.43	1.95
Class 6	14.68	1.95
Koochiching Co.:		
Class 1	10.60	1.15
Class 2	10.75	1.15
Class 3	10.80	1.15
Class 4	10.95	1.15
Class 5	11.05	1.15
Class 6	11.30	1.15
POWER EQUIPMENT OPERATORS:		
Building Construction:		
Class 1	19.34	2.15
Class 2	19.00	2.15
Class 3	18.20	2.15
Class 4	17.59	2.15
Class 5	17.25	2.15
Class 6	17.08	2.15
Class 7	15.57	2.15
Class 8	14.45	2.15
Class 9	13.89	2.15

	Basic Hourly Rates	Fringe Benefits
POWER EQUIPMENT OPERATORS:		
Site Preparation, Excavation, & Incidental Paving:		
Carlton, Itasca (E. of the Western right-of-way of Minn. Hwy 6), & Koochiching (E. of a N-S line from the Canadian border to Pelland, the S Western right-of-way of U. S. Hwy 71, from Pelland to Big Falls & Minn. Hwy 6) Cos.:		
Group 1	15.08	2.40
Group 2	14.57	2.40
Group 3	14.42	2.40
Group 4	14.30	2.40
Group 5	12.35	2.40
Group 6	11.65	2.40
Cook, Lake, & St. Louis Cos.:		
Group 1	15.60	2.40
Group 2	15.10	2.40
Group 3	14.93	2.40
Group 4	14.82	2.40
Group 5	12.86	2.40
Group 6	12.15	2.40
Itasca (Rem. of Co.) & Koochiching (Rem. of Co.) Cos.:		
Group 1	13.42	2.40
Group 2	12.56	2.40
Group 3	12.38	2.40
Group 4	12.28	2.40
Group 5	10.97	2.40
Group 6	10.49	2.40

	Basic Hourly Rates	Fringe Benefits
TRUCK DRIVERS:		
Site Preparation, Excavation, & Incidental Paving:		
Carlton, Cook, Itasca (E. of T.H. 6), Lake, & St. Louis Cos.:		
Group 1	$10.90	$1.30
Group 2	10.45	1.30
Group 3	10.35	1.30
Group 4	10.15	1.30
Itasca (Rem. of Co.), & Koochiching Cos.:		
Group 1	9.72	1.30
Group 2	9.27	1.30
Group 3	9.17	1.30
Group 4	8.97	1.30

FOOTNOTES:

a. Employer contributes 8% of regular hourly rate to vacation pay credit for employees who have worked in the business more than 5 years, 6% for employees who have worked in business less than 5 years; 7 Paid Holidays: New Year's Day; Memorial Day; Independence Day; Labor Day; Thanksgiving Day; Day After Thanksgiving; & Christmas Day

b. 2 weeks' paid vacation

LABORERS CLASSIFICATIONS (Building Construction):

Itasca, Koochiching, & St. Louis (N. of T 55N) Cos.:

CLASS 1: Common; Concrete Shoveler; Damp Proofer below grade; Steel Joist Handler; Salamander & Gas Heater Tender; Snow Blower Operator; Tamper; & Reinforced Steel

CLASS 2: Carpenter Tender; Bricklayer Tender; Mason Tender; Stone Mason Tender; Jackhammer Operator; Pavement Breaker Operator; Cement Handler (bulk or bag); Cement, Mortar or any other substitute or composition mixer - mixer, one bag; Concrete Vibrator Operator; Concrete Puddler; Hand Cement Mixer; Hand Frame or Pnuematic Concrete & Power Operated Tamper Operator; Chipping Hammer Operator; Power Buggy Operator; Kettleman; Pump Operator 3" & Under; & Torchman Demolition

CLASS 3: Cement Gun Operator; Nozzleman; Concrete Saw - Core Drill; Gunite Machine Operator; & Underground work which is 8 ft. or more below the adjoining ground where the excavation is not more than 8 ft. wide

CLASS 4: Pipe Handler (water, gas, cast iron & non-metallic)

CLASS 5: Pipe Layer - non-metallic

CLASS 6: Power Chain Saw Operator

LABORERS CLASSIFICATIONS (Site Preparation, Excavation, & Incidental Paving):

CLASS 1: Unskilled; Bituminous Batcherman (stationary plant); Blacksmith Tenders; Cement Coverman Batch Truck; Cement Handler - Bulk, Bag; Carpenter Tender; Concrete Batcherman; Concrete Handler, Caisson, Footings, Columns, Piling, Slabs, etc.; Concrete Shoveler, Tamper & Puddler (paving); Concrete Longitudinal Floatman (manual bullfloat on paving); Damp Proofer below grade; Drill Runner Tender; Dumpman (dirt, paver, dumping batchtrucks, etc.); Hydrant & Valve Setter; Joint Filler (concrete pavement); Kettleman (bituminous or lead); Labor Wrecking Demolition; Landscape Gardener, sod, etc.; Pipe Derrickman (tripod, manual); Pipe Handler; Power Buggy Operator; Powder Monkey; Reinforced Steel Laborer; Reinforced Steel Setter (paving); Service Connection Maker (water, gas); Squeegeeman; Stablizing Batcherman (stationary plant); Temporary Heater & Blower Tender; Tool Crib Checker; Top Man (sewer, water or gas trench); Winch Handler (manual)

CLASS 2: Bituminous Worker - Shoveler, Raker, Floater, Squeegee, Utility; Brick Tender; Compaction Equipment (hand operated); Conduit Layer; Curb Setter; Mortar Mixer; Sand Cushion Bedmaker; Torchman - gas, electric, thermal or similar device

CLASS 3: Chain Saw; Concrete Drilling; Concrete Mixer Operator; Concrete Sawer; Concrete Vibrator; Ditch & other work more than 8 ft. below starting level of manual work; Formsetter; Joint Sawer, Mortar; Pneumatic Tools, Jackhammer, Paving Buster, Chipping Hammer, etc.; Stone Tender; & Mason Tender

CLASS 4: Bottom Man (sewer, water or gas trench) (more than 8 ft. below starting level of manual work); Brick or Block Paving Setter; Caisson Work; Cofferdam Work; Tunnel Laborer; Underground Laborer; & Underpinning

CLASS 5: Cement Gun Operator (1½" or over); Driller - Air Track or similar; Nozzleman (gunite, sandblasting, cement); & Pipelayer, Laser Beam (sewer, water, gas)

CLASS 6: Blaster Powder Man (dynamite or substitute products); Tunnel Miner (atmospheric); & Tunnel Miner Tender

POWER EQUIPMENT OPERATORS CLASSIFICATIONS (Building Construction):

CLASS 1 - Helicopter Operator; Truck & Crawler Cranes with 300' of Boom and over, including jib; Tower Crane 300' & over

CLASS 2 - Truck & Crawler Crane w/200' of Boom, up to and not including 300' of Boom, including jib; Tower Crane 250' & over

CLASS 3 - Truck & Crawler Cranes with 150' of Boom, up to and not including 200' of Boom, including jib; Tower Crane 200' & over

CLASS 4 - Traveling Tower Crane; Master Mechanic; Pile Driving Operator; Tower Crane 150' & over

CLASS 5 - Truck & Crawler Cranes up to & not including 150' of Boom, including jib; Derrick (Guy & Stiffleg); Hoist Engineer (3 drums or more); Locomotive Operator; Overhead Crane Operator (Inside Building Perimeter); Tower Cranes - Stationary 100' & over; Tractor Operator with Boom; All Terrain Vehicle Cranes; Fireman, Chief License.

CLASS 6 - Air Compressor Operator, 450 CFM or over, Pump Operator and/or Conveyor Operator (2 or more machines); Hoist Engineer (2 drum); Mechanic or Welder; Pumpcrete or Complaco-type Machine Operator; Forklift; Boom Truck Operator; Concrete Mixer Op.; Drill Rigs - Heavy Rotary or Churn when used for caisson drilling for Elevator Cylinder or Building Construction; Front End Loader Operator; Hoist Engineer (one drum); Straddle Carrier Operator; Power Plant Engineer (100 KW and over on multiples equal to 100 KW and over); Tractor Operator over D2; Well Point Pump Operator

CLASS 7 - Concrete Batch Plant Operator; Fireman, First Class License; Gunite Operator; Tractor Operator D-2 or similar size; Front End Loader Operator, up to 1 cu. yd.

POWER EQUIPMENT OPERATORS CLASSIFICATIONS (Building Construction) CONT'D:

CLASS 8 - Air Compressor Operator, 450 CFM or over, Pump and/or Conveyor Operator; Fireman, Temporary Heat; Brakeman; Pick-up Sweeper (1 cu. yd. and over hopper capacity); Truck Crane Oiler; Welding Machine Operator

CLASS 9 - Mechanical Space Heater (temporary heat); Oiler or Greaser; Elevator Operator

POWER EQUIPMENT OPERATORS CLASSIFICATIONS (Site Preparation, Excavation & Incidental Paving):

CLASS 1: Helicopter Pilot; Crane with over 135' Boom, excluding jib; Dragline and/or other similar equipment with Shovel-type controls 3 cu. yds. & over Mfg. rated cap.; Pile Driving when 3 Drums are in use

CLASS 2: Cableway; Concrete Mixer, Stationary Plant over 34E; Derrick (Guy or Stiffleg) (Power) (Skids or stationary); Dragline and/or similar equipment with Shovel-type controls, up to 3 cu. yds. Mfg. rated cap.; Dredge or Engineers, Dredge (power) & Engineer; Front End Loader, 5 cu. yds. & over; Grader or Motor Patrol, Finishing Earthwork & Bituminous; Locomotive Crane; Master Mechanic; Mixer (Paving) Concrete Paving, Road; Mole, inclu. Power Supply; Mucking Machine, inclu. Mucking Operations, Conway or similar type; Piledriving; Refrigeration Plant Engineer; Tandem Scraper; Tractor - Boom type; Truck Crane - Crawler Crane; & Tugboat - 100 HP & over

CLASS 3: Dual Tractor; Elevating Grader; Pumpcrete; Scraper - Struck Cap. 32 cu. yds. & over; Self-propelled Traveling Soil Stabilizer

CLASS 4: Air Track Rock Drill; Asphalt Bituminous Stabilizer Plant; Automatic Road Machine (CMI or similar); Backfiller; Batch Plant (Concrete); Bituminous Spreader & Finishing (Power); Boom Truck (Power operated Boom); Cat Tractors with Rock Wagons or similar types; Chip Harvester & Tree Cutter over 150 HP; Concrete Mixer on jobsite over 14S; Concrete Mobile; Crushing Plant (gravel & stone) or Gravel Washing, Crushing & Screening Plant; Curb Machine; Dope Machine (Pipeline); Drill Rigs, Heavy Rotary or Churn or Cable Drill; Fork Lift or Straddle Carrier; Fork Lift or Lumber Stacker; Front End Loader, over 1 cu. yd.; Hoist Engineer (power); Launcherman (Tankerman or Pilot License); Lead Greaser; Locomotive; Mechanic or Welder; Multiple Machines, such as Air Compressors, Welding Machines, Generators, Pumps; Paving Breaker or Tamping Machine (Power Driven) Mighty Mite or similar type; Paving Milling Machine; Pickup Sweeper, 1 cu. yd. & over Hopper cap.; Pipeline Wrapping, Cleaning or Bending Machine; Power Plant Engineer, 100 K.W.H. & over; Power Actuated Horizontal Boring Machine, over 6"; Pugmill; Roller, 8 tons & over; Rubber-tired Farm Tractor, Backhoe Attach.; Sheep Foot Rollers; Slip Form (Power Driven) (paving); Tie Tamper & Ballast Machine; Tractor, over D2, TD6 or similar HP with Power Take-off; Tractor, over 50 HP without Power Take-off; Trenching Machine (sewer, water, gas); Turnapull (or similar type); Well Point Installation, Dismantling or Repair Mechanic; Hydraulic Tree Planter

CLASS 5: Air Compressor, 450 CFM or over; Bituminous Spreader & Bituminous Finishing Machine (Tender) (Power); Concrete Distributor & Spreader Finishing Machine; Longitudinal Float, Joint Machine, & Spray; Concrete Mixer on jobsite 14S & under; Concrete Saw (multiple blade) (power operated); Form Trench Digger (power); Front End Loader, up to & inclu. 1 cu. yd.; Grader (motor patrol); Gunite Gunall; Hydraulic Log Splitter; Loader (Barber Greene or similar type); Payhauler or similar type; Power Actuated Augers & Boring Machine; Power Actuated Jacks; Pump; Roller; Self-propelled Chip Spreader (Flaherty or similar); Shouldering Machine (Power) Apsco or similar type inclu. self-propelled Sand & Chip Spreader; Stump Chipper; Tractor, D2, TD6 or similar HP without power take-off; & Tree Farmer

CLASS 6: Conveyor; Dredge Deck Hand; Fireman or Tank Car Heater; Gravel Screening Plant (portable not crushing or washing); Greaser (Truck or Tractor); Leverman; Mechanic Tender; Mechanic, Space Heater (Temporary Heat); Oiler (Power Shovel, Crane, Dragline); Self-Propelled Vibrating Packer (Pad type) (35 HP & over); Tractor, 50 HP or less w/o Power take-off; & Truck Crane Oiler

DECISION NO. MN83-2059 PAGE 7

TRUCK DRIVERS CLASSIFICATIONS (Site Preparation, Excavation & Incidental Paving):

GROUP 1: Truck Driver (Operation of Hand & Power Operated winches); Truck Trains; Mechanic-Welder; Tractor Trailer; & Off Road

GROUP 2: Tri Axle (Inclu. 4 Axles)

GROUP 3: Bituminous Distributor; & Tandem Axle

GROUP 4: Bituminous Distributor Spray Operator (Rear End Oiler); Dumpman; Tank Truck Tender (gas, oil, road oil & water); Teamster & Stableman; Tractor Operator (wheel type used for any purpose); Pilot Car; Self-propelled Packer; Slurry Operator; Single Axle; Dump; Dry Batch Hauler; Boom & "A" Frame; & Ready-Mix Concrete

WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a) (1) (ii)).

SUPERSEDEAS DECISION

STATE: Nebraska COUNTIES: See below*

DECISION NO.: NE83-4057 DATE: Date of Publication

Supersedes Decision No. NE83-4052, dated July 22, 1983 in 48 FR

DESCRIPTION OF WORK: Heavy and Highway Projects (excluding tunnels, building structures in rest area projects and railroad construction; bascule, suspension and spandrel arch bridges; bridges designed for commercial navigation; bridges involving marine construction; and other major bridges)

*Statewide (except Douglas, Cass, Sarpy, Washington and that portion of Saunders County East of Highway #109

	Basic Hourly Rates	Fringe Benefits
CARPENTER	$7.90	
CARPENTER HELPER	5.50	
CEMENT FINISHER	7.60	
CEMENT FINISHER HELPERS	5.50	
CONCRETE SAW OPERATOR	6.95	
FORM SETTER (ROAD)	6.95	
FORM SETTER (STRUCTURES)	5.90	
LABORER	4.95	
MANHOLE BUILDER	6.20	
PAINTER	4.95	
PILE DRIVER LEADSMAN	4.95	
POWER EQUIPMENT OPERATORS:		
All Purpose Spreader	5.90	
Asphalt Distributor	5.65	
Asphalt Distributor Helper	5.30	
Asphalt Heaterman	5.30	
Asphalt Paving Machine	7.60	
Asphalt Paving Machine Screedman	6.20	
Stationary Pl. (base or stabilization)	6.95	
Stationary Pl. (asphalt or concrete)	7.90	
Beginner Operator	6.20	
Bulldozer:		
Less than 115 Drawbar H.P.	7.10	
115 Drawbar H.P. and over	7.90	
Cement Handler	4.95	
Clamshell, Dragline, Backhoe, Crane, Pile Driver or Shovel	8.00	
Concrete Mixer	4.95	
Concrete Paver	6.95	
Slip Form Paver	7.90	
Concrete Finishing Machine and Spreader	7.90	
Conveyor	4.95	
Crusher (incl. those with integral screening plant)	7.10	

	Basic Hourly Rates	Fringe Benefits
POWER EQUIPMENT OPERATORS (Cont'd):		
Dredge Pump Under 10"	$5.90	
Dredge Pump 10" and over	6.95	
Fireman (boiler)	5.30	
Front End Loader:		
3-1/2 Cu. Yds. or less	6.95	
Over 3-1/2 Cu. Yds.	7.60	
Mechanic	8.00	
Mechanic Helper	6.95	
Motor Grader	8.00	
Oiler or Greaser	6.95	
Roller or Compactor, Self-Propelled	7.10	
Scraper, Under 16 Cu. Yds.	7.10	
Scraper 16 Cu. Yds. and Over	7.90	
Power Grade Machine (trimmer & profiler)	7.90	
Tractor:		
Farm Type	5.90	
Less than 115 Drawbar H.P.	7.10	
115 Drawbar H.P. and Over	7.60	
Traveling Plant (stabilization)	7.10	
Traveling Plant Helper (stabilization)	5.90	
Trenching Machine	6.20	
TRUCK DRIVERS:		
Single Axle	4.95	
Tandem Axle	5.90	
Semi-Trailer	5.90	
Transit Mix	5.90	
Lowboy	6.95	
WATER TANKER, 6,000 GAL. & OVER	7.10	
WELDER	7.60	
HYDROHAMMER	5.85	

"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 Jersey

COUNTIES: Bergen, Essex, Hudson and Passaic

DECISION NO.: NJ83-3026

DATE: Date of Publication

Supersedes Decision No. NJ82-3006, dated October 9, 1981 in 47 FR 50243.

DESCRIPTION OF WORK: Residential Construction Projects consisting of single family homes and apartments up to and including 4 stories.

	Basic Hourly Rates	Fringe Benefits
AIR CONDITIONING & REFRIGERATION MECHANICS:		
Group 1	$9.10	$4.15 +a
ASBESTOS WORKERS	16.89	5.68
BOILERMAKERS	16.60	0.29 +38%
BRICKLAYERS, CEMENT MASONS, PLASTERERS & STONEMASONS:		
Zone 1	14.61	2.65
Zone 2	16.99	2.07
Zone 3	14.87	4.48
Zone 4:		
Bricklayers & Stonemasons	16.80	3.55
Cement Masons & Plasterers	18.05	2.15
CARPENTERS, INSULATORS AND MILLWRIGHTS:		
Zone 1:		
Carpenters & Insulators	16.63	20.5%
Millwrights	17.13	20.5%
Zone 2:		
Carpenters & Insulators	16.20	15.5%
Millwrights	17.20	15.5%
Zone 3	16.10	3.88
Zone 4:		
Carpenters & Insulators	16.01	15.5%
Millwrights	16.51	15.5%
DIVERS & DIVER TENDERS:		
Divers	20.87	5.98
Diver Tenders	16.27	5.98
DOCK BUILDERS AND PILEDRIVERMEN	17.36	6.60
DRYWALL TAPERS AND FINISHERS	10.60	2.10

	Basic Hourly Rates	Fringe Benefits
ELECTRICIANS & CABLE SPLICERS:		
Family residence construction not to exceed 4 unit apartments (Note: Firewalls alone are not a determinative criterion.)	10.36	10% +.02
Other residential construction:		
Bergen & Hudson Cos.	18.72	1.00 +21.5%
Essex County	18.10	26.5%
Passaic County:		
Wiremen	19.56	1.00 +17%
Cable Splicers	20.87	1.00 +17%
ELEVATOR CONSTRUCTION:		
New Construction:		
Mechanics	13.21	2.05+ b+c+d
Helpers	9.91	2.05+ b+c+d
Probationary Helpers	6.605	
Modernization:		
Mechanics	11.23	2.05+ b+c+d
Helpers	8.42	2.05+ b+c+d
Probationary Helpers	5.615	
Contract Repairs:		
Mechanics	11.23	2.05+ b+c+d
Helpers	8.42	2.05+ b+c+d
Probationary Helpers	5.615	
GLAZIERS:		
Bergen & Passaic Cos.	11.17	4.08
Essex & Hudson Cos.	15.70	3.30

	Basic Hourly Rates	Fringe Benefits
IRONWORKERS - ORNAMENTAL, REINFORCING & STRUCTURAL	16.35	6.66
LABORERS:		
Zone 1:		
Group 1	12.05	3.10
Zone 2:		
Group 1	11.55	2.60
Zone 3:		
Group 1	12.35	2.95
Group 2	12.60	2.95
Zone 4:		
Laborers	13.25	1.90
Zone 5:		
Laborers	12.25	2.90
Zone 6:		
Group 1	11.65	3.65
Zone 7:		
Laborers	11.85	3.30
LINE CONSTRUCTION:		
Zone 1:		
Linemen, Cable Splicers, Line Equipment Operators, Line Truck Operators, Groundmen and Welders	16.30	26.75%
Zone 2:		
Linemen and Equipment Operators	19.56	1.50+ 17%+ 100.00 P/YR.
Cable Splicers	20.87	1.50+ 17%+ 100.00 P/YR.
Groundmen	70%JR	
Zone 3:		
Linemen, Cable Splicers, Equipment Operators and Groundmen	17.00	0.58+ 21.75%
MARBLE SETTERS, TILE SETTERS AND TERRAZZO WORKERS:		
Marble Setters	10.25	2.92+e
Tile Setters	9.15	2.90
Terrazzo Workers	11.18	2.71

	Basic Hourly Rates	Fringe Benefits
MARBLE SETTERS, TILE SETTERS AND TERRAZZO WORKER FINISHERS:		
Marble Setters' Finishers	8.28	2.32+e
Terrazzo Workers' Finishers	9.84	2.71
PAINTERS:		
Zone 1:		
Uncontrollable & Repaint Work	12.60	5.01
Other Residential Construction:		
Painters & Tapers	14.60	5.01
Steel Outside and Spray	16.60	5.01
Zone 2:		
(West half of County) Counties:		
Group 1	13.30	1.88
Group 2	12.30	1.88
Group 3	12.90	1.88
Group 4	13.45	1.88
Group 5	12.45	1.88
Group 6	13.90	1.88
Zone 3:		
Group 1	13.60	4.83
Group 2	13.90	4.83
Group 3	14.40	4.83
Group 4	11.65	4.83
Group 5	12.65	4.83
PIPEFITTERS:		
Zone 1	15.25	6.18
Zone 2	16.12	3.69
PLUMBERS:		
Zone 1	17.88	4.55
Zone 2	16.93	5.20
ROOFERS:		
Zone 1:		
Composition	17.30	3.84
Zone 2:		
Composition, Damp, Waterproofing, Slate & Tile	17.72	2.00
Zone 3:		
Slate & Tile	16.70	4.75
Slate & Tile Helpers	8.85	4.75

	Basic Hourly Rates	Fringe Benefits
ROOFERS (Cont'd):		
Zone 4:		
Composition, Damp and Waterproofing	13.84	6.55
SHEET METAL WORKERS:		
Zone 1	12.80	3.56
Zone 2	14.20	1.63+ 16%
SOFT FLOOR LAYERS	15.45	1.00+ 16%
SPRINKLER FITTERS	17.08	2.82
POWER EQUIPMENT OPERATORS:		
Class 1	19.37	4.60+g
Class 2	17.98	4.60+g
Class 3	16.37	4.60+g
Class 4	14.94	4.60+g
Class 5	13.63	4.60+g
Class 6	21.19	4.60+g
TRUCK DRIVERS:		
Zone 1:		
Group 1	7.27	1.43+ h+i
Group 2	7.50	1.43+ h+i
Group 3	7.55	1.43+ h+i
Group 4	7.65	1.43+ h+i
Group 5	7.76	1.43+ h+i
Zone 2:		
Group 1	11.72	2.065+ h+i
Group 2	11.95	2.065+ h+i
Group 3	12.00	2.065+ h+i
Group 4	12.10	2.065+ h+i
Group 5	12.20	2.065+ h+i

	Basic Hourly Rates	Fringe Benefits

WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental

PAID HOLIDAYS:
A - New Year's Day; B - Memorial Day; C - Independence Day; D - Labor Day; E - Thanksgiving Day; F - Christmas Day

FOOTNOTES:
a. Holidays: A through F, plus Armistic Day and Washington's Birthday
b. Employer contributes $8.00 per day per employee to an Annuity Fund
c. Holidays: A through F, plus Lincoln's Birthday, Washington's Birthday, Columbus Day, Election Day, and Armistic Day
d. Employees with 6 months of service but less than 5 years of service receive 2 weeks vacation; 5 or more years of service receive 3 weeks vacation
e. Holiday: A half day's pay for Labor Day
f. Holidays: A through F, plus Washington's Birthday, Veterans' Day and Presidential Election Day providing the employee works on 3 days for the same employer within a period of 10 working days, consisting of 5 working days before and 5 working days after the day upon which the holiday falls or is observed as such
g. Holidays: A through F, plus Washington's Birthday, Presidential Election Day and Veterans' Day providing the employee works any of the 3 days in the 5 days preceeding the holiday and the first work day after the recognized holiday
h. All Employees who are assigned to work on Sundays or the following holidays: New Year's Day, Martin Luther King's Birthday, Lincoln's Birthday, Washington's Birthday, Good Friday, Decoration Day, Independence Day, Labor Day, General Election Day, Columbus Day, Veteran's Day, Thanksgiving Day, Christmas Day, and any new holiday proclaimed by the Federal Government (not days of mourning), shall be paid two and one half times the rates listed for all hours worked which includes the holiday pay
i. Employees working or receiving pay for 80 days within a year receive one week's vacation (48 hours); 125 days receive two weeks vacation (96 hours); 145 days receive 15 days (120 hours); 15 years seniority and 145 days receive 4 weeks vacation (160 hours)
j. Employer contribution of $124.00 per month per employee to Health and Welfare Funds

AREA, GROUP and ZONE DESCRIPTIONS

AIR CONDITION and REFRIGERATION MECHANIC:
Group 1: Installation of refrigeration equipment for any type of building where the combined compressor tonage does not exceed 5 tons; Installation of water-cooled air conditioning that does not exceed 10 tons (includes the piping of component system and the erection of the water tower); Installation of air-cooled air conditioning that does not exceed 15 tons

BRICKLAYRES; STONEMASONS, CEMENT MASONS; and PLASTERERS:
Zone 1: Bergen (North Arlington, Lyndhurst - east of Ridge Road and north to Rutherford Avenue and Barry's Creek, west to the Hackensack River); Essex (except Millburn Township); Judson that portion west of the Jackensack River
Zone 2: Bergen (Wallington, part of East Patterson, Garfield, Lodi, North Arlington and part of Lyndhurst); Morris (Ponpton Plains, Pequannock, Lincoln Part, Kinnelon, Butler and Riverdale); Passaic and Sussex (that portion north of a line along Route #521 from Dingmans Ferry to Tuttles Corner, Along Route #206 to Lafayette, then along North Church Road to Route #23 to Passaic County Line) Counties
Zone 3: Bergen (Remainder of County)
Zone 4: Hudson (Remainder of County)
Zone 5: Essex (Millburn Township), Morris (Gillette and Sterling, Shore Hills Townships), Union (New Providence Springfield Summit and Union Townships

CARPENTERS, INSULATORS and MILLWRIGHTS:
Zone 1: Essex County and that part of Hudson County west of the Hackensack River
Zone 2: Passaic County and the City of Garfield and Borough of Lodi and Wallington in Bergen County
Zone 3: Bergen County (east of the Hackensack River including but not limited to Cliffside, Fort Lee, Grant Wood, Palisades Part, Ridgefield, Edgewater, Fairview, Leonia and Coytesville) and that part of Hudson County east of the Hackensack River
Zone 4: Bergen (Remainder of County)

LABORERS BUILDING CONSTRUCTION
Zone 1: Passaic County (Townships of Boroughs Passaic, Delawanna, Allwood, Athenia and Clifton to Piaget Avenue; Paterson, and the Boroughs and Townships of Albion Place, Little Fall, Totowa Borough, West Paterson, Wayne, Hawthorne, Pompton, Haledon, Clifton to Piaget Avenue, West Millford, Ringwood, Bloomingdale, New Jersey and East Paterson to the Garfield boundary line) Bergen County (Townships of Garfield, Lodi and Wallington):
Group 1: Laborers; Air Tool Operators (Jackhammers, Vibrators); Mason Tenders; Mortar Mixers; Pipelayers (concrete and clay); and Plasterer Tenders

ZONE and GROUP DESCRIPTIONS (Cont'd)

LABORERS BUILDING CONSTRUCTION (Cont'd):
Zone 2: Bergen County (Cliffside: Borough of Cliffside Park: Borough of Fort Lee, south of Central Boulevard; Borough of Palisades Part, south of Central Boulevard; Borough of Ridgefield; Borough of Edgewater, and Borough of Fairview; Hackensack: City of Hackensack; Hasbrouck Heights; Little Ferry; South Jackensack; Ridgefield Park; Bogota; Teaneck Township, west of Teaneck Road and South of Fort Lee Road; Maywood; Saddle Brook Township; Borough of Paramus, east of Sprout Brook; and the Borough of River Edge; New Milford;Teterboro; Bendix; and Tochell Park; Englewood: City of Englewood; Borough of Dumont; Borough of Bergenfield; Borough of Palisades Park, north of Central Boulevard to Edgewater; Fort Lee, to the Hudson River; Borough of Fort Lee, north of Central Boulevard; Township of Teaneck, east of Teaneck Road and north of Fort Lee Road; Borough of Leonia; Borough of Englewood Cliffs; Borough of Tenafly; Borough of Cresskill; Borough of Demarest; Borough of Closter; Borough of Oradell; Borough of Montvale; Borough of Woodcliff Lake; Borough of Park Ridge; Borough of Hillsdale; Township of Washington; Borough of Westwood; Borough of Emerson; Borough of Haworth; Borough of alpine; Borough of Rockleigh; Borough of Norwood; Borough of Harrington Park; Borough of Old Tappan; Borough of Northvale; and Township of Rivervale; Lyndhurst: Rutherford; East Rutherford; Wood-Ridge; Carlton; Carlstadt; North Arlington and Moonachie; Ridgewood: Village of Ridgewood; Borough of Fair Lawn; Borough of Blen Rock; Borough of HoHoKus; Borough of Saddle River; Borough of Upper Saddle River; Borough of Allendale; Borough of Ramsey; Borough of Waldwick; Borough of Midland Park; Borough of Oakland; Borough of Franklin Lakes; Township of Wykoof; Township of HoHoKus; and Borough of Paramus with the exception of portion of Paramus, east of Sprout Brook and Borough of Mahwah):
Group 1: Laborers; Air Tool Operator (Jackhammers, Vibrators); Mason Tenders; Mortar Mixers; Pipelayers (concrete and clay); Plasterer Tenders; Wrecking and Excavation
Zone 3: Essex County (City of East Orange, Townships of South Orange and Maplewood):
Group 1: Laborers
Group 2: Mortar Mixers; Scaffold Men; Pneumatic Hammer Operators; Bell Men and Carpenter Tenders
Zone 4: Essex County (Orange and Montclair)
Zone 5: Essex (Millburn) and Union (Springfield and Union Townships) Counties
Zone 6: Essex (Remainder of County) and Hudson (Kearny, East of Newark and Harrison) Counties:
Group 1: Laborers; Air Tool Operators; Mason Tenders; Mortar Mixers and Pipelayers (concrete and clay)
Zone 7: Remainder of Hudson County

AREA, GROUP, and ZONE DESCRIPTIONS (Cont'd)

PAINTERS:
Zone 1: Bergen, Passaic Counties
Zone 2: Essex, Hudson (west half of County) Counties:
Group 1: Painters on New Construction and Major Alterations
Group 2: Painters on REpaint Work
Group 3: Spraying or Application of hazardous or dangerous materials on Repaint Work
Group 4: Exterior Work exceeding 3 stories in height for painting of Open Structural Steel and Tanks under 3 stories in height except Flat Tanks on the ground and on interior work which requires painting higher than 20' above the ground or floor (this shall not be applicable to Machinery or Equipment located therein)
Group 5: Repaint Work as described in Group 4
Group 6: On Bridges, Television and Radio Towers, Structural Steel and Tanks above 3 stories in height (30' or over), Smoke Stacks, Water Towers, Sandblasting, Steam Cleaning, Spraying or application of Hazardous materials
Zone 3: Hudson (Remainder of County):
Group 1: Interior of apartment houses; Paperhangers
Group 2: All extension Ladder work, 36 feet high and over, on all scaffold work except one and two family homes and all boatswains chair work; Structural Steel, Tanks, Bridges, Towers, Smokestacks, Radio Towers, Television Towers, Flag Poles (steel or wood construction), Fire Escapes from top to bottom, Cable Work, Hazardous Work
Group 3: Sandblasting; Spraying
Group 4: Repainting high rises and old warehouses with Scaffold or extension Ladders
Group 5: Rehab. Work - all closets below street level, basements, sub-basements, Boiler Rooms and Stairways, may be sprayed

PIPEFITTERS:
Zone 1: Bergen, Hudson and Passaic Counties

PLUMBERS:
Zone 1: Bergen, Hudson (excluding East Newark, Harrison, and Kearney), and Passaic Counties
Zone 1: Bergen, Hudson (excluding East Newark, Harrison and Kearney), and Passaic County

Zone 2: Hudson (East Newark, Harrison, and Kearney only) and Essex Counties

AREA, GROUP AND ZONE DESCRIPTIONS (Cont'd)

ROOFERS:
Zone 1: Bergen and Passaic Counties
Zone 2: Essex, Hudson (west of the Hackensack River) Counties
Zone 3: Bergen, Passaic Counties
Zone 4: Hudson (East of Hackensack River) County

SHEET METAL WORKERS:
Zone 1: Bergen and Hudson Counties
Zone 2: Essex and Passaic Counties

LINE CONSTRUCTION:
Zone 1: Essex County
Zone 2: Passaic County
Zone 3: Bergen and Hudson Counties

POWER EQUIPMENT OPERATORS
Class 1: Autograde - Combination Subgrader; Base Metal Spreader and Base TRimmer (CMI and similar types); Autograde Placer, Trimmer, Spreader Combination (CMI andsimilar types); Autograde Slipform Paver (CMI and similar types); BAckhoe; Central Power Plants (all types); Concrete Paving Machines; Cranes (all types, including Overhead and Straddle Traveling type); Cranes; Gantry; Derricks (Land or Floating); Drillmaster, Quarrymaster (down the Hole Drill) Rotary Drill; Self Propelled Hydraulic Drill; Self-powered DRill; Dragline; ElevatorGraders; Front End Loaders (5 yds. and over); Gradalls; Grader; Raygo; Helicopter, Co-Pilot; Helicopters, Communications Engineer; Locomotive (large); Mucking Machines; Pavement and Concrete Breaker, e.e.; Superhammer and Hoe Ram; Pile Driver; Length of Boom including Length of Leads, shall determine premium rate applicable; Roadway Surface Grinder; Scooper (Loader and Shovel); Shovels; Tree Chopper with Boom; Trench Machines
Class 2: "A" Frame; Backhoe (combination); Boom Attachment on Loaders (rate based on size of Bucket) not applicable to Pipehoo, Boring and Drilling Machines; Brush Chopper; Shredder and Tree Shredder; Cableways; Carryalls; Concrete Pump; Concrete Pumping System; Pumpcrete and similar types; Conveyors, 125 ft. and over; Drill Doctor (duties include Dust Collector, Maintenance); Front End Loaders (2 yds. but less than 5 yds.); Graders (Finisher); Groove Cutting Machine (ride on type); Header Planer; Hoists: (all types hoists, shall also include Steam, Gas, Diesel, Electric, Air Hydraulic, Single and Double Drum, Concrete Brick Shaft Caisson, Snorkel Roof, and/or any other similar type Hoisting Machines, portable or stationary, except Chicago Boom type); Long Boom Rate to be applied if Hoist is "Outside Material Tower Hoist"; Hoists (Chicago Boom type); Hydraulic Cranes, 10 tons and under; Hydro-axle; Jacks Screw Air Hydraulic power operated unit or Console type (not Hand Jack or Pile Load Test type); Log Skidder; Pans; Pavers (all Concrete; Pumpcrete Machines; Squeezecrete and Concrete Pumping (regardless of size); Scrapers; Side Booms; Stradddle Carrier; Ross and similar types; Winch Truck (hoisting)

AREA, GROUP and ZONE DESCRIPTIONS (Cont'd)

POWER EQUIPMENT OPERATORS (Cont'd):
Class 3: Asphalt Curbing Machine; Asphalt Plant Engineer; Asphalt Spreader; Autograde Tube Finisher and Texturing Machine (CMI and similar types); Autograde Curercrete Machine (CMI and similar types); Autograde Curb Trimmer and Sidewalk; Shoulder; Slipform (CMI and similar types); Bar Bending Machines (power); Batchers; Bartching Plant and Crusher on Site; Belt Conveyor Systems; Boom type Skimmer Machines, Bridge Deck Finisher; Bulldozers (all); Car Dumpers (railroad); Chief of Party; Compressor and Blower type units (used independently or mounted on Dual Purpose Trucks, on job site or in conjunction with job site, in loading and unloading of Concrete, Cement, Fly Ash, Instancrete, or similar type materials); Compressor (2 or 3) (Battery); Concrete Breaking Machines; Concrete Finishing Machines; Concrete Saws and Cutters (ride on type); Concrete Spreaders; Hetzel; Rexomatic and similar types; Concrete Vibrators; Conveyors; under 125 ft.; Crushing Machines; Ditching Machine; Small (Ditchwitch or similar type); Dope Pots (Mechanical with or without Pump); Dumpsters; Elevator; Fireman; Fork Lifts (Economobile; Lull and similar types of equipment); Front End Loaders (1 yd. and over but less than 2 yds.); Generators (2 or 3) in Battery; Giraffe Grinders; Graders and Motor Patrols; Gunnite Machines (excluding Nozzle); Hammer Vibratory (in conjuncion with Generator); Hoist (Roof, Tugger, Aerial Platform Hoist and House Cars); Hoppers; Hopper Doors (power operated); Ladders (motorized); Laddervator; Locomotive; Dinky type; Maintenance; Utility Man; Mechanics; Mixers (except Paving Mixers); Motor Patrols and Graders; Pavement Breakers, small; Self-propelled Ride on type (all maintains Compressor or Hydraulic unit); Pavement Breaker; Truck mounted; Pipe Bending Machine (power); Pitch Pump; Plaster Pump (regardless of size); Post Hole Digger (Post Pounder and Auger); Rod Bending Machines (power); Roller; Black Top; Scales; Power; Seaman Pulverizing Mixer; Shoulder Widener; Silos; Skimmer Machines (boom type); Steel Cutting Machine; Services and Maintains; Tractors; Tug Captain; Vibrating Plants (used in conjunction with unloading); Welder and Repair Mechanics
Class 4: Brooms and Sweepers, Chippers, Compressor (single), Concrete Spreaders (small type), Conveyors (under 125 ft.), Conveyor Loaders (not including Elevator Graders), Engines, Large Diesel (1620 H.P.) and Staging Pump, Farm Tractors; Fertilizing Equipment (operation and maintenance of); Fine Grader Machine (small type); Form Line Graders (small type); Front Loader (under 1 yd.); Generator (single); Grease, Gas, Fuel and Oil Supply Trucks; Heaters (Nelson or other type including Propane, NaturalGas or Flow-type units); Lights; Portable Generating Light Plants; Mixers; Concrete small; Mulching Equipment (operation and maintenance of); Pumps (4 inch suction and over includingSumbersible Pumps); Pumps (2 or less than 4" suction and over including submersible pumps); Pumps (Diesel engine and Hydraulic) immaterial of power Road Finishing Machines (small type); Rollers; Grade; Fill or Stone Base; Seeding Equipment (operation and maintenance of); Sprinkler and Water Pump Trucks (used on job site or in conjunction with job site); Steam Jennies and Boilers, Irrespective of use; Stone Spreader; Tamping Machines, Vibrating Ride-on; Temporary Heating Plant (Nelson or other type, including Propane, Natural Gas or Flow type units); Welding Machines (gas, diesel, and/or electric Converters on any type, single; two or three in a Battery); Welding System, Multiple (Rectifier Transformer type); Wellpoint Systems (including Installation by Bull Gang and Maintenance of)

AREA, GROUP and ZONE DESCRIPTIONS (Cont'd)

POWER EQUIPMENT OPERATORS (Cont'd):
Class 5: Assistant Engineer/Oiler; Tire Repair and Maintenance and Transit/Instrument Man
Class 6: Helicopter Pilot and Helicopter Engineer

TRUCK DRIVERS:
Group 1: Mechanic Helper
Group 2: Drivers on the following type vehicles: Straight Dumps, Flats, Floats, Pickups, Container Haulers, Fuel, Water Sprinkler, road Oil, Stringer, Bead, Hot Pass, Bus Dumpcrete, Transit Mixers, Agitator Mixer, Half Truck, Winch Truch, Side-O-Matic, Dynamite, Powder, X-ray, Welding, Skid, Jeep, Station Wagon, Stringer, A-frame, All Dual Purpose Trucks, Trucks with mechanical tailgates, Asphalt Distributor, Batch Trucks, Seeding, Mulching, Fertilizer, Air Compressor Trucks (intransit), Parts Chaser, Escort, Scissor, Hi-lift, Telescope, Concrete Breaker, Gin Pole, Stone, Sand, Asphalt Distributor and Spreader, Nipper, Fuel Trucks (drivers on Fuel Trucks including handling of hose and nozzle-entire unit), Team Drivers, Vacuum or Vac-all Trucks (entire unit), Skid Truck (debris container - entire unit), Concrete Mobile Trucks (entire unit), Expediter (parts chaser), Beltcrete Trucks, Pumpcrete trucks, Line truck, Reel Truck, Wreckers, Utility Trucks, Tack Trucks, Warehousemen, Warehouse Parts-men, Hardmen, Lift Truck in Warehouse, Helper when required on Lift Truck in Warehouse, Warehouse Clerk, Parts Man, MaterialChecker, Receivers, Shippers, Binning Men (materials), Cardex Man, Helper when required on Broyhill Coat Tar Epoxy Truck and Asphalt and Bituminous Distributor Truck, Drivers on the following type vehicles: Broyhill Coat Tar Epoxy Trucks, Little Ford Bituminous Distributor, Slurry Seal TRuck or vehicle, Thiokol Track Master Pickup (Swamp Cat Pickup); Bucket Loader Dump Truck and any rubbertired Tractor used in pulling and towing Farm Wagons and Trailers of any discription, similar type vehicles, Off-site and On-site Repair Shop
Group 3: Drivers on straight 3-axle materials: Trucks and Floats
Group 4: Drivers on all Euclid type vehicles: Euclids, International Harvesters, Wabcos, Caterpillar, Koehring, Tractors and Wagons, Dumpsters, Straight, Bottom, Rear and Side Dumps, Carry-alls and Scarpers (not self loading, loading over the top); Water Sprinkler Trailers; Water Pulls and similar types of vehicles; Drivers on Tractors and Trailer type vehicles: Flat, Floats, I-Beams, Low Beds, Water Sprinkler, Bituminous Transit Mix, Road Oil, Fuel, Bottom Dump Hopper, Rear Dump, Office, Shanty, Epoxy, Asphalt, Agitator Mixer

AREA, GROUP and ZONE DESCRIPTIONS (Cont'd)

TRUCK DRIVERS (Cont'd):
Mulching, Stringer, Seeding, Fertilizing Pole, Spread, Bituminous Distributor, Water Pulls (entire unit) (Tractor Trailer), Reel Trailer, and similar types of vehicles
Group 5: Winch Trailers Drivers

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 York

COUNTIES: Bronx, Kings, Queens, New York & Richmond

DECISION NO. NY83-3032

DATE: Date of Publication

Supersedes Decisions No. NY81-3024 dated April 3, 1981 in 46 FR 20442.

DESCRIPTION OF WORK: Residential (includes single family homes and apartments up to and including 4 stories), Building, Heavy & Highway Construction Projects.

	Basic Hourly Rates	Fringe Benefits
ASBESTOS WORKERS	16.44	7.78
BOILERMAKERS	19.09	32%+ .04
BRICKLAYERS	15.22	6.17
CARPENTERS		
Carpenters, Soft Floor Layers & Drywall Installers	17.37	6.50
Millwrights	16.45	6.46
Piledrivermen & Dockbuilders	17.36	6.535
Diver	20.87	6.615
Diver Tenders	16.27	6.615
Timbermen	16.15	4.94
Carpenters & Floor Coverers New Construction of one or two family homes, condominiums, apartments or town houses of up to 2 stories	12.67	4.42
CEMENT MASONS	12.10	3.80
DRYWALL TAPERS	14.82	32%
ELECTRICIANS	19.50	29.2%+ a+b
Jobbing, maintenance, repair work; alterations and new work up to a contract price of $50,000	8.75	19%+ a+b
ELEVATOR CONSTRUCTORS	14.99	2.33+ c+d
ELEVATOR CONSTRUCTORS HELPERS	11.24	2.33+ c+d
ELEVATOR CONSTRUCTORS HELPER (PROBATIONARY)	7.50	
GLAZIERS	17.65	5.70
IRONWORKERS		
Ornamental Finisher	16.23	8.45
Structural	15.50	11.59+ e
Riggers	13.24	8.0208
Stone Derrickmen	14.48	5.34

	Basic Hourly Rates	Fringe Benefits
LABORERS		
Unskilled	11.50	3.95
Mason Tenders	14.15	3.505
Asphalt Laborers	12.40	2.85+f
Asphalt Rakers	12.76	2.85+f
Asphalt Tampers	12.42	2.85+f
Cement & Concrete Workers	16.65	3.00
LABORERS (Heavy)		
Blasters	14.75	2.86
Concrete Breakers, Chippers, Jackhammers, Pneumatic Tools, Spades	13.03	2.86
Drill Runner, Air Trac, Wagon Drills	13.30	2.86
Drills	13.30	2.86
Powder Carriers	11.98	2.86
Magazine Keepers	7.47	2.86
Nippers	11.41	2.86
LABORERS (Highway)		
Form Setters	13.65	2.85+f
Pavers & Curb Setters	14.68	2.85+f
Rammermen	14.21	2.85+f
Puddlers, Concrete, Rakers	12.16	2.85+f
LABORERS (Demolition)		
Barmen	11.90	18%
Barmen Helpers	11.60	18%
LATHERS, METALIC	10.79	4.09+g
MARBLE SETTERS		
Cutters & Setters	16.21	4.19+h
Carvers	16.36	3.19+h
Polishers	15.89	2.90+h
Crane Operator	15.21	4.34+h
Marble Finishers	14.21	2.90+h
PAINTERS		
Brush & Roller	14.04	30%+ .01
Spray & Scaffold	17.05	30%+ .01
Fire Escapes	16.05	30%+ .01
Structural Steel	16.30	20.5% +1.00

DECISION NO. NY83-3032

	Basic Hourly Rates	Fringe Benefits
PLASTERERS		
Kings	12.45	2.90
Queens	15.40	3.11
Richmond, Bronx, NY	13.75	4.50
PLUMBERS		
NY, Bronx	16.32	5.80
Kings, Queens	19.33	5.31
Richmond	18.92	4.07
POINTERS, CAULKERS & CLEANERS		
Steamcleaners	19.52	4.07
Sandblasters	20.17	4.07
POWER EQUIPMENT OPERATORS (BUILDING & RESIDENTIAL CONSTRUCTION):		
Double Drum Hoist	13.82	5.15+i
Stone Derrick, Cranes, Cherry Pickers	13.56	5.15+i
Hoists, Fork Lifts, House Cars, Plasterer (platform machine), Plasterer Bucket, Plasterer Pump, Compressors-Welding Machines (cutting concrete-tank work), Paint Spraying, Sandblasting, and All Equipment Used For Hoisting Material	13.06	5.15+i
Cranes: All types-crawler or truck		
100' to 149' Boom	14.03	5.15+i
150' to 249' Boom	14.28	5.15+i
250' to 349' Boom	14.53	5.15+i
350' to 450' Boom	15.03	5.15+i
Steel Erection:		
Three Drum Derricks	14.76	5.15+i
Cranes, 2 Drum Derricks, Cherry Pickers	14.12	5.15+i
Compressors, welding Machines	12.57	5.15+i
Tower Cranes	13.53	5.15+i

	Basic Hourly Rates	Fringe Benefits
POWER EQUIPMENT OPERATORS (HEAVY & HIGHWAY CONSTRUCTION):		
Class 1	13.95	5.15+j
Class 2	13.85	5.15+j
Class 3	13.53	5.15+j
Class 4	13.26	5.15+j
Class 5	12.97	5.15+j
Class 6	12.96	5.15+j
Class 7	12.60	5.15+j
Class 8	12.32	5.15+j
Class 9	11.73	5.15+j
Class 10		
a	14.03	5.15+j
b	14.28	5.15+j
c	14.53	5.15+j
d	15.03	5.15+j
Class 11	13.31	2.20
Class 12	13.00	2.20
Class 13	12.78	2.20
ROOFERS		
Composition, Damp & waterproofer	13.84	6.55
SHEET METAL WORKERS	20.03	4.493
SPRINKLER FITTER & STEAMFITTER	16.92	2.83
STONEMASONS	17.76	5.75
TERRAZZO WORKERS	15.48	3.12
TERRAZZO WORKERS HELPERS	9.84	2.71
TILE SETTERS	15.28	4.385
TILE SETTER FINISHER	11.71	1.825
Welders receive rate prescribed for craft performing operation to which welding is incidental		

DECISION NO. NY83-3032

Unlisted classification needed for work not included within the scope of the classifications may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a)(1)(ii)).

PAID HOLIDAYS:
A-New Year's Day, B-Memorial Day, C-Independence Day, D-Labor Day, E-Thanksgiving Day, F-Christmas Day

FOOTNOTES:
a. Employer contributes $4.00 per day.
b. Paid Holidays: A through F, Washington's Birthday, Columbus Day, and Election Day.
c. Employer contributes $8.00 per day to an Annuity Fund.
d. Holidays A through F, Columbus Day, Election Day, Lincoln's Birthday, Washington's Birthday, and Armistice Day.
e. Paid Holidays: A and F, provided the employee works a full half day preceding the holiday.
f. Holidays: B,C,D,E, Election Day, Columbus Day, and Veterans' Day providing the employee works at least 1 day in the week in which the holiday occurs.
g. Work on Christmas Eve and New Year's Eve will terminate at Noon, but will receive a full days pay.
h. One half day pay for Labor Day
i. Paid Holidays: A through F plus Lincoln's Birthday, Washington's Birthday, Good Friday (Iron League Only), Columbus Day, Election Day, Armistice Day, providing the employee is employed during the payroll week in which the holiday occurs.
j. Paid Holidays: A through F plus Lincoln's Birthday, Washington's Birthday, Columbus Day, Election Day, Veteran's Day, providing the employee works one day in the payroll week in which the holiday occurs.

DECISION NO. NY83-3032

CLASSIFICATION DESCRIPTIONS
POWER EQUIPMENT OPERATORS - HEAVY & HIGHWAY CONSTRUCTION

Class 1: Backhoes, Power shovels.

Class 2: Mine hoist, Cranes, etc, used as minehoists.

Class 3: Gradalls, Ketstones, Cranes (with digging buckets including sand dock cranes), Trenching machines.

Class 4: Riggs (under direction of a dockbuilder foreman), Derrick boats, Tunnel shovels, Piledrivers.

Class 5: Raise Bore Drill.

Class 6: Mucking machines, Back filling machines, Cranes, Paver dual drums.

Class 7: Elevator (manually operated), Concrete pavers, Cableways, Land Derricks, Mixers, Power Houses (which contain lowpressure units).

Class 8: Power Houses (other than above), Compressors (3 or more in battery), Stone Crusher, Double Drum Hoist, Concrete pumps, Well point pumps, Tugger machines (caissons), Drilled in caissons, Soil solidification equipment, Welding machines (used for steel erection), Concrete plant, Conveyor attachment, Well Drilling machine.

Class 9: River cofferdam pumps, Welding machines, Boilers, High pressure, Compressors (portable, single or two in a battery), not over 100' apart, Concrete breaking machines, Hoists, Single drum, Load Masters, Locomotives and Dinkies over 10 tons, Mixers (concrete with loading attachment), Push button machines.

Class 10: Long Boom Land Cranes:
a---100' to 149'
b---150' to 249'
c---250' to 349'
d---350' to 450'

Class 11: Loaders rubber tired and/or tractor type with a manufacturer's minimum rated bucket capacity of 6 cublic yards and over.

DECISION NO. NY83-3032

CLASSIFICATION DESCRIPTIONS
POWER EQUIPMENT OPERATORS - HEAVY & HIGHWAY CONSTRUCTION CONT'D

Class 12: Scrapers, Tunapulls, Tugger hoists used exclusively for handling excavated material, Tractors (rubber tired and/or track type), Hysters and roustabout cranes, Back scratchers, Cherrypickers under 20 tons, Austin Western and machines of a similar nature, Bulldozers, Loaders rubber tired and/or tractor type with a manufacturer's minimum rated bucket capacity or less than 6 cubic yards, Conveyors, Motor graders, Curb and Gutter Pavers and machines of a similar nature.

CLASS 13: Tractors, Locomotive 10 tons and under, Post hole diggers, Motor generators, Road Finishing machines, Mixers 16S and under with or without loading devices, Rollers 5 tons and under, Tugger hoists, Dual purpose trucks, Fork lifts, Dempster Dumpsters, Firemen tending to: Steam operated shovels, power boilers, steam operated pile-drivers, steam operated derrick boats, steam operated water rigs.

SUPERSEDEAS DECISION

STATE: PUERTO RICO
COUNTY: ISLAND WIDE
DECISION NO.: PR83-3031
DATE: DATE OF PUBLICATION
Supersedeas Decision No. PR80-3063, dated October 17, 1980 in 45 FR 69137.
Description of Work: Building Construction (does not include single family homes and apartments up to and including 4 stories).

	Basic Hourly Rates	Fringe Benefits
AIR CONDITIONING AND HEATING MECHANICS	$5.54	
AIR CONDITIONING AND HEATING MECHANICS HELPERS	3.70	$55.00 p/mo.
CARPENTERS	4.47	
CARPENTERS HELPERS	3.50	
CEMENT MASONS	4.47	
DRYWALL MECHANICS	5.00	
ELECTRICIANS	4.68	
ELECTRICIAN'S HELPERS	3.91	
GLAZIERS	4.50	
INSULATION MECHANICS	4.85	
IRONWORKERS	3.63	
LABORERS:		
Laborers	3.54	
Masons Tenders	3.52	
Pipelayers	4.15	
PAINTERS	3.84	
PLASTERERS	4.90	57.00 p/mo.
PLUMBERS & PIPEFITTERS	4.21	
PLUMBERS & PIPEFITTERS HELPERS	3.70	55.00 p/mo.
ROOFERS	3.60	
SHEET METAL WORKERS	5.12	
SHEET METAL WORKER HELPERS	3.72	
TRUCK DRIVERS	4.24	
POWER EQUIPMENT OPERATORS:		
Backhoe	5.00	
Bulldozers	4.55	
Crane	5.40	
Diggers	4.52	
Oilers	3.70	
Riggers	4.59	
Rollers	4.05	
Pavers	4.45	
Tractors	4.92	

WELDERS - Rate for craft to which the welding is incidental

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a)(1)(ii)).

[FR Doc. 83-20386 Filed 7-28-83; 8:45 am]

BILLING CODE 4510-27-C

SUPERSEDEAS DECISION

STATE: Virgin Islands
COUNTY: Island Wide
DECISION NUMBER: VI83-3025
DATE: Date of Publication
Supersedes Decision No. VI79-3023 dated July 7, 1979, in 47 FR 52579.
DESCRIPTION OF WORK: Heavy and Highway Construction Projects.

	Basic Hourly Rates	Fringe Benefits
BOILERMAKERS	$8.42	a+b+c
CARPENTERS	7.41	
CARPENTERS HELPERS	6.00	
CEMENT MASONS	7.59	
ELECTRICIANS	7.63	a+b+d
ELECTRICIANS HELPERS	5.64	a+b+d
INSULATION MECHANIC	7.67	.17+e +f
IRONWORKERS	6.44	.17+e +f
LABORERS:		
Laborers	5.06	
JACKHAMMER OPERATOR	6.23	a+b+c
MASON TENDER	6.90	.17+e +f
PAINTERS & SANDBLASTERS	6.93	.17+e +f
PLUMBERS & PIPEFITTERS	7.77	a+b+c
PLUMBERS HELPERS	6.50	
MILLWRIGHTS	8.85	a+b+d
TRUCK DRIVERS	5.65	g+h
POWER EQUIPMENT OPERATORS:		
Backhoe	7.68	
Bulldozers	7.55	
Cranes	7.76	
Drillers	7.00	g+h
LOADERS	6.75	g+h
CHERRY PICKERS	8.42	a+b+c
OILERS	9.55	.17+ e+f
TRACTORS	6.455	
ASPHALT MACHINE OPERATORS	7.62	i+j
RIGGERS	8.47	e+f

WELDERS: Receive rate prescribed for craft performing operation to which welding is incidental

Category	Footnotes:
VAC	a) 6-2/3 (six and two-thirds) hours vacation pay per month when a minimum of 120 hours is worked in the month.
VAC	b) 10 Paid Holidays
H & W	c) $25.52 per month
H & W	d) $23.16 per month
VAC	e) 11 Paid Holidays
VAC	f) 12 hours per month paid vacation.
VAC	g) 9 Paid Holidays
VAC	h) 7 hours vacation pay per month if employee works more than half the regular working hours in the month.
VAC	i) 5 Paid Holidays.
VAC	j) 40 hours paid vacation after 2 years with employer

Paid Holidays include New Year's Day, Three Kings Day, Martin Luther King Day, Good Friday, Easter Monday, July 4th, Labor, Day, Veteran's Day Thanksgiving Day, Christmas Day, and Christmas "Second Day"

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)).

federal register

Friday
July 29, 1983

Part IV

Department of Labor

Employment and Training Administration

Federal-State Unemployment Compensation Program; Unemployment Insurance Program Letter No. 31-83

DEPARTMENT OF LABOR

Employment and Training Administration

Federal-State Unemployment Compensation Program; Unemployment Insurance Program Letter No. 31-83; Tax Equity and Fiscal Responsibility Act of 1982 and Social Security Amendments of 1983 as They Relate to Repayment of Advances to States Under Title XII of the Social Security Act and Interest Assessed Thereon

Unemployment Insurance Program Letter No. 31-83 advises States of changes in title XII of the Social Security Act and in section 3302 of the Internal Revenue Code of 1954 made by the Tax Equity and Fiscal Responsibility Act of 1982 and the Social Security Amendments of 1983; explains the action States should take to apply and qualify for a cap or partial limitation on reduction of credits against the tax imposed by section 3301 of the Internal Revenue Code by reason of outstanding balance of advances received pursuant to title XII of the Social Security Act, deferral and/or delay of interest payment, or a discounted interest rate on such advances. UIPL 31-83 is published below.

Dated: July 11, 1983.

Albert Angrisani,

Assistant Secretary of Labor.

U.S. Department of Labor

Employment and Training Administration

Washington, D.C. 20213

Classification: UI
Correspondence Symbol: TEURA
DATE: June 29, 1983

Rescissions
Distribution
EXPIRATION DATE: June 30, 1984

Directive: Unemployment Insurance Program Letter No. 31-83

TO: All State Employment Security Agencies

From: Royal S. Dellinger, Administrator for Regional Management

SUBJECT: Changes in the Social Security Act, title XII and the Internal Revenue Code of 1954, section 3302, made by the Tax Equity and Fiscal Responsibility Act of 1982 and the Social Security Amendments of 1983.

1. *Purpose.* To advise States of the provisions of the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA), Pub. L. 97-248, and the Social Security Amendments of 1983, Pub. L. 98-21, as they relate to loan repayment and interest provisions.

2. *References.* Social Security Act, title XII; Internal Revenue Code of 1954, section 3302; Pub. L. 97-35, sections 2406 and 2407; Pub. L. 97-248, sections 272 through 274; Pub. L. 98-21, sections 511 through 514; and UIPL No. 13-82.

3. *Background:*

a. Under the Federal Unemployment Tax Act (FUTA), employers in all States are assessed an employment tax at a rate of 3.5 percent on a taxable wage base of $7000. However, employers generally receive a FUTA tax credit of 2.7 percent, resulting in a net Federal tax rate of 0.8 percent. States with insufficient reserves in their unemployment funds to meet State benefit obligations may borrow funds from the Federal Unemployment Account (FUA).

(1) *Loan Repayment.* If a State does not repay its advances by a specified time, employers in the State begin to lose the FUTA tax credit in increments of at least 0.3 percent per year.

Specifically, if a balance of advances is outstanding on two consecutive January firsts and is not fully repaid prior to the following November 10, the FUTA tax credit applicable for that taxable year for the State's employers is reduced by 0.3 percent. For each succeeding year in which a balance of loans remains outstanding, the reduction is at least an additional 0.3 percent (i.e., 0.6, 0.9, 1.2 percent, etc.). Additional offset credit reductions may apply to a State beginning with the third taxable year if a balance is still outstanding and certain criteria are not met. Under legislation enacted in the 1970s, offset credit reductions were not imposed for taxable years 1975-1979 for States satisfying specific requirements.

Sections 2406 and 2407 of the Omnibus Budget Reconciliation Act of 1981 (OBRA), Pub. L. 97-35, made two major changes in loan provisions: interest of up to 10 percent is charged on loans made after April 1, 1982 (except those made for cash flow purposes and repaid by September 30 of the calendar year in which they occur); and States are allowed to cap the automatic FUTA offset credit reduction if certain solvency requirements are met.

(2) *Cap of Offset Credit Reduction.* In a State that qualifies for the cap, the offset credit reduction is limited to the higher of 0.6 percent or the rate of reduction that was in effect for the State for the preceding calendar year. The cap provisions are designed to give States additional time to make legislative and administrative changes necessary to restore the State unemployment fund to solvency. These provisions lengthen the repayment period, but do not reduce a State's total liability.

To qualify for the cap on the automatic offset credit reductions 3302(f) of the Internal Revenue Code of 1954, a State must demonstrate that:

(a) The State has taken no action decreasing the State's unemployment compensation (UC) system tax effort;

(b) The State has taken no action by which the net solvency of its UI system has diminished;

(c) The State's average tax rate (on total wages) for the calendar year equals or exceeds its average benefit cost rate (on total wages) for the prior five years, and

(d) The outstanding loan balance as of September 30 of the tax year in consideration is not greater than on the third preceding taxable year (the comparable year for taxable year 1983, however, is 1981).

b. Federal law imposes interest of up to 10 percent per year on title XII advances obtained by the States after April 1, 1982. Interest is not imposed on advances repaid in full before October 1 of the calendar year in which the advances were made, provided no other advance is made to that State after September 30 during the same calendar year.

The due date for interest payable on advances made during the fiscal year is October 1 of the following fiscal year. For loans made during the months of May through September, the State may defer payment of the interest until the last day of the following calendar year, i.e., interest due October 1, 1983, may be deferred to December 31, 1984. A State may, at its option, pay the interest on such an advance earlier than the due date. Interest accrues on the deferred interest as though it were, and in the same manner as, an advance made on the day when payment of the interest would have been due except for the deferral.

Advances made before April 1, 1982, remain interest-free.

c. TEFRA and the Social Security Amendents of 1983 made changes in the offset credit reduction and interest provisions with respect to loans to States.

(1) The offset credit reduction is not applicable when a State makes certain repayments;

(2) The fifth-year offset credit reduction is limited under certain circumstances;

(3) The offset credit reduction cap/limitation provisions are permanent;

(4) Two partial offset credit reductions are provided;

(5) The average employer contribution rate computation for third year offset credit reduction is revised;

(6) Interest due dates are changes;

(7) The imposition of interest is permanent;

(8) Additional deferrals of interest payment are provided;

(9) A discounted interest rate is provided; and

(10) A penalty is imposed for failure to pay interest (subject will be covered in a future unemployment insurance program letter).

The above changes are described in detail in sections 4 and 5 below. Explanation of the steps States should take to apply for a cap or partial limitation on offset credit reduction, deferral and delay of interest payment, and a discounted interest rate is provided in sections 6 and 7 below.

4. *Offset Credit Reduction Provisions*—a. *Offset Credit Reduction Not Applicable When State Makes Certain Repayments.* (1) *Previous Law.* Under section 3302(c) of the Internal Revenue Code of 1954, a State repaid its outstanding loans only through the automatic repayment provisions of section 3302(c) of the Internal Revenue Code of 1954 or through voluntary repayments. If a State made a voluntary repayment, but did not fully repay its loans, the automatic offset credit reduction provisions applied.

(2) *New Law.* Section 272 of TEFRA amended Section 3302 of the Internal Revenue Code of 1954 by adding subsection (g) which gives a State the option of repaying on or before November 9 a portion of its outstanding loans each year through transfer of a specified amount from its unemployment fund to the FUA. The transfer to FUA would be in lieu of an increase in the Federal tax paid by the employers in the State. The State must meet the following criteria in order to avoid the offset credit reduction:

(a) repay all loans for the one-year period ending on November 9, plus the additional tax due by reason of the reduced credit amount;

(b) have sufficient funds remaining after the transfer to pay benefits for at least three months from November 1 of the same year without receiving another title XII advance; and

(c) have taken action to increase the net solvency of its UI system and such net increase equals or exceeds the potential additional taxes for such taxable year.

The amendment is effective for taxable years beginning after December 31, 1982.

b. *Fifth-Year Offset Credit Reduction Limited.* (1) *Previous Law.* Under section 3302(c)(2)(C) the Internal Revenue Code of 1954, a State may be subject to an additional credit reduction if all loans are not repaid by the fifth or any suceeding consecutive January first as of which there is a balance of outstanding advances and remain outstanding on the following November 10. the additional credit reduction is equal to the difference between the State's benefit cost rate on taxable wages (or 2.7 precent, whichever is higher) and the State's average employer contribution rate on taxable wages.

(2) *New Law.* Section 273 of TEFRA added subsection (f)(2)(B) to section 3302 of the Internal Revenue Code of 1954 to allow a State to apply for a waiver of the additional credit reduction imposed by section 3302(c)(2)(C) (discussed above). The waiver may be granted if a State has taken no action to reduce the net solvency of its UI system during the 12-month period ending on September 30 of the year for which the waiver would be applicable, i.e., meets section 3302(f)(2)(B) of the Internal Revenue Code of 1954. However, the offset credit reduction imposed by section 3302(c)(2)(B) of the Internal Revenue Code of 1954 continues in effect.

The amendment is effective for taxable years beginning after December 31, 1982.

c. *Offset Credit Reduction Cap/ Limitation Provisions in Present Law Made Permanent*—(1) *Previous Law.* Under section 3302(f) of the Internal Revenue Code of 1954, the offset credit reduction cap or limitation applied only to taxable years 1981 through 1987.

(2) *New Law.* Section 512(b) of Pub. L. 98–21 makes the cap on the offset credit reduction provision permanent.

The amendment is effective upon enactment.

d. *Two Partial Credit Reductions Provided*—(1) *Previous Law.* There is no provision in previous law for partial caps. To qualify for a full or total cap on the offset credit reduction, a State is required to meet conditions (A) through (D) of section 3302(f)(2) of the Internal Revenue Code of 1954.

(2) *New Law.* Section 512(a)(1) of Pub. L. 98–21 provides two partial limitations on offset credit reduction as follows:

(a) if a State meets the conditions of 3302(f)(2)(A) and (B) and either (C) or (D), the annual credit reduction would be reduced by 0.1 percentage point from what it otherwise would have been.

(b) if a State meets the conditions of 3302(f)(2)(A) and (B) and qualifies for interest deferral under section 1202(b)(8)(B) of the Social Security Act, the annual credit reduction would be reduced by an additional 0.1 percentage point, for a total of 0.2 percentage points, from what it otherwise would have been.

The lower credit reductions or partial limitations are authorized only for taxable year 1983, 1984, and 1985 liabilities. A State may qualify for a total cap or a partial reduction of 0.1 or 0.2 percentage points.

Credits earned during this period would be applied in determining the State's offset credit reduction for years after 1985. The January 1st of each year for which a State qualifies for a partial limitation on the offset credit reduction will be taken into account for purposes of determining future offset credit reductions.

The amendment is effective upon enactment.

e. *Average Employer Contribution Rate Computation Changed for Offset Credit Reduction for Third and Fourth Consecutive January Firsts*—(1) *Previous Law.* Section 3302(c)(2)(B) of the Internal Revenue Code of 1954 provides that a State may be subject to an additional credit reduction (above the 0.6 percent minimum) if all loans are not repaid by the third consecutive January first on which there is a balance of outstanding advances and remain outstanding on November 10. The additional credit reduction was equal to the amount by which the State's average employer contribution (tax) rate for the calendar year preceding such taxable year was lower than 2.7 percent. The average tax rate was computed from the ratio of State trust fund account revenues collected to State taxable wages. Taxable wages were determined by the taxable wage base in effect in the State. Any wages above the taxable wage base were therefore not included.

In States where the taxable wage base exceeds the Federal taxable base, the ratio of the State's UC revenues to the State's taxable wages would be lower than it would be if the State taxable wage base were at the Federal taxable wage base. This could have activated the additional credit reduction in the third year in a State that has s relatively higher tax effort.

(2)*New Law.* Pub. L. 98–21 changes the calculation under this provision so that all covered wages, instead of just State taxable wages, are considered. Each State's tax rate on all wages subject to taxation under the FUTA is compared to an estimate of the national percentage of all wages, subject to FUTA taxes, that 2.7 percent of taxable wages represents. The 2.7 percent equivalent is calculated as the product of 2.7 percent and the ratio of the Federal taxable wage base to the estimated U.S. average annual

wage in covered employment. The ratio of State average annual wages to the Federal taxable wage base converts the difference between the U.S. average tax rate and the State average tax rate based on total wages to a difference based on taxable wages. The equation to determine the effective additional credit reduction, if any, is as follows:

[((.027) x (FTWB)/US AAW)—ST ATRToW] x (ST AAW/FTWB)

where:

FTWB=Federal Taxable Wage Base for the preceding calendar year,

US AAW=US Average Annual Wage for the preceding calendar year,

ST ATRToW=State Average Tax Rate on Total Wages for the preceding calendar year, and

ST AAW=State Average Annual Wage for the preceding calendar year.

This amendment is effective for taxable years beginning with 1983.

5. *Interest Provisions*—a. *Interest Due Dates Changed.* (1) *Previous Law.* Pub. L. 97–35 required that interest when payable was due and payable no later than October 1 following the Federal fiscal year in which an advance was made, i.e. the interest was due no later than the first day of the next fiscal year. Specifically, if the next fiscal year fell on a weekend, interest was due in the prior fiscal year. Otherwise, it was due on the first day of the next fiscal year. Under that law it was possible for a year to lapse with no interest due and payable. For example, interest would be due and payable on September 30, 1983 (FY 1983), since October 1 falls on a weekend. Interest on FY 1984 loans would be due and payable October 1, 1984 (FY 1985). Hence, no interest would be due in FY 1984.

(2) *New Law.* Section 514 of Pub. L. 98–21 amends Section 1202(b)(3)(A) of the Social Security Act to require payment of interest before the first day of the next fiscal year. The due date for deferred interest on May through September loans remains unchanged (December 31 of the following year) as does the date for interest due by reason of a later advance (i.e., cash flow loans repaid by September 30, followed by later advances).

This amendment is effective upon enactment.

b. *Imposition of Interest Made Permanent*—(1) *Previous Law.* Under Pub. L. 97–35, interest was imposed on advances to States, (pursuant to title XII of the Social Security Act) made after April 1, 1982, and before January 1, 1988.

(2) *New Law.* Section 511(b) of Pub. L. 98–21 amends section 1202(b)(7) of the Social Security Act by striking out "and before January 1, 1988", thereby imposing interest on a permanent basis.

This amendment is effective upon enactment.

c. *Additional Deferrals of Interest Payment Provided*—(1) *Previous Law.* Section 2407 of OBRA amended section 1202(b)(2) of the Social Security Act to allow a State to defer interest payable only on advances made during May through September. Such interest is payable on the last day of the following calendar year.

(2) *New Law*—(a) *High Unemployment Deferral of Interest Payment.* Section 274 of TEFRA amended 1202(b) of the Social Security Act to allow a State with high unemployment to defer payment of, and extend the payment for, 75 percent of interest charges due on September 30. The State must pay one-third of the deferred amount in each of the three years following the fiscal year for which it is due. To qualify for this deferral and extension of the payment period, the State insured unemployment rate (IUR), as determined for purposes of the Federal-State Extended Unemployment Compensation Act of 1970, must have equaled or exceeded 7.5 percent during the first 6 months of the preceding calendar year.

Section 511(a) and (b) of Pub. L. 98–21 effected two changes in this type of deferral: interest does not accrue on the deferred interest, as originally enacted and the availability of this deferral is permanent, whereas originally enacted it applied to interest accrued before January 1, 1988, since interest did not accrue after that date.

Amendments are effective upon enactment.

(b) *Legislative-Action or Average Tax Rate Deferral of Interest Payment.* Section 511(a) of Pub. L. 98–21 amends Section 1202(b) of the Social Security Act to allow another type of deferral. The amendment allows States to defer 80 percent of the interest due for a fiscal year, effective for interest accrued in fiscal years 1983, 1984, 1985. The initial payment of interest, 20 percent of the total amount payable, is due on the required September 30 date. The amount deferred under this provision would be payable in four installments, in each of the succeeding years, equal to at least 20 percent of the original amount of interest due. A State would be required to meet conditions i *and* ii(A) or ii(B) below to qualify for the deferral.

(i) no action has been taken since October 1, 1982, to reduce the State's tax effort or unemployment fund solvency as determined for purposes of section 3302(f)(2)(A) and (B) of the Internal Revenue Code of 1954 (see the explanation provided in UIPL No. 13–82, Item 4c, Criteria b(1) and (2)); and

(ii)(A) action (certified by the Secretary of Labor) has been taken after March 31, 1982, which increases revenues to the State's unemployment fund and decreases benefits by a total of 25 percent in the calendar year for which the first deferral is requested; and, deferral of interest due for the two years immediately following the year in which the first year change is effective may be received if changes of 35 and 50 percent, respectively, are made effective in those years; or

(B) for taxable year 1982, total State unemployment compensation revenues to the unemployment fund equaled at least two percent of total wages paid by employers covered under the State unemployment compensation law.

Interest will not be charged against any interest for which payment is deferred under this provision or as noted previously under the high unemployment deferral. Interest will continue to accrue on interest deferred for May through September advances.

Once a legislative-action deferral is approved, a State must continue to maintain its solvency effort. Failure to do so would result in requirement of immediate payment of all deferred interest.

The amendment is effective for interest accrued during fiscal years 1983, 1984, and 1985.

(c) *High Unemployment Delay of Interest Payment.* Section 511(a) of the Social Security Amendments of 1983 amends section 1202(b) of the Social Security Act to allow a State to delay up to nine months the payment of interest due September 30 of any calendar year after 1982 during which the average total unemployment rate (TUR) in the State was 13.5 percent or higher. The average total unemployment rate for a State is computed using the 12 month period for which the most recent information is available prior to the month in which the interest is due. Interest will not be charged against interest for which payment is delayed. Any interest delayed is not subject to either further delays or deferrals; the interest is due and payable at the specified time.

The amendment is effective upon enactment.

d. *Discounted Interest Rate Provided*—(1) *Previous Law.* There is no provision in previous law for a discounted interest rate.

(2) *New Law.* Section 511 of Public Law 98–21 allows States to receive a discounted interest rate that would be one percentage point below the interest rate that would otherwise apply. It is available to a State which produces a solvency effort of 50, 80, and 90 percent

rather than the 25, 35, and 50 percent, respectively, as specified under the legislative-action deferral, section 1202(b)(8)(B)(ii)(I) of the Social Security Act.

Effective for interest accrued only for fiscal years 1983, 1984, and 1985.

6. *Application for Total Cap and Partial Limitations on Offset Credit Reduction*—a. *Total Cap.* The Governor of a State wishing to apply for a cap on offset credit reduction under section 3302(f) of the Internal Revenue Code of 1954 shall submit a request to that effect to the Secretary of Labor by July 1 of the year for which a cap is sought. The request should include the information specified in UIPL No. 13–82, item 4d, beginning on page 8. The Secretary of Labor will determine the proper amount of offset credit reduction as of November 10 and notify the Governor and the Secretary of the Treasury of his findings. Such findings will be published in the **Federal Register.**

b. *Partial Limitation.* The Governor of a State wishing to apply for a partial limitation on offset credit reduction under section 3302(f)(8)(A) of the Internal Revenue Code of 1954 shall submit a request as specified for a total cap. To apply for a partial cap under section 3302(f)(8)(B) of the Internal Revenue Code of 1954, the Governor shall submit a request as specified for legislative-action or average tax rate deferral of interest payment (see following section 7). The Secretary of Labor will determine the proper amount of offset credit reduction as of November 10 and notify the Governor and the Secretary of the Treasury of his findings. Such findings will be published in the **Federal Register.**

c. *Repayment by Transfer of Funds.* The Secretary of Labor may require a State to furnish such information at such time and in such manner as may be necessary to determine if the State meets the requirements of 3302(g) of the Internal Revenue Code of 1954 to avoid an offset credit reduction.

7. *Application for Deferral and Delay of Interest Payment and Discounted Interest Rate*—a. *High Unemployment Deferral of Interest Payment.* The Governor shall submit to the Secretary of Labor a request for a deferral under this provision by July 1 of the fiscal year for which the deferral is requested. The Secretary of Labor will make the determination based on weeks claimed and covered employment data previously submitted by all States for the purpose of determining the status of the extended benefit program. The Secretary of Labor will notify the Governor of his determination within 30 days of receipt of the request for deferral.

b. *Legislative-Action Deferral of Interest Payment.* The Governor may request a certification under these provisions at any time after State legislation is enacted. However, application for legislation enacted on or before June 30 of the year in which a deferral or discount is requested must be received by the Secretary of Labor no later than July 1 of the request year or within 30 days of enactment, whichever is later. For legislation not enacted by July 1, a preliminary application must be received by the Secretary of Labor by July 1 indicating the most likely options to be adopted if legislation is enacted. Notification of final action must be received within two working days of final enactment, but no later than September 10 of the request year in order to allow certification by September 20 of the request year.

To determine whether a State meets the conditions for a legislative-action deferral, the Secretary of Labor will provide by June 1 quarterly estimates of the IURs for all States for the base year, the calendar year in which the deferral is requested. A State requesting a deferral or discount, will determine the level of benefits and revenues to the unemployment fund using the State IURs and the State law in effect before passage, of the legislation. The cost estimate of changes as a result of new legislation will be made from the base year for each year for which a deferral is requested. Changes in State law which provide for automatic increases in benefit amounts, i.e., an escalating maximum weekly benefit amount prior to March 31, 1982, will be considered as if they were in effect in the base year for purposes of determining the change occurring as a result of new legislation. The Secretary of Labor may use historical growth rates for indexed items when considered appropriate. The Secretary of Labor may request additional data as required in order to make the necessary determination.

Increases in the taxable wage base from $6000 to $7000 after calendar year 1982 and increases in the maximum FUTA tax rate to 5.4 percent after calendar year 1984 will not be considered for purposes of meeting criteria for a legislative-action or an average tax rate deferral, section 1202(b)(8)(B) of the Social Security Act.

States will not be penalized or rewarded if economic events change from those used in the base year for determining eligibility for legislative-action or average tax rate deferral, section 1202(b)(8)(B) of the Social Security Act.

Specifically, the Governor should submit with the request, an analysis of each legislative change which has a revenue or outlay impact. The analysis should include, but is not limited to:

—A brief description of each change,
—A brief description of any interrelated effects of the change which could have additional impact on outlays or unemployment fund revenues,
—The anticipated impact on unemployment fund revenues and outlays for each change for each year for which a deferral is requested,
—All necessary data used to support the estimates provided, including:
—The most recent actual data related to the change,
—Any assumptions made and the rationale for each assumption,
—The effective date and termination date (if any) for each change.

c. *Average Tax Rate Deferral of Interest Payment.* If a Governor wishes to request this type of deferral, the State should submit contributions, taxable wages, and total wages, as specified in items (1) through (3) under the heading "For Criterion b.(3)" beginning on page 10 in UIPL No. 13–82.

For legislative-action and average tax rate deferrals, requests received by August 1 will be processed within 45 days. Applications received after August 1 will be processed by September 20. Applications must be received by September 10 in order for the Secretary of Labor to complete the certification process and notify the Governor and the Secretary of the Treasury of the determination by September 20. If the initial request is incomplete and the Secretary of Labor requests additional information, the determination by the Secretary may be delayed.

d. *High Unemployment Delay of Interest Payment.* The Governor shall submit to the Secretary of Labor by September 1 of the year for which the delay is requested, a written request of intention to delay payment of interest because of high unemployment (13.5 percent TUR).

The Secretary of Labor shall notify the Governor of his decision within 15 days of receipt of the request, but in no case before September 15 (the earliest date on which the required information for determination is available) of the year of the request. The 12 month average State TUR will be based on the most recently benchmarked data available from the Bureau of Labor Statistics.

e. *Discounted Rate of Interest.* The Governor of a State wishing to apply for a discounted rate of interest under section 1202(b)(8)(D) of the Social

Security Act shall submit a request as specified under the legislative-action deferral of interest payment (see above). The Secretary of Labor shall notify the Governor of his decision in the same manner as indicated under the legislative-action deferral noted above.

8. *OMB Approval.* The timing of the changes in the Internal Revenue Code of 1954 and the Social Security Act did not allow for prior Office of Management and Budget (OMB) clearance under the Paperwork Reduction Act of 1980. However, immediate dissemination of this information is imperative. OMB approval is being sought and States will be notified once this approval has been obtained.

9. *Action Required.* Administrators shall advise their Governors of the requirements necessary to secure a cap or partial cap on offset credit reductions, deferral and delay of interest payments, and a discounted interest rate.

10. *Inquiries.* Direct inquiries to the appropriate regional office.

[FR Doc. 83-20554 Filed 7-28-83; 8:45 am]

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federal register

Friday
July 29, 1983

Part V

Department of Labor

Employment and Training Administration

Federal-State Unemployment Compensation Program; Unemployment Insurance Program Letter No. 35-83

DEPARTMENT OF LABOR

Federal-State Unemployment Compensation Program; Unemployment Insurance Program Letter No. 35-83; Insured Unemployment Rates (IURs) and Wage Growth Rates for Use in Applying for Loan Repayment and Interest Relief Under the Social Security Amendments of 1983

Unemployment Insurance Program Letter No. 35-83 transmits IURs and wage growth rates for States to use in estimating revenues and outlays when applying for certification by the Secretary of Labor for partial limitation on reduction of credits against the tax imposed by section 3301 of the Internal Revenue Code by reason of an outstanding balance of advances received pursuant to title XII of the Social Security Act, deferral of interest payment, or a discounted interest rate on such advances. UIPL 35-83 is published below.

Dated: July 11, 1983.

Albert Angrisani,

Assistant Secretary of Labor.

U.S. Department of Labor

Employment and Training Administration

Washington, D.C. 20213

Classification: UI
Correspondence Symbol: TEURA
Date: July 5, 1983
Rescissions
Distribution
Expiration Date: July 31, 1984
Directive: Unemployment Insurance Program Letter No. 35-83
To: All state Employment Security Agencies
From: Royal S. Dellinger, Administrator for Regional Management
Subject: Insured Uneployment Rates (IURs) and Wage Growth Rates for Use in Applying for Loan Repayment and Interest Relief under the Social Security Amendments of 1983

1. *Purpose.* to transmit IURs and wage growth rates for States to use in estimating revenues and outlays when applying for certification by the Secretary of Labor for partial cap (limitation) on offset credit reduction, deferral of interest payment, and discounted interest rate.

2. *References.* Social Security Amendments of 1983 (Pub. L. 98-21) and the Statement of Managers for same: UIPL 31-83.

3. *Background.* Section 511 of Pub. L. 98-21 requires the Secretary of Labor to estimate IURs for the base year. A State requesting certification for partial cap on offset credit reduction, deferral of interest payment, or discounted interest rate shall use the Secretary's estimated IURs to determine revenues and outlays under the State's previous law and new law for the years under consideration. The Statement of Managers for Pub. L. 98-21 states that the Secretary of Labor may use historical growth rates in determining the impact of indexed items, if appropriate. A complete discussion of application for the above appears in UIPL 31-83, items 6 and 7.

The IURs are based on actual data for January through April 1983 and projections for may through December. These projections were made by applying monthly seasonal factors, developed using the Census X-11 method, to the seasonally adjusted April rate. States using the Department of Labor (DOL) benefit financing model to develop estimates of revenues and benefit outlays, can use the following equation to convert the IUR provided to one appropriate for model use:

Model rate=1/[(1/IUR)+1]
Where IUR=DOL provided IUR for the quarter.

The wage growth rates were derived by averaging State growth rates projected by Data Resources, Inc. (DRI) and Chase Econometrics and then adjusting for differences among the administration, DRI, and Chase national wage growth forecasts.

4. *Action Required.* States should use the appropriate State IURs and wage growth rates transmitted in this UIPL in their applications for partial cap, deferral of interest payment, and discounted interest rate.

5. *Inquiries.* Direct inquiries to the Division of Actuarial Services, Jim Van Erden on 202-376-7066.

6. *Attachments.* Insured Unemployment Rates for CY 1983 (I); Projected Average Annual Wage Growth by State (II).

ATTACHMENT I TO UIPL 35-83—INSURED UNEMPLOYMENT RATES FOR CY 1983

	1st quarter	2d quarter	3d quarter	4th quarter
Alabama	6.1	4.8	5.1	5.0
Alaska	9.4	7.0	5.4	6.7
Arizona	4.1	3.4	3.5	3.2
Arkansas	6.8	4.9	4.3	4.9
California	6.0	4.9	4.6	4.8
Colorado	4.2	3.2	2.7	2.8
Connecticut	4.1	3.0	3.0	2.7
Delaware	3.8	2.8	3.2	3.1
District of Columbia	4.0	3.4	3.7	3.5
Florida	2.5	2.1	2.6	2.4
Georgia	3.4	2.6	2.7	2.6
Hawaii	3.4	3.4	3.5	3.7
Idaho	8.1	5.3	4.4	4.7
Illinois	6.6	5.4	4.9	4.9

ATTACHMENT I TO UIPL 35-83—INSURED UNEMPLOYMENT RATES FOR CY 1983—Continued

	1st quarter	2d quarter	3d quarter	4th quarter
Indiana	5.6	4.0	3.5	3.6
Iowa	5.7	4.2	3.7	3.6
Kansas	4.3	3.3	3.3	3.0
Kentucky	7.1	5.3	4.7	4.8
Louisiana	6.2	5.4	5.0	4.8
Maine	6.1	4.5	4.2	4.0
Maryland	4.9	3.8	3.5	3.6
Massachusetts	4.6	3.2	3.4	3.2
Michigan	7.4	5.0	4.7	4.5
Minnesota	5.0	3.2	2.4	2.6
Mississippi	6.9	5.7	5.7	5.1
Missouri	5.1	3.7	3.7	3.6
Montana	6.7	4.4	3.5	3.7
Nebraska	4.1	2.9	2.5	2.6
Nevada	5.5	4.0	3.6	3.9
New Hampshire	3.3	2.3	2.2	1.9
New Jersey	5.2	3.9	3.7	3.8
New Mexico	5.0	4.2	4.1	3.9
New York	4.4	3.5	3.3	3.4
North Carolina	4.8	3.3	3.0	3.1
North Dakota	5.8	3.4	2.3	2.5
Ohio	6.3	4.5	4.0	4.3
Oklahoma	4.1	3.5	3.6	3.5
Oregon	7.5	5.7	4.7	5.0
Pennsylvania	8.0	6.3	5.9	6.0
Puerto Rico	8.1	7.2	7.7	7.6
Rhode Island	6.4	4.4	4.9	4.0
South Carolina	5.2	4.0	4.1	4.1
South Dakota	3.1	1.8	1.5	1.6
Tennessee	5.2	4.1	3.8	3.8
Texas	3.0	2.6	2.5	2.7
Utah	6.2	4.3	3.8	3.7
Vermont	6.2	4.9	4.0	4.0
Virginia	2.9	1.9	1.6	1.6
Virgin Islands	5.2	5.2	5.2	4.7
Washington	7.2	5.6	5.0	5.3
West Virginia	10.5	7.7	6.6	6.6
Wisconsin	7.5	4.9	4.0	4.4
Wyoming	6.3	5.1	3.6	4.4

ATTACHMENT II TO UIPL 35-83—PROJECTED AVERAGE ANNUAL WAGE GROWTH BY STATE

	1982-83 (percent)	1983-84 (percent)	1984-85 (percent)
Alabama	5.6	5.6	6.3
Alaska	6.0	4.5	2.4
Arizona	4.4	6.4	7.4
Arkansas	6.0	6.3	6.2
California	6.2	5.5	6.3
Colorado	4.9	5.4	6.4
Connecticut	4.8	5.4	6.4
Delaware	5.7	5.8	6.6
District of Columbia	6.4	6.2	6.1
Florida	6.5	6.5	7.0
Georgia	5.6	5.1	5.7
Hawaii	6.3	4.8	5.2
Idaho	5.9	5.8	6.2
Illinois	4.6	5.4	5.9
Indiana	4.1	5.5	6.1
Iowa	4.9	5.7	6.5
Kansas	6.0	6.5	6.5
Kentucky	4.6	5.1	6.7
Louisiana	5.4	5.1	6.9
Maine	6.1	6.1	6.7
Maryland	6.0	5.8	6.1
Massachusetts	5.3	5.4	6.2
Michigan	4.8	5.9	6.3
Minnesota	5.4	6.0	6.9
Mississippi	6.3	5.1	5.9
Missouri	5.1	5.0	6.1
Montana	5.6	5.2	6.0
Nebraska	5.0	5.9	6.4
Nevada	4.3	5.1	6.7
New Hampshire	5.5	5.4	6.5
New Jersey	6.0	5.7	6.1
New Mexico	6.9	5.5	5.6
New York	6.4	5.5	5.9
North Carolina	5.7	6.0	6.6
North Dakota	7.2	5.0	5.8
Ohio	4.1	5.9	6.4
Oklahoma	6.3	6.0	6.0

ATTACHMENT II TO UIPL 35-83—PROJECTED AVERAGE ANNUAL WAGE GROWTH BY STATE—Continued

	1982-83	1983-84	1984-85
	(percent)	(percent)	(percent)
Oregon	5.4	6.2	6.9
Pennsylvania	3.6	5.1	6.6
Puerto Rico	4.9	5.1	5.9
Rhode Island	4.6	5.3	5.3
South Carolina	6.4	5.9	6.4
South Dakota	7.8	5.1	6.1
Tennessee	5.8	5.6	6.5
Texas	6.7	6.0	6.4
Utah	7.2	6.4	6.3
Vermont	6.2	5.5	6.2
Virginia	7.3	5.7	6.4
Virgin Islands	4.9	5.1	5.9
Washington	4.8	5.1	6.3
West Virginia	5.3	5.9	6.5
Wisconsin	5.0	6.0	6.5
Wyoming	3.5	6.2	5.8

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federal register

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July 29, 1983

Part VI

Department of Education

Migrant Education Activities; Financial Assistance to State Educational Agencies To Improve the Interstate and Intrastate Coordination; Final Rules

DEPARTMENT OF EDUCATION

34 CFR Part 205

Chapter 1 of the Education Consolidation and Improvement Act of 1981; Financial Assistance to State Educational Agencies To Improve the Interstate and Intrastate Coordination of Migrant Educational Activities

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary issues these regulations to govern grants under the Migrant Education Interstate and Intrastate Coordination Program authorized under the Education Consolidation and Improvement Act of 1981. This program provides financial assistance to State educational agencies for projects designed to improve the interstate and intrastate coordination of migrant education activities, including those activities conducted under the Migrant Education Program.

EFFECTIVE DATE: These regulations take effect either 48 days after publication in the **Federal Register** or later if Congress takes certain adjournments.

FOR FURTHER INFORMATION CONTACT: Ms. Melissa Murray, Education Program Specialist, Migrant Education Programs Office, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue, SW., (Donohoe Building, Room 1100), Washington, D.C. 20202, Telephone (202) 245-2222.

SUPPLEMENTARY INFORMATION: Chapter 1 of the Education Consolidation and Improvement Act of 1981 (Chapter 1) was enacted as part of Subtitle D of Title V of the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97-35). Chapter 1 supersedes Title I of the Elementary and Secondary Education Act of 1956, as amended (Title I). The purpose of Chapter 1 is to continue to provide financial assistance to State educational agencies (SEAs) and local educational agencies (LEAs) to meet the special educational needs of educationally deprived children on the basis of entitlements calculated under Title I, but to do so in a manner which will eliminate burdensome, unnecessary, and unproductive papework and free the schools of unnecessary Federal supervision, direction, and control.

These regulations apply only to that portion of Chapter 1 that provides financial assistance to SEAs for special projects designed to improve interstate and intrastate coordination among SEAs and LEAs of eductional programs available for migratory students.

These regulations relate to:

- General matters such as the purpose of this program, eligibility as a grantee, and regulations and definitions that apply to this program;
- How an SEA applies for a grant, including the required contents of an application, and how an SEA must develop its application; and
- How a grant is made to an SEA, including how an application is evaluated, the selection criteria for reviewing an application, and the factors considered in awarding a grant.

Recipients of funds under Chapter 1 must comply with Federal civil rights laws generally applicable to recipients of Federal financial assistance; consequently, those laws, as well as the regulations that implement them, apply to all Chapter 1 programs. The applicable civil rights regulations are found in 34 CFR Parts 100, 104, and 106. Although regulations implementing the Age Discrimination Act of 1975 have not yet been published, recipients of Chapter 1 funds must comply with the provisions of that Act.

Section 596 of the ECIA makes certain sections of the General Education Provisions Act (GEPA) specifically applicable to Chapter 1 programs. Subject to the exceptions noted below, the Secretary adopts the interpretation that the other provisions of GEPA are applicable to Chapter 1. These regulations reflect that interpretation.

Even though GEPA generally applies to Chapter 1, some specific provisions of GEPA are inapplicable because they are specifically made inapplicable by the ECIA, they are superseded by specific provisions of the ECIA, or for other reasons explained in the following paragraphs. Other provisions of GEPA, though not inapplicable, have been superseded by the Department of Education Organization Act or are otherwise irrelevant to the operation of the Chapter 1 program. After a careful consideration of the ECIA and its legislative history, the Secretary interprets the following sections of GEPA as inapplicable to Chapter 1 as a matter of law:

Section 408(a)(1) of GEPA (authorizing the Secretary to promulgate regulations), 20 U.S.C. 1221e-3(a)(1), is superseded by Section 591(a) of the ECIA.

Section 425 of GEPA, 20 U.S.C. 1231b-2, provides complex procedures regarding certain actions by an SEA made in accordance with a State Plan approved by the Secretary, that affect applicants or recipients under an applicable program. The Secretary believes that this provision does not apply to the Chapter 1 program to provide assistance for projects designed to improve the interstate and intrastate coordination of migrant education activities, since these projects are predicated upon a competitive project application submitted under these regulations, and not upon a State Plan approved by the Secretary. Further, Section 425 is clearly inconsistent with Section 552 of Chapter 1 which provides: "The Congress declares it to be the policy of the United States to continue to provide financial assistance to State and local educational agencies to meet the special educational needs of educationally deprived children . . . but to do so in a manner which will . . . free the schools of unnecessary Federal supervision, direction, and control."

Section 426(a) of GEPA (relating to technical assistance from the Department), 20 U.S.C. 1231(a), is superseded by Section 591(b) of the ECIA.

Section 427 of GEPA, 20 U.S.C. 1231d, directs the promulgation of Federal regulations or criteria relating to parental participation where the Secretary determines that parental participation at the State or local level will increase the effectiveness of a Federal program. The Secretary believes that Section 427 should not be invoked with respect to Chapter 1 even in the context of a determination of general GEPA applicability. The matter of parental involvement is covered in Section 556(b)(3) of Chapter 1, and the Secretary regards this section as preemptive and rendering unnecessary the issuance of regulations or criteria under Section 427 of GEPA.

Sections 1741 (distribution of block grant funds), 1742 (reports on the proposed use of funds and public hearings), 1743 (transition provisions), and 1745 (State audit requirements) of the Omnibus Budget Reconciliation Act of 1981 do not apply to Chapter 1. However, Section 1744 regarding access to records by the Comptroller General by its own terms does apply.

The Education Department General Administrative Regulations (EDGAR) do apply to projects funded under these regulations for the Migrant Education Interstate and Intrastate Coordination Program. Those portions of EDGAR that apply to the Program are found in 34 CFR Parts 74, 75, 77, and 78.

The President's Task Force on Regulatory Relief has named EDGAR as a target for review. Therefore, the Department of Education will review EDGAR for the purpose of identifying opportunities to reduce paperwork and other burdens. Deregulation resulting from this review will be reflected in the final EDGAR regulations.

For the most part, EDGAR is inapplicable to programs funded under Chapter 1 of the Education Consolidation and Improvement Act. See, final regulations for programs of financial assistance to meet special educational needs of disadvantaged children, 45 FR 52340 (November 8, 1982), and proposed regulations for State agencies to meet special educational needs of migratory children, handicapped, and neglected or delinquent children in institutions, 45 FR 54718 (December 3, 1982). However, EDGAR is applicable to these regulations for the Migrant Education Interstate and Interstate Coordination Program because, unlike the others, this program distributes funds to State educational agencies on the basis of a competitive application process.

There are no significant differences between these final regulations and those contained in the April 20, 1983, 48 FR 17048, notice of proposed rulemaking (NPRM).

In the NPRM for this program, the Secretary established a 45-day period for the submission of written comments. The Secretary received comments from 11 commenters.

The following is a summary of the comments received on the proposed regulations for the Migrant Education Interstate and Intrastate Coordination Program. Each comment is followed by the Secretary's response.

Comment. Several commenters recommended that the regulations be revised to include a specific mention of continued funding of the Migrant Student Record Transfer System (MSRTS). Further, several commenters were concerned about the lack of a requirement in the regulations regarding the necessity of entering data into the MSRTS.

Response. No change has been made. Section 143 of Title I of the Elementary and Secondary Education Act of 1965, as amended (Pub. L. 95-561), was incorporated by reference into Section 554(a)(2)(A) of Chapter 1 of the Education Consolidation and Improvement Act of 1981 (ECIA) (Pub. L. 97-35) and continues to authorize the operation of a system for the transfer of migrant student records administered either through a contract or a grant.

For a number of years, ED has contracted with an SEA to provide for the transfer of student records utilizing the MSRTS. Because of the nature of this particular interstate and intrastate coordination project, a contract has been determined to be the most appropriate instrument to procure the desired services and products. Since these regulations govern only grants under this program, the "transfer of student records" activity described in the authorizing program statute is not covered by these regulations.

The Secretary has not included in these regulations a requirement for grantees to provide information to the MSRTS. Operational and data collection responsibilities regarding use of the MSRTS are allotted to the Migrant Education Basic State Formula Grant Program.

Comment. Two commenter recommended that the Department select projects through the grant and contract process rather than solely through the contract process.

Response. No change has been made. The Department currently uses both processes to make awards for the program.

Comment. One commenters stated a concern regarding the lack of information contained in the regulations.

Response. No change has been made. In Section 552 of Chapter 1 of ECIA, Congress declared that the policy of the United States is to continue to provide financial assistance to eligible grantees, but to do so in a manner which will eliminate burdensome, unnecessary, and unproductive paperwork and free the schools of unnecessary Federal supervision, direction, and control. Consistent with Section 591 of ECIA, the Secretary has limited the content of these regulations to include only those provisions that are absolutely essential to describe and ensure effective projects. SEAs thereby have been provided with the maximum amount of flexibility possible.

Comment. Several commenters recommended that the regulations include a national needs assessment and national goals.

Response. No change has been made. The Secretary recognizes the unique position of the SEAs involved in this program to assess their own need for financial assistance that will promote the intrastate and intrastate coordination of projects for eligible children. Further, the Secretary is aware of the immense amount of interstate and interstate coordination that SEAs voluntarily maintain in efforts to determine the unique needs of migratory children and corresponding educational goals. The Secretary prefers to provide flexibility to participating SEAs to assess the interstate and intrastate coordination needs of migratory children and to design their own programs for meeting those needs rather than to attempt a listing of those needs and project designs in these regulations.

However, the Secretary has included in § 205.31(a)(2) of these regulations a selection criterion for assessing the extent to which the proposed activity addresses unmet national needs.

Comment. Several commenters recommended that the Department and representatives of the National Association of State Directors of Migrant Education (NASDME) meet and establish priorities for the use of funds to be made available to the SEAs by these regulations. Another commenter recommended that the NASDME committee on Interstate and Intrastate Coordination be more involved in the planning, implementation, and evaluation of each project.

Response. No change has been made. With regard to the recommendation that funding priorities be established, Subpart C of 34 CFR Part 75 provides the Secretary with the authority to establish priorities on an annual basis. However, the Secretary has chosen not to identify lists of either the types of activities that may be funded according to these regulations or any priorities that might affect the types of project applications that SEAs may submit. This was done in order to encourage the States to develop interstate and intrastate activities and project designs that meet their own needs without the Secretary appearing to promote a limited number of priority areas. The project selection process described in these regulations places a large emphasis on a project application's description of how the proposed project will promote interstate and intrastate coordination efforts toward meeting unmet national needs. If the Secretary at any time determines that it may be important to establish funding priorities, the Secretary will establish them on an annual basis only after consultation with the States and will publish them in the **Federal Register.**

With regard to the specific proposal to involve the NASDME committee in the planning, implementation, and evaluation of the projects, a selection criterion is currently included in the regulations to assess appropriate SEA consultation with other SEAs or appropriate LEAs. The Secretary elects to provide as much discretion as possible to individual SEAs to determine for themselves with whom they should consult.

Comment. One commenter recommended that each project be required to contain strong implementation and dissemination components.

Response. No change has been made. Section 205.31(a)(3) currently includes selection criteria that provide points for inclusion of implementation and dissemination components in an

application for funding. Once a grant proposal has been submitted and approved for funding, an SEA must adhere to the application's components until such time as it is legally amended. In addition, the Department will continue to maintain a practice of informally disseminating information about successful projects to the SEAs.

Comment. Several commenters recommended that the Department increase its oversight responsibilities regarding projects funded under these regulations. The recommendations included the development of procedures to eliminate overlapping and duplication of services and to assure appropriate monitoring of projects for compliance with established guidelines.

Response. No change has been made. In 34 CFR 75.215–75.236 of EDGAR, the Department has established procedures for awarding projects selected under direct grant programs including the Migrant Education Interstate and Intrastate Coordination Program that is the subject of these regulations. ED utilizes panels of expert readers—both Federal and non-Federal—to read and score all applications for grant funds. Once the applications are scored and ranked, the Secretary or his designee may evaluate the individual project proposals and, for good cause, elect not to provide funds for a specific project. An acceptable rationale for not funding a highly scored application would be that it and other top applications propose to use program funds to provide virtually the same services.

With regard to compliance with established guidelines, the Department provides grant recipients with copies of all applicable regulations and guidelines with the grant award document. Along with the Department's programmatic monitoring, the Secretary relies upon internal audits by grant recipients and audits performed by the Department's Office of the Inspector General to assure compliance with established standards.

Comment. One commenter recommended that funding for the program be increased to $8 million in Fiscal Year 1984.

Response. No change has been made. Appropriation levels are not established by regulations.

Comment. One commenter recommended that reference be made in the regulations to the statutory requirements contained in Section 558 of Chapter 1 of ECIA (20 U.S.C. 3807) including the applicability of its provisions regarding maintenance of effort, supplement not supplant, and comparability of services.

Response. No change has been made. The requirements contained in Section 558 of Chapter 1 of ECIA apply to SEAs that receive funds distributed under the Migrant Education Interstate and Intrastate Coordination Program. More specifically, the requirements of Section 558 of Chapter 1 are bassic conditions of eligibility that apply to all SEAs and LEAs that receive any program funds under Chapter 1. See final regulations for program of financial assistance to meet special educational needs of disadvantaged children, 45 FR 52340 (November 8, 1982), and proposed regulations for agencies to meet special educational needs of migratory children, handicapped, and neglected or delinquent children in institutions, 45 FR 54718 (December 3, 1982).

However, because these regulations are intended only to provide supplemental programmatic requirements that govern SEA projects and SEA project applications under the Migrant Education Interstate and Intrastate Coordination Program, the statutory requirements of Section 558 of Chapter 1 have not been expressly incorporated into these regulations.

Comment. One commenter recommended that the regulations clarify whether in awarding grants the Secretary must rely solely on the amount of available funds and the rank and order of the applications based upon the selection criteria established in these regulations.

Response. A change has been made. These regulations are not intended to affect the Secretary's authority under 34 CFR 75.217 of EDGAR but also to consider the information contained in the application and any other information that is relevant to a selection criterion or other requirement that applies to the selection of applications for new grants. Section 205.32 has been revised to clarify the Secretary's authority to take such available information into consideration in awarding grants under these regulations.

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are classified as non-major because they do not meet the criteria for major regulations published in the Order.

Regulatory Flexibility Act

The Secretary certifies that these regulations will not have a significant economic impact on a substantial number of small entities. Under these regulations, grants are available only to State agencies. As defined in the Regulatory Flexibility Act, "small entities" only includes small businesses, small organizations, and small governmental jurisdictions. The definition of "small governmental jurisdiction" does not include States or State agencies.

List of Subjects in 34 CFR Part 205

Education, Education of disadvantaged, Elementary and secondary education, Grant programs—education, Migrant labor.

Citation of Legal Authority

A citation of statutory or other legal authority is placed in parentheses on the line following each substantive provision of these regulations.

Dated: July 25, 1983.

T. H. Bell,

Secretary of Education.

(Catalog of Federal Domestic Assistance No. 84.144; Migrant Education/Interstate and Intrastate Coordination Program)

The Secretary amends Title 34 of the Code of Federal Regulations by revising Part 205 to read as follows:

PART 205—CHAPTER 1 OF THE EDUCATION CONSOLIDATION AND IMPROVEMENT ACT OF 1981—FINANCIAL ASSISTANCE TO STATE EDUCATIONAL AGENCIES TO IMPROVE THE INTERSTATE AND INTRASTATE COORDINATION OF MIGRANT EDUCATION ACTIVITIES

Subpart A—General

Sec.
205.1 Purpose.
205.2 Eligibility to participate as a grantee.
205.3 Regulations that apply.
205.4 Definitions that apply.
205.5 Acronyms.

Subpart B—Types of Activities That the Secretary Assists Under This Program

205.10 Types of projects that may be funded.

Subpart C—How To Apply for a Grant

205.20 Information required in an application.
205.21 Specific information required in a group application.
205.22 Consultation with other agencies.

Subpart D—How Grants Are Made

205.30 Application evaluation.
205.31 Selection criteria for reviewing an application.
205.32 Factors considered in awarding a grant.

Authority: Sec. 554(a) of Chapter 1 of the Education Consolidation and Improvement Act of 1981 (Pub. L. 97–35) (20 U.S.C. 3803(a)) and Sec. 143 of Title I, Elementary and Secondary Education Act of 1965, as amended by the Education Amendments of 1978 (Pub. L. 95–561) (20 U.S.C. 2763), unless otherwise noted.

Subpart A—General

§ 205.1 Purpose.

The Migrant Education Interstate and Intrastate Coordination Program is designed to provide financial assistance to State educational agencies (SEAs) for projects designed to improve interstate and intrastate coordination of migrant education activities among SEAs and local educational agencies (LEAs). The projects may be designed to include SEAs, LEAs, and other operating agencies participating in the Chapter 1 Migrant Education Program.

(Sec. 552, 20 U.S.C. 3801; sec. 554(a), 20 U.S.C. 3803(a), Title I, Sec. 143, 20 U.S.C. 2763)

§ 205.2 Eligibility to participate as a grantee.

Only SEAs, either individually or cooperatively (i.e., through a group or consortium), may apply for a grant under this program.

(Sec. 554(a), 20 U.S.C. 3803(a), Title I, sec. 143, 20 U.S.C. 2763)

§ 205.3 Regulations that apply.

The following regulations apply to this program:

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, and 78.

(b) The regulations in this Part 205.

(Sec. 554(a), 20 U.S.C. 3803(a), Title I, sec. 143, 20 U.S.C. 2763)

§ 205.4 Definitions that apply.

The definitions that are included in the regulations for the Chapter 1 Migrant Education Program (34 CFR Part 204) apply to this program.

(Sec. 554(a), 20 U.S.C. 3803(a), Title I, sec. 143, 20 U.S.C. 2763)

§ 205.5 Acronyms.

The following acronyms are used frequently in these regulations:

"LEA" means local educational agency.

"SEA" means State educational agency.

(Sec. 554(a), 20 U.S.C. 3803(a), Title I, sec. 143, 20 U.S.C. 2763)

Subpart B—Types of Activities That the Secretary Assists Under This Program

§ 205.10 Types of projects that may be funded.

The Secretary may make grants to an SEA or SEAs to carry out among State and local educational agencies projects designed to improve the interstate and intrastate coordination of the educational programs available for migratory students.

(Sec. 554(a), 20 U.S.C. 3803(a), Title I, sec. 143, 20 U.S.C. 2763)

Subpart C—How To Apply for a Grant

§ 205.20 Information required in an application.

In applying for a grant, an SEA shall follow the procedures and meet the requirements stated in Subpart C of 34 CFR Part 75.

(Approved by the Office of Management and Budget under control number 1810–0028)

(Sec. 554(a), 20 U.S.C. 3803(a), Title I, sec. 143, 20 U.S.C. 2763)

§ 205.21 Specific information required in a group application.

In applying for a grant, an SEA shall provide information relevant to any proposed consortium of SEAs (for a group application only) as required by Subpart C of 34 CFR Part 75. In addition, the application must include:

(a) An identification of each SEA proposed to participate in the consortium;

(b) A description of the proposed objectives of the consortium; and

(c) A description of how each SEA proposed to participate in the consortium was involved in the development of the proposed objectives and activities of the project.

(Sec. 554(a), 20 U.S.C. 3803(a), Title I, sec. 143, 20 U.S.C. 2763)

§ 205.22 Consultation with other agencies.

An applicant SEA under the Migrant Education Interstate and Intrastate Coordination Program shall plan and develop its project in consultation and coordination with other SEAs or with participating LEAs, as appropriate.

(Sec. 554(a); 20 U.S.C. 3803(a), Title I, sec. 143, 20 U.S.C. 2763)

Subpart D—How Grants Are Made

§ 205.30 Application evaluation.

(a) The Secretary evaluates an application under this program on the basis of the criteria in § 205.31 of these regulations.

(b) The Secretary awards up to 100 possible points for meeting these criteria.

(c) The maximum number of points possible for meeting each individual criterion is indicated in parentheses after the heading for that criterion.

(Sec. 554(a), 20 U.S.C. 3803(a); 20 U.S.C. 1221e–3(a)(1), Title I, sec. 143, 20 U.S.C. 2763)

§ 205.31 Selection criteria for reviewing an application.

(a) *Interstate and intrastate consultation and coordination.* (30 points) (1) The Secretary reviews each application for information that shows the quality of the applicant SEA's proposed consultation and coordination with other SEAs or with participating LEAs, as appropriate to effect improved interstate and intrastate coordination of programs available for migratory students (10 points).

(2) The Secretary reviews each application to determine the extent to which the proposed activities address unmet national needs (10 points).

(3) The Secretary looks for information that shows that the applicant SEA:

(i) Has consulted and coordinated adequately with other SEAs or participating LEAs, as appropriate, in planning, developing, and disseminating its project (5 points); and

(ii) Will consult and coordinate adequately with other SEAs or participating LEAs, as appropriate, in implementing and evaluating its project and in disseminating the results of the project (5 points).

(b) *Plan of operation.* (25 points) (1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows the following:

(i) High quality in the design of the project.

(ii) An effective plan of management that insures proper and efficient administration of the project.

(iii) A clear description of how the objectives of the project relate to the purpose of the program.

(iv) A clear description of the way that the applicant SEA plans to use its resources and personnel to achieve each objective of the project.

(v) A clear description of how the applicant SEA will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as:

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(vi) A clear description of how the applicant SEA will provide an opportunity for participation of students enrolled in private schools.

(c) *Quality of key personnel.* (15 points) (1) The Secretary reviews each application for information that shows adequate qualifications of the key personnel the applicant SEA plans to use in the project.

(2) The Secretary looks for information that shows the following:

(i) The qualifications of the project director (if one is to be used).

(ii) The qualifications of each of the other key personnel to be used in the project.

(iii) The time that each person referred to in paragraphs (b)(2) (i) and (ii) of this section plans to commit to the project.

(iv) The extent to which the applicant SEA, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as:

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine personnel qualifications, the Secretary considers experience and training—in fields related to the objectives of the project—as well as other information that the applicant SEA provides.

(d) *Budget and cost effectiveness.* (15 points) (1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows the following:

(i) The budget for the project is adequate to support the project activities.

(ii) Costs are reasonable in relation to the objectives of the project.

(e) *Evaluation plan.* (10 points) (1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project.

Cross-reference. See 34 CFR 75.590 of EDGAR (Evaluation by the grantee).

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(f) *Adequacy of resources.* (5 points) (1) The Secretary reviews each application for information that shows that the applicant SEA plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows the following:

(i) The facilities that the applicant SEA plans to use are adequate.

(ii) The equipment and supplies that the applicant SEA plans to use are adequate.

(Sec. 554(a), 20 U.S.C. 3803(a); 20 U.S.C. 1221e-3(a)(1), Title I, sec. 143 20 U.S.C. 2763)

§ 205.32 Factors considered in awarding a grant.

In awarding grants, the Secretary considers:

(a) The amount of funds available for grants under the program;

(b) The rank order of the applications—as determined by using the criteria listed in § 205.31 of these regulations; and

(c) Other information contained in the application or that is otherwise relevant to a selection criterion or requirement that applies to the selection of applications for new grants.

(Sec. 554(a); 20 U.S.C. 3803(a); 20 U.S.C. 1221e-3(a)(1), Title I, sec. 143, 20 U.S.C. 2763)

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July 29, 1983

Part VII

Department of Agriculture

Food and Nutrition Service

Technical Amendments to the Quality Control Review Process

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 271, 272, 273, and 275

[Amdt. No. 256]

Food Stamp Program; Technical Amendments to the Quality Control Review Process

AGENCY: Food and Nutrition Service, USDA.

ACTION: Proposed rulemaking.

SUMMARY: This rule contains proposed regulations for the Food Stamp Program to implement various technical changes in the quality control (QC) review process. State agencies administering the Food Stamp Program are required to conduct QC reviews as a part of the Performance Reporting System under the Food Stamp Act of 1977. The Department is proposing these technical changes based on its experience administering the Program's QC system. The result of implementing these changes will be to improve the accuracy of error rates, reduce workloads and costs, simplify the QC system, and increase the compatibility of Food Stamp-QC with AFDC-QC.

DATE: Comments on this proposed rulemaking must be received on or before September 27, 1983 to be assured of consideration.

ADDRESS: Comments should be submitted to Thomas O'Connor, Chief, Program Design and Rulemaking Branch, Family Nutrition Programs, Food and Nutrition Service, USDA, Alexandria, Virginia 22302. All written comments will be open to public inspection at the Office of the Food and Nutrition Service during regular business hours (8:30 a.m. to 5:00 p.m., Monday through Friday), at 3101 Park Center Drive, Alexandria, Virginia, Room 708.

FOR FURTHER INFORMATION CONTACT: Questions regarding this proposed rulemaking should be directed to John Hitchcock, Acting Supervisor, State Agency Management and Control Section, at the above address, or by telephone at (703) 756-3431.

SUPPLEMENTARY INFORMATION:

Classification

Executive Order 12291. This proposed rule has been reviewed under Executive Order 12291 and Secretary's Memorandum No. 1512-1, and has been classified "not major". The rule will not have an annual effect on the economy of $100 million or more, nor is it likely to result in a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies or geographic regions. Because this rule would not affect the business community, it would not result in significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

This proposed rule has also been reviewed with regard to the requirements of Pub. L. 96-354, and Robert E. Leard, Administrator of the Food and Nutrition Service, has certified that it will not have a significant economic impact on a substantial number of small entities. The rule would implement various technical changes aimed at improving the quality control (QC) review process. State and local welfare agencies would be affected to the extent that they administer the Program, and should experience a reduction in workloads and costs associated with more simplified QC system. Individuals participating in the Program would be affected should the increased accuracy of error rates result in the identification of an underissuance or overissuance in their benefits which would be subsequently corrected.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507), the reporting and recordkeeping provisions that are included in this proposed rule will be submitted for approval to the Office of Management and Budget (OMB). They are not effective until OMB approval has been obtained.

Background

The Food Stamp Act of 1977 (Pub. L. 95-113, enacted on September 29, 1977) provides the Department authority to establish standards for the efficient and effective administration of the Food Stamp Program by State agencies. To determine how efficiently and effectively State agencies operate the Program and to ensure compliance with Program requirements, the Act also requires State agencies to establish procedures for monitoring and improving their administration of the Program and to report on their administration to the Department. In addition, the Act authorizes the Department to withhold an appropriate share of the Federal reimbursement of administrative costs as a sanction for State agency failure without good cause to meet any Program requirements or to carry out the approved State plan of operation. Finally, the 1977 Act authorizes the Department to increase the Federal share of all administrative costs from 50 percent to 60 percent for those State agencies whose cumulative allotment error rate with respect to basic program eligibility, overissuance and underissuance of coupons as determined by quality control is less than five percent.

The Department issued final rules on the quality control (QC) aspect of the Performance Reporting System under the 1977 Act on August 3, 1979 (at 44 FR 45880). The August 3, 1979 final rules established the requirements for conducting QC reviews, and made enhanced funding available to State agencies with QC error rates of less than five percent based on QC reviews conducted during a six-month review period. On March 11, 1980 (at 45 FR 15884), the Department issued final rules which established the remainder of the Performance Reporting System under the 1977 Act. The March 11, 1980 final rules established the requirements that State agencies needed to meet regarding administration, conducting management evaluation (ME) reviews, data analysis and evaluation, corrective action, and reporting as part of the Performance Reporting System. In addition, the March 11, 1980 final rules established the requirements for Federal monitoring and determining State agency efficiency and effectiveness in administering the Food Stamp Program.

The Food Stamp Act Amendments of 1980 (Pub. L. 96-249, enacted on May 26, 1980) establish an incentive system to encourage State agencies to lower error rates by offering them one of three possible increases in the Federal share of State administrative costs, and to determine whether a State agency is eligible for this enhanced administrative funding. The 1980 Amendments also establish an error rate sanction system under which the Department would establish payment error rate standards and determine whether a State agency is liable to the Federal government for a portion of its food stamp issuance. Both the incentive and sanction systems utilize quality control error rates as the basis for determining whether a State agency is eligible for enhanced administrative funding or liable to the Federal government for its payment errors, respectively. The Department issued final rules establishing the Food Stamp Program's Sanction and Incentive Systems on January 23, 1981 (at 46 FR 7257).

The Food Stamp Act Amendments of 1982 (Pub. L. 97-253, enacted on

September 2, 1982), provide for continuation of the sanction and incentive systems in the Food Stamp Program with a number of significant revisions in the requirements governing their operation. The 1982 Amendments exclude from the calculation of payment error rates those food stamp benefits underissued to eligible households, thereby limiting payment error rates to measuring only the dollar value of benefits issued to ineligible households and overissued to eligible households. The 1982 Amendments also modify the sanction system by establishing payment error rate goals for all State agencies in each fiscal year, and measuring performance on an annual basis rather than at the end of each six-month reporting period. In addition, the revised sanction system bases liability for failure to meet the standard upon a State agency's share of Federal administrative funding rather than a percentage of the benefits it issued. Finally, the 1982 Amendments revise the current incentive system for State agencies to maintain low error rates. Any State agency is eligible for an increase in the Federal share of administrative costs from 50 to 60 percent if the sum of its payment error rate and its rate of underissuance to eligible households is less than five percent, provided that its rate of invalid decisions in denying and terminating eligibility is less than a reasonable level set by the Department. Interim final rules establishing the error rate reduction system for the Food Stamp Program in accordance with the provisions of the 1982 Amendments were issued by the Department on May 27, 1983 (at 48 FR 23797).

As discussed in the preamble of the May 27, 1983 interim rules, the Department has been reexamining the structure of the QC sampling requirements and case disposition standards in light of the revisions made to the requirements governing the Program's sanction and incentive systems by the 1982 Amendments. The Department is proposing modifications to these and other aspects of the QC system in this rulemaking as a result of that effort. These changes should enhance the ability of State agencies to meet the yearly payment error rate goals established through the 1982 Amendments by reducing QC workloads and costs, thereby enabling State agencies to devote additional resources to error reduction activities.

Definitions

The Department proposes to eliminate the Food Stamp Program's definitions of "administrative deficiencies" and "cumulative allotment error rate," and revise the definitions of "active case" and "negative case." (See 7 CFR 271.2).

Active case. An active case is currently defined as a household which was certified for and received food coupons during the sample month. This definition has posed problems for some State agencies for two reasons. First, those State agencies which utilize lists of certified eligible households for their sample frames may experience delays in frame compilation because households can be certified for participation after the end of the sample month. This could occur, for example, with households that file an initial application for participation after the first day of the sample month. Since State agencies have 30 days to determine the eligibility of such households and to provide them an opportunity to participate, households which file initial applications during the sample month may be certified during the following month. And second, the definition is sufficiently vague that households which receive food stamp benefits during the sample month, which benefits are intended for the participation of such households during the previous month, may never be subjected to quality control review. This situation could occur, for example, if the State agency decides not to review such households because the households were not certified for participation during the sample month. The Department is proposing to address these problems by revising the definition of "active case" to mean a household which was certified prior to, or during, the sample month and issued food stamp benefits for the sample month.

Administrative deficiencies. Current Program regulations define "administrative deficiencies" as deficiencies detected in a case which do not affect a household's eligibility for food stamps or which involve variances that are disregarded from a case's error determination. The QC reviewer is required to identify such deficiencies and to report this information to the State agency for action on an individual case basis. For active cases, any deficiencies in a case which do not directly contribute to a dollar loss are considered administrative deficiencies. Examples of administrative deficiencies for active cases include the incidence of errors which are excluded from the error analysis, insufficient documentation, inadequate verification of those elements required to be verified, excessive verification, inadequate documentation of each household member's work registration status, and others. For negative cases, an administrative deficiency occurs when a household is, in fact, ineligible, but for a reason other than that given by the State agency. Other examples of administrative deficiencies in negative cases include, but are not limited to, situations where the household is ineligible but no Notice of Adverse Action was sent, the application was not signed, there is insufficient documentation, or no application is on file. These deficiencies are administrative in nature and are viewed as problems which could not have been avoided by the eligibility worker. The Department has been requiring State agencies to collect and report this information as administrative deficiencies, rather than as eligibility errors and attaching no dollar loss. This has enabled the Department to obtain statistically reliable data by which to measure compliance with administrative standards, without artifically increasing State agencies' error rates. The proposal would eliminate the concept of "administrative deficiencies" in order to relieve State agencies of the burden associated with identifying and reporting errors resulting from administrative complexities or procedures. This change would provide each State agency the flexibility to obtain this information by whatever method is best suited to its particular needs and make the Food Stamp QC process more compatible with the procedures of the Aid to Families with Dependent Children (AFDC) quality control system. The Department would also like to point out that information concerning deficiencies in the State agency's administration of the Food Stamp Program is, and would continue to be, gathered through the management evaluation review process.

Cumulative allotment error rate. The cumulative allotment error rate is currently defined to include the value of allotments underissued or overissued in those cases determined to be in error during the sample month. This includes the total value of the allotments overissued in cases found to be ineligible. When the Department issued final rules to implement the 1980 Amendments on January 23, 1981 (at 46 FR 7257), a definition of payment error rate was added to the Program's regulations to mean the same thing as the cumulative allotment error rate. The Department took this approach because section 126 of the 1980 Amendments also defined payment error rate as the percentage total of all food stamp allotments that are issued to households which fail to meet the eligibility

requirements of the Act, are overissued to eligible households, and are underissued to eligible households. Whereas Congress initially established the cumulative allotment error rate in the Food Stamp Act of 1977 as the basis for determining the State agency's eligibility for enhanced funding, the 1980 Amendments established the payment error rate as the basis for determining the State agency's liability for payment errors. As previously mentioned, the 1982 Amendments excluded from the calculation of payment error rates those food stamp benefits underissued to eligible households, and maintained the payment error rate as the basis for determining the State agency's liability for payment errors. The 1982 Amendments also established the payment error rate as part of the basis for determining the State agency's eligibility for enhanced funding, along with the underissuance error and negative case error rates. Since the Department has already revised the Program's definition of payment error rate and added a new definition of underissuance error rate through interim rules implementing the 1982 Amendments, the definition of cumulative allotment error rate is no longer necessary. Therefore, the Department proposes to delete this definition from the Program's regulations through this proposed rulemaking.

Negative case. A negative case is currently defined as a household which was denied certification in the Food Stamp Program or whose benefits were terminated in the review period. This definition has posed problems for some State agencies in compiling their negative case frames because actions taken to terminate a household's benefits during the sample month may not be effective for that month. This situation occurs due to the 10 day period given households to appeal a Notice of Adverse Action. If the household is provided a Notice of Adverse Action terminating its Program benefits late in the sample month, the household's benefits may not actually be terminated until the following month (at the end of the 10 day period). In fact, those households whose normal issuance cycle occurs during the first few days of the month may not experience the effects of the State agency's action to terminate their Program benefits until the month following the month in which their 10 day appeal period ended. All of these variables have made it exceedingly difficult for some State agencies to accurately and timely identify those households whose benefits were terminated in the review period. The Department is proposing to address this problem by revising the definition of a negative case to mean a household which was denied certification or whose food stamp benefits were terminated effective for the sample month. Although the review date for such cases would continue to be the date of the State agency's decision to deny or terminate program benefits, the proposed definition would consider negative cases only those situations where the State agency's action to deny or terminate is effective for the sample month. Therefore, if a State agency acts to deny or terminate a household's participation during the sample month but the action is not effective for the sample month, the case would not be considered a negative case for quality control review purposes. This change would clarify that negative case reviews are limited to those situations where negative actions taken against the household actually result in the household being denied or terminated, as discussed later in this preamble.

Quality Control Reviews

Scope and purpose. Current Program regulations specify that the purpose of quality control reviews is to measure the validity of food stamp cases at a given time (the review date) by reviewing against the Food Stamp Program standards established in the Food Stamp Act and the Regulations, as specified in each State's FNS-approved manual. The regulations also specify that the review findings must be analyzed to determine the incidence and dollar amount of errors, to determine the State agency's cumulative allotment error rate and eligibility for enhanced funding, and to plan corrective action to reduce excessive levels of errors when cumulative allotment error rates of 5 percent or more are reported. The Department proposes to revise these provisions to reflect a number of legislative and regulatory changes which have occurred since their implementation.

First, section 166 of the 1982 Amendments (Pub. L. 97-253, enacted on September 8, 1982) mandates that the Department *not* require a State agency to submit for prior approval the State agency's "instructions to staff, interpretations of existing policy, State agency methods of administration, forms used by the State agency, or any materials, documents, memoranda, bulletins, or other matter . . ." The Department is proposing to delete the reference to the State agency's FNS-approved manual in the above provision to conform with the final rule on State Plans and Operating Guidelines, Forms and Waivers issued on February 11, 1983 (at 48 FR 6313) which implements section 166 of the 1982 Amendments. Therefore, the reviewer would continue to review the validity of food stamp cases against the Food Stamp Program standards established in the Food Stamp Act and the regulations, but using the State agency's manual and obtaining FNS approval of the manual would no longer be requirements. Although use of the State agency's manual would no longer be required, the Department anticipates that most State agencies would continue to utilize their manuals in the conduct of quality control reviews. During the Federal validation review process, however, the State agency's sample cases would be rereviewed against Food Stamp Program standards as set out in the Food Stamp Act, the Program's regulations, policy interpretations and, as discussed below, taking into account any FNS authorized waivers for the State agency to deviate from specific regulatory provisions. The effect of this change is that it would increase the State agency's responsibility for ensuring that its quality control reviewers are provided materials for conducting sample case reviews which reflect the provisions of the Act, current Food Stamp Program regulations, policy interpretations, and any FNS authorized waivers the State agency is granted to deviate from the Program's regulations.

Second, the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97-35, enacted on August 13, 1981) provides the Department authority to waive specific provisions of the statutory requirements governing the Program's Monthly Reporting and Retrospective Budgeting (MRRB) system. Section 107(a) of Pub. L. 97-35 authorized the Department to waive any provision of section 5(f) of the Food Stamp Act upon the request of a State agency so that the income of households in retrospective budgeting systems could be calculated on the same retrospective basis for the Food Stamp Program as for MRRB households in AFDC Programs. At the same time, section 108(a) of Pub. L. 97-35 authorized the Department to waive the current limit of twelve months for certification periods where that would "improve the administration of the Program." Parallel to the authority granted by section 107(a) of Pub. L. 97-35, section 156 of the 1982 Amendments (Pub. L. 97-253) provides the Department authority, with certain exceptions, to waive the monthly reporting rules to allow State agencies to establish monthly reporting systems for the Food

Stamp Program which are similar to monthly reporting systems which they have established for the AFDC Program. In addition, section 154 of the 1982 Amendments provides the Department further authority for waivers which would allow less frequent than monthly reporting for certain households when it is determined that the inclusion of such households in a monthly reporting system is not cost effective. The Department has included the waiver authority granted by section 107(a) of Pub. L. 97-35 and section 156 of Pub. L. 97-253 in the regulatory provisions governing waivers of Food Stamp Program regulations through interim MRRB rules issued on May 25, 1982 (at 47 FR 22684) and interim rules on waivers to monthly reporting rules on November 5, 1982 (at 47 FR 50179), respectively. Another interim rule currently being developed within the Department would also incorporate the waiver authority granted by section 106(a) of Pub. L. 97-35 and section 154 of Pub. L. 97-253 into the regulatory provisions governing waivers of Food Stamp Program regulations. The Food and Nutrition Service has been granting waivers of Program regulations since the Department issued final rules regarding waivers on January 21, 1981 (at 46 FR 6310). The regulations specify that FNS will not approve any request for a waiver when the waiver would be inconsistent with the provisions of the Food Stamp Act, except for certain specified provisions pertaining to MRRB systems. The Department proposes to add language which clarifies that any FNS authorized waivers for a State agency to deviate from specific regulatory provisions would be taken into account when reviewing food stamp cases against Food Stamp Program standards established in the regulations.

And third, section 126 of the 1980 Amendments (Pub. L. 96-249, enacted on May 26, 1980) and section 180 of the 1982 Amendments establish and modify a sanction and incentive system which the Department has implemented through regulations already cited in the background portion of this preamble. As a result, the Department proposes to revise the language of the above regulatory provisions to conform with the change in emphasis from the State agency's cumulative allotment error rate to payment error rate.

The Department is also proposing several minor revisions to the language of the provisions in this section concerning the objectives of quality control reviews to better state the role of quality control in the Program. (See 7 CFR 275.10 (a) and (b).)

Sampling plan. Current Program regulations governing the conduct of quality control reviews require the State agency to submit a sampling plan and subsequent modifications of sample design, frame, or procedures to FNS for approval at least 30 days prior to implementation. However, the Department also recently issued revisions to the regulatory requirements relative to State plans and operating guidelines which eliminated prior approval of State sampling plans. This technical inconsistency occurred because State quality control sampling plans were included under the category of operating guidelines when the Department issued final rules on State Plans of Operation and Operating Guidelines on January 21, 1981 (at 46 FR 6310). As a result, prior approval of quality control sampling plans was eliminated when the Department issued final rules eliminating the requirement that FNS review and approve State agency operating guidelines prior to distribution within the State on February 11, 1983 (at 48 FR 6313).

The Department proposes to correct this technical inconsistency concerning prior approval of State quality control sampling plans by requiring State agencies to submit such plans as part of the State Plan of Operation along with other planning documents (i.e., the Disaster Plan (currently reserved) and the optional Nutrition Education Plan). Under current Program regulations, all sampling procedures used by a State agency are required to be fully documented and available for review by FNS. This documentation includes descriptions of the construction of the sampling frame and any supplemental lists, the sample selection process, and any checks and controls established by the State agency to monitor the selection and assignment of sample cases. The sampling plan is basically a summary of this documentation along with descriptions of the sampling frames, methods of sample selection, methods for estimating characteristics of the population and their sampling errors, and the relationship, if any, between the food stamp quality control sample design and other Federally mandated quality control samples (e.g., AFDC or Medicaid). As a result, the sampling plan serves as the foundation for FNS review of the integrity of the State agency's quality control sampling procedures. The Department views the maintenance of prior FNS-approval of sampling plans in the best interest of the State agency because it protects the State agency from having its review findings disregarded and error rates being assigned by FNS because of deficiencies in sampling procedures that are discovered too late for correction.

The proposed regulation would consider the quality control sampling plan in effect for each State agency as of October 1, 1983, as submitted and approved for purposes of meeting this requirement, provided that the State agency obtained prior FNS approval of its sampling plan. This should eliminate any potential burden on the State agency as a result of making the sampling plan a part of the State plan of operation. However, the Department is also proposing to require that any changes in the State agency's FNS-approved sampling plan through modifications in sample design, frame, or procedures be submitted to FNS for approval at least 60 days prior to implementation rather than 30 days prior as currently required. This change is being proposed to allow FNS to approve sample plan submissions with sufficient lead time prior to implementation when approval requires coordination with other Federal agencies due to the integration of quality control review systems. The Department estimates that 30 State agencies currently operate integrated quality control review systems involving food stamp and AFDC or Medicaid recipients. In addition, the proposal would continue to require that the State agency's sampling procedures be fully documented and available for review by FNS. (See 7 CFR 272.2 and 275.11(a).)

Sample size. Under the current quality control procedures, the number of active and negative cases which the State agency is required to select and review during each semiannual review period is determined based on equations which are designed to distribute the quality control sample among State agencies with caseloads of different sizes. For active cases, the sample sizes range from a minimum of 150 cases for State agencies with an average monthly caseload of under 10,000 participating households to a maximum of 1,200 cases for State agencies with monthly caseloads of 60,000 or more participating households. The sample sizes for negative cases range from a minimum of 150 cases for State agencies with an average monthly caseload of under 500 negative actions to a maximum of 800 cases for State agencies with monthly caseloads of more than 5,000 negative actions. The Department is proposing to shift the determinations of a State agency's sample sizes from a semiannual to an annual basis. This shift would be consistent with the 1982 Amendments which place the

determinations of a State agency's liability for payment errors and eligibility for enhanced funding on an annual rather than semiannual basis.

The proposed rule would essentially spread the current semiannual sample sizes out over a year, with a few minor modifications. First, the equation currently used for determining the minimum number of active cases which State agencies with an average monthly caseload of up to 60,000 participating households must review would be revised slightly to prevent any reduction in the reliability of the error rate estimate. Since sample sizes must be large enough to produce error rates with an acceptable reliability, the Department is proposing a minimum sample size for State agencies with an average monthly caseload of under 10,000 participating households of 300 cases rather than a minimum sample size of 150 cases which would have resulted from merely spreading the current semiannual minimum sample size for these State agencies over a year period. The result would be a corresponding change in the minimum active case sample size for State agencies with an average monthly caseload of between 60,000 and 10,000 participating households as the revised minimum sample size for monthly caseloads of under 10,000 participating households is calculated into the equation. The overall effect of these proposed changes on the active case sample size is that State agencies with an average monthly caseload of 60,000 or more participating households would experience a 50 percent reduction in the minimum required sample size, State agencies with an average monthly caseload of between 60,000 and 10,000 participating households would experience a progressively smaller decrease, and State agencies with a monthly caseload of under 10,000 participating households would experience no change in the minimum sample size required each year.

Second, the proposed regulations would require each State agency to accept the reliability of the payment error and underissuance error rates which would result from selecting and reviewing the minimum required sample size. In addition, any State agency which is unwilling to accept the anticipated reliability of the error rates which would result from determining its active case sample size based on the minimum required sample sizes would be allowed to increase its sample size in order to achieve an anticipated level of reliability it is willing to accept under the proposed rules. The Department has carefully examined the reliability and precision level that the revised minimum required sample sizes would yield and believes that the proposed sample sizes would provide levels of precision and reliability similar to those associated with the current semiannual sample size. The Department believes that requiring each State agency to agree not to use its chosen sample size as the basis for challenging the reliability of the error rate estimates would ensure that the State agency deals with the issue of the sample's reliability before it is actually selected and reviewed. Therefore, the proposal would require each State agency to include an agreement in its quality control sampling plan that it will not challenge on the basis of the sample size the payment error and underissuance error rates which would result from choosing to sample based on either the minimum required or an increased active case sample size. For those State agencies which choose to increase their active case sample sizes, the additional cases would be selected and reviewed in accordance with standard procedures, and the review findings would be included in the calculation of their payment error and underissuance error rates.

Third, the language of the equation currently used for determining the minimum required negative case sample size would be revised to reflect the shift in focus to the review of negative actions which actually result in the household being denied or terminated. In all other respects, the proposal would merely spread the current semiannual minimum required negative case sample sizes out over an annual period, thereby resulting in a halving of the State agency's current workload. Whereas the reliability of error rates based on the current semiannual minimum required active case sample sizes for State agencies with small and moderate average monthly caseloads of participating households spread out over a year was viewed as unacceptable, the Department believes that larger reductions in the negative case sample sizes are justified based on the uniformly low negative case error rates reported in the past. In addition, negative case review findings are not used to determine the State agency's liability for payment errors and the precision associated with the negative case error rate is less subject to fluctuation than is the case with the payment error rate.

The Department has examined the possible effects of these proposed changes upon reliability and determined that current State agency workloads can be significantly reduced without sacrificing the reliability of error rates. This examination consisted of reviewing the levels of reliability associated with error rate estimates in the past. The Department has determined that the past reliability was sufficient to meet its responsibilities in determining State agencies' liability for sanctions and eligibility for enhanced funding. Since, as previously mentioned, the Department determined that current semiannual sample sizes for the larger State agencies can be spread out over a year period with no significant change in the reliability of the error rate etimates produced, the reliability of the proposed sample sizes are sufficient to meet the Department's responsibilities. However, the Department realizes that some State agencies may not accept the reliability associated with the minimum sample sizes and may wish to select larger sample sizes. Therefore, as mentioned earlier, the proposed rulemaking would provide State agencies the flexibility to increase their sample sizes if they wish to do so. (See 7 CFR 275.11(b).)

Sample selection. Although the current quality control sample sizes cover a six-month period, State agencies are required to select cases separately from the active and negative sample frames each month. The regulations also specify that sample selection should be made no later than the 20th day of the month following the sample month. The Department instituted the monthly sampling requirement to avoid the potential bias which could result in the State agency's error rates should sample cases for a given month be omitted from its active and negative case samples. The provision outlining timeframes for sample selection was included based on the belief that quality control reviews are most effective and most accurate when made soon after the review date.

The proposed rule would continue to require the State agency to select active and negative cases separately for quality control review each month. In addition, the Department is proposing to expand the requirement to specify that the State agency select a twelfth of the cases from its annual sample sizes for review each month. This change would standardize the quality control sample selection process, and ensure an even distribution of the State agency's review workload over the entire annual review period. A standardized sample selection process along with an ongoing monthly case disposition standard, as discussed later in this preamble, would also provide both Federal and State Program

managers with timely quality control data to begin the analyses and correction of errors. Lastly, the proposed rule would delete the provision of current Program regulations which specifies the timeframes for sample selection. Although the Department continues to believe that sample cases should be selected promptly, it has decided that a standardized sample selection process with a monthly case disposition standard more adequately addresses the issue. (See 7 CFR 275.11(c).)

Active case sample. Under current quality control procedures, the active case sample is selected from a frame. The sample frame for active cases is a list of all households which participate during the review period except for a limited number of households excluded from the active case universe because they are not usually amenable to quality control review. (An example of a household not amenable to review is one in which the participants died or moved out of State.) The frame may take a number of physical forms, including lists of redeemed ATP's, mail issuance records, or computer files of certified households. The regulations also specify that State agencies electing to use a list of certified households to select the active sample must exclude those households which do not participate and must supplement it with those households which are certified eligible after the frame has been compiled and participate during the sample month.

The Department is proposing a number of modifications to the regulatory provisions relative to the active case frame and universe. The definitions of both the active case frame and universe would be revised to exclude those households which are certified for benefits only after the end of the sample month. The proposal would also clarify that a household which participates during the review period is one which is issued benefits for the sample month. A corresponding change would clarify that the supplemental list for State agencies electing to use a list of certified households for sample selection would include only those households which are certified during the sample month and issued benefits for the sample month after the frame has been compiled. In addition, the Department is proposing to incorporate a provision which would require those State agencies which choose to use an issuance list to ensure that the list includes those households which do not actually receive an allotment because the entire amount of the household's benefits is recovered for repayment of a claim against the household. These changes are designed to make the active case frame and universe coincide more closely with one another, and to facilitate the State agency's efforts to accurately identify the active case universe and construct the case frame in a timely manner with a minimum of administrative burden. (See 7 CFR 275.11 (d)(1) and (e)(1).)

Negative case sample. The negative case sample is also selected from a frame in the current quality control review process. The sample frame for negative cases is a list of all households whose applications for food stamps were denied or whose certifications were terminated during the review period except for those excluded from the negative universe. The negative universe excludes a limited number of households not usually amenable to review such as those which withdrew applications prior to the State agency's determination or in which all members of the household died or moved out of State by the time of the review, as well as those households which had their cases closed due to the expiration of the certification period. In addition, the regulations exclude from the definition of negative cases those actions taken to change a household's food stamp classification from nonassistance to public assistance (or vice versa) that does not interrupt the household's participation. The Department is proposing to limit negative case reviews to those actions taken against the household which actually result in the household being denied or terminated. The proposal would also clarify that a denial or termination action which occurs during the review period is one which is effective for the sample month. (See 7 CFR 275.11 (d)(2) and (e)(2).)

Review of Active Cases

The proposed rulemaking would reorganize and streamline the regulatory provisions governing the conduct of active case reviews, thereby eliminating duplicate provisions and simplifying the regulatory requirements relative to the review process. The proposal would replace references to the basic worksheets and coding documents (Form FNS-245) formerly utilized for active case reviews with appropriate references to the Integrated Worksheet (Form FNS-380) and Review Schedule (Form FNS-380-1) currently being utilized. Language would also be added to cross-reference the regulatory provisions concerning the Program's Monthly Reporting and Retrospective Budgeting (MRRB) System, implemented through interim rules issued on May 25, 1982 (at 47 FR 22684). All significant changes being proposed for the review of active cases are discussed below. The reader will notice other changes from the current regulations in these provisions which are intended only as technical changes with no significant impact. The Department encourages comments from any reader who believes these changes are more significant than intended or who wishes to suggest other alternatives.

Household case record review. Under current quality control review procedures, household case record reviews are conducted for all active cases. Through the household case record review, the reviewer analyzes the household's case record, compiles essential household data, and plans the field investigation. If the reviewer, after all reasonable efforts, is unable to locate the household case record, the review is terminated and the case is reported as not completed. The Department is proposing to require the reviewer to utilize the household issuance record to identify as many of the pertinent facts as possible and to plan the field investigation whenever the household case record cannot be located. Thus, fewer cases would be placed in the not completed category. Cases in which the reviewer is unable to locate the household case record and the household itself is not subsequently located would be reported as not completed. The reviewer would also be required to report any instances in which both the household and the household case record cannot be located to the State agency for appropriate action on an individual case basis (i.e., to ensure that allotments are being issued to eligible households). These changes would allow State agencies to complete reviews in situations where the case record cannot be located, thereby eliminating one of the instances where the State agency is required to report an active case as not completed. The Department believes that most State agency completion rates would increase as a result of this change and that the potential bias from not completed cases on the State agency's error rates would decrease as a result. (See 7 CFR 275.12(b) and (g)(2).)

Field investigation. The reviewer is currently required to conduct a full field investigation for all active cases selected in the sample to determine if the household is eligible and is receiving the correct allotment. The field investigation includes interviews with the head of household, spouse, authorized representative, or any other responsible household member, and contact with collateral sources of

information. The Department is proposing to allow State agencies to terminate field investigations at the point the reviewer is able to determine, and verify that the household is ineligible, as long as the household's ineligibility is resolved with the household. The effect of this change would be to free administrative resources for use on other case reviews, since the correctness of the household's basis of issuance would no longer need to be determined. Therefore, whenever the household's ineligibility is determined through the household case record review and confirmed through subsequent contact with the household, a full field investigation would not have to be conducted. (See 7 CFR 275.12(c).)

Variance identification. The quality control reviewer is currently required to identify and report information on all basic Program requirements and basis of issuance elements which contain a variance (i.e., information from review findings which indicates that policy was applied incorrectly and/or information verified as of the review date that differs from that used at the most recent certification action). Current Program regulations identify certain variances which the reviewer must disregard when determining the correctness of the household's eligibility and basis of issuance for the sample month. Included among these variances which are excluded from the case's error analysis is any variance resulting from an individual being included as a member of a household pending verification of citizenship where the individual is not a citizen or eligible alien, provided the household has not participated for more than two months based upon such pending verfication. The proposed rulemaking would delete this exclusion from the quality control regulations to conform with the final Administrative Flexibility Rules issued on November 26, 1982 (at 47 FR 53309), which require verification of questionable citizenship prior to issuance of any benefits. (See 7 CFR 275.12(d).)

Error analysis and reporting. In addition to coding and reporting information on all elements which vary, the reviewer is currently required to determine whether each completed case is either eligible, eligible with a basis of issuance error, or ineligible. The Department proposes to allow State agencies to terminate the review of active cases at the point the reviewer determines that the household is ineligible. As a result, the reviewer would no longer need to identify all variances in such cases and cases would be considered completed at the point of the ineligibility determination. The proposed rulemaking would also make a distinction between those variances that directly contribute to an error determination in an active case and other variances discovered during the course of the review. Under this proposal, the reviewer would only be required to code and report those variances that directly contributed to the error determination. Of course, each State agency would have the option of continuing to require their reviewers to code and report information on any other variances in elements of eligibility and basis of issuance which are discovered and verified during the course of the review. Allowing State agencies to terminate the review of active cases at the point of the ineligibility determination and requiring the reporting of only those variances that directly contributed to the error determination would result in a simplification of the coding and classification of data, while providing State agencies the flexibility to continue collecting this information for their own purposes. The Department is proposing this simplification of the coding and classification of data to allow State agencies to obtain more useful data, save some time in completing quality control forms, and reduce their reporting burdens.

Disposition of case review. In the existing quality control review system, the reviewer must account for each case selected in the sample of active cases by classifying it as completed, not completed, or not subject to review. Situations in which a case is reported as not completed include those where the reviewer, after all reasonable efforts, is unable to locate the case record and/or is unable to locate the participant; the participant refuses to cooperate; or the review is not completed in time to be included in the reports due at the end of the semiannual review period. The list of situations when an active case is not subject to review coincides, basically, with the list of exclusions from the active case universe.

As already mentioned, the Department is proposing to eliminate failure to locate the household case record as an instance where an active case must be reported as not completed. The proposed rulemaking would also modify the situation where an active case is reported as not completed due to the reviewer being unable to locate the participant. The Department proposes to include a list of specific actions which the reviewer must undertake in order to attempt locating the household. These actions include contacting, at a minimum, the local office of the U.S. Postal Service; the State Motor Vehicle Department; the owner or property manager of the residence at the address in the case record; and any other appropriate sources based on information contained in the case record, such as public utility companies, telephone company, employers or relatives. Once the reviewer has undertaken all of these reasonable efforts and has documented the response of each required contact, the case would be reported as not subject to review if the household still cannot be located and the State agency has documented evidence that the household did actually exist. However, if the reviewer fails to undertake these efforts or to properly document the results, the case would be considered as not completed. This change should further increase the State agency's ability to complete all of the cases selected in the active case sample. The Department is interested in comments from State agencies concerning reasons for being unable to locate households and intends to use these comments in formulating the final rule on this matter.

Also, the proposed rulemaking would establish penalties for household failure to cooperate with a quality control reviewer. Although current Program regulations specify that the household shall be determined ineligible if it refuses to cooperate in any review of its eligibility as part of a quality control review, the household may reapply and be determined eligible if it subsequently cooperates with the State agency. In many situations, due to quality control reporting timeframes, households that are terminated for failure to cooperate with the reviewer and subsequently reapply never have their case reviewed by a quality control reviewer. The proposal would continue to require that a household's refusal to cooperate with the reviewer be reported to the State agency for termination action. However, any household which reapplies subsequent to its termination would not be determined eligible until it cooperates with the quality control reviewer. The period of ineligibility for refusal to cooperate would extend until 95 days after the end of the annual review period or until the household cooperates with the quality control reviewer, whichever comes first. At the same time, the proposal would add language to clairfy that, under certain circumstances, a household's demonstrated unwillingness to take actions that it can take to complete the quality control review process would have the effect of a refusal to cooperate,

even though the household or its members do not state that the household refuses to cooperate. These limited circumstances involve instances where the household does not take actions that are necessary to complete the review after having been given every reasonable opportunity to do so, and include not responding to a letter from the reviewer sent Certified Mail-Return Receipt Requested within 30 days of the date of receipt; not attending any agreed upon interview with the reviewer and then not contacting the reviewer to reschedule the interview within 10 days; or not returning any signed release of information statements to the reviewer within 10 days of either agreeing to do so or receiving a request from the reviewer sent Certified Mail-Return Receipt Requested. However, the proposed rulemaking would also continue to stipulate that, regardless of the situation, if there is any question as to whether the household has merely failed to cooperate, as opposed to refused to cooperate, the household would not be reported to the State agency for termination. The Department believes that these changes would increase the likelihood that households will choose to cooperate with quality control reviewers. Consequently, the State agency's rate of review completions should increase, and the potential for cases not completed, due to household refusal to cooperate, to bias the State agency's payment error and underissuance error rates should decrease.

In addition, the Department is proposing to revise the provision requiring an active case to be reported as not completed because the review is not finished in time to be included in the required reports. As proposed, the State agency would be prohibited from reporting any active case as not completed solely because the State agency is unable to process the case in time for it to be reported in accordance with the quality control system's reporting requirements, unless the State agency obtains prior FNS approval to do so. This change is intended to clarify the difference between the quality control system's case disposition and case completion requirements. Whereas the State agency is required to dispose of each case selected in the active case sample by accounting for it as completed, not completed, or not subject to review, the State agency is also responsible for meeting the quality control system's sample completion standard. As discussed later in this preamble, the proposed rulemaking would establish a monthly quality control review disposition and reporting standard for individual sample case reviews. The Department does not intend for State agencies to be able to circumvent the monthly disposition standard merely by reporting those cases it did not have time to process as not completed. The proposed rulemaking contains specific procedures for State agencies to follow for individual sample cases which remain pending at the end of the required reporting period. These proposed procedures would entail informing the FNS Regional Office of the reason cases remain pending, and may involve a suspension or disallowance of the State agency's Federal administrative funding when cases are determined overdue, depending upon the number of overdue cases. The proposed rulemaking also contains another set of procedures for adjusting the State agency's payment error rate to account for those required cases not completed at the end of the annual review period. As a result of these proposed changes, the Department believes that it is no longer practicable to allow State agencies to report active cases as not completed merely because the cases are not processed in time to be reported in accordance with the quality control system's reporting requirements. (See 7 CFR 273.2 and 275.12(g).)

Review of Negative Cases

Currently, negative cases are reviewed to determine whether the reason documented in the case file for the denial or termination is valid. If the reviewer is able to determine through the case record review and/or telephone contact with a collateral source that the denial or termination is valid, then the case is considered completed. If the reviewer is unable to determine the validity of the State agency's reason for denial or termination through a case record review or a partial field investigation, then a full field investigation is conducted to determine the status of the household's eligibility. The reviewer is required to complete the review until it can be determined whether the household was, in fact, ineligible to participate at the time of the denial or termination.

The Department is proposing to limit negative case reviews to a determination of the validity of the reason for denial or termination as documented in the household case record. The reviewer would examine the household case record and verify through documentation in the file whether the reason given for the denial or termination is valid, or whether the denial or termination is valid for any other reason documented in the casefile. When the case record alone does not prove ineligibility, the reviewer would attempt to verify the element(s) in question through a phone call to a collateral contact designated in the case record. If the reviewer is able to verify through documentation in the household case record or collateral source that a household was correctly denied or terminated from the Program, the negative case would be considered valid. Whenever the reviewer is unable to verify the correctness of the State agency's decision to deny or terminate a household's participation through such documentation or collateral contact, the negative case would be considered invalid. In addition, the proposal would make a corresponding change to the regulatory requirements relative to the disposition of case reviews to limit the instances in which a negative case is classified as not completed to those situations where the reviewer, after all reasonable efforts, is unable to locate the case record. Language has also been added to the proposed rulemaking to clarify that a negative case cannot be reported as not completed solely because the State agency was unable to process the case review in time for it to be reported in accordance with the quality control system's reporting requirements, unless the State agency obtains prior FNS approval to do so. As previously discussed in reference to active cases, this change results from the establishment of a monthly quality control review disposition and reporting standard, and is intended to clarify the difference between the quality control system's case disposition and case completion standards. The Department believes that limiting negative case reviews to determining the correctness of the stated reason would simplify the review process while continuing to ensure that eligible households are not being denied or terminated from the Program. (See 7 CFR 275.13.)

Review Processing

The proposed regulations would expand the current regulatory provisions relative to use of the Quality Control Review Schedule, Form FNS-245, to cover the use of all FNS-designed handbooks, worksheets, and schedules in the quality control review process. As proposed, each State agency would continue to use FNS-designed materials for review processing, unless FNS grants the State agency approval for a specific deviation. FNS would grant deviations from its handbooks, worksheets, and schedules on the same basis as deviations are granted from the FNS-designed food stamp application form

(i.e., to accommodate the use by a State agency of joint public assistance (PA)/ food stamp processing or to accommodate the needs of a computer system or for other exigencies. The Department believes that maintaining use of FNS-designed materials for quality control review processing would ensure compatibility of procedures between State agencies as well as guarantee uniformity of review findings. The availability of uniform data becomes increasingly important as implementation of the automated Integrated Quality Control System Reporting Network nears completion. Therefore, language has been added to the proposed rulemaking which would require State agencies to utilize the following FNS-designed materials for quality control review processing.

Handbooks. The reviewer would follow the procedures outlined in the Quality Control Review Handbook, FNS Handbook 310, to conduct quality control reviews. In addition, the sample of active and negative cases would be selected in accordance with the sampling techniques described in the Quality Control Sampling Handbook, FNS Handbook 311. (See 7 CFR 275.14(b).)

Worksheets. The Integrated Review Worksheet, Form FNS–380, would be used by the reviewer to record required information from the case record, plan and conduct the field investigation, and record findings which contribute to the determination of eligibility and basis of issuance in the review of active cases. In some instances, reviewers may need to supplement Form FNS–380 with other forms. The State forms for appointments, interoffice communications, release of information, etc., would be used when appropriate. (See 7 CFR 275.14(c).)

Schedules. Decisions reached by the reviewer in active case reviews would be coded and recorded on the Integrated Review Schedule, Form FNS–380–1. Such active case review findings would have to be substantiated by information recorded on the Integrated Review Worksheet, Form FNS–380. In negative case reviews, the review findings would be coded and recorded on the Negative Quality Control Review Schedule, Form FNS–245, and supplemented as necessary with other documentation substantiating the findings. (See 7 CFR 275.14(d).)

Quality Control Review Reports

Under current Program performance reporting requirements, each State agency is required to report to FNS the monthly progress of sample selection and completion on the Form FNS–248, Status of Sample Selection and Completion, no later than 10 days after the end of each month. State agencies are also required to submit summary reports of the results of all quality control reviews no later than 95 days from the end of each semiannual reporting period. These semiannual reports consist of the Forms FNS–247–1, Statistical Summary of Sample Distribution, FNS–247–2, Distribution of Variances by Type of Agency and Participant Error, FNS–247–3, Distribution of Variances by Element, and FNS–247–4, Distribution of Administrative Deficiencies. Any data received by FNS later than 95 days from the end of each semiannual reporting period is not processed and, therefore, is not reflected in the State agency's completed quality control sample. In addition, State agencies have been submitting the results of individual quality control reviews in a format specified by FNS since the Department implemented an automated system with the first semiannual reporting period for Fiscal Year 1982.

Individual cases. The Department is proposing to establish a monthly quality control review reporting standard for individual case review findings. As proposed, each State agency would be required to dispose of and report the findings of 90 percent of all cases selected in a given sample month within 75 days of the end of the sample month, and 100 percent of all cases within 95 days of the end of the sample month. If a case has not been disposed of within 95 days from the end of a given sample month, the State agency would be required to immediately inform its FNS Regional Office of why the case remains pending, the progress of the review to date and when the case(s) will be disposed of. It would be important for the State agency to identify when the certification record was reviewed, when the home visit was made (or attempted) and when required verification was requested. The FNS Regional Office would use this information to determine whether the State agency has made a good faith effort in disposing of a case or whether the case would be considered overdue. FNS would be authorized to suspend or disallow a percentage of the State agency's Federal administrative funding when cases are overdue, depending upon the number of overdue cases.

The Department is also proposing to add provisions to the reporting requirements to reflect implementation of the Integrated Quality Control System Reporting Network. As proposed, the State agency would report individual active cases by submitting the edited findings of the Integrated Review Schedule, Form FNS–380–1. For negative cases, the State agency would submit the edited findings of the Negative Quality Control Review Schedule, Form FNS–245. The State agency would report review findings by inputting and editing the results of each case into the FNS-supplied computer terminal and transmitting the data to the host computer. For State agencies that do not have FNS-supplied terminals, the State agency would submit the results of each quality control review in a format specified by FNS. In addition, each State agency would be required to supply its FNS Regional Office with individual household case records, or copies of the pertinent information contained in the case records, as well as hard copies of individual Forms FNS–380–1 and FNS–245. The State agency would provide these materials to the FNS Regional Office within 10 days of receipt of a request to facilitate timely completion of the Federal validation process.

These proposed changes result from the Department's concern with the timeliness of quality control data as well as the fact that most State agencies now have the capability of entering, editing, and transmitting data from quality control reviews immediately. The Department is concerned with the timeliness of quality control data because implementation of annual sampling under the current reporting system would result in final reports for a given fiscal year not being completed until 15 months after the beginning of the fiscal year. This is far too long for either Federal or State managers to wait before being able to begin the analysis and correction of errors. The Department believes that an ongoing monthly case disposition and reporting standard would standardize both State agency and Federal review workload over the review workload over the review period, and avoid the current problem many State agencies experience when backlogs of quality control reviews not done occur at the end of the reporting period. While the Department does not expect data entry on a daily basis, weekly or monthly submission is anticipated. And, in view of the State agencies' new capabilities for direct data transmission, the Department does not envision that the monthly case disposition and reporting standard would impose any additional workload burden upon State agencies. (See 7 CFR 275.21(b).)

Other reports. The proposed rulemaking would continue to require each State agency to report to FNS the monthly progress of sample selection

and completion, and to submit summary reports of the results of all quality control reviews. However, the proposal would revise the language of current regulations to correct the name previously stated for the Form FNS-248, which is the Status of Sample Selection and Completion report rather than the Statistical Summary of Sample Disposition report. In addition, the department is proposing to retain use of the Form FNS-247-1, Statistical Summary of Sample Distribution as a summary report, but to eliminate use of the remaining Form FNS-247 series reports (i.e., Forms FNS-247-2, Distribution of Variances by Type of Agency and Participant Error; FNS-247-3, Distribution of Varances by Element; and FNS-247-4, Distribution of Administrative Deficiencies). As proposed, the State agency would report the monthly progress of sample selection and completion (Form FNS-248) no later than 95 days after the end of the sample month, and would submit a summary report on the results of all quality control reviews (Form FNS-247) no later than 95 days from the end of the annual review period. The Department intends for these reports to provide FNS a mechanism for monitoring each State agency's progress in meeting the ongoing monthly case disposition and reporting standard, and ensuring that the automated data base conforms with the information reported by each State agency. As a result, each State agency would have the flexibility of either submitting separate reports or utilizing the automated system to generate and transmit the required information. (See 7 CFR 275.21(c) and (d).)

Federal Monitoring

The proposed rulemaking would make various changes in the way that the Food and Nutrition Service (FNS) conducts reviews to determine the accuracy of State agencies' reported sample case review findings. These Federal validation reviews are conducted to ensure that State agencies' reported sample case review findings do not bias the state agencies' error rates through sampling errors, misapplication of quality control procedures, or incorrect application of certification policy, and that State agencies' completion rates are at the level required by Program regulations. The proposed changes are designed to strengthen the Federal validation process by allowing FNS to direct its Regional Office resources where they are most needed. For example, the proposal would concentrate the Federal validation process on desk reviews of State agencies' sample cases and allow FNS Regional Offices to return certain cases to the State agencies for further work, thereby allowing FNS to conserve resources that could be redirected as necessary. The Department believes that the proposed changes to the Federal validation review process are necessary to continue meeting its responsibility, under the law, for ensuring that State agencies' error rates are accurate for purposes of determining liability for sanctions and eligibility for enhanced funding.

The Department is also proposing to provide FNS the flexibility to validate State agencies' error rates selectively. Selective validation would enable FNS Regional Offices, under specific circumstances, to choose to accept the error rate estimates generated on the basis of a State agency's reported sample case review findings. The Department will take into consideration such factors as the State agency's historical performance in operating the quality control system. For those State agencies which do not meet the specific circumstances, the FNS Regional Offices would conduct full validation reviews of the State agencies' estimated error rates. This proposal would allow FNS Regional Offices to further redirect resources where necessary and is based upon the change in the sanction system where set standards are used rather than National averages to determine State agencies' goals. Prior to the 1982 Amendments, each State agency's performance had been measured against the performance of all other State agencies through the establishment of National averages during each base period. The Department is especially anxious to receive comments on this proposal. The remainder of this preamble discusses the various changes being proposed to the Federal validation review process in more detail.

State Agency error rates. Current Program regulations contain provisions which specify the content of the State agency's reported active case error rate, cumulative allotment error rate, and negative case error rate. The Department is proposing to replace the provision of current regulations governing the cumulative allotment error rate with separate provisions outlining the content of the payment error and underissuance error rates. The payment error rate would include the value of the allotments reported as overissued, including overissuances in ineligible cases, for those cases included in the active case error rate. And, the underissuance error rate would include the value of allotments reported as underissued for those cases included in the active case error rate. Replacing the cumulative allotment error rate concept with separate provisions outlining the payment error and underissuance error rates is intended to simplify the quality control system and is based on recent legislative changes enacted through the 1982 Amendments, as explained in the definition section of this preamble. In addition, the proposed rulemaking would reorganize the provisions relative to the content of the State agency's active case error, payment error, underissuance error, and negative case error rates by locating them in the section of the Program's regulations which govern the determination of a State agency's Program performance. This change would result in the Program's regulations accurately reflecting the fact that, since implementation of the Integrated Quality Control System Reporting Network, a State agency's error rates are no longer reported, but are generated by FNS based on the findings of individual sample case reviews that are reported through an automated system. (See 7 CFR 275.25(c).)

Validation of State agency error rates. FNS currently conducts validation reviews of each State agency's reported payment error and cumulative allotment error rates during each semiannual quality control reporting period. FNS also validates the negative case error and underissuance error rates for each period a State agency's payment error rate would entitle it to an increased share of Federal administrative funding. Each validation review consists of rereviewing a subsample of the State agency's quality control sample; reviewing the State agency's sampling, estimation, and data management procedures; and examination of the State agency's completion rate. The Program's regulations currently contain a formula for determining the size of the Federal review sample, and a procedure for resolving differences between State agency and Federal case findings. In addition, the current Program regulations contain a provision that FNS will attempt to assist State agencies in completing cases that the State agency failed to complete initially.

The Department is proposing for FNS to validate each State agency's active case error rate, payment error rate, and underissuance error rate during each *annual* quality control review period. One effect of this change would be to shift Federal validation of the State agency's error rates from a semiannual to an annual occurrence. Since the 1982 Amendments place the determinations of the State agency's liability for

payment errors and eligibility for enhanced funding on an annual rather than semiannual basis, Federal validation of the State agency's error rates every six months is no longer necessary. The Department would also like to clarify that the proposal specifies annual validation of the State agency's underissuance error rate in order to reflect the realities of the Federal validation process. Although the 1982 Amendments excluded the value of food stamp allotments underissued to eligible households from the determination of the State agency's liability for payment errors, validation of both the payment error and underissuance error rates occurs as a result of the Federal validation of the State agency's active case error rate. This happens because the State agency's payment error and underissuance error rates consist of the value of the allotments reported as overissued and underissued, respectively, for those cases included in the active case error rate. As a result, even though validation of the State agency's underissuance error rate is not necessary for determining the State agency's liability for payment errors, the proposed rulemaking would include it in the category of error rates which would undergo Federal validation review during each annual review period.

As proposed, FNS would validate the State agency's negative case error rate only when the State agency's payment and underissuance error rates for an annual review period would appear to entitle it to an increased share of Federal administrative funding *and* its negative case error rate is less than the national weighted mean negative case error rate for the period of enhanced funding. This provision of the proposed rulemaking would be consistent with the 1982 Amendments which provided for an increase in the Federal share of administrative costs to 60 percent for any State agency if the sum of its payment error rate and its rate of underissuance to eligible households is less than five percent, provided that its rate of invalid decisions in denying and terminating eligibility is less than a reasonable level set by the Department. It is also consistent with the interim rules issued by the Department to implement this provision of the 1982 Amendments, which continued to follow current regulatory procedures and used the national weighted mean rate in establishing an acceptable rate of invalid decisions. The Department views the additional stipulation that the State agency's negative case error rate must be below the national weighted mean negative case error rate as a precondition for Federal validation of the negative case error rate as a practical matter. The purpose of Federal rereviews it to ensure that the Department meets its responsibility to validate a State agency's error rates prior to providing increased Federal administrative funding, and recovering administrative funding from State agencies which have been deficient in their administration of the Program. Therefore, if the State agency's negative case error rate does not indicate that it would be entitled to enhanced funding, the Department does not consider itself to be responsible for determining whether the State agency's negative case error rate is accurate.

The proposal would replace the current formula used for determining the Federal rereview sample sizes for both active and negative cases with separate formulas for each type of case. These formulas would distribute the Federal samples among State agencies according to their annual sample sizes. For active cases, the sample sizes would range from a minimum of 150 Federal case rereviews for State agencies with annual sample sizes of under 300 cases to a maximum of 400 Federal case rereviews for State agencies with annual samples sizes of 1,200 or more cases. The sample sizes for negative cass would range from a minumum of 75 Federal case rereviews for State agencies with annual sample sizes of under 150 cases to a maximum of 160 Federal case rereviews for State agencies with annual sample sizes of 800 or more cases.

The Department is also proposing to concentrate the Federal validation process on desk reviews of State agencies' sample cases selected for review. As proposed, the FNS Regional Office would conduct case record reviews for active cases to the extent necessary to determine the accuracy of the State agency's findings using household's certification records and the State agency's quality control records as the basis of determination. The FNS Regional Office would also have the option of verifying any aspect of a State agency's active case quality control findings through telephone interviews with participants or collateral contacts. In addition, the FNS Regional Office would have the option to conduct field investigations to the extent necessary. For negative cases, the FNS Regional Office would conduct case record reviews to the extent necessary to determine whether the household case record contained sufficient documentation to justify the State agency's quality control findings of the correctness of the agency's decision to deny or terminate a household's participation.

In addition, the proposed rulemaking would establish procedures for completing the Federal validation process when the Federal reviewer determines that an individual case was incorrectly disposed of or that a case not contain sufficient documentary evidence to support the State agency's findings. As proposed, the FNS Regional Office would return cases to the State agency for appropriate action on an individual case basis whenever the Federal reviewer determines that the State agency incorrectly disposed of and reported cases as not completed or not subject ro review. In addition, the FNS Regional Office would have the option of returning cases to the State agency for appropriate action on an individual case basis if the reviewer is unable to determine the accuracy of the State agency's findings due to insufficient documentary evidence to support the verification required by FNS guidelines. The State agency would have 30 days to take appropriate actions and report the findings. For each case that remains pending after 30 days of the date it was returned by the Regional Office, the State agency would report the reasons in the same way it would report a failure to meet the monthly case disposition and reporting standard. Similarly, the State agency may be subject to a suspension or disallowance of Federal administrative funding, depending upon the number of cases FNS considers to be overdue, if FNS determines that the State agency's quality control system is inefficient or ineffective. As before, the proposed regulations would require each FNS Regional Office to appoint an official, who is not involved in the Federal QC validation process, to arbitrate disputes between the State agency and the FNS Regional Office concerning individual case findings and the appropriateness of actions taken to dispose of individual cases. This procedure would standardize and ensure timely completion of the Federal validation review process.

The proposed case disposition and reporting standard for cases referred during the Federal rereview process would also represent a continuation of procedures recently established by the Department of Health and Human Services' (HHS) Social Security Administration (SSA) for the Aid to Families with Dependent Children (AFDC) and Adult Assistance Programs. Through final regulations issued on October 19, 1982 (at 47 FR 46507), SSA established case completion standards that require completion of 90 percent of

cases selected each month within 75 days after the end of the sample month and 100 percent of the cases selected in a quarter within 120 days after the end of the quarter. Under SSA's Federal rereview procedures, the Regional Office has the option of either completing or referring to the State agency for appropriate action any cases from the State agency's sample which were dropped (i.e., because of household failure to cooperate, inability to locate the household, etc.), if the Federal reviewer determines that the cases could have been completed. The State agency then has to take appropriate actions to complete each individual case within 120 days after the end of the quarter in which it was originally selected or the case is considered overdue. The ongoing monthly case disposition standard established by these proposed regulations along with the proposed case disposition standard for cases referred during the Federal rereview process would, therefore, result in a procedure approximately equal to that used by SSA for completing those cases whose findings are determined unacceptable by Federal reviewers. In both situations, the State agency would have approximately 120 days in which to dispose of and report the findings of an individual sample case or it would be considered overdue.

Lastly, the Department is proposing to eliminate the provision of current regulations that FNS will attempt to assist State agencies in completing cases that the State agency failed to complete initially. Since the proposed rulemaking would concentrate the Federal validation process on desk reviews of a subsample of the State agency's completed sample cases, the Department believes that it would be inconsistent to continue assisting State agencies to complete reviews. In addition, this change would remove the likelihood that the State agency's payment error and underissuance error rates might increase as a result of using Federal review findings for cases which the State agency was itself unable to complete. (See 7 CFR 275.3(c).)

Determination of Payment Error Rates. Under current Program regulations, FNS adjusts each State agency's reported payment error rate based on the results of the Federal validation review process. The State agency's payment error rate is adjusted to reflect the findings of rereviewed cases using a linear regression equation once the Federal rereviews have been completed and all differences with the State agency have been resolved. If FNS determines that a State agency has sampled incorrectly, estimated improperly, or has deficiencies in its quality control data management system, FNS also corrects the State agency's reported error rate based upon a correction to that aspect of the State agency's quality control system which is deficient. However, if FNS cannot accurately correct the State agency's deficiency, an error rate is assigned to the State agency based upon the best information available. In addition, FNS adjusts the payment error rate when a State agency fails to meet the 95 percent completion standard by multiplying the State agency's reported payment error rate by the percentage of cases completed relative to the 95 percent standard, multiplying the remaining percentage of cases relative to the 95 percent standard by the upper level of their 67 percent confidence interval (or one standard deviation) and summing these two products. When a State agency's reported payment error rate is modified through assignment or adjustment of an error rate by FNS, the resultant payment error rate becomes the State agency's official payment error rate for use in determining the State agency's eligibility for enhanced funding and liability for payment errors. The same procedure is also used for adjusting the State agency's reported underissuance error rate if the State agency's validated payment error rate indicates that it may be eligible for enhanced funding.

The proposal would retain the procedure of current Program regulations for adjusting the State agency's error rates to account for incorrect sample selection. Section 180 of the 1982 Amendments provides the Department authority to require State agencies to report on error rates or to use available pertinent information in computing error rates if a State agency fails to report. Therefore, the proposed rule would continue to specify that if FNS determines that a State agency has sampled incorrectly, estimated improperly, or has deficiencies in its quality control data management system, FNS would correct the State agency's estimated error rate based upon a correction to that aspect of the State agency's quality control system which is deficient. However, if FNS cannot accurately correct the State agency's deficiency, FNS would assign the State agency an error rate based upon the best information available. The State agency would also continue to have the right to appeal the assignment of an error rate in this situation under the proposed rulemaking.

In addition, the Department is proposing to increase the case completion standard from 95 percent to 100 percent of the minimum required sample size, to adjust the State agency's error rates for failure to meet the 100 percent standard, and to increase the penalty for such failure. The Department is proposing these changes to provide State agencies an incentive to complete as many cases as possible, thereby limiting the potential bias resulting when such cases are not included in the final error rates. There is general agreement that uncompleted cases by and large are more prone to error because they involve unstable situations in which the household is not located or the participant refuses to cooperate in the review. In addition, the Department believes that the proposed changes already discussed relative to reasonable efforts the reviewer must take when the participant cannot be located as well as the establishment of penalties for household refusal to cooperate with the reviewer should significantly lessen the instances in which the State agency might be forced to report a case as not completed. As proposed, FNS would adjust the State agency's error rates if it fails to complete 100 percent of its minimum required sample size by assigning two standard deviations of the estimated error rates added to the regressed error rates, where appropriate, to those cases not completed in order to calculate the State agency's official error rates. Two standard deviations corresponds to approximately a 95 percent confidence interval, while the 67 percent confidence interval currently being used corresponds to one standard deviation. The use of standard deviations, from the mean, is a common device for measuring the dispersion in a simple distribution and represents a natural breakpoint. The Department would also like to clarify that the proposal stipulates that two standard deviations of the estimated error rates would be added to the regressed error rates, where appropriate, to account for those situations in which the FNS Regional Office has opted to accept a State agency's estimated error rates rather than adjusting them through regression analysis. In such cases, State agencies' estimated error rates would be adjusted for failure to meet the 100 percent standard using only two standard deviations of the estimated error rates. The effect of these changes is that a somewhat larger penalty would be applied to a larger percent of cases, thereby increasing the amount by which the error rates are adjusted for

incomplete sampling. (See 7 CFR 275.25(e)(6).)

Implementation

The Department is proposing to require State agencies to implement these changes to the quality control review system beginning with the October 1983 sample month. (See 7 CFR 272.1(g)(67).)

List of Subjects

7 CFR Part 271

Administrative practice and procedure, Food stamps, Grant programs-social programs.

7 CFR Part 272

Alaska, Civil rights, Food stamps, Grant programs-social programs, Reporting and recordkeeping requirements.

7 CFR Part 273

Administrative practice and procedure, Aliens, Claims, Food stamps, Fraud, Grant programs-social programs, Penalties, Reporting and recordkeeping requirements, Social security, Students.

7 CFR Part 275

Administrative practice and procedure, Food stamps, Reporting and recordkeeping requirements.

Accordingly, it is proposed that 7 CFR Parts 271, 272, 273, and 275 be amended as follows:

PART 271—GENERAL INFORMATION AND DEFINITIONS

1. In § 271.2, the definitions of "administrative deficiencies" and "cumulative allotment error rate" are removed; and the definitions of "active case" and "negative case" are revised, in alphabetical order. The revisions read as follows:

§ 271.2 Definitions.

"Active case" means a household which was certified prior to, or during, the sample month and issued food stamp benefits for the sample month.

* * * * *

"Negative case" means a household which was denied certification or whose food stamp benefits were terminated effective for the sample month.

* * * * *

PART 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

2. In § 272.1, add new paragraph (g)(67) to read as follows:

§ 271.1 General terms and conditions.

* * * * *

(g) *Implementation.* * * *

(67) *Amendment 256.* The quality control review provisions contained in Amendment 256 are effective October 1, 1983, and State agencies shall implement them beginning with the October 1983 sample month.

3. In § 272.2, the seventh sentence of paragraph (a)(2) is revised; paragraphs (d)(1) (i) and (ii) are redesignated as paragraphs (d)(1) (ii) and (iii), respectively, and a new paragraph (d)(1)(i) is added; and paragraphs (e)(4) through (6) are redesignated as paragraphs (e)(5) through (7), respectively, and a new paragraph (e)(4) is added. The revision and additions read as follows:

§ 272.2 Plan of operation.

(a) *General purpose and content.* * * *

(2) *Content.* * * The Plan's attachments include the Quality Control Sample Plan, the Disaster Plan (currently reserved), and the optional Nutrition Education Plan. * * *

* * * * *

(d) *Planning documents.* (1) * * *

(i) Quality Control Sampling Plan as required by § 275.11(a)(4).

* * * * *

(e) *Submittal requirements.* * * *

(4) The Quality Control Sampling Plan in effect for each State agency as of October 1, 1983, shall be considered submitted and approved for purposes of this section, provided that the State agency has obtained prior FNS approval of its sampling plan. Henceforth, any changes in the State agency's sampling plan through modifications in sample design, frame, or procedures shall be submitted to FNS for approval at least 60 days prior to implementation.

* * * * *

PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS

4. In § 273.2, the text after the title of paragraph (d) is redesignated as paragraph (d)(1), the last two sentences of newly-designated paragraph (d)(1) are revised, and a new paragraph (d)(2) is added. The revisions and additions read as follows:

§ 273.2 Application processing.

* * * * *

(d) *Household cooperation.* (1) * * * The household shall also be determined ineligible if it refuses to cooperate in any subsequent review of its eligibility, including reviews generated by reported changes and applications for recertification. Once denied or terminated for refusal to cooperate, the household may reapply but shall not be determined eligible until it cooperates with the State agency.

(2) In addition, the household shall be determined ineligible if it refuses to cooperate in any subsequent review of its eligibility as a part of a quality control review. If a household is terminated for refusal to cooperate with a quality control reviewer, in accordance with § 275.12(g)(1)(ii), the household may reapply but shall not be determined eligible until it cooperates with the quality control reviewer. However, if the household reapplies after 95 days from the end of the annual review period, the household shall not be determined ineligible for its refusal to cooperate with a quality control reviewer during the completed annual review period.

* * * * *

PART 275—PERFORMANCE REPORTING SYSTEM

5. In § 275.3, paragraph (c) is revised to read as follows:

§ 275.3 Federal monitoring.

* * * * *

(c) *Validation of State agency error rates.* FNS shall validate each State agency's active case error rate, payment error rate, and underissuance error rate, as described in § 275.25(c), during each annual quality control review period. However, FNS shall validate the State agency's negative case error rate, as described in § 275.25(c), only when the State agency's payment and underissuance error rates for an annual review period would appear to entitle it to an increased share of Federal administrative funding as outlined in § 277.4(b) (2), (5), (6), or (7), and its negative case error rate is less than the national weighted mean negative case error rate for the period of enhanced funding. Any deficiencies detected in a State agency's QC system shall be included in the State agency's corrective action plan. The findings of validation reviews shall be used as outlined in § 275.25(e)(6).

(1) *Active case error rate.* The validation review of each State agency's active case error rate shall consist of the following actions:

(i) FNS will select a subsample of a State agency's completed active cases. The Federal review sample for completed active cases is determined as follows:

State annual active case sample size	Federal annual sample size
1,200 and over	n=400
300–1,199	n=150+0.277 (N-300)
Under 300	n=150

(A) In the above formula, n is the minimum number of Federal review sample cases which must be selected when conducting a validation review.

(B) In the above formula, N is the State agency's minimum active case sample size as determined in accordance with § 275.11(b)(1).

(ii) FNS Regional Offices will conduct case record reviews to the extent necessary to determine the accuracy of the State agency's findings using the household's certification records and the State agency's QC records as the basis of determination. The FNS Regional Office may choose to verify any aspect of a State agency's QC findings through telephone interviews with participants or collateral contacts. In addition, the FNS Regional Office may choose to conduct field investigations to the extent necessary.

(iii) Whenever the Federal reviewer determines through case record reviews that the State agency incorrectly disposed of and reported cases as not completed or not subject to review, the FNS Regional Office will return the cases to the State agency for appropriate action on an individual case basis. In addition, the FNS Regional Office may choose to return to the State agency for appropriate action on an individual case basis any cases in which the reviewer is unable to determine the accuracy of the State agency's findings during the course of case record reviews due to insufficient documentary evidence to support the verification required by FNS guidelines. The State agency will have 30 days from the date of receipt of an individual case to take appropriate actions and submit the findings in accordance with the procedures specified in § 275.21(b) (1) and (2). For each case that remains pending after 30 days of the date it was returned by the Regional Office, the State agency will report the reasons why the case has not been disposed of and may be subject to the effects of a finding that its QC system is inefficient or ineffective, as outlined in § 275.21(b)(3).

(iv) Each FNS Regional Office will appoint an individual to arbitrate disputes between the State agency and the FNS Regional Office concerning individual case findings and the appropriateness of actions taken to dispose of individual cases on a case-by-case basis. This individual will not be directly involved in the validation effort and will accept questions of certification policy only upon written request by the State agency.

(v) FNS will also review the State agency's sampling procedures, estimation procedures and the State agency's system for data management to ensure compliance with § 275.11 and § 275.12.

(vi) FNS validation reviews of the State agency's active sample cases will be conducted on an ongoing basis as the State agency reports the findings for individual cases and supplies the necessary case records. FNS will begin the remainder of each State agency's validation review as soon as possible after the State agency has supplied the necessary information regarding its sample and review activity.

(2) *Payment error rate.* The validation review of each State agency's payment error rate shall occur as a result of the Federal validation of the State agency's active case error rate as outlined in paragraph (c)(1) of this section.

(3) *Underissuance error rate.* The validation review of each State agency's active underissuance error rate shall occur as a result of the Federal validation of the State agency's case error rate as outlined in paragraph (c)(1) of this section.

(4) *Negative case error rate* The validation review of each State agency's negative case error rate shall consist of the following actions:

(i) FNS will select a subsample of a State agency's completed negative cases. The Federal review sample for completed negative cases is determined as follows:

State annual negative case sample size	Federal annual sample size
800 and over	n=160
150-799	n=75+0.130 (N-150)
Under 150	n=75

(A) In the above formula, n is the minimum number of Federal review sample cases which must be selected when conducting a validation review.

(B) In the above formula, N is the State agency's minimum negative case sample size as determined in accordance with § 275.11(b)(2).

(ii) FNS Regional Offices will conduct case record reviews to the extent necessary to determine whether the household case record contained sufficient documentation to justify the State agency's QC findings of the correctness of the State agency's decision to deny or terminate a household's participation.

(iii) Whenever the Federal reviewer determines that an individual case was incorrectly disposed of or that a case does not contain sufficient documentary evidence to support the State agency's findings based on case record reviews, the FNS Regional Office and the State agency will take appropriate actions, as outlined in paragraphs (c)(1)(iii) and (iv) above, to complete the validation review process for such cases.

(iv) FNS will also review each State agency's negative case sampling and review procedures against the provisions of §§ 275.11 and 275.13.

(v) FNS will begin each State agency's negative sample case validation review as soon possible after the State agency has supplied the necessary information, including case records and information regarding its sample and review activity.

* * * * *

6. In § 275.10, the fifth and sixth sentences of paragraph (a) are revised; and paragraph (b) is revised. The revisions read as follows:

§ 275.10 Scope and purpose.

(a) * * * Quality control reviews measure the validity of food stamp cases at a given time (the review date) by reviewing against the Food Stamp Program standards established in the Food Stamp Act and the Regulations, taking into account any FNS authorized waivers to deviate from specific regulatory provisions. FNS and the State agency shall analyze findings of the reviews to determine the incidence and dollar amounts of errors, which will determine the State agency's liability for payment errors and eligibility for enhanced funding in accordance with the Food Stamp Act of 1977, as amended, and to plan corrective action to reduce excessive levels of errors for any State agency with combined payment error and underissuance error rates of 5 percent or more.

(b) The objectives of quality control reviews are to provide:

(1) A systematic method of measuring the validity of the food stamp caseload;

(2) A basis for determining error rates;

(3) A timely continuous flow of information on which to base corrective action at all levels of administration; and

(4) A basis for establishing the State agency's liability for errors that exceed the National standard.

* * * * *

7. Section 275.11 is revised to read as follows:

§ 275.11 Sampling.

(a) *Sampling plan.* Each State agency shall develop a quality control sampling plan which demonstrates the integrity of its sampling procedures.

(1) *Content.* The sampling plan shall include a complete description of the frame, the method of sample selection, and methods for estimating characteristics of the population and their sampling errors. The description of the sample frames shall include: source,

availability, accuracy, completeness, components, location, form, frequency of updates, deletion of cases not subject to review, and structure. The description of the methods of sample selection shall include procedures for: estimating caseload size, overpull, computation of sampling intervals and random starts (if any), stratification or clustering (if any), identifying sample cases, correcting over- or undersampling, and monitoring sample selection and assignment. A time schedule for each step in the sampling procedures shall be included. In addition, the sampling plan shall include a description of its relationship, if any, to other Federally-mandated quality control samples (e.g., Aid to Families with Dependent Children or Medicaid).

(2) *Criteria.* All sampling plans shall meet the following criteria:

(i) Conform to principles of probability sampling;

(ii) Document methods for estimating characteristics of the population and their sampling errors;

(iii) Contain population estimates with the same or better precision as would be obtained by a simple random sample of the size specified in paragraphs (b)(1) and (b)(2) of this section;

(iv) Describe all weighting procedures and their effects on data analysis and reporting requirements;

(v) Maintain current effort in other phases of the quality control process (e.g., case reviews, statistical reports and data analysis);

(vi) Contain a written agreement that the State agency will not use the size of the case sample chosen in accordance with paragraph (b)(1) of this section as a basis for challenging the reliability of the error rate estimates; and

(vii) Specify the sample sizes chosen by the State agency.

(3) *Design.* FNS generally recommends a systematic sample design because of its relative ease to administer, and because it yields a sample proportional to variations in the caseload over the course of the annual review period. (To obtain a systematic sample, a State agency would select every kth case after a random start between 1 and k. The value of k is dependent upon the estimated size of the universe and the sample size.) A State agency may, however, develop an alternative sampling design better suited for its particular situation.

(4) *FNS review and approval.* The State agency shall submit its sampling plan to FNS for approval as a part of its State Plan of Operation in accordance with § 272.2. As outlined in § 272.2(e)(4), any changes in the State agency's FNS-approved sampling plan through modifications in sample design, frame, or procedures shall be submitted to FNS for approval at least 60 days prior to implementation. In addition, all sampling procedures used by the State agency, including frame composition, construction, and content shall be fully documented and available for review by FNS.

(b) *Sample Size.* The size of the sample selected for quality control review shall be determined in accordance with the requirements outlined in this section. There are two samples for the food stamp quality control review process, an active case sample and a negative case sample. The size of both these samples is based on the State agency's average monthly caseload during the annual review period.

(1) *Active cases.* (i) The minimum number of active cases to be selected and reviewed during each annual review period shall be determined as follows:

Average monthly active households	Required annual sample size
60,000 and over	n=1200
10,000 to 59,999	n=300+0.018(N−10,000)
Under 10,000	n=300

(A) In the above formula, n is the required active case sample size. This is the minimum number of active cases subject to review which must be selected each review period.

(B) In the above formula, N is the anticipated average monthly participating caseload subject to quality control review (i.e., households which are included in the active universe defined in paragraph (e)(1) of this section) during the annual review period.

(ii) The State agency may choose to select and review a larger number of active cases than the required minimum determined in accordance with the above formula. FNS encourages any State agency which is unwilling to accept the anticipated reliability of the payment error and/or underissuance error rates which would result from determining its active case sample size based on the above formula to increase the sample size to meet its particular needs. If the State agency chooses to increase its active case sample size, the additional active cases shall be selected and reviewed in accordance with standard procedures, and the review findings shall be included in the calculation of the State agency's payment error and underissuance error rates.

(2) *Negative cases.* The number of negative cases to be selected and reviewed during each annual review period shall be determined as follows:

Average monthly negative households	Required annual sample size
5,000 and over	n=800
500 to 4,999	n=150+0.144 (N-500)
Under 500	n=150

(i) In the above formula, n is the required negative sample size. This is the minimum number of negative cases subject to review which must be selected each review period.

(ii) In the above formula, N is the anticipated average monthly number of negative cases which are subject to quality control review (i.e., households which are part of the negative universe defined in paragraph (e)(2) of this section) during the annual review period.

(3) *Unanticipated changes.* Since the average monthly caseloads (both active and negative) must be estimated at the beginning of each annual review period, unanticipated changes can result in the need for adjustments to the sample size. Recognizing the difficulty of forecasting caseloads, State agencies will not be penalized if the actual caseload during a review period is less than 20 percent larger than the estimated caseload used to determine sample size. If the actual caseload is more than 20 percent larger than the estimated caseload, the larger sample size appropriate for the actual caseload will be used in computing the sample completion rate.

(4) *Alternative designs.* The active and negativce sample size determinations assume that State agencies will use a systematic or simple random sample design. Some State agencies may be able to obtain results of equivalent reliability with a smaller sample and appropriate design, subject to FNS approval. To receive FNS approval, such proposals must provide population estimates with equivalent or better precision than would be obtained had the State agency reviewed a simple random sample of the size specified by paragraph (b)(1) or (b)(2) of this section.

(c) *Sample selection.* The selection of cases for quality control review shall be made separately for active and negative cases each month during the annual review period. The State agency shall select a twelfth of the required minimum number of cases from its annual sample size for review each month. If the State agency has chosen to increase its active case sample size, in accordance with paragraph (b)(1) of this section, the State agency shall also select a twelfth of the number of cases in addition to the

required minimum for review each month.

(1) *Substitutions.* Once a household has been identified for inclusion in the sample by a predesigned sampling procedure, substitutions are not acceptable. An active case must be reviewed each time it is selected for the sample. If a household is selected more than once for the negative sample as the result of separate and distinct instances of denial or termination, it shall be reviewed each time.

(2) *Corrections.* Excessive undersampling must be corrected during the annual review period. Excessive oversampling may be corrected at the State agency's option. Cases which are dropped to compensate for oversampling shall be reported as not subject to review. These corrections must not bias the sample results. Consequently, cases which are dropped to compensate for oversampling must be a random subsample of all cases selected (including those completed, not completed, and not subject to review). Cases which are added to the sample to compensate for undersampling must be randomly selected from the entire frame. All sample adjustments must be fully documented and available for review by FNS.

(d) *Sample frame.* The State agency shall select cases for quality control review from a sample frame. The choice of a sampling frame shall depend upon the criteria of timeliness, completeness, accuracy, and administrative burden. Complete coverage of the sample universes, as defined in paragraph (e) of this section, must be assured so that every household subject to quality control review has an equal or known chance of being selected in the sample. There are two sample frames for the food stamp quality control review process, an active case frame and a negative case frame.

(1) *Active cases.* The frame for active cases shall list all households which were: (i) Certified prior to, or during, the sample month; and (ii) issued benefits for the sample month, except for those households excluded from the universe in paragraph (e)(1) of this section. State agencies may elect to use either a list of certified eligible households or a list of households issued an allotment. If the State agency uses a list of certified eligible households, those households which are issued benefits for the sample month after the frame has been complied shall be included in a supplemental list. If the State agency uses an issuance list, the State agency shall ensure that the list includes those households which do not actually receive an allotment because the entire amount is recovered for repayment of an overissuance in accordance with the allotment reduction procedures in § 273.18.

(2) *Negative cases.* The frame for negative cases shall list all households whose application for food stamps was denied or whose certification was terminated effective for the sample month except those excluded from the universe in paragraph (e)(2) of this section.

(3) *Unwanted cases.* A frame may include cases for which information is not desired (e.g., households which have been certified but did not actually participate during the sample month). When such cases cannot be eliminated from the frame beforehand and are selected for the sample, they must be accounted for and reported as being not subject to review in accordance with the provisions in § 275.12(g) and § 275.13(e).

(e) *Sample universe.* The State agency shall ensure that its active and negative case frames accurately reflect their sample universes. There are two sample universes for the food stamp quality control review process, an active case universe and a negative case universe. The exceptions noted below for both universes are households not usually amenable to quality control review.

(1) *Active cases.* The universe for active cases shall include all households certified prior to, or during, the sample month and receiving food stamps for the sample month, except for the following:

(i) A household in which all the participants had died or had moved out of the State;

(ii) A household receiving food stamps under a disaster certification authorized by FNS;

(iii) A household which is under investigation for intentional Program violation, including a household with a pending administrative disqualification hearing;

(iv) A household appealing an adverse action when the review date falls within the time period covered by continued participation pending the hearing; or

(v) A household receiving restored benefits in accordance with § 273.17 but not participating based upon an approved application. Other households excluded from the active case universe during the review process are identified in § 275.12(g).

(2) *Negative cases.* The universe for negative cases shall include all households whose application for food stamps was denied or whose certification was terminated effective for the sample month except the following:

(i) A household which had its case closed due to expiration of the certification period;

(ii) A household which withdrew an application prior to the agency's determination;

(iii) A household which is under investigation for intentional Program violation;

(iv) A household in which all members had died or had moved out of State at the time of the review (except those negative cases in which the reason for denial or termination is that all household members died or moved out of State). Other households excluded from the negative case universe during the review process are identified in § 275.13(e). The negative case universe shall not include negative actions taken against the household which do not result in the household actually being denied or terminated.

(f) *Demonstration projects/SSA processing.* Households correctly classified for participation under the rules of an FNS-authorized demonstration project which FNS determines to significantly modify the rules for determining households' eligibility or allotment level, and households participating based upon an application processed by Social Security Administration personnel shall be included in the selection and review process. They shall be included in the universe for calculating sample sizes and included in the sample frames for sample selection as specified in paragraphs (b) through (e) of this section. In addition, they shall be included in the quality control review reports as specified in § 275.21(e) and included in the calculation of a State agency's completion rate as specified in § 275.25(e)(6). However, all results of reviews of active and negative demonstration project/SSA processed cases shall be excluded from the determination of State agencies' active and negative case error rates, payment error rates, and underissuance error rates as described in § 275.25(c). The review of these cases shall be conducted in accordance with the provision specified in § 275.12(h) and § 275.13(f).

8. Section 275.12 is revised to read as follows:

§ 275.12 Review of active cases.

(a) *General.* A sample of households which were certified prior to, or during, the sample month and issued food stamp benefits for the sample month shall be selected for quality control review. These active cases shall be reviewed to determine if the household is eligible and, if eligible, whether the

household is receiving the correct allotment. The determination of a household's eligibility shall be based on an examination and verification of all elements of eligibility (i.e., basic program requirements, resources, income and deductions). The elements of eligibility are specified in § 273.1 and § 273.3 through § 273.9. The verified circumstances and the resulting benefit level determined by the quality control review shall be compared to the benefits authorized by the State agency as of the review date. When changes in household circumstances occur, the reviewer shall determine whether the changes were reported by the participant and handled by the agency in accordance with the rules set forth in § 273.12, § 273.13 and § 273.21, as appropriate. For active cases, the review date shall always fall within the sample month, either the first day of a calendar or fiscal month or the day of certification, whichever is later. The review of active cases shall include: a household case record review; a field investigation; the identification of any variances; an error analysis; and the reporting of review findings.

(b) *Household case record review.* The reviewer shall examine the household case record to identify the specific facts relating to the household's eligibility and basis of issuance. If the reviewer is unable to locate the household case record, the reviewer shall identify as many of the pertinent facts as possible from the household issuance record. The case record review shall include all information applicable to the case as of the review month, including the application and worksheet in effect as of the review date. Documentation contained in the case record can be used as verification if it is not subject to change, and applies to the sample month. The reviewer shall utilize information obtained through the case record review to complete column (2) of the Integrated Worksheet, Form FNS-380, and to tentatively plan the content of the field investigation.

(c) *Field investigation.* A full field investigation shall be conducted for all active cases selected in the sample month unless the household's ineligibility was determined, and verified, through the household case record review and resolved with the household. In Alaska an exception to this requirement can be made in those isolated areas not reachable by regularly scheduled commercial air service, automobile, or other public transportation provided one fully documented attempt to contact the household has been made. Such cases may be completed through casefile review and collateral contact. The field investigation will iclude interviews with the head of household, spouse or authorized representative; contact with collateral sources of information; and any other materials and activity pertinent to the review of the case. The scope of the review shall not extend beyond the examination of household circumstances which directly relate to the determination of household eligibility and basis of issuance status. The reviewer shall utilize information obtained through the field investigation to complete column (3) of the Integrated Worksheet, Form FNS-380.

(1) *Personal interviews.* Personal interviews shall be conducted in a manner that respects the rights, privacy and dignity of the participants. Prior to making a home visit, the reviewer shall notify the household that it has been selected, as part of an ongoing review process, for review by quality control and that a home visit will be made in the future. The method of notifying the household and the specificity of the notification shall be determined by the State agency, in accordance with applicable State and Federal laws. Most interviews will be held in the home; however, interviews can be held elsewhere when circumstances warrant. Under no circumstances shall the interview with the household be conducted by phone, except in Alaska when an exception to the field investigation is made in accordance with this section. During the interview with the participant, the reviewer shall:

(i) Explore with the head of the household, spouse, authorized representative, or any other responsible household member, household circumstances as they affect each factor of eligibility and basis of issuance;

(ii) Establish the composition of the household;

(iii) Review the documentary evidence in the household's possession and secure information about collateral sources of verification; and

(iv) Elicit from the participant names of collateral contacts. The reviewer shall use, but not be limited to, these designated collateral contacts. If required by the State, the reviewer shall obtain consent from the head of the household to secure collateral information. If the participant refuses to sign the release of information form, the reviewer shall explain fully the consequences of this refusal to cooperate (as contained in paragraph (g)(1)(ii) of this section), and continue the review to the fullest extent possible.

(2) *Collateral contacts.* The reviewer shall obtain verification from collateral contacts in all instances when adequate documentation was not available from the participant. This second party verification shall cover each element of eligibility as it affects the household's eligibility and coupon allotment. The reviewer shall make every effort to use the most reliable second party verification available (for example, banks, payroll listings, etc.), in accordance with FNS guidelines, and shall thoroughly document all verification obtained. If any information obtained by the QC reviewer differs from that given by the participant, then the reviewer shall resolve the differences to determine which information is correct before an error determination is made. The manner in which the conflicting information is resolved shall include recontacting the participant unless the participant cannot be reached. When resolving conflicting information reviewers shall use their best judgement based on the most reliable data available and shall document how the differences were resolved.

(d) *Variance identification.* The reviewer shall identify any element of a basic program requirement or the basis of issuance which varies (i.e., information from review findings which indicates that policy was applied incorrectly and/or information verified as of the review date that differs from that used at the most recent certification action). For each element that varies, the reviewer shall determine whether the variance was State agency or participant caused. The results of these determinations shall be coded and recorded in column (5) of the Integrated Worksheet, Form FNS-380.

(1) *Variances included in error analysis.* Any variance involving an element of eligibility or basis of issuance, except those variances in an element resulting from one of the situations described in paragraph (d)(2) of this section, shall be included in the error analysis.

(2) *Variances excluded from error analysis.* The following variances shall be excluded from the determination of a household's eligibility and basis of issuance for the sample month:

(i) Any variance resulting from the nonverified portion of a household's gross nonexempt income where there is conclusive documentation (a listing of what attempts were made to verify and why they were unsuccessful) that such income could not be verified at the time of certification because the source of income would not cooperate in

providing verification and no other sources of verification were available. If there is no conclusive documentation as explained above, then the reviewer shall not exclude any resulting variance from the error determination. This follows certification policy outlined in § 273.2(f)(1)(i).

(ii) Any variance in cases certified under expedited certification procedures resulting from postponed verfication of an element of eligibility as allowed under § 273.2(i)(4)(i). Verification of gross income, deductions, resources, household composition, alien status or tax dependency may be postponed for cases eligible for expedited certification. However, if a case certified under expedited procedures contains a variance as a result of a residency deficiency, a mistake in the basis of issuance computation, a mistake in participant identification, or incorrect expedited income accounting, the variance shall be included in the error determination. This exclusion shall only apply to those cases which are selected for QC review in the first month of participation under expedited certification.

(iii) Any variance subsequent to certification in an element of eligibility or basis of issuance which was not reported and was not required to have been reported as of the review date. The elements participants are required to report and the time requirements for reporting are specified in § 273.12(a) and § 273.21 (h) and (i), as appropriate. If, however, a change in any element is reported, and the State agency fails to act in accordance with § 273.12(c) and § 273.21(j), as appropriate, any resulting variance shall be included in the error determination.

(iv) Any variance in deductible expenses which was not provided for in determining a household's benefit level in accordance with §273.2(f)(3)(i)(B). This provision allows households to have their benefit level determined without providing for a claimed expense when the expense is questionable and obtaining verification may delay certification. If such a household subsequently provides the needed verification for the claimed expense and the State agency does not redetermine the household's benefits in accordance with § 273.12(c), any resulting variance shall be included in the error determination.

(e) *Error analysis.* The reviewer shall analyze all appropriate variances in completed cases, in accordance with paragraph (d) of this section, which are based upon verified information and determine whether such cases are either eligible, eligible with a basis of issuance error or ineligible. The review of an active case determined ineligible shall be considered completed at the point of the ineligibility determination. For households determined eligible, the review shall be completed to the point where the correctness of the basis of issuance is determined, except in the situations outlined in paragraph (g) of this section. In the event that a review is conducted of a household which is receiving restored or retroactive benefits for the sample month, the portion of the allotment which is the restored or retroactive benefit shall be excluded from the determination of the household's eligibility and/or basis of issuance. A food stamp case in which a household member(s) receives public assistance shall be reviewed in the same manner as all other food stamp cases, using income as received. The determination of a household's eligibility and the correctness of the basis of issuance shall be determined based on data entered on the computation sheet as well as other information documented on other portions of the Integrated Worksheet, Form FNS–380, as appropriate.

(f) *Reporting of review findings.* All information verified to be incorrect during the review of an active case shall be reported to the State agency for appropriate action on an individual case basis. This includes information on all variances in elements of eligibility and basis of issuance in both error and nonerror cases. In addition, the reviewer shall report the review findings on the Integrated Review Schedule, Form FNS–380–1, in accordance with the following procedures:

(1) *Eligibility errors.* If the reviewer determines that a case is ineligible, the occurence and the total allotment issued in the sample month shall be coded and reported. Whenever a case contains a variance in an element which results in an ineligibility determination and there are also variances in elements which would cause a basis of issuance error, the case shall be treated as an eligibility error. The reviewer shall also code and report any variances that directly contributed to the error determination. In addition, if the State agency has chosen to report information on all variances in elements of eligibility and basis of issuance, the reviewer shall code and report any other such variances which were discovered and verified during the course of the review.

(2) *Basis of issuance errors.* If the reviewer determines that food stamp allotments were either overissued or underissued to eligible households in the sample month, in an amount exceeding $5.00, the occurrence and the amount of the error shall be coded and reported. The reviewer shall also code and report any variances that directly contributed to the error determination. In addition, if the State agency has chosen to report information on all variances in elements of eligibility and basis of issuance, the reviewer shall code and report any other such variances which were discovered and verified during the course of the review.

(g) *Disposition of case review.* Each case selected in the sample of active cases must be accounted for by classifying it as completed, not completed, or not subject to review. These case dispositions shall be coded and recorded on the Integrated Review Schedule, Form FNS–380–1.

(1) Active cases shall be reported as not completed if the reviewer is unable to locate the participant, unless the reviewer undertakes all reasonable efforts to locate the household as outlined in this paragraph, if the participant refuses to cooperate, or if the household case record cannot be located and the household itself is not subsequently located. In no event, however, shall any active case be reported as not completed solely because the State agency was unable to process the case review in time for it to be reported in accordance with the timeframes specified in § 275.3(c)(1)(iii) or § 275.21(b)(2), without prior FNS approval. This information shall be reported to the State agency for appropriate action on an individual case basis.

(i) If the reviewer is unable to locate the participant at the address indicated in the case record and the State agency is unaware of the participant's current address, the reviewer shall undertake all reasonable efforts to locate the household. All reasonable efforts shall include contacting, at a minimum, the following sources prior to determining that the household cannot be located:

(A) The local office of the U.S. Postal Service;

(B) The State Motor Vehicle Department;

(C) The owner or property manager of the residence at the address in the case record; and

(D) Any other appropriate sources based on information contained in the case record, such as public utility companies, telephone company, employers or relatives. Once the reviewer has undertaken all of these efforts and has documented the response of each required contact, the State agency shall report the active case as not subject to review if the household still cannot be located and the State

agency has documented evidence that the household did actually exist.

(ii) If the household refuses to cooperate with the reviewer, the household's refusal shall be reported to the State agency for termination action. For a determination of refusal to be made, the household must be able to cooperate, but clearly demonstrate that it will not take actions that it can take and that are required to complete the quality control review process. In certain circumstances, the household may demonstrate that it is unwilling to cooperate by not taking actions after having been given every reasonable opportunity to do so, even though the household or its members do not state that the household refuses to cooperate. Instances where the household's unwillingness to cooperate in completing a quality control review has the effect of a refusal to cooperate shall include the following:

(A) The household does not respond to a letter from the reviewer sent Certified Mail-Return Receipt Requested within 30 days of the date of receipt;

(B) The household does not attend an agreed upon interview with the reviewer and then does not contact the reviewer within 10 days of the date of the scheduled interview to reschedule the interview; or

(C) The household does not return a signed release of information statement to the reviewer within 10 days of either agreeing to do so or receiving a request from the reviewer sent Certified Mail-Return Receipt Requested. However, in these and other situations, if there is any question as to whether the household has merely failed to cooperate, as opposed to refused to cooperate, the household shall not be reported to the State agency for termination.

(2) Cases which are not subject to review, if they have not been eliminated in the sampling process, shall be eliminated during the review process. These cases shall be as follows:

(i) Death of all members of a household if they died before the review could be undertaken or completed;

(ii) The household moved out of State before the review could be undertaken or completed;

(iii) The household, at the time of the review, is under active investigation for intentional Food Stamp Program violation, including a household with a pending administrative disqualification hearing;

(iv) A household receiving restored benefits in accordance with § 273.17 but not participating based upon an approved application for the sample month;

(v) A household dropped as a result of correction for oversampling;

(vi) A household participating under disaster certification authorized by FNS for a natural disaster;

(vii) A case incorrectly listed in the active frame;

(viii) A household appealing an adverse action when the review date falls within the time period covered by continued participation pending the hearing;

(ix) A household that did not receive benefits for the sample month; or

(x) A household that still cannot be located after the reviewer has undertaken all reasonable efforts in accordance with paragraph (g)(1)(i) of this section.

(h) *Demonstration projects/SSA processing.* Households correctly classified for participation under the rules of a demonstration project which establishes new FNS-authorized eligibility criteria or modifies the rules for determining households' eligibility or allotment level shall be reviewed following standard procedures provided that FNS does not modify these procedures to reflect modifications in the treatment of elements of eligibility or basis of issuance in the case of a demonstration project. If FNS determines that information obtained from these cases would not be useful, then they may be excluded from review. Households whose most recent application for participation was processed by Social Security Administration personnel shall be reviewed following standard procedures. This includes applications for recertification, provided such an application is processed by the SSA as allowed in § 273.2(k)(2)(ii).

9. Section 275.13 is revised to read as follows:

§ 275.13 Review of negative cases.

(a) *General.* A sample of households denied certification to receive food stamps or which had their participation in the Food Stamp Program terminated during a certification period effective for the sample month shall be selected for quality control review. These negative cases shall be reviewed to determine whether the State agency's decision to deny or terminate the household, as of the review date, was valid. For negative cases, the review date shall be the date of the agency's decision to deny or terminate program benefits. The review of negative cases shall include a household case record review; an error analysis; and the reporting of review findings.

(b) *Household case record review.* The reviewer shall examine the household case record and verify through documentation in the file whether the reason given for the denial or termination is valid, or whether the denial or termination is valid for any other reason documented in the casefile. When the case record alone does not prove ineligibility, the reviewer may be able to verify the element(s) of eligibility in question by contacting by phone a collateral contact designated in the case record. Through the review of the household case record, the reviewer shall complete the household case record sections and document the reasons for denial or termination on the Negative Quality Control Review Schedule, Form FNS–245.

(c) *Error analysis.* A negative case shall be considered valid when the reviewer is able to verify through documentation in the household case record or collateral contact that a household was correctly denied or terminated from the program. Whenever the reviewer is unable to verify the correctness of the State agency's decision to deny or terminate a household's participation through such documentation or collateral contact, the negative case shall be considered invalid.

(d) *Reporting of review findings.* When a negative case is invalid, this information shall be reported to the State agency for appropriate action on an individual case basis, such as recomputation of the coupon allotment and restoration of lost benefits. In addition, the reviewer shall code and record the error determination on the Negative Quality Control Review Schedule, Form FNS–245.

(e) *Disposition of case review.* Each case selected in the sample of negative cases must be accounted for by classifying it as completed, not completed, or not subject to review. These case dispositions shall be coded and recorded on the Negative Quality Control Review Schedule, Form FNS–245.

(1) Negative cases shall be reported as not completed if the reviewer, after all reasonable efforts, is unable to locate the case record. In no event, however, shall any negative case be reported as not completed solely because the State agency was unable to process the case review in time for it to be reported in accordance with the timeframes specified in § 275.3(c)(1)(iii) or § 275.21(b)(2), without prior FNS approval. This information shall be reported to the State agency for appropriate action on an individual case basis.

(2) Negative cases shall be reported as not subject to review when the household, at the time of the review;

(i) Withdrew an application prior to the State agency's determination;

(ii) Is under active investigation for intentional Food Stamp Program violation;

(iii) Had its case closed due to expiration of the certification period;

(iv) Was dropped as a result of correction for oversampling; or

(v) Is a household in which all members died or moved out of State at the time of the review (except those negative cases in which the reason for denial or termination is that all household members died or moved out of State).

(f) *Demonstration projects/SSA processing.* Households whose application has been denied or whose participation has been terminated under the rules of an FNS-authorized demonstration project shall be reviewed following standard procedures unless FNS provides modified procedures to reflect the rules of the demonstration project. If FNS determines that information obtained from these cases would not be useful, then these cases may be excluded from review. Households whose application has been processed by SSA personnel and are subsequently denied participation shall be reviewed following standard procedures.

10. Section 275.14 is revised to read as follows:

§ 275.14 Review processing.

(a) *General.* Each State agency shall use FNS handbooks, worksheets, and schedules in the quality control review process. Deviations may be granted from FNS-designed materials under the conditions in § 273.2(b).

(b) *Handbooks.* The reviewer shall follow the procedures outlined in the Quality Control Review Handbook, FNS Handbook 310, to conduct quality control reviews. In addition, the sample of active and negative cases shall be selected in accordance with the sampling techniques described in the Quality Control Sampling Handbook, FNS Handbook 311.

(c) *Worksheets.* The Integrated Review Worksheet, Form FNS-380, shall be used by the reviewer to record required information from the case record, plan and conduct the field investigation, and record findings which contribute to the determination of eligibility and basis of issuance in the review of active cases. In some instances, reviewers may need to supplement Form FNS-380 with other forms. The State forms for appointments, interoffice communications, release of information, etc., should be used when appropriate.

(d) *Schedules.* Decisions reached by the reviewer in active case reviews shall be coded and recorded on the Integrated Review Schedule, Form FNS-380-1. Such active case review findings must be substantiated by information recorded on the Integrated Review Worksheet, Form FNS-380. In negative case reviews, the review findings shall be coded and recorded on the Negative Quality Control Review Schedule, Form FNS-245, and supplemented as necessary with other documentation substantiating the findings.

11. Section 275.21 is revised to read as follows:

§ 275.21 Quality control review reports.

(a) *General.* Each State agency shall submit reports on the performance of quality control reviews in accordance with the requirements outlined in this section. These reports are designed to enable FNS to monitor the State agency's compliance with Program requirements relative to the Quality Control Review System. Every case selected for review during the sample month must be accounted for and reflected in the appropriate report(s).

(b) *Individual cases.* The State agency shall report the review findings on each case selected for review during the sample month. For active cases, the State agency shall submit the edited findings of the Integrated Review Schedule, Form FNS-380-1. For negative cases, the State agency shall submit the edited findings of the Negative Quality Control Review Schedule, Form FNS-245. The review findings shall be reported as follows:

(1) The State agency shall input and edit the results of each active and negative case into the FNS supplied computer terminal and transmit the data to the host computer. For State agencies that do not have FNS supplied terminals, the State agency shall submit the results of each QC review in a format specified by FNS. The State agency shall not change the results of reviews after they have been reported to FNS, without FNS approval or unless the change results from a case having been returned to the State agency by the FNS Regional Office during the Federal validation review process, in accordance with § 275.3(c).

(2) The State agency shall dispose of and report the findings of 90 percent of all cases selected in a given sample month so that they are received by FNS within 75 days of the end of the sample month. All cases selected in a sample month shall be disposed of and the findings reported so that they are received by FNS within 95 days of the end of the sample month. In addition, any case returned to the State agency for appropriate action during the Federal validation review process, as described in § 275.3(c), shall be disposed of and the findings reported so that they are received by FNS within 30 days of the date the case was returned to the State agency. The State agency shall supply the FNS Regional Office with individual household case records, or copies of the pertinent information contained in the individual case records, as well as hard copies of individual Forms FNS-380, FNS-380-1, and FNS-245 within 10 days of receipt of a request for such information.

(3) For each case that remains pending after 95 days of the end of the sample month or, for cases returned to the State agency, that remains pending after 30 days of the date the case was received from the FNS Regional Office, the State agency shall immediately submit a report that includes an explanation of why the case has not been disposed of, documentation describing the progress of the review to date, and the date by which it will be completed. If FNS determines that the above report does not sufficiently justify the case's pending status, the case shall be considered overdue. Depending upon the number of overdue cases, FNS may find the State agency's QC system to be inefficient or ineffective and suspend and/or disallow the State agency's Federal share of administrative funds in accordance with the provisions of § 276.4. At a minimum, the amount involved would equal one percent of the State agency's Federal funding for quality control costs for every one percent of its required case reviews classified as overdue in a review period.

(c) *Monthly status.* The State agency shall report the monthly progress of sample selection and completion on the Form FNS-248, Status of Sample Selection and Completion. This report shall be submitted to FNS so that it is received no later than 95 days after the end of the sample month. Each report shall reflect sampling and review activity for a given sample month.

(d) *Annual results.* The State agency shall annually report the results of all quality control reviews during the review period. For this report, the State agency shall submit the edited results of all QC reviews on the Form FNS-247, Statistical Summary of Sample Distribution. This report shall be submitted to FNS so that it is reviewed no later than 95 days from the end of the annual review period. Every case

selected in the active or negative sample must be accounted for and reported to FNS, including cases not sbject to review, not completed, and completed.

(e) *Demonstration projects/SSA processing.* The State agency shall identify the monthly status of active and negative demonstration project/SSA processed cases (i.e., those cases described in § 275.11(f)) on the Form FNS-248, described in paragraph (c) of this section. In addition, the State agency shall identify the annual results of such cases on the Form FNS-247, described in paragraph (d) of this section.

12. In § 275.25, paragraphs (c) and (d) are redesignated as paragraphs (d) and (e), respectively; a new paragraph (c) is added; newly redesignated paragraph (d) is revised; newly redesignated paragraph (e)(1) is revised; the first sentence of newly redesignated paragraph (e)(3)(ii) is revised; and newly redesignated paragraph (e)(6) is revised. The addition and revisions read as follows:

§ 275.25 Determination of State agency program performance.

* * * * *

(c) *State agency error rates.* FNS shall estimate each State agency's error rates based on the results of quality control review reports submitted in accordance with the requirements outlined in § 275.21. The State agency's active case error, payment error, underissuance error, and negative case error rates shall be estimated as follows:

(1) *Active case error rate.* The active case error rate shall include the proportion of active sample cases which were reported as ineligible or as receiving an incorrect allotment (as described in § 275.12(e)) based upon certification policy as set forth in Part 273.

(3) *Payment error rate.* The payment error rate shall include the value of the allotments reported as overissued, including overissuances in ineligible cases, for those cases included in the active case error rate.

(3) *Underissuance error rate.* The underissuance error rate shall include the value of the allotments reported as underissued for those cases included in the active case error rate.

(4) *Negative case error rate.* The negative case error rate shall be the proportion of negative sample cases which were reported as having been eligible at the time of denial or termination (as described in § 275.13(c)) based upon certification policy as set forth in Part 273.

(5) *Demonstration projects/SSA processing.* The reported results of reviews of active and negative demonstration project/SSA processed cases, as described in § 275.11(f), shall be excluded from the estimate of the active case error rate, payment error rate, underissuance error rate and negative case error rate.

(d) *Federal enhanced funding.* (1) Before making enhanced funding available to a State agency, as described in § 277.4(b), FNS will:

(i) Validate the State agency's estimated active case error rate, payment error rate, underissuance error rate, and negative case error rate, as provided for in § 275.3(c);

(ii) Ensure that the sampling techniques used by the State agency are FNS-approved procedures, as established in § 275.11; and

(iii) Validate the State agency's quality control completion rate to ensure that all of the minimum required sample cases, of both active and negative quality control samples, have been completed. This completion standard is applied separately to the active and negative case samples, and the State agency's estimated payment and underissuance error rates will be adjusted separately, if necessary, to account for those required cases not completed, in accordance with the procedures described in paragraph (e)(6)(iii) of this section for adjustment of the payment error rate.

(2) After validation and any necessary adjustment of estimated error rates, a State agency with a combined official payment error rate and underissuance error rate of five percent or less shall be eligible for a 60 percent Federally funded share of administrative costs, provided that the State agency's official negative case error rate is less than the national weighted mean negative case error rate for the period of enhanced funding.

(3) State agencies entitled to enhanced funding shall receive the additional funding on a retroactive basis only for the review period in which their error rates are less than the levels described in paragraph (d)(2) of this section.

(e) *State agencies' liabilities for payment error rates.* (1) At the end of each fiscal year, each State agency's payment error rate over the entire fiscal year will be computed, as described in paragraph (e)(6) of this section, and evaluated to determine whether the payment error rate goals established in the following paragraphs have been met.

* * * * *

(3) *State agencies failing to achieve payment error rate goals.* * * *

(ii) If a State agency fails to reach its payment error rate goal but reduces its error rate as explained in paragraph (e)(2)(ii) of this section for a given fiscal year it will share no liability for its error rates. * * *

* * * * *

(6) *Determination of payment error rates.* As specified in § 275.3(c), FNS will validate each State agency's estimated payment error rate through rereviewing the State agency's active case sample and ensuring that its sampling, estimation, and data management procedures are correct.

(i) FNS may adjust State agencies' estimated error rates based on findings of rereviewed cases. Once the Federal case reviews have been completed and all differences with the State agency have been resolved, the State agency's estimated error rate may be adjusted using the following linear regression equation.

(A) $y' = y + b(X - x)$ where y' is the average value of allotments overissued to eligible and ineligible households; y is the average value of allotments overissued to eligible and ineligible households in the rereview sample according to the Federal finding; b is the estimate of the slope parameter; x is the average value of allotments overissued to eligible and ineligible households in the rereview sample according to State agency findings; and X is the average value of allotments overissued to eligible and ineligible households in the full quality control sampling according to the State agency's findings.

(B) The adjusted error rates are given by $r = y'/u$, where u is the average value of allotments issued to participating households.

(C) After application of the provisions of paragraph (e)(6)(iii), the adjusted payment error rate will then become the State agency's official payment error rate for use in the reduced and enhanced funding determinations described in paragraphs (d) and (e) of this section.

(ii) If FNS determines that a State agency has sampled incorrectly, estimated improperly, or has deficiencies in its QC data management system, FNS will correct the State agency's payment error rate based upon a correction to that aspect of the State agency's QC system which is deficient. If FNS cannot accurately correct the State agency's deficiency, FNS will assign the State agency a payment error rate based upon the best information available. After consultation with the State agency, this assigned payment error rate will then be used in the above described liability determination and in determinations for enhanced funding under paragraph (d) of this section.

State agencies shall have the right to appeal assignment of an error rate in this situation in accordance with the procedure of § 276.7.

(iii) Should a State agency fail to complete all of its minimum required sample size, FNS shall adjust the State agency's payment error rate by assigning two standard deviations of the estimated payment error rate added to the regressed payment error rate, where appropriate, to those cases not completed in order to calculate the State agency's official payment error rate.

(91 Stat. 958 (7 U.S.C. 2011-2029))

(Catalog of Federal Domestic Assistance Programs No. 10551, Food Stamp Program)

Dated: July 26, 1983.

John H. Stokes III,

Acting Administrator.

[FR Doc. 83-20650 Filed 7-28-83; 8:45 am]

BILLING CODE 3410-30-M

federal register

Friday
July 29, 1983

Part VIII

Department of Labor

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions; Republication

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

Note.—In FR Doc. 83-19611 beginning on page 33612 in the issue of Friday, July 22, 1983, portions of the general wage determination decisions were illegible. The document is reprinted in its entirety as follows:

General wage determination decisions of the Secretary of Labor specify, in accordance with applicable law and on the basis of information available to the Department of Labor from its study of local wage conditions and from other sources, the basic hourly wage rates and fringe benefit payments which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of the character and in the localities specified therein.

The determinations in these decisions of such prevailing rates and fringe benefits have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 1.1 (including the statutes listed at 36 FR 306 following Secretary of Labor's Order No. 24-70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act and pursuant to the provisions of part 1 of subtitle A of title 29 of Code of Federal Regulations, Procedure for Predetermination of Wage Rates (37 FR 21138) and of Secretary of Labor's Orders 12-71 and 15-71 (36 FR 8755, 8756). The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in effective date as prescribed in that section, because the necessity to issue construction industry wage determination frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions are effective from their date of publication in the **Federal Register** without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision together with any modifications issued subsequent to its publication date shall be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR, Part 5. The wage rates contained therein shall be the minimum paid under such contract by contractors and subcontractors on the work.

Modifications and Supersedeas Decisions to General Wage Determination Decisions

Modifications and supersedeas decisions to general wage determination decisions are based upon information obtained concerning changes in prevailing hourly wage rates and fringe benefit payments since the decisions were issued.

The determinations of prevailing rates and fringe benefits made in the modifications and supersedeas decisions have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 1.1 (including the statutes listed at 36 FR 306 following Secretary of Labor's Order No. 24-70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of part 1 of subtitle A of title 29 of Code of Federal Regulations, Procedure for Predetermination of Wage Rates (37 FR 21138) and of Secretary of Labor's orders 13-71 and 15-71 (36 FR 8755, 8756). The prevailing rates and fringe benefits determined in foregoing general wage determination decisions, as hereby modified, and/or superseded shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged in contract work of the character and in the localities described therein.

Modifications and supersedeas decisions are effective from their date of publicaiton 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. Futher 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.

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.

Arkansas: AR83-4049	July 15, 1983.
Delaware: DE82-3015	
Florida: FL83-1041; FL83-1042; FL83-1047; FL83-1048; FL83-1049; FL83-1050.	June 24, 1983.
Illinois:	
IL83-2034; IL83-2035	Apr. 8, 1983.
IL83-2036	Apr. 15, 1983.
Minnesota:	
MN82-2064	Nov. 26, 1982.
MN83-2038	May 6, 1983.
Missouri: MO83-4047	June 24, 1983.
New Jersey: NJ83-3015; NJ83-3016	June 17, 1983.
New Mexico: NM83-4032	Apr. 15, 1983.
North Carolina: NC82-1027	Apr. 20, 1982.
Ohio: OH83-2040	May 13, 1983.
Pennsylvania: PA82-3017	Mar. 26, 1982.
Wisconsin: WI83-2012	Feb. 18, 1983.

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.

Alabama: AL80-1069 (AL83-1053)	June 6, 1980.
Nebraska: NE80-4038 (NE83-4052)	May 16, 1980.
New York: NY81-3041 (NY83-3027)	July 17, 1981.
Texas: TX82-4052 (TX83-4053); TX78-4066 (TX83-4054); TX78-4065 (TX83-4056).	June 16, 1978.

Signed at Washington, D.C., This 15th day of July 1983.

Dorothy P. Come,

Assistant Administrator, Wage and Hour Division.

BILLING CODE 1505-02-M

MODIFICATION P. 1

DECISION #AR83-4049-Mod. #1
48FR July 15, 1983
SEBASTIAN, CRAWFORD AND WASHINGTON COUNTIES, ARKANSAS

	Basic Hourly Rates	Fringe Benefits
CHANGE (Sebastian & Crawford Cos.):		
ELECTRICIANS:		
ELECTRICIANS	$14.79	A
CABLE SPLICERS	15.04	A
LINE CONSTRUCTION:		
Linemen-Operator	14.04	A
Cable splicers	14.29	A
Powderman	90%JR	A
Truck driver	75%JR	A
Groundman	65%JR	A
FOOTNOTE:		
A - 8-3/4% + .80		

DECISION NO. DE82-3015 - MOD #5
(48 FR 4220 - January 28, 1982)
STATE OF DELAWARE

	Basic Hourly Rates	Fringe Benefits
CHANGE:		
ELECTRICIANS	$17.92	2.48 +3¼%

DECISION NO. WI83-2012 - MOD. #2
(48 FR 7386 - February 18, 1983)
Statewide, Wisconsin

	Basic Hourly Rates	Fringe Benefits
Change:		
LINE CONSTRUCTION:		
Statewide:		
Linemen	$15.47	9½%+ .65

DECISION NO. FL83-1049 - MOD. # 1
(June 24, 1983 - 48 FR 29427)
Broward and Palm Beach Counties in Florida

	Basic Hourly Rates	Fringe Benefits
HIGHWAY CONSTRUCTION		
DELETE:		
POWER EQUIPMENT OPERATORS		
ROLLER:		
Operator	$5.13	
TRACTORS:		
Operator	7.50	

DECISION NO. FL83-1050 - MOD. # 1
(June 24, 1983 - 48 FR 29427)
Dade County, Florida

	Basic Hourly Rates	Fringe Benefits
HIGHWAY CONSTRUCTION		
DELETE:		
TRUCK DRIVERS:		
Operators	$5.65	

MODIFICATION P. 2

DECISION NO. FL83-1041 - MOD. # 1
(June 24, 1983 - 48 FR 29423)
Bay, Escambia, Gulf, Okaloosa, Santa Rosa, and Walton Counties in Florida

	Basic Hourly Rates	Fringe Benefits
HIGHWAY CONSTRUCTION		
DELETE:		
TRUCK DRIVERS:		
Single Rear Axle	$6.00	

DECISION NO. FL83-1042 - MOD. # 1
(June 24, 1983 - 48 FR 29423)
Calhoun, Franklin, Holmes, Jackson, Liberty, and Washington Counties in Florida

	Basic Hourly Rates	Fringe Benefits
HIGHWAY CONSTRUCTION		
DELETE:		
POWER EQUIPMENT OPERATORS		
Guardrail Post Driver Erector	$4.50	
ADD:		
POWER EQUIPMENT OPERATORS		
Guardrail Post Driver Operator	$4.50	

DECISION NO. FL83-1047 Mod. # 1
(June 24, 1983 - 48 FR 29426)
Brevard (excludes Cape Canaveral AF Station, Patrick AFB, Kennedy Space Flight Center, & Melabar Radar Site), Hillsborough, Indian River, Manatee, Martin, Orange, Osceola, Pinellas, Polk, St. Lucie, Sarasota, & Seminole Counties in Florida

	Basic Hourly Rates	Fringe Benefits
HIGHWAY CONSTRUCTION		
DELETE:		
POWER EQUIPMENT OPERATORS:		
ROLLER:		
Operator	$4.71	

DECISION NO. FL83-1048 - MOD # 1
(June 24, 1983 - 48 Fr 29426)
Charlotte, Collier, DeSota, Glades, Hardee, Hendry, Highland, Lee, Monroe, Okeechobee Counties in Florida

	Basic Hourly Rates	Fringe Benefits
HIGHWAY CONSTRUCTION		
DELETE:		
POWER EQUIPMENT OPERATORS		
Roller:		
Operator	$ 6.00	

Republication of page 33613 of the Federal Register of Friday, July 22, 1983.

MODIFICATION P. 3

DECISION NO. IL83-2034 - MOD. #1
(48 FR 15410 - April 8, 1983)
Ford, Grundy, Iroquois, Kankakee, LaSalle, Livingston, McLean, Marshall, Putnam, & Woodford Counties, Illinois

	Basic Hourly Rates	Fringe Benefits	Basic Hourly Rates	Fringe Benefits
Omit:				
Power Equipment Operators:				
Area 3				
Add:				
Power Equipment Operators:				
Area 3:				
Group 1	$17.29	$2.35		
Group 2	16.14	2.35		
Group 3	14.43	2.35		

Group 1 - Cranes; Hydro Crane; Shovels; Crane Type Backfiller; Tower Cranes - Mobile & Crawler & Stationary; Derricks & Hoists, (3 Drum); Draglines; Drott Yumbo & Similar types considered as Cranes; Backhoe; Derrick Boats; Pile Driver and Skid Rigs; Clam Shell; Locomotive - Cranes; Road Pavers - Single Drum - Dual Drum - Tri-Batcher; Motor Patrol & Power Blades - Dumore - Elevating & Similar types; Mechanics; Central Concrete Mixing Plant Operator; Asphalt Batch Plant Operators and Plant Engineers; Gradall; Caisson Rigs; Skimmer Scoop - Koehring Scooper; Dredges; Hoptoe; All Cherry Pickers; Work Boat; Ross Carrier; Helicopter; Dozer; Tournadozer; Tournapulls - all and Similar types; Multiple Unit Earth Movers: 25¢ per hr. for each scoop over one (1); Scoops; Pushcats; Endloaders; Asphalt Surfacing Machine; Slip Form Paver; Rock Crusher; Heavy Equipment Greaser (top greaser on spread); CMI, Auto Grade, CMI Belt Placer & 3 Track and Similar types; Side Booms; Starting Engineer on Pipeline; Asphalt Heater & Planer Combination (used to plane streets); Wheel Tractors (with dozer, hoe or endloader attachments); F.W.D. and Similar types; Blaw Knox Spreader and Similar types; Trench Machines; Pump Crete - Belt Crete - Squeeze Crete - screw type pumps and gypsum (operator will clean); Formless Finishing Machines; Flaherty Spreader or similar types; Screed Man on Laydown Machine; Vermeer Concrete Saw; Escalated Rate on Crane and Derrick Booms: .01¢ per hr., per ft. over 80 ft. including jib, $1.00 per hour over scale when crane or derrick boom is positioned 50' or more adjacent ground level or water level

Group 2 - Bulker & Pump; Power Launches; Boring Machine & Pipe Jacking Machine; Dinkeys; P-H One Pass Soil Cement Machines and similar types; Wheel Tractors (Industry or farm type - other); Back Fillers; Euclid Loader; Fork Lifts; Jeep w/Ditching Machine or other attachments; Tuneluger; Automatic Cement & Gravel Batching Plants; Mobile Drills - Soil Testing and similar types; Pugmill with Pump; All (1) and (2) Drum Hoists; Dewatering System; Straw Blower; Hydro-Seeder; Boring Machine; Hydro-Boom; Bump Grinders (self-propelled); Assistant Heavy Equipment Greaser; Apsco Spreader; Tractors (track-type) without Power Units Pulling Rollers; Rollers on Asphalt - Brick or Macadam; Concrete Breakers; Concrete Spreaders; Cement Strippers; Cement Finishing Machines & CMI Texture & Reel Curing Machines; Vibro-Tampers (all similar types self-propelled);

DECISION NO. IL83-2034 (Cont'd) MODIFICATION P. 4

Power Equipment Operators (Cont'd):

Group 2 (Cont'd):

Mechanical Bull Floats; Mixers-over three (3) bags to 27E; Winch and Boom Trucks; Tractor Pulling Power Blade or Elevating Grader; Porter Rex Rail; Clary Screed; Mule Pulling Rollers; Pugmill without Pump; Barber Green or similar Loaders; Track Type Tractor w/Power Unit attached; Fireman; Spray Machine on Paving; Curb Machines; Paved Ditch Machine; Power Broom; Self-Propelled Conveyors; Power Subgrader; Oil Distributor; Straight Tractor; Truck Crane Oiler; Truck Type Oilers; 3-4 Pieces Small Equipment; Oiler and 1 Piece Small Equipment

Group 3 - Trac Air Machine (without attachments); Herman Nelson Heater, Dravo Warner, Silent Glo & similar types, One Engineer will operate 1-5 and after 5 two Operators required; Self-Propelled Concrete Saws; Rollers - five ton and under on earth and gravel; Form Graders; Pump (1) or (2); Light Plant (1) or (2); Generator (1) or (2); Air Compressor (1) or (2); Conveyor (1) or (2) - Operator will clean; Welding Machine (1) or (2); Mixer - 3 bags and under; Bulk Cement Plant; Oilers

Republication of page 33614 of the Federal Register of Friday, July 22, 1983.

MODIFICATION P. 5

DECISION NO. IL83-2035 - MOD. #2
(48 FR 15413 - April 8, 1983)
Bureau, Carroll, Henry, JoDaviess, Lee, Ogle, Rock Island, Stephenson, Whiteside, & Winnebago Counties, Illinois

	Basic Hourly Rates	Fringe Benefits		Basic Hourly Rates	Fringe Benefits
Omit:					
Power Equipment Operators:					
Area 1					
Add:					
Power Equipment Operators:					
Area 1:					
Group 1	$17.29	$2.35			
Group 2	16.14	2.35			
Group 3	14.43	2.35			

Group 1 - Cranes; Hydro Crane; Shovels; Crane Type Backfiller; Tower Cranes - Mobile & Crawler & Stationary; Derricks & Hoists (3 Drum); Draglines; Drott Yumbo & Similar types considered as Cranes; Backhoe; Derrick Boats; Pile Driver and Skid Rigs; Clam Shell; Locomotive - Cranes; Road Pavers - Single Drum - Dual Drum - Tri-Batcher; Motor Patrol & Power Blades - Dumore - Elevating & Similar types; Mechanics; Central Concrete Mixing Plant Operator; Asphalt Batch Plant Operators and Plant Engineers; Gradall; Caisson Rigs; Skimmer Scoop - Koehring Scooper; Dredges; Hoptoe; All Cherry Pickers; Work Boat; Ross Carrier; Helicopter; Dozer; Tournadozer; Tournapulls - all and Similar types; Multiple Unit Earth Movers: 25¢ per hr. for each scoop over one (1); Scoops; Pushcats; Endloaders; Asphalt Surfacing Machine; Slip Form Paver; Rock Crusher; Heavy Equipment Greaser (top greaser on spread); CMI, Auto Grade, CMI Belt Placer & 3 Track and Similar types; Side Booms; Starting Engineer on Pipeline; Asphalt Heater & Planer Combination (used to plane streets); Wheel Tractors (with dozer, hoe or endloader attachments); F.W.D. and Similar types; Blaw Knox Spreader and Similar types; Trench Machines; Pump Crete - Belt Crete - Squeeze Crete - screw type pumps and gypsum (operator will clean); Formless Finishing Machines; Flaherty Spreader or similar types; Screed Man on Laydown Machine; Vermeer Concrete Saw; Escalated Rate on Crane and Derrick Booms: .01¢ per hr., per ft. over 80 ft. including jib, $1.00 per hour over scale when crane or derrick boom is positioned 50' or more adjacent ground level or water level

Group 2 - Bulker & Pump; Power Launches; Boring Machine & Pipe Jacking Machine; Dinkeys; P-H One Pass Soil Cement Machines and similar types; Wheel Tractors (Industry or farm type - other); Back Fillers; Euclid Loader; Fork Lifts; Jeep w/Ditching Machine or other attachments; Tuneluger; Automatic Cement & Gravel Batching Plants; Mobile Drills - Soil Testing and similar types; Pugmill with Pump; All (1) and (2) Drum Hoists; Dewatering System; Straw Blower; Hydro-Seeder; Boring Machine; Hydro-Boom; Bump Grinders (self-propelled); Assistant Heavy Equipment Greaser; Apsco Spreader; Tractors (track-type) without Power Units Pulling Rollers; Rollers on Asphalt - Brick or Macadam; Concrete Breakers; Concrete Spreaders; Cement Strippers; Cement Finishing Machines & CMI Texture & Reel Curing Machines; Vibro-Tampers (all similar types self-propelled);

DECISION NO. IL83-2035 (Cont'd) MODIFICATION P. 6

Power Equipment Operators (Cont'd):
Group 2 (Cont'd):
Mechanical Bull Floats; Mixers-over three (3) bags to 27E; Winch and Boom Trucks; Tractor Pulling Power Blade or Elevating Grader; Porter Rex Rail; Clary Screed; Mule Pulling Rollers; Pugmill without Pump; Barber Green or similar Loaders; Track Type Tractor w/Power Unit attached; Fireman; Spray Machine on Paving; Curb Machines; Paved Ditch Machine; Power Broom; Self-Propelled Conveyors; Power Sub-grader; Oil Distributor; Straight Tractor; Truck Crane Oiler; Truck Type Oilers; 3-4 Pieces Small Equipment; Oiler and 1 Piece Small Equipment

Group 3 - Trac Air Machine (without attachments); Herman Nelson Heater, Dravo Warner, Silent Glo & similar types, One Engineer will operate 1-5 and after 5 two Operators required; Self-Propelled Concrete Saws; Rollers - five ton and under on earth and gravel; Form Graders; Pump (1) or (2); Light Plant (1) or (2); Generator (1) or (2); Air Compressor (1) or (2); Conveyor (1) or (2) - Operator will clean; Welding Machine (1) or (2); Mixer - 3 bags and under; Bulk Cement Plant; Oilers

Republication of page 33615 of the Federal Register of Friday, July 22, 1983.

DECISION NO. IL83-2036 - MOD. #1
(48 FR 16404 - April 15, 1983)

MODIFICATION P. 7

	Basic Hourly Rates	Fringe Benefits
Adams, Brown, Cass, Champaign, Christian, Clark, Coles, Cumberland, DeWitt, Douglas, Edgar, Logan, Macon, Mason, Menard, Morgan, Moultrie, Piatt, Pike, Sangamon, Schuyler, Scott, Shelby, & Vermilion Counties, Illinois		
Omit:		
Power Equipment Operators:		
Area 3		
Add:		
Power Equipment Operators:		
Area 3:		
Group 1	$17.29	$2.35
Group 2	16.14	2.35
Group 3	14.43	2.35

Group 1 - Cranes; Hydro Crane; Shovels; Crane Type Backfiller; Tower Cranes - Mobile & Crawler & Stationary; Derricks & Hoists (3 Drum); Draglines; Drott Yumbo & Similar types considered as Cranes; Backhoe; Derrick Boats; Pile Driver and Skid Rigs; Clam Shell; Locomotive - Cranes; Road Pavers - Single Drum - Dual Drum - Tri-Batcher; Motor Patrol & Power Blades - Dumore - Elevating & Similar types; Mechanics; Central Concrete Mixing Plant Operator; Asphalt Batch Plant Operators and Plant Engineers; Gradall; Caisson Rigs; Skimmer Scoop - Koehring Scooper; Dredges; Hoptoe; All Cherry Pickers; Work Boat; Ross Carrier; Helicopter; Dozer; Tournadozer; Tournapulls - all and Similar types; Multiple Unit Earth Movers: 25¢ per hr. for each scoop over one (1); Scoops; Pushcats; Endloaders; Asphalt Surfacing Machine; Slip Form Paver; Rock Crusher; Heavy Equipment Greaser (top greaser on spread); CMI, Auto Grade, CMI Belt Placer & 3 Track and Similar types; Side Booms; Starting Engineer on Pipeline; Asphalt Heater & Planer Combination (used to plane streets); Wheel Tractors (with dozer, hoe or endloader attachments); F.W.D. and Similar types; Blaw Knox Spreader and Similar types; Trench Machines; Pump Crete - Belt Crete - Squeeze Crete - screw type pumps and gypsum (operator will clean); Formless Finishing Machines; Flaherty Spreader or similar types; Screed Man on Laydown Machine; Vermeer Concrete Saw; Escalated Rate on Crane and Derrick Booms: .01¢ per hr., per ft. over 80 ft. including jib, $1.00 per hour over scale when crane or derrick boom is positioned 50' or more adjacent ground level or water level

Group 2 - Bulker & Pump; Power Launches; Boring Machine & Pipe Jacking Machine; Dinkeys; P-H One Pass Soil Cement Machines and similar types; Wheel Tractors (Industry or farm type - other); Back Fillers; Euclid Loader; Fork Lifts; Jeep w/Ditching Machine or other attachments; Tuneluger; Automatic Cement & Gravel Batching Plants; Mobile Drills - Soil Testing and similar types; Pugmill with Pump; All (1) and (2) Drum Hoists; Dewatering System; Straw Blower; Hydro-Seeder; Boring Machine; Hydro-Boom; Bump Grinders (self-propelled); Assistant Heavy Equipment Greaser; Apsco Spreader; Tractors (track-type) without Power Units Pulling Rollers; Rollers on Asphalt - Brick or Macadam; Concrete Breakers; Concrete Spreaders; Cement Strippers; Cement Finishing Machines & CMI Texture & Reel Curing Machines; Vibro-Tampers (all similar types self-propelled);

DECISION NO. IL83-2036 - MOD. #1 (Cont'd):

MODIFICATION P. 8

Power Equipment Operators (Cont'd):

Group 2 (Cont'd):

Mechanical Bull Floats; Mixers-over three (3) bags to 27E; Winch and Boom Trucks; Tractor Pulling Power Blade or Elevating Grader; Porter Rex Rail; Clary Screed; Mule Pulling Rollers; Pugmill without Pump; Barber Green or similar Loaders; Track Type Tractor w/Power Unit attached; Fireman; Spray Machine on Paving; Curb Machines; Paved Ditch Machine; Power Broom; Self-Propelled Conveyors; Power Sub-grader; Oil Distributor; Straight Tractor; Truck Crane Oiler; Truck Type Oilers; 3-4 Pieces Small Equipment; Oiler and 1 Piece Small Equipment

Group 3 - Trac Air Machine (without attachments); Herman Nelson Heater, Dravo Warner, Silent Glo & similar types, One Engineer will operate 1-5 and after 5 two Operators required; Self-Propelled Concrete Saws; Rollers - five ton and under on earth and gravel; Form Graders; Pump (1) or (2); Light Plant (1) or (2); Generator (1) or (2); Air Compressor (1) or (2); Conveyor (1) or (2) - Operator will clean; Welding Machine (1) or (2); Mixer - 3 bags and under; Bulk Cement Plant; Oilers

Republication of page 33616 of the Federal Register of Friday, July 22, 1983.

MODIFICATION P. 9

DECISION NO. MN83-2038 - MOD. #1
(48 FR 20594 - May 6, 1983
Aitkin, Becker, Beltrami, Big Stone, Cass, Chisago, Clay, Clearwater, Cottonwood, Crow Wing, Dodge, Douglas, Goodhue, Grant, Hubbard, Isanti, Jackson, Kittson, Lac Qui Parle, Lake of the Woods, Le-Sueur, Lincoln, Lyon, Mahnomen, Marshall, McLeod, Meeker, Mille Lacs, Morrison, Murray, Nicholet, Nobles, Norman, Otter Tail, Pennington, Pine, Polk, Pope, Red Lake, Redwood, Renville, Rice, Roseau, Sibley, Steele, Stevens, Swift, Todd, Traverse, Wabasha, Wadena, Waseca, Wilkin, Winona, Wright, & Yellow Medicine Counties, Minnesota

Change:

	Basic Hourly Rates	Fringe Benefits
ASBESTOS WORKERS:		
Area 1	$19.15	1.46
Area 3	18.32	3.65
BOILERMAKERS	17.345	3.00
CARPENTERS; Millwrights; Piledrivermen; & Soft Floor Layers:		
Area 8:		
Carpenters; Piledrivermen	15.86	3.62
Area 9:		
Soft Floor Layers	15.78	3.02
ELEVATOR CONSTRUCTORS:		
Chisago & Isanti Cos.:		
Mechanic	17.99	2.69+ a&b
Helpers	70%JR	2.69+ a&b
GLAZIERS:		
Area 1	$17.65	1.31
PAINTERS:		
Area 1:		
Brush	13.45	1.59
Sandblaster; Spray; Steel	14.45	1.59
Area 3:		
Brush	12.48	1.59
Sandblaster; Spray; Steel	13.48	1.59
Area 6:		
Brush; Roller	15.40	1.62
Drywall Sander	11.63	1.62
Drywall Finisher	15.50	1.62
Paperhanging; Steel	15.65	1.62
Sandblasting; Spray	15.90	1.62
Stageman; Beltman	16.40	1.62
Area 7:		
Brush; Roller; Wallpaper	16.06	2.43
Sandblast; Spray; Steel	16.81	2.43
Finishers & Tapers	17.01	1.47
Sanders	12.76	1.47
PIPEFITTERS; Plumbers; & Steamfitters:		
Area 1	15.28	2.41
Area 8:		
Pipefitters; Steamfitters	17.99	3.81
Plumbers	14.95	6.85+c
Area 9		
ROOFERS:		
Area 1:		
Roofers	13.78	3.30
2nd Roofers	13.53	3.30
Kettlemen	13.33	3.30
Area 6	14.35	1.20
SHEET METAL WORKERS:		
Area 1	16.63	3.78
TILE SETTERS:		
Area 1	18.45	
LABORERS:		
Area 2:		
Group 1	9.00	.95
Group 2	9.10	.95
Group 3	9.20	.95

MODIFICATION P. 10

DECISION NO. MN83-2038 (CONT'D)

	Basic Hourly Rates	Fringe Benefits
Laborers (Cont'd)		
Area 8:		
Group 1	9.00	.95
Group 2	9.10	.95
Group 3	9.20	.95

AREA DESCRIPTIONS:
PAINTERS:
Area 1:
Aitkin, Beltrami, Big Stone, Cass, Clearwater, Crow Wing, Hubbard, Lake of the Wood, Morrison (N. part, exclu. Little Falls), Stevens, Swift, Todd & Wadena Cos.
Area 2:
Becker, Clay, Grant, Kittson, Mahnomen, Marshall, Norman, Otter Tail, Pennington, Polk, Red Lake, Roseau, Traverse & Wilkin Cos.
Area 3:
Douglas, Meeker, Mille Lacs, Morrison (S. part, inclu. Little Falls), & Pope Cos.
ROOFERS:
Area 1:
Pine Co.
Area 4:
Aitkin, Cass, Douglas, Hubbard, Isanti (N. of St. Hwy. #95, exclu. city of Cambridge), Mille Lacs, Morrison, Pope, Stevens, Todd, Wadena & Wright (N. of Wright Co. Rd. #39, from S. Haven to Monticello, incl. both towns) Cos.

Republication of page 33617 of the Federal Register of Friday, July 22, 1983.

MODIFICATION P. 11

DECISION NO. MN82-2064 - MOD. #4
(47 FR 53622 - November 26, 1982)
Anoka, Carver, Dakota, Hennepin Ramsey, Scott & Washington Counties, Minnesota

	Basic Hourly Rates	Fringe Benefits
Change:		
Electricians:		
Anoka (Remainder of Co.) & Remaining Counties:		
Commercial Building:		
Electricians	$16.80	10½%+ $3.59
Cable Splicers	16.95	10½%+ $3.59

DECISION NO. MO83-4047 - Mod. #1
(48 FR 29428 - June 24, 1983)
Statewide, Missouri

	Basic Hourly Rates	Fringe Benefits
Change:		
Ironworkers:		
Zone 3	$16.125	$4.25
Line Construction:		
Zone 1:		
Lineman	17.80	1.06+ 5-1/2%
Lineman Operator	16.60	1.06+ 5-1/2%
Groundman Powderman	12.47	1.06+ 5-1/2%
Groundman	11.87	1.06+ 5-1/2%
Zone 2:		
Lineman	17.03	1.06+ 5-1/2%
Lineman Operator	16.24	1.06+ 5-1/2%
Groundman Powderman	11.91	1.06+ 5-1/2%
Groundman	11.03	1.06+ 5-1/2%
Truck Drivers:		
Zone 1:		
Group 1	12.76	3.25
Group 2	12.96	3.25
Group 3	13.27	3.25
Group 4	13.42	3.25
Group 5	12.54	3.25

DECISION NO. OH83-2040 - MOD. #2
(48 FR 21791 - May 13, 1983)
Lucas County, Ohio

	Basic Hourly Rates	Fringe Benefits
Change:		
Boilermakers	$20.075	$3.23

DECISION NO. OH83-2055 - MOD. #1
(48 FR 31540 - July 8, 1983)
Adams, Allen,...Wood & Wyandot Counties, Ohio

	Basic Hourly Rates	Fringe Benefits
Change:		
Boilermakers:		
Area 2	$20.075	$3.23
Sheet Metal Workers:		
Area 4	16.22	2.68

MODIFICATION P. 12

DECISION NO. NJ83-3015 - MOD. #3
(48 FR 27991 - June 17, 1983)
Bergen, Essex, Hudson, Hunterdon, Middlesex, Morris, Passaic, Somerset, Sussex, Union, and Warren Counties, New Jersey

	Basic Hourly Rates	Fringe Benefits
CHANGE:		
Laborers:		
Laborers - Building Construction Zone 1:		
Zone 1: Passaic County (Townships of Passaic, Delwanna, Allwood, Athenia and Clifton to Piaget Avenue; Paterson, and the Boroughs and Townships of Albion Place, Little Fall, Totowa Boroughs, West Paterson, Wayne, Hawthorne, Pompton, Haledon, Clifton to Piaget Avenue, West Milford, Ringwood, Bloomingdale, New Jersey and East Paterson to the Garfield boundary line) Bergen County (Townships of Garfield, Lodi and Wallington)		
Power Equipment Operators:		
Power Equipment Operators (Excluding Steel Erection, Tank Erection and Oilostatic Mainlines and Transporation Pipe Lines)		
Class 4 to read Class 3; Class 5 to read Class 4; Class 6 to read Class 5; Class 7 to read Class 6.		
Sheet Metal Workers: Zone 4	$15.23	4.39
Sprinkler Fitters: Zone 1	17.68	4.65

DECISION NO. NJ83-3016 - MOD. #3
(48 FR 28003 - JUNE 17, 1983)
Atlantic, Burlington, Camden, Cumberland, Gloucester, Mercer, Ocean, and Salem Counties, New Jersey

	Basic Hourly Rates	Fringe Benefits
CHANGE:		
PAINTERS:		
Zone 3:		
Commercial Brush, Roller and Paperhanging	$15.30	2.20
Commercial Spray or dipping, or the use of any special material, Brushing or Rolling on Steel or Tanks, or Working Swing or Chair	16.05	2.20
Sandblasting or Power Tools; Spraying or the use of any special material on steel or Tanks	16.80	2.20
Laborers:		
Zone 2:		
Burlington (Townships of Edgewater Park, Delance, Willingsboro, West Hampton, East Hampton, Pemberton, Delran, Cinnaminson, Morrestown, Mt. Laurel, Hainesport, Lumberton, South Hampton, Evesham Medford, Shamong, Tabernacle and Woodland), Camden, Gloucester, Salem and Cumberland (Remainder of County) Counties:		

Republication of page 33618 of the Federal Register of Friday, July 22, 1983.

MODIFICATION P. 13

DECISION #NM83-4032-Mod.#8 48FR16413-April 15, 1983 STATEWIDE, NEW MEXICO	Basic Hourly Rates	Fringe Benefits
CHANGE:		
ELEVATOR CONSTRUCTORS:		
AREA I	$16.28	JJ
AREA II	12.38	JJ
Elevator constr. helpers	70%JR	JJ
JJ - $2.69 + seven paid Holidays; and employees with 6 mos. to 5 years of service 6%; over 5 years 8% of Basic hourly rate.		
ELECTRICIANS (ZONE III)		
3-A	13.60	Z
3-B	15.05	Z
Z--3-1/2%+.80		
CABLE SPLICERS (ZONE III)		
3-A	13.85	M
3-B	15.30	M
M--3-1/2%+.80		
ELECTRICIANS (ZONE I):		
Area 1-A	16.45	Y
Area 1-B	17.93	Y
Area 1-C	18.92	Y
Area 1-D	20.73	Y
ELECTRICIANS - ZONE II	18.92	Y
CABLE SPLICERS (ZONE I):		
Area 1-A	18.10	K
Area 1-B	19.58	K
Area 1-C	20.57	K
Area 1-D	22.38	K
ADD:		
CABLE SPLICERS - ZONE II	20.57	K

DECISION NO. NC82-1027 -- MOD. # 3	Basic Hourly Rates	Fringe Benefits
(April 30, 1982 in 47 FR 18752)		
HIGHWAY CONSTRUCTION STATEWIDE, NORTH CAROLINA		
DELETE:		
POWER EQUIPMENT OPERATORS:		
Chain Saw Operator	$ 4.50	
CHANGE:		
POWER EQUIPMENT OPERATORS:		
Power Tool Operator--Jackhammer, Vibrator, Temper, Paving Breaker, Chainsaw, Etc. employing air, fuel, or current for power	6.18	

MODIFICATION P. 14

DECISION #PA82-3017-MOD.#4 (47FR13108-March 26, 1982) LACKAWANNA, SUSQUEHANNA, WAYNE AND WYOMING COUNTIES, PENNSYLVANIA	Basic Hourly Rates	Fringe Benefits
CHANGE:		
BRICKLAYERS-STONEMASONS:		
Scranton in Lackawanna County	$15.85	2.01
Susquehanna & Wyoming Counties	15.70	2.00
CARPENTERS:		
Lackawanna, Susquehanna and Wayne Counties	14.46	2.50
Wyoming County:		
East of Susquehanna River	14.97	2.50
West of Susquehanna River	14.99	2.25
CEMENT MASONS:		
Wyoming, Wayne, Susquehanna Cos., Scranton in Lackawanna County	15.65	
ELECTRICIANS:		
Lackawanna, Susquehanna and Wayne Counties	15.25	3.00+3%
Wyoming County:		
East of Susquehanna River	15.25	3.00+3%
West of Susquehanna River	15.99	3.00+3%
ELEVATOR CONSTRUCTORS	15.60	3.00+a+b
" " HELPERS	10.92	3.00+a+b
" " "(Prob.)	7.80	
IRONWORKERS:		
Lackawanna, Wayne and Wyoming Counties:		
Structural-Ornamental	18.10	3.55
Reinforcing	18.00	3.55
LABORERS:		
Lackawanna, Wayne, Susquehanna & Northern part of Wyoming County:		
Unskilled and window cleaners	12.80	2.67
Semi-skilled laborers; jackhammer oprs. (each man when two are required for operation of Jackhammer) vibrator & buster men, wagon drill & all men handling dynamite, gas buggies, 2" pumps & conc. mixers (up to 2 bags) & all pneumatic tools	12.95	2.67

CHANGE (CONT'D)	Basic Hourly Rates	Fringe Benefits
LABORERS CONT'D)		
Plasterer tenders and mason tenders and handling of all material to be used; masons and scaffold builders	$13.20	2.67
Non-Metallic pipe layers & making of joints, clay, terra cotta, ironstone, vitrified concrete handling of burning torches; asphalt or other material	12.95	2.67
SOUTHERN PART OF WYOMING COUNTY:		
Unskilled	12.87	2.60
Semi-skilled laborers; pneumatic and other mechanical tool oper.; 2" pump or under; handling and mixing of all material used by masons from stock pile to mason; non-metallic pipelayer & making of joints, clay, terra cotta, ironstone, vitrified concrete, handling of burning torches; asphalt or other hot material; cement finishers and blasters helpers	13.07	2.60
Plasterers' tenders; blaster; wagon drill operators	13.19	2.60
Mason tenders and scaffold builders	13.27	2.60
LINE CONSTRUCTION:		
Linemen, dynamite man, heavy equip. operators	15.64	.55+ 3-3/8%
Winch truck operators	10.94	.55+ 3-3/8%
Groundman	10.46	.55+ 3-3/8%
MARBLE SETTERS	13.60	2.50
MILLWRIGHTS:		
Lackawanna, Susquehanna and Wayne Counties	15.04	2.50
PAINTERS:		
Brush & roller	13.90	1.20
Spray	15.40	1.20
Steel	14.90	1.20

Republication of page 33619 of the Federal Register of Friday, July 22, 1983.

MODIFICATION P. 15

DECISION #PA82-3017(cont'd)	Basic Hourly Rates	Fringe Benefits
CHANGE:		
PLASTERERS	$15.38	
PLUMBERS	15.24	3.95
POWER EQUIPMENT OPERATORS:		
GROUP 1	14.76	25.6%+a
GROUP 2	14.48	25.6%+a
GROUP 3	13.63	25.6%+a
GROUP 4	12.89	25.6%+a
GROUP 5	12.42	25.6%+a
GROUP 6	11.53	25.6%+a
GROUP 7	15.01	25.6%+a
GROUP 7-A	15.25	25.6%+a
GROUP 7-B	15.49	25.6%+a
PIPEFITTERS	16.59	2.60
ROOFERS:		
Composition & Kettleman	14.42	2.28
SHEET METAL WORKERS	15.92	2.00
SOFT FLOOR LAYERS:		
Lackawanna, Wayne and Susquehanna Counties	14.46	2.50
Wyoming County	11.94	2.25

Basic Hourly Rates	Fringe Benefits

SUPERSEDEAS DECISION

STATE: ALABAMA COUNTY: TUSCALOOSA
DECISION NUMBER: AL83-1053 DATE: DATE OF PUBLICATION
Supersedes Decision No.: AL80-1069 dated June 6, 1980 in 45 FR 38239.
DESCRIPTION OF WORK: BUILDING CONSTRUCTION PROJECTS (does not include single family homes and apartments up to and including 4 stories).

	Basic Hourly Rates	Fringe Benefits
BRICKLAYERS	$ 11.36	
CARPENTERS	8.87	
CEMENT MASONS	12.00	
ELECTRICIANS	14.70	1.20+ 3½%
ELEVATOR CONSTRUCTORS:		
Mechanics	13.25	2.69+ a
Helpers	9.275	2.69+ a
GLAZIERS	9.50	
IRONWORKERS	6.67	
LABORERS	4.89	
MILLWRIGHTS	8.47	
PAINTERS, Brush	9.07	
PLUMBERS & PIPEFITTERS	11.38	1.20
ROOFERS	11.45	.60
SHEET METAL WORKERS	14.67	1.96
TRUCK DRIVERS	4.89	
WELDERS--Rate for craft for which welding is incidental		

	Basic Hourly Rates	Fringe Benefits
POWER EQUIPMENT OPERATORS:		
Asphalt Luteman	$ 6.00	
Asphalt Spreader	6.00	
Backhoe	6.00	
Bulldozer	6.00	
Crane	11.43	
Front End Loader	6.00	
Motor Grader	6.00	
Motor Patrol	5.50	
Scraper	6.00	

FOOTNOTE:
a. Six Paid Holidays: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, & Christmas Day. Employer contributes 8% of regular hourly rate to Vacation Credit for employee who has worked in business more than 5 years. Employer contributes 6% regular hourly rate to Vacation Credit for employee who has worked less than 5 years.

Unlisted classifications needed for work not included within the scope of this classification may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a)(1)(ii)).

Republication of page 33620 of the Federal Register of Friday, July 22, 1983.

SUPERSEDEAS DECISION

STATE: Nebraska COUNTIES: See below *
DECISION NO.: NE83-4052 DATE: Date of Publication
Supersedes Decision No. NE80-4038 dated May 16, 1980 in 45 FR 32543.
DESCRIPTION OF WORK: Heavy and Highway Projects (excluding tunnels, building structures in rest area projects and railroad construction; bascule, suspension and spandrel arch bridges; bridges designed for commercial navigation; bridges involving marine construction; and other major bridges)
* Statewide (except Douglas, Cass, Sarpy, Washington and that portion of Saunders County East of Highway #109.

	Basic Hourly Rates	Fringe Benefits
CARPENTER	$8.70	
CARPENTER HELPER	6.23	
CEMENT FINISHER	8.00	
CEMENT FINISHER HELPERS	5.50	
CONCRETE SAW OPERATOR	6.95	
DRILLER	8.15	
FORM SETTER (ROAD)	6.95	
FORM SETTER (STRUCTURES)	5.90	
LABORER	5.43	
MANHOLE BUILDER	6.20	
PAINTER	7.00	
PILE DRIVER LEADSMAN	4.95	
POWER EQUIPMENT OPERATORS:		
All Purpose Spreader	5.90	
Asphalt Distributor	5.65	
Asphalt Distributor Helper	5.30	
Asphalt Heaterman	5.30	
Asphalt Paving Machine	7.60	
Asphalt Paving Machine Screedman	7.60	
Asphalt Plant Operator	7.90	
Stationary Pl. (base or stabilization)	6.95	
Stationary Pl. (asphalt or concrete)	7.90	
Beginner Operator	6.20	
Bulldozer:		
Less than 115 Drawbar H.P.	7.10	
115 Drawbar H.P. and over	7.90	
Cement Handler	4.95	
Clamshell, Dragline, Backhoe, Crane, Pile Driver or Shovel	8.41	
Concrete Mixer	4.95	
Concrete Paver	6.95	
Slip Form Paver	7.90	
Concrete Finishing Machine and Spreader	7.90	
Conveyor	4.95	
Crusher (incl. those with integral screening plant)	7.10	
POWER EQUIPMENT OPERATORS (Cont'd):		
Dredge Pump Under 10"	$5.90	
Dredge Pump 10" and and Over	6.95	
Fireman (boiler)	5.30	
Front End Loader:		
3-1/2 Cu. Yds. or less	6.95	
Over 3-1/2 Cu. Yds.	7.60	
Hydrohammer	6.68	
Laydown Machine	7.60	
Mechanic	8.25	
Mechanic Helper	6.95	
Motor Grader	8.00	
Oiler or Greaser	6.95	
Roller or Compactor, Self-Propelled	7.10	
Scraper, Under 16 Cu. Yds.	7.10	
Scraper 16 Cu. Yds. and Over	7.90	
Power Grade Machine (trimmer & profiler)	7.90	
Pump	5.90	
Tractor:		
Farm Type	5.90	
Less than 115 Drawbar H.P.	7.10	
115 Drawbar H.P. and Over	7.60	
Traveling Plant (stabilization)	7.10	
Traveling Plant Helper (stabilization)	5.90	
Trenching Machine	6.20	
TRUCK DRIVER:		
Single Axle	6.49	
Tandem Axle	5.90	
Triple Axle	6.23	
Semi-Trailer,	5.90	
Transit Mix	5.90	
Lowboy	6.95	
WATER TANKER, 6,000 Gal. & OVER	7.10	
WELDER	7.60	

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)).

Republication of page 33621 of the Federal Register of Friday, July 22, 1983.

SUPERSEDEAS DECISION

STATE: NEW YORK
DECISION NO. NY83-3027
SUPERSEDES DECISON NO. NY81-3048 dated July 17, 1981 in 46 FR 37193
DESCRIPTION OF WORK: Building, Residential (includes single family homes and apartments up to and including 4 stories), Heavy & Highway Construction Projects

COUNTIES: NASSAU & SUFFOLK
DATE: DATE OF PUBLICATION

	Basic Hourly Rates	Fringe Benefits
ASBESTOS WORKERS	16.14	7.03
BOILERMAKERS	19.09	32%+.04
BRICKLAYERS	17.22	6.17
CARPENTERS		
Nassau County (except that part South of the Southern State Parkway West of Seaford Creek, also, Smithtown Islip line on the East, Long Island Sound on the North and Middle Island RR track on the South		
Carpenters, Millwrights Piledrivers, Soft Floor Layers, Acostical, Drywall		
Residential (under two stories)	12.67	2.35
Building	17.37	6.01
Heavy & Highway	17.65	6.01
Remainder of Nassau County		
Building, Residential, Heavy & Highway	17.37	4.63
Suffolk County		
Residential (2 stories & under)	16.15	2.15
Building	16.15	5.44
Heavy & Highway	16.20	5.44
CEMENT MASONS	14.15	3.71
DIVERS	15.69	4.735
ELECTRICIANS		
Building	18.55	37%+.70
Wiring of single or multiple family dwellings & apartments up to and including 2 stories	12.20	34%+.70
Installation of television receivers, radio receivers, record players, and associated apparatus and antenna and home appliances and closed circuit TV and multiple outlet distribution systems, sound and inter-communication systems and commercial electrcmechancial devices and appliances where such is not part of an electrical contract	9.57	a
ELEVATOR CONSTRUCTORS	14.99	2.33+b +c
ELEVATOR CONSTRUCTORS' HELPERS	11.24	2.33+b +c
ELEVATOR CONSTRUCTORS' HELPER (PROBATIONARY)	7.50	
MODERNIZATION & REPAIR ELEVATOR CONSTRUCTORS	11.23	2.33+b +c
MODERNIZATION & REPAIR ELEVATORS CONSTRUCTORS' HELPERS	8.42	2.33+b +c
MODERNIZATION & REPAIR ELEVATOR CONSTRUCTORS' HELPERS (PROBATIONARY)	5.615	
GLAZIERS	16.75	5.70
IRONWORKERS		
Structural	15.50	11.59
Ornamental Finisher	15.50	11.59
LABORERS (BUILDING)	12.74	4.57
LABORERS (HEAVY & HIGHWAY):		
Concrete & Curb form setters, asphalt rakers	11.39	23%+ .75+d
Asphalt workers & roller boys, asphalt top shovelers & smoothers asphalt tampers	11.14	23%+.75 +d
Jackhammers, & drill men, hoppermen, carpenters' tenders, pipe jointers & setters, concrete laborers (structures), stone spreading laborers, trackmen, grading & excavating laborers, yard laborers, puddlers on concrete pavement, asphalt plant (batcher & hopper men), all other unskilled laborers	10.67	.75+23% +d
MARBLE SETTERS		
Cutters & Setters	16.21	4.19+e
Carvers	16.36	4.19+e
Polishers	15.89	2.90+e
Crane operators; derrickmen	15.21	4.34+e
Marble Finishers	14.21	2.90+e
MILLWRIGHTS	16.45	6.46
PAINTERS		
Suffolk County:		
Basic	11.95	4.43
Scaffold work, rolling scaffold 18 ft. and over, spraying	13.40	4.43
Structural steel & Sandblasting	14.86	4.43
Nassau County (Inwood, Lawrence, Cedarhurst, Woodmere, Hewlett, Hewlett Bay, Hewlett Neck, Hewlett Park, East Rockaway, part of Oceanside, part of Lynbrook, part of Rockville Center, Atlantic Beach, Long Beach, Lido Beach, Point Lookout, Gibson and part of Valley Stream):		-
Painters	14.04	.01+30%
Spray	17.05	.01+30%
Fire Escapes	16.05	.01+30%
Nassau County (Remainder of County):		
Painters	13.45	4.07
Spray, Open Steel, Swinging Scaffold, Rolling Scaffold 18 ft. or over	15.37	4.07
Sandblasting	17.29	4.07
PAPERHANGERS	13.15	33%
PLASTERERS	15.40	4.22
PLUMBERS:		
Nassau County		
Building, Heavy & Highway Construction	16.13	4.97
Residential	10.53	3.40
Jobbing (repair ot present plumbing systems that does not change the existing roughing or any minor alterations job where the change to the existing roughing does not have a labor cost in excess of $1,500,000	9.00	2.72
Suffolk County	17.05	6.04
POWER EQUIPMENT OPERATORS (BUILDING CONSTRUCTION):		
Class 1	17.080	2.40+ 8%+f
Class 2	17.355	2.40+ 8%+f
Class 3	17.255	2.40+ 8%+f
Class 4	15.905	2.40+ 8%+f
Class 5	16.905	2.40+ 8%+f
Class 6	17.105	2.40+ 8%+f
Class 7	16.655	2.40+ 8%+f
Class 8	17.480	2.40+ 8%+f
Class 9	16.905	2.40+ 8%+f
Class 10	17.455	2.40+ 8%+f
Class 11	17.055	2.40+ 8%+f
Class 12	16.155	2.40+ 8%+f
Class 13	17.73	2.40+ 8%+f
Class 14-A	18.23	2.40+ 8%+f
Class 14-B	18.48	2.40+ 8%+f
Class 14-C	19.73	2.40+ 8%+f
Class 14-D	20.23	2.40+ 8%+f
Class 15	16.85	2.40+ 8%+f
Class 16	17.23	2.40+ 8%+f
Class 17	17.28	2.40+ 8%+f
Class 18	17.07	2.40+ 8%+f
Class 19	16.68	2.40+ 8%+f
Class 20	17.33	2.40+ 8%+f

Republication of page 33622 of the Federal Register of Friday, July 22, 1983.

POWER EQUIPMENT OPERATORS (BUILDING CONSTRUCTION) (CONT'D)	Basic Hourly Rates	Fringe Benefits
Class 21	19.95	2.40+ 8%+f
Class 22	15.53	2.40+ 8%+f
Class 23	18.33	2.40+ 8%+f
Class 24	16.67	2.40+ 8%+f
Class 25	17.15	2.40+ 8%+f
Class 26	14.87	2.40+ 8%+f
Class 27	15.18	2.40+ 8%+f
Class 28	17.295	2.40+ 8%+f
Class 29	17.705	2.40+ 8%+f
Class 30	17.08	2.40+ 8%+f
Class 31	15.895	2.40+ 8%+f
Class 32	17.305	2.40+ 8%+f
Class 33	17.705	2.40+ 8%+f
Class 34	14.87	2.40+ 8%+f
Class 35	16.965	2.40+ 8%+f
POWER EQUIPMENT OPERATORS (HEAVY & HIGHWAY):		
Class 1	17.08	2.40+ 8%+g
Class 2	17.45	2.40+ 8%+g
Class 3	17.30	2.40+ 8%+g
Class 4	14.83	2.40+ 8%+g
Class 5	16.58	2.40+ 8%+g
Class 6	17.02	2.40+ 8%+g
Class 7	16.27	2.40+ 8%+g
Class 8	16.80	2.40+ 8%+g
Class 9	16.50	2.40+ 8%+g

	Basic Hourly Rates	Fringe Benefits
Class 10	17.45	2.40+ 8%+g
Class 11	15.89	2.40+ 8%+g
Class 12	16.27	2.40+ 8%+g
Class 13	15.18	2.40+ 8%+g
Class 14	16.91	2.40+ 8%+g
Class 15	14.86	2.40+ 8%+g
Class 16	16.48	2.40+ 8%+g
Class 17	17.27	2.40+ 8%+g
Class 18	14.88	2.40+ 8%+g
Class 19	16.62	2.40+ 8%+g
Class 20	14.87	2.40+ 8%+g
Class 21	16.44	2.40+ 8%+g
Class 22	15.32	2.40+ 8%+g
Class 23	16.54	2.40+ 8%+g
Class 24	17.70	2.40+ 8%+g
Class 25	14.65	2.40+ 8%+g
ROOFERS		
Slate & Tile	11.07	3.95
Waterproofer	12.33	6.27
SHEET METAL WORKERS	12.35	2.88+11%
SPRINKLER FITTERS & STEAMFITTERS	16.07	5.75
STONE DERRICKMEN & RIGGERS	14.88	5.25
STONEMASONS	17.76	5.75
TERRAZZO WORKERS	13.38	2.82
TERRAZZO FINISHERS	12.07	2.71
TILE SETTERS	15.28	4.335
TILE FINISHERS	11.71	1.825
TRUCK DRIVERS		
Building		
Ready-mix concrete, sand, gravel, asphalt & bulk cement	9.37	3.064+h
Euclids & Turnapulls	9.225	3.064+h
Heavy		
Euclids & Turnapulls	9.325	3.064+h
High rise	9.94	3.064+h

WELDERS - receive rate prescribed for craft to which welding is incidental.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 DFR 5.5 (a)(1)(ii)).

FOOTNOTES:

PAID HOLIDAYS: A - New Year's Day; B - Memorial Day; C - Independence Day; D - Labor Day; E - Thanksgiving Day; F - Christmas Day

a. Paid Holidays: A through F, President's Day, the anniversary of the employee's date of employment, and the employee's birthday.

All employees whose continuous service credit began prior to April 1 of the current year shall be entitled to a vacation of one week, and the employee whose continuous service credit started prior to October 1 of the preceding year shall be entitled to a vacation of two weeks. Employees who on March 31 of the current year have continuous service credit of six years or more with the Company shall be entitled to a vacation in accordance with the following schedule:

6 years but less than 7 years	2 weeks and 1 day
7 years but less than 8 years	2 weeks and 2 days
8 years but less than 9 years	2 weeks and 3 days
9 years but less than 10 years	2 weeks and 4 days
10 years but less than 15 years	3 weeks
15 years but less than 25 years	4 weeks
25 years and over	5 weeks

An employee shall be paid for absence due to personal illness, personal injury, or death in the immediate family at his basic rate for a period of five (5) days in any calender year.

b. Employer contributes $8/day.
c. Paid Holidays: A through F Lincoln's birthday, Washington's Birthday, Columbus Day, Armitice Day, and Friday after Thanksgiving Day.
d. Paid Holidays: A through F, Columbus Day, Lincoln's Birthday, Washington's Birthday, Veteran's Day, and Election Day, provided the employee worked or shows up for work on the schedule day before and the scheduled day after the holiday.
e. Paid Holidays: One half day's pay for Labor Day

f. Paid Holidays: A through F; Lincoln's Birthday, Washington's Birthday, Columbus Day, Election Day, and Veteran's Day.
g. Paid Holidays: A through F; Lincoln's Birthday, Washington's Columbus Day, Election Day, and Veteran's Day, provided employee works the day after the holiday.
h. For each 15 days worked with the contract year an employee will receive one day's vacation with pay, maximum vacation of 3 weeks per year.
Employer contributes $4.00 per day to Security Fund.

Republication of page 33623 of the Federal Register of Friday, July 22, 1983.

CLASSIFICATION DESCRIPTIONS-POWER EQUIPMENT OPERATORS

BUILDING CONSTRUCTION:

Class 1: Asphalt spreader
Class 2: Backhoe, dragline, gradall, piledriver, shovel
Class 3: Batching plant (on site of job), power winch (used for stone or steel), power winch truck mounted (used for stone or steel), pump (concrete)
Class 4: Bending machine, generator (small), vibrator (1 to 5) dinky locomotive
Class 5: Boiler, bulldozer, compressor (on crane), compressor (pile work), compressor (stone setting), concrete breaker, conveyor, generator (pilework), loading machine (front end), maintenance engineer, mechanical compacters (machine drawn), powerhouse, power winch truck mounted (used for other than steel or stone), pulvi-mixer, power winch (used for other than steel), pump (double action diaphram), pump (gypsum), pump (hydraulic), pump (jet), pump (single action - 1 to 3), pump (well point), welding and burning, welding machine (pilework)
Class 6: Boom truck, crane (crawler or truck), conveyor-multi plant engineer, stone spreader (self-propelled)
Class 7: Compressor, compressor (2 or more in battery), generator, mulch machine, pin puller, portable heaters, pump (4 inch or over), trac tamper, welding machine
Class 8: Crane and boom truck (setting structural or stone
Class 9: Bulldozer (use for excavation), fireman, loading machine, powerboom, scoop (carry-all scraper) vac-all
Class 10: CMI or maxim spreader, concrete spreader, derrick, sideboom tractor
Class 11: Compressor (structural steel)
Class 12: Concrete saw or cutter, mixer (with skip), mixer (2 small, with or without skip), pump (up to 3 inches), tractor caterpillar or wheel
Class 13: Crane with clam shell bucket
Class 14: Crane, crawler or truck:
a. Boom lengths of 100' (including jib) but less than 150'
b. Boom lengths of 150' (including jib) but less than 250'
c. Boom lengths of 250' (including jib) but less than 350'
d. Boom lengths of 350'
Class 15: Curb machine (asphalt or concrete), curing machine, pump (subersible), tower crane maintenance man
Class 16: Dredge
Class 17: Elevator, forklift, hoist (ldrum)
Class 18: Forklift (walk-behind, power operated)
Class 19: Grader
Class 20: Hoist (2 and drum)
Class 21: Hoist (multiple platform)
Class 22: Mechanical compacters (hand operated), trench machine (hand)
Class 23: Hoist tandem platform
Class 24: Hydra-hammer, ridge cutter
Class 25: Loading machine (with capacity of 10 yds. or over)
Class 26: Oiler, stump chipper

CLASSIFICATION DESCRIPTIONS-POWER EQUIPMENT OPERATORS (CON'T)

Class 27: Power buggies
Class 28: Roller, trench machine
Class 29: Scoop, carry-all, scraper in tandem
Class 30: Sideboom tractor (used in tank work)
Class 31: Stripping machine
Class 32: Tank work
Class 33: Tower crane (engineer)
Class 34: Tower crane (oiler)
Class 35: Welding machine, structural steel

HEAVY & HIGHWAY CONSTRUCTION

Class 1: Asphalt spreader, boom truck, boring machine (other than post holes), CMI or maxim spreader, crane (crawler or truck), conveyor (multi), plant engineer, concrete spreader, sideboom tractor, stone spreader, (self-propelled), cherry picker
Class 2: Backhoe, crane (stone setting), crane (structural steel), dragline, gradall, piledriver, road paver, shovel
Class 3: Batching plant (on site of job), crane (on barge), derrick, sideboom tractor (used in tank work), tank work
Class 4: Bending machine, mechanical compactors (hand operated), pump (centrifugal, up to 3 inches), trench machine(hand)
Class 5: Boiler
Class 6: Boring machine (post holes)
Class 7: Bulldozer, concrete finishing machine, conveyor, curb machine, (asphalt or concrete), curing machine, dinky locomotive, fireman, forklift, hoist (1 drum), loading machine, maintenance engineer, pulvi-mixer, pump (4 in. or over), pump (hydraulic), pump (jet), pump (submersible), pump (well point), roller (5 tons and over scoop (carry-all, scraper), maintenance man (tower crane), vac-all, welding & burning
Class 8: Compressor (on crane), generator (pile work), welding machine (pile work), power winch (used for other than stone or structural steel) poser house, loading machine (front end), compressor (pile work), power winch (truck mounted, used for other than stone or steel), hoist (2 drum)
Class 9: Compressor (2 or more in battery)
Class 10: Compressor (stone setting), compressor (structural steel), welding machine(structural steel)
Class 11: Compressor, mulch machine, pin puller, pump (double action diaphragm), pump (gypsum), pump (single action 1 to 3), striping machine, welding machine
Class 12: Loading machine, with bucket capacity of 10 yards or over
Class 13: Concrete breaker, concrete saw or cutter, forklift (walk-behind, poser operated), hydra-hammer, mixer (with skip), mixer (2 small wth or without skip), mixer (2 bag or over with or without skip), power buggies, power grinders, ridge cutter
Class 14: Dredge
Class 15: Generator (small)
Class 16: Grader

Republication of page 33624 of the Federal Register of Friday, July 22, 1983.

DECISION NO. NY83-3027 Page 7

CLASSIFICATION DESCRIPTIONS-POWER EQUIPMENT OPERATORS (CON'T)

BUILDING CONSTRUCTION:

Class 17: Hoist (3 drum), power winch (truck mounted, used for stone or steel), power winch (used for stone setting & structural steel), trench machine
Class 18: Mechanic
Class 19: Mechanical compactors (machine drawn), roller (over 5 tons)
Class 20: Oiler, root cutter, stump chipper, tower crane(oiler, track tamper), (2 engineers, each)
Class 21: Portable heaters
Class 22: Power boom
Class 23: Pump (concrete)
Class 24: Scoop (carry-all, scraper in tandem), tower crane (engineer)
Class 25: Tractor (caterpillar or wheel)

SUPERSEDEAS DECISION

STATE: Texas COUNTIES: Statewide
DECISION NO.: TX83-4053 DATE: Date of Publication
Supersedes Decision No. TX82-4052, dated October 29, 1982 in 47 FR 49213.
DESCRIPTION OF WORK: See "Area Covered by Various Zones"

	ZONE 1	ZONE 2	ZONE 3	ZONE 4	ZONE 5
	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates
Air Tool Man	-	6.00	-	-	6.00
Asphalt Heaterman	5.70	5.40	5.35	5.00	-
Asphalt Raker	6.35	6.25	5.90	5.35	5.40
Asphalt Shoveler	-	-	4.80	4.65	4.15
Batching Plant Scaleman	6.40	6.30	-	-	-
Batterboard Setter	7.70	-	-	-	6.20
Carpenter	6.50	7.10	6.20	5.85	6.25
Carpenter Helper	5.25	5.50	5.10	4.70	5.05
Concrete Finisher (Paving)	7.75	7.25	7.50	7.05	6.25
Concrete Finisher Helper (Paving)	6.50	-	5.60	-	4.80
Concrete Finisher (Structures)	7.10	7.25	5.90	5.40	6.20
Concrete Finisher Helper (Structures)	5.60	6.00	5.00	4.80	5.05
Concrete Rubber	-	-	-	-	4.50
Electrician	-	7.75	13.50	11.30	10.55
Electrician Helper	-	5.75	-	8.20	5.85
Form Builder (Structures)	6.75	-	7.70	5.15	6.00
Form Builder Helper (Structures)	5.35	-	4.95	4.40	5.00
Form Liner (Paving & Curb)	7.75	-	-	-	5.20
Form Setter (Paving & Curb)	7.05	7.35	6.25	-	6.05
Form Setter Helper (Paving & Curb)	-	-	4.80	-	4.75
Form Setter (Structures)	7.55	7.30	6.45	5.35	6.25
Form Setter Helper (Structures)	5.95	6.25	5.50	4.75	4.95
Laborer, Common	4.90	4.65	4.80	4.10	4.15
Laborer, Utility Man	5.50	5.55	6.00	4.90	4.75
Manhole Builder, Brick	-	-	6.00	-	-
Mechanic	8.75	7.60	7.20	6.50	7.05
Mechanic Helper	6.55	-	5.60	-	5.25
Oiler	6.25	5.30	5.45	5.85	5.80
Serviceman	6.45	6.60	5.85	5.30	5.65
Painter (Structures)	6.00	-	-	-	-
Piledrivermen	-	-	-	-	-
Pipelayer	6.95	-	-	-	5.35
Pipelayer Helper	-	-	-	-	4.65
Pneumatic Mortarman	-	-	-	-	-
Powderman	6.90	7.10	5.70	5.50	5.75
Reinforcing Steel Setter (Paving)	6.00	6.75	6.20	-	5.50
Reinforcing Steel Setter (Structures)	6.05	-	6.40	5.20	6.25

Republication of page 33625 of the Federal Register of Friday, July 22, 1983.

Decision Number TX83-4053 Page 2

	ZONE 1	ZONE 2	ZONE 3	ZONE 4	ZONE 5
	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates
Reinforcing Steel Setter Helper	5.70	-	4.90	4.25	5.25
Steel Worker (Structural)	-	-	-	-	6.25
Steel Worker Helper (Structural)	-	-	-	-	5.60
Sign Erector	-	-	-	-	-
Sign Erector Helper	-	-	-	-	-
Spreader Box Man	6.20	6.60	5.80	5.80	-
Swamper	4.90	4.65	5.60	-	5.35
Power Equipment Operators:					
Asphalt Distributor	6.85	6.60	6.25	5.75	5.60
Asphalt Paving Machine	7.10	6.70	6.45	5.80	5.75
Broom or Sweeper Operator	5.15	4.65	5.00	5.20	4.65
Bulldozer 150 HP & Less	6.30	6.25	6.45	5.90	6.15
Bulldozer over 150 HP	7.00	7.05	6.65	6.30	6.50
Concrete Paving Curing Machine	6.50	-	-	-	-
Concrete Paving Finishing Machine	7.00	-	-	-	-
Concrete Paving Form Grader	-	-	-	-	-
Concrete Paving Grinder	7.00	-	-	-	-
Concrete Paving Longitudinal Float	-	-	-	-	-
Concrete Paving Mixer	-	-	-	-	6.00
Concrete Paving Saw	6.00	-	-	5.00	-
Concrete Paving Spreader	-	-	-	-	6.00
Paving Sub Grader	6.50	-	-	-	-
Crane, Clamshell, Backhoe, Derrick, Dragline, Shovel (less than 1½ CY)	6.50	7.60	6.25	6.05	6.20
Crane, Clamshell, Backhoe, Derrick, Dragline, Shovel (1½ CY & Over)	7.80	8.80	7.00	7.00	7.10
Crusher or Screening Plant Operator	6.90	6.35	5.80	-	-
Elevating Grader	-	6.00	-	5.35	-
Foundation Drill Op. (Truck Mounted)	-	7.00	9.00	-	-
Foundation Drill Op. Helper	-	-	5.85	-	-
Front End Loader (2½ CY & less)	6.50	6.00	5.75	4.85	5.30

Decision Number TX83-4053 Page 3

	ZONE 1	ZONE 2	ZONE 3	ZONE 4	ZONE 5
	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates
Front End Loader (Over 2½ CY)	7.00	6.85	6.55	6.00	6.25
Hoist (Double Drum & Less)	-	-	-	-	-
Mixer (Over 16 CF)	-	-	-	-	-
Motor Grader Operator, Fine Grade	8.20	8.60	8.45	7.50	7.40
Motor Grader Operator	7.20	7.35	6.90	6.75	6.35
Roller, Steel Wheel (Plant-Mix Pavements)	5.95	5.90	5.45	4.85	4.90
Roller, Steel Wheel (Other-Flat Wheel or Tamping)	5.50	6.15	5.25	4.80	4.65
Roller, Pneumatic (self-Propelled)	4.95	5.35	5.25	4.90	4.40
Scrapers (17 CY & Less)	5.95	5.50	6.00	5.35	5.60
Scrapers (over 17 CY)	6.75	7.20	6.20	6.00	5.90
Self-Propelled Hammer	-	-	-	-	-
Side Boom	5.25	-	-	-	4.15
Tractor (Crawler Type) 150 HP & Less	5.80	4.95	5.20	5.50	5.30
Tractor (Crawler Type) over 150 HP	6.15	6.00	6.00	5.75	6.20
Tractor (Pneumatic) 80 HP & Less	-	4.65	5.00	-	4.50
Tractor (Pneumatic) over 80 HP	6.20	6.50	5.50	-	5.25
Traveling Mixer	5.45	-	-	-	5.65
Trenching Machine, Light	-	-	-	5.30	5.25
Trenching Machine, Heavy	-	6.75	-	-	-
Wagon Drill, Boring Machine or Post Hole Driller Operator	5.85	-	6.95	4.70	5.25
Truck Drivers:					
Single Axle, Light	5.40	5.25	5.30	4.95	4.65
Single Axle, Heavy	5.70	5.75	5.40	5.00	4.80
Tandem Axle or Semitrailer	6.00	6.15	5.40	5.40	4.90
Lowboy-Float	-	-	6.65	5.90	5.50
Transit-Mix	-	-	-	-	-
Winch	7.00	-	-	-	4.80
Welder	8.00	7.75	6.00	5.95	6.85
Welder Helper	-	6.00	5.00	-	5.15

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).

Republication of page 33626 of the Federal Register of Friday, July 22, 1983.

Decision Number TX83-4053 Page 4

	ZONE 6	ZONE 7	ZONE 8	ZONE 9	ZONE 10
	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates
Air Tool Man	5.10	-	-	-	-
Asphalt Heaterman	-	-	-	5.35	-
Asphalt Raker	4.90	5.50	5.60	5.65	6.85
Asphalt Shoveler	4.80	-	-	-	5.95
Batching Plant Scaleman	-	5.85	-	-	8.15
Batterboard Setter	-	-	-	-	-
Carpenter	6.75	6.15	6.25	7.35	7.05
Carpenter Helper	5.20	4.95	5.25	5.60	5.55
Concrete Finisher (Paving)	5.45	5.25	6.05	-	7.70
Concrete Finisher Helper (Paving)	4.00	-	5.25	-	6.45
Concrete Finisher (Structures)	6.70	6.25	6.45	6.35	7.05
Concrete Finisher Helper (Structures)	-	5.25	4.80	5.30	5.80
Concrete Rubber	4.45	-	5.50	-	-
Electrician	-	-	9.90	12.70	9.75
Electrician Helper	-	-	6.85	-	6.85
Form Builder (Structures)	6.75	6.80	6.60	5.50	7.20
Form Builder Helper (Structures)	-	5.50	6.25	-	5.65
Form Liner (Paving & Curb)	-	-	-	-	7.20
Form Setter (Paving & Curb)	-	-	5.00	-	6.40
Form Setter Helper (Paving & Curb)	-	-	-	-	5.85
Form Setter (Structures)	5.40	6.20	6.20	6.60	7.15
Form Setter Helper (Structures)	4.50	5.00	5.50	5.75	5.65
Laborer, Common	4.00	4.55	4.45	4.45	4.85
Laborer, Utility Man	4.95	4.95	5.10	4.90	5.45
Manhole Builder, Brick	-	-	-	-	-
Mechanic	5.90	6.80	7.65	7.10	7.75
Mechanic Helper	4.85	5.30	5.65	-	5.90
Oiler	5.20	6.85	-	6.00	6.75
Serviceman	4.85	6.00	5.25	5.60	6.30
Painter (Structures)	-	-	-	-	10.00
Piledriverman	-	-	-	-	-
Pipelayer	5.00	5.85	5.25	5.50	6.45
Pipelayer Helper	4.50	-	-	-	5.25
Pneumatic Mortarman	-	-	-	-	-
Powderman	-	-	6.00	-	-
Reinforcing Steel Setter (Paving)	-	-	5.50	-	6.05

Decision Number TX83-4053 Page 5

	ZONE 6	ZONE 7	ZONE 8	ZONE 9	ZONE 10
	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates
Reinforcing Steel Setter (Structures)	6.40	5.95	6.20	5.45	7.25
Reinforcing Steel Setter Helper	5.10	-	4.75	5.10	5.50
Steel Worker (Structural)	-	-	-	-	6.50
Steel Worker Helper (Structural)	-	-	-	-	-
Sign Erector	-	-	-	-	7.10
Sign Erector Helper	-	-	-	-	-
Spreader Box Man	-	5.65	5.40	5.75	5.40
Swamper	-	-	5.15	5.00	-
Power Equipment Operators:					
Asphalt Distributor	5.20	6.25	6.00	6.05	6.30
Asphalt Paving Machine	5.60	6.85	6.75	5.55	7.05
Broom or Sweeper Operator	-	5.25	5.15	4.85	5.20
Bulldozer 150 HP & Less	4.90	6.25	6.05	5.60	6.80
Bulldozer over 150 HP	5.85	6.55	7.60	6.00	7.50
Concrete Paving Curing Machine	-	-	-	-	7.70
Concrete Paving Finishing Machine	5.25	-	-	-	7.40
Concrete Paving Form Grader	-	-	-	-	-
Concrete Paving Grinder	-	-	-	-	-
Concrete Paving Joint Machine	-	-	-	-	-
Concrete Paving Longitudinal Float	-	-	-	-	-
Concrete Paving Mixer	-	-	-	-	7.75
Concrete Paving Saw	-	-	-	-	6.75
Concrete Paving Spreader	-	-	-	-	7.55
Paving Sub Grader	-	-	-	-	-
Crane, Clamshell, Backhoe, Derrick, Dragline, Shovel (less than 1½ CY)	5.45	5.65	6.80	6.55	7.30
Crane, Clamshell, Backhoe, Derrick, Dragline, Shovel (1½ CY & Over)	7.50	7.15	8.00	8.45	8.00
Crusher or Screening Plant Operator	-	4.75	-	-	-
Elevating Grader	-	-	-	-	-
Foundation Drill Op. (Truck Mounted)	-	-	-	8.15	10.15

Republication of page 33627 of the Federal Register of Friday, July 22, 1983.

	ZONE 6	ZONE 7	ZONE 8	ZONE 9	ZONE 10
	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates
Foundation Drill Operator Helper	-	-	-	5.15	5.70
Front End Loader (2½ CY & Less)	5.10	5.65	5.60	5.80	6.55
Front End Loader (Over 2½ CY)	5.70	6.15	6.70	7.00	7.60
Hoist (Double Drum & Less)	-	-	-	-	-
Mixer (Over 16 CF)	-	-	-	-	8.00
Motor Grader Operator, Fine Grade	6.55	7.80	7.85	7.45	8.10
Motor Grader Operator	5.70	6.65	7.00	6.65	7.15
Roller, Steel Wheel (Plant-Mix Pavement)	4.70	5.65	5.00	5.40	6.60
Roller, Steel Wheel (Other-Flat Wheel or Tamping)	4.35	5.40	5.10	5.25	5.90
Roller, Pneumatic (Self-Propelled)	4.45	4.90	4.95	4.70	5.65
Scrapers (17 CY & Less)	4.80	5.85	5.60	5.30	6.85
Scrapers (Over 17 CY)	5.25	6.10	6.35	5.65	7.10
Self-Propelled Hammer	-	-	-	-	5.50
Side Boom	-	-	-	6.00	-
Tractor (Crawler Type) 150 HP & Less	4.00	-	5.15	-	6.80
Tractor (Crawler Type) over 150 HP	6.75	6.20	6.35	-	7.25
Tractor (Pneumatic) 80 HP & Less	4.25	4.65	4.80	4.90	6.25
Tractor (Pneumatic) over 80 HP	4.70	5.60	6.00	5.25	6.50
Traveling Mixer	5.05	5.15	-	-	-
Trenching Machine, Light	-	-	-	-	-
Trenching Machine, Heavy	-	-	-	6.25	-
Wagon Drill, Boring Machine or Post Hole Driller Operator	-	-	5.05	-	6.50
Truck Drivers:					
Single Axle, Light	4.30	4.95	5.00	5.15	5.70
Single Axle, Heavy	4.50	5.50	-	5.40	5.95
Tandem Axle or Semi-trailer	4.45	5.65	5.50	5.55	5.90

	ZONE 6	ZONE 7	ZONE 8	ZONE 9	ZONE 10
	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates
Lowboy-Float	5.00	-	-	-	-
Transit-Mix	-	-	-	-	6.00
Winch	-	5.20	-	-	6.55
Welder	6.50	6.65	-	-	7.50
Welder Helper	-	-	-	-	6.50

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5(a)(1)(ii)).

Republication of page 33628 of the Federal Register of Friday, July 22, 1983.

Decision Number TX83-4053 Page 8

	ZONE 11	ZONE 12	ZONE 13	ZONE 14	ZONE 15
	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates
Air Tool Man	-	-	-	-	6.95
Asphalt Heaterman	-	5.50	-	-	5.00
Asphalt Raker	7.75	6.80	5.35	5.15	6.55
Asphalt Shoveler	5.00	4.90	4.65	-	6.45
Batching Plant Scaleman	6.50	5.40	6.50	-	7.45
Batterboard Setter	-	-	-	-	-
Carpenter	6.90	6.70	7.75	7.00	8.25
Carpenter Helper	5.40	5.80	6.10	5.65	6.35
Concrete Finisher (Paving)	7.50	7.15	7.65	6.00	7.90
Concrete Finisher Helper (Paving)	5.85	-	6.00	-	5.75
Concrete Finisher (Structures)	6.80	6.50	6.90	7.30	7.95
Concrete Finisher Helper (Structures)	6.05	5.55	5.90	6.50	5.85
Concrete Rubber	4.95	-	5.50	-	7.00
Electrician	11.25	8.60	-	-	14.05
Electrician Helper	7.50	6.80	-	-	8.95
Form Builder (Structures)	7.05	6.80	6.25	7.45	7.05
Form Builder Helper (Structures)	5.35	5.75	5.50	5.50	6.00
Form Liner (Paving & Curb)	7.25	6.90	6.90	-	8.00
Form Setter (Paving & Curb)	6.85	6.85	6.60	6.50	7.05
Form Setter Helper (Paving & Curb)	6.20	5.50	5.00	6.00	5.80
Form Setter (Structures)	6.85	7.15	7.20	7.70	7.45
Form Setter Helper (Structures)	5.45	5.80	5.70	6.10	5.90
Laborer, Common	4.70	4.55	4.65	4.55	4.95
Laborer, Utility Man	5.05	5.40	5.15	5.15	5.70
Manhole Builder, Brick	-	-	-	-	6.55
Mechanic	8.00	7.00	7.25	7.75	8.45
Mechanic Helper	6.25	-	-	-	6.90
Oiler	6.45	6.20	6.10	5.50	7.25
Serviceman	6.50	5.45	-	6.25	7.30
Painter (Structures)	-	-	-	-	-
Piledriverman	-	-	-	-	8.45

Decision Number TX83-4053 Page 9

	ZONE 11	ZONE 12	ZONE 13	ZONE 14	ZONE 15
	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates
Pipelayer	6.10	6.75	5.00	5.50	6.30
Pipelayer Helper	5.10	5.50	4.75	-	5.40
Pneumatic Mortarman	5.50	-	-	-	-
Powderman	-	-	-	-	-
Reinforcing Steel Setter (Paving)	5.45	5.50	-	-	-
Reinforcing Steel Setter (Structures)	6.40	6.00	6.05	6.00	7.25
Reinforcing Steel Setter Helper	4.85	5.00	-	-	5.60
Steel Worker (Structural)	-	-	-	-	7.40
Steel Worker Helper (Structural)	-	-	-	-	5.55
Sign Erector	8.40	-	-	-	-
Sign Erector Helper	7.00	-	-	-	-
Spreader Box Man	6.60	6.60	5.75	5.35	7.00
Swamper	5.85	-	-	-	-
Power Equipment Operators:					
Asphalt Distributor	6.50	6.25	6.05	5.05	6.45
Asphalt Paving Machine	7.40	6.75	6.55	5.65	7.60
Broom or Sweeper Operator	5.25	5.00	4.65	4.85	6.25
Bulldozer 150 HP & Less	6.80	6.30	6.35	5.50	7.15
Bulldozer over 150 HP	7.55	6.75	7.30	7.25	8.10
Concrete Paving Curing Machine	6.75	6.75	-	-	6.50
Concrete Paving Finishing Machine	6.75	6.90	-	-	7.70
Concrete Paving Form Grader	5.50	-	-	-	-
Concrete Paving Grinder	-	7.00	-	-	-
Concrete Paving Joint Machine	6.50	-	-	-	-
Concrete Paving Longitudinal Float	-	-	-	-	7.75
Concrete Paving Mixer	7.85	7.25	-	-	-
Concrete Paving Saw	6.50	6.65	-	-	7.50
Concrete Paving Spreader	6.50	6.00	-	-	7.25
Paving Sub Grader	-	-	-	-	6.05

Republication of page 33629 of the Federal Register of Friday, July 22, 1983.

Decision Number TX83-4053 Page 10

	ZONE 11	ZONE 12	ZONE 13	ZONE 14	ZONE 15
	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates
Crane, Clamshell, Backhoe, Derrick, Dragline, Shovel (less than 1½ CY)	6.90	6.95	6.80	6.50	7.65
Crane, Clamshell, Backhoe, Derrick, Dragline, Shovel (1½ CY & Over)	7.70	7.60	8.65	8.10	8.85
Crusher or Screening Plant Operator	-	-	-	-	8.50
Elevating Grader	-	-	-	-	-
Foundation Drill Op. (Truck Mounted)	8.50	10.00	-	-	9.40
Foundation Drill Operator Helper	-	6.15	-	-	-
Front End Loader (2½ CY & Less)	6.70	6.35	5.85	5.40	6.35
Front End Loader (Over 2½ CY)	7.20	6.95	6.75	6.55	7.30
Hoist (Double Drum or Less)	-	-	6.50	-	-
Mixer (Over 16 CF)	-	7.00	-	-	6.25
Motor Grader Operator, Fine Grade	8.10	7.85	7.75	8.25	8.75
Motor Grader Operator	7.25	7.10	6.95	6.35	7.80
Roller, Steel Wheel (Plant-Mix Pavements)	7.25	5.85	5.80	5.15	6.75
Roller, Steel Wheel (Other-Flat Wheel or Tamping)	6.05	5.85	5.50	5.20	6.35
Roller, Pneumatic (Self-Propelled)	5.85	5.60	5.80	4.75	6.05
Scrapers (17 CY & Less)	6.50	6.25	6.05	5.25	6.45
Scrapers (Over 17 CY)	7.25	6.35	6.85	7.00	7.35
Self-Propelled Hammer	-	-	-	-	-
Side Boom	4.85	-	-	-	-
Tractor (Crawler Type) 150 HP & Less	-	5.50	6.00	-	-
Tractor (Crawler Type) over 150 HP	6.50	5.80	6.55	-	7.40
Tractor (Pneumatic) 80 HP & Less	5.50	5.00	-	-	6.00
Tractor (Pneumatic) over 80HP	5.90	5.80	-	-	-
Traveling Mixer	-	6.50	-	5.75	5.75
Trenching Machine, Light	-	-	-	-	-
Trenching Machine, Heavy	-	-	5.60	-	10.00

Decision Number TX83-4053 Page 11

	ZONE 11	ZONE 12	ZONE 13	ZONE 14	ZONE 15
	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates
Wagon Drill, Boring Machine or Post Hole Driller Operator	-	-	-	-	-
Truck Drivers:					
Single Axle, Light	5.75	5.25	5.85	5.15	5.95
Single Axle, Heavy	5.95	5.50	6.00	5.60	6.05
Tandem Axle or Semi-trailer	5.90	5.95	6.05	5.75	6.20
Lowboy-Float	6.55	6.50	7.00	-	6.70
Transit-Mix	6.00	-	-	-	6.00
Winch	-	-	-	-	-
Welder	7.45	7.50	6.60	-	7.80
Welder Helper	6.50	-	5.50	-	6.00

Unlisted classifications needed for work not included within the scope of the classifications listed may be added only as provided in the labor standards contract clauses (29 CFR, 5.5(a)(1)(ii)).

Republication of page 33630 of the Federal Register of Friday, July 22, 1983.

Decision Number TX83-4053 Page 12

	ZONE 16				
	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates
Air Tool Man	-				
Asphalt Heaterman	-				
Asphalt Raker	7.00				
Asphalt Shoveler	-				
Batching Plant Scaleman	-				
Batterboard Setter	-				
Carpenter	8.00				
Carpenter Helper	6.55				
Concrete Finisher (Paving)	8.70				
Concrete Finisher Helper (Paving)	6.75				
Concrete Finisher (Structures)	8.15				
Concrete Finisher Helper (Structures)	6.55				
Concrete Rubber	-				
Electrician	9.50				
Electrician Helper	7.00				
Form Builder (Structures)	8.05				
Form Builder Helper (Structures)	5.80				
Form Liner (Paving & Curb)	-				
Form Setter (Paving & Curb)	8.00				
Form Setter Helper (Paving & Curb)	6.75				
Form Setter (Structures)	7.50				
Form Setter Helper (Struqtures)	5.80				
Laborer, Common	5.80				
Laborer, Utility Man	6.00				
Manhole Builder, Brick	9.25				
Mechanic	10.00				
Mechanic Helper	7.50				
Oiler	-				
Serviceman	8.45				
Painter (Structures)	-				
Painter Helper (Structures)	-				
Piledrivermen	8.10				
Pipelayer	6.50				

Decision Number TX83-4053 Page 13

	ZONE 16				
	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates
Pipelayer Helper	-				
Pneumatic Mortarman	-				
Powderman	-				
Reinforcing Steel Setter (Paving)	6.00				
Reinforcing Steel Setter (Structures)	7.60				
Reinforcing Steel Setter Helper	5.80				
Steel Worker (Structural)	-				
Steel Worker Helper (Structural)	-				
Sign Erector	-				
Sign Erector Helper	-				
Spreader Box Man	-				
Swamper	-				
Power Equipment Operators:					
Asphalt Distributor	8.00				
Asphalt Paving Machine	7.85				
Broom or Sweeper Operator	7.75				
Bulldozer 150 HP & Less	8.00				
Bulldozer over 150 HP	8.80				
Concrete Paving Curing Machine	-				
Concrete Paving Finishing Machine	-				
Concrete Paving Form Grader	-				
Concrete Paving Grinder	-				
Concrete Paving Joint Machine	7.05				
Concrete Paving Joint Sealer	-				
Concrete Paving Longitudinal Float	-				
Concrete Paving Mixer	-				
Concrete Paving Saw	6.50				
Concrete Paving Spreader	-				
Paving Sub Grader	-				
Crane, Clamshell, Backhoe, Derrick, Dragline, Shovel (less than 1½ CY)	8.10				

Republication of page 33631 of the Federal Register of Friday, July 22, 1983.

Decision Number TX83-4053 Page 14

	ZONE 16				
	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates
Crane, Clamshell, Backhoe, Derrick, Dragline, Shovel (1½ CY & Over)	9.05				
Crusher or Screening Plant Operator	-				
Elevating Grader	-				
Form Loader	-				
Foundation Drill Operator (Crawler Mounted)	-				
Foundation Drill Op. (Truck Mounted)	-				
Foundation Drill Operator Helper	-				
Front End Loader (2½ CY & Less)	6.75				
Front End Loader (Over 2½ CY)	8.45				
Hoist (Double Drum or Less)	-				
Hoist (Over 2 drums)	-				
Mixer (Over 16 CF)	-				
Mixer (16 CF & Less)	-				
Motor Grader Operator, Fine Grade	9.45				
Motor Grader Operator	8.30				
Roller, Steel Wheel (Plant-Mix Pavements)	7.25				
Roller, Steel Wheel (Other-Flat Wheel or Tamping)	-				
Roller, Pneumatic (Self-Propelled)	6.50				
Scrapers (17 CY & Less)	-				
Scrapers (Over 17 CY)	-				
Self-Propelled Hammer	-				
Side Boom	-				
Tractor (Crawler Type) 150 HP & Less	-				
Tractor (Crawler Type) over 150 HP	-				
Tractor (Pneumatic) 80 HP & Less	-				
Tractor (Pneumatic) over 80 HP	-				

Decision Number TX83-4053 Page 15

	ZONE 16				
	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates
Traveling Mixer	-				
Trenching Machine, Light	-				
Trenching Machine, Heavey	-				
Wagon Drill, Boring Machine or Post Hole Driller Operator	-				
Truck Drivers:					
Single Axle, Light	6.90				
Single Axle, Heavy	7.10				
Tandem Axle or Semittailer	6.95				
Lowboy-Float	9.75				
Transit-Mix	-				
Winch	-				
Vibrator Man (Hand Type)	-				
Welder	8.85				
Welder Helper	-				

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5(a)(1)(ii)).

Republication of page 33632 of the Federal Register of Friday, July 22, 1983.

AREA COVERED BY VARIOUS ZONES

ZONE 1 - Archer, Armstrong, Baylor, Briscoe, Carson, Castro, Childress, Clay, Collingsworth, Dallam, Deaf Smith, Donley Gray, Hall, Hansford, Hardeman, Hartley, Hemphill, Hutchinson, Lipscomb, Montague, Moore, Ochiltree, Oldham, Parmer, Potter, Randall, Roberts, Sherman, Swisher, Wheeler, Wichita & Wilbarger Counties

DESCRIPTION OF WORK: Heavy (excluding tunnels & dams) and Highway Projects (does not include building structures in rest area projects)

ZONE 2 - Bailey, Borden, Cochran, Cottle, Crosby, Dawson, Dickens, Fisher, Floyd, Foard, Gaines, Garza, Hale, Haskell, Hockley, Jones, Kent, King, Knox, Lamb, Lubbock, Lynn, Motley, Scurry, Shackelford, Stephens, Stonewall, Terry, Throckmorton, Yoakum & Young Counties

DESCRIPTION OF WORK: Heavy (excluding tunnels & dams) and Highway Projects (does not include building structures in rest area projects)

ZONE 3 - Andrews, Brown, Callahan, Coke, Coleman, Comanche, Concho, Crane, Crockett, Eastland, Ector, Erath, Glasscock, Howard, Irion, Kimble, Loving, Martin, McCulloch, Menard, Midland, Mills *, Mitchell, Nolan, Reagan, Runnels, San Saba, Schleicher, Sterling, Sutton, Taylor, Tom Green, Upton, Ward & Winkler Counties

DESCRIPTION OF WORK: Heavy (excluding tunnels & dams) and Highway Projects (does not include building structures in rest area projects)
*Not to be used for work on water or sewage treatment plant or lift/pump stations in Mills County

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ZONE 4 - Brewster, Culberson, El Paso *, Hudspeth, Jeff Davis, Pecos, Presidio, Reeves & Terrell Counties

DESCRIPTION OF WORK: Heavy (excluding tunnels & dams), Water & sewer lines and Highway Projects (does not include building structures in rest area projects)

*Not to be used for Heavy Projects in El Paso County

ZONE 5 - Atascosa, Bandera, Bexar, Comal, Dimmit, Edwards, Frio, Guadalupe, Kendall, Kerr, Kinney, LaSalle, Maverick, McMullen, Medina, Real, Uvalde, Val Verde, Wilson & Zavala Counties

DESCRIPTION OF WORK: Heavy (excluding tunnels & dams) and Highway Projects (does not include building structures in rest area projects)

ZONE 6 - Brooks, Cameron, Duval, Hidalgo, Jim Hogg, Kenedy, Starr, Webb, Willacy & Zapata Counties

DESCRIPTION OF WORK: Heavy (excluding tunnels & dams) and Highway Projects (does not include building structures in rest area projects) & Incidental Shore Work

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ZONE 7 - Aransas, Bee, Calhoun, DeWitt, Goliad, Jackson, Jim Wells, Karnes, Kleberg, Lavaca, Live Oak, Nueces, Refugio, San Patricio & Victoria Counties

DESCRIPTION OF WORK _ Heavy (excluding tunnels & dams) and Highway Projects (does not include building structures in rest area projects) & Incidental Shore Work

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ZONE 8 - Austin, Bastrop, Blanco, Burnet, Caldwell, Colorado, Fayette, Gillespie, Gonzales, Hays, Lee, Llano, Mason, Travis & Williamson * Counties

DESCRIPTION OF WORK: Heavy (excluding tunnels & dams) and Highway Projects (does not include building structures in rest area projects)
*Not to be used on work on water or sewage treatment plant or lift pump Stations in Williamson Co

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ZONE 9 - Bell, Bosque, Coryell, Falls, Freestone, Hamilton, Hill, Lampasas, Limestone, McLennan & Navarro Counties

DESCRIPTION OF WORK Heavy (exluding tunnels, dam & work on water or sewage treatment plant or lift/pump stations) and Highway Projects (does not include building structures in rest area projects)

ZONE 10 - Cooke, Denton, Hood, Jack, Johnson, Palo Pinto, Parker, Sommervell, Tarrant * and Wise Counties

DESCRIPTION OF WORK: Heavy (exluding tunnels & dams), Water & Sewer Lines and Highway Projects (does not include building structures in rest area projects)
*Not to beused for Heavy Projects in Tarrant County

ZONE 11 - Collin, Dallas, Ellis, Grayson & Rockwall Counties

DESCRIPTION OF WORK: Water & sewer lines & Highway Construction Projects Only

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ZONE 12 - Bowie, Camp, Cass, Delta, Fannin, Franklin, Gregg, Harrison, Hopkins, Hunt, Kaufman, Lamar, Marion, Morris, Rains, Red River, Rusk, Smith, Titus, Upshur, Van Zandt & Wood Counties

DESCRIPTION OF WORK: Heavy (excluding tunnels & dams) and Highway Projects (does not include building structures in rest area projects)

ZONE 13 - Anderson, Angelina, Cherokee, Henderson, Houston, Jasper, Nacogdoches, Newton, Panola, Polk, Sabine, San Augustine, San Jacinto, Shelby, Trinity & Tyler Counties

Republication of page 33633 of the Federal Register of Friday, July 22, 1983.

DECISION NO: TX83-4053 PAGE 18

DESCRIPTION OF WORK: Heavy (excluding tunnels & dams) and Highway Projects (does not include building structures in rest area projects) & Incidental Shore Work

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ZONE 14 - Brazos, Burleson, Grimes, Leon *, Madison, Milam *, Robertson *, Walker & Washington Counties

DESCRIPTION OF WORK: Heavy (excluding tunnels & dams) and Highway Projects (does not include building structures in rest area projects)
*Not to be used for work on water or sewage treatment plant or lift/pump stations in Leon, Milam & Robertson Cos.

ZONE 15 -Brazoria, Fort Bend, Galveston, Harris, Matagorda, Montgomery, Waller & Wharton Counties

DESCRIPTION OF WORK: Highway Construction Projects Only

ZONE 16 - Chambers, Hardin, Jefferson *, Liberty & Orange * Counties

DESCRIPTION OF WORK: Heavy Projects (excluding tunnels & dams) and Highway Projects (does not include building structures in rest area projects) & Incidental Shore Work

*Not to be used for Heavy Projects & Incidental Shore Work in Jefferson & Orange Cos.

SUPERSEDEAS DECISION

STATE: Texas

COUNTIES: Collin, Cooke, Denton, Ellis, Grayson, Hunt, Kaufman & Rockwall

DECISION NO.: TX83-4054

DATE: Date of Publication

Supersedes Decision No. TX78-4065, dated 6/16/78, in 43 FR 26271

DESCRIPTION OF WORK: Residential projects consisting of single family homes & apartments up to & including 4 stories.

	Basic Hourly Rates	Fringe Benefits		Basic Hourly Rates	Fringe Benefits
AIR CONDITIONING MECHANICS	$ 7.70		PAINTERS	$ 7.42	
BRICKLAYERS	8.65		PLASTERERS	11.00	
CARPENTERS	8.69		PLUMBERS	9.00	
CEMENT MASONS	9.78		ROOFERS	6.06	
ELECTRICIANS	8.05		SHEET METAL WORKERS	5.50	
FORM SETTERS	8.61		SOFT FLOOR LAYERS	7.39	
INSULATORS	6.78		TRUCK DRIVERS	5.00	
IRONWORKERS	6.30		POWER EQUIPMENT OPERATORS:		
LABORERS:			Backhoes	7.00	
Unskilled	4.96		Bulldozers	6.00	
Mason tenders	5.54		Loaders	6.50	
LANDSCAPERS	5.25		Motor graders	7.43	

WELDERS - receive rate prescribed for craft performing operation to which welding is incidental.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5(a)(1)(ii)).

Republication of page 33634 of the Federal Register of Friday, July 22, 1983.

SUPERSEDEAS DECISION

STATE: Texas COUNTY: Dallas
DECISION NO.: TX83-4055 DATE: Date of Publication
Supersedes Decision No. TX78-4065, dated 6/16/78 in 43 FR 26271.
DESCRIPTION OF WORK: Residential projects consisting of single family homes & apartments up to & including 4 stories.

	Basic Hourly Rates	Fringe Benefits		Basic Hourly Rates	Fringe Benefits
AIR CONDITIONING MECHANICS	$ 7.89		PAINTERS	$ 7.66	
BRICKLAYERS	9.26		PLUMBERS	9.53	
CARPENTERS	8.66		SHEET METAL WORKERS	7.27	
CEMENT MASONS	9.84		TILE SETTERS	8.00	
ELECTRICIANS	8.72		TRUCK DRIVERS	7.19	
FORM SETTERS	9.37		POWER EQUIPMENT OPERATORS:		
INSULATORS	8.67		Asphalt rakers	7.00	
IRONWORKERS	8.38		Backhoes	8.75	
LABORERS:			Bulldozers	8.21	
Unskilled	5.00		Loaders	8.28	
Brick tenders	5.73		Motor graders	8.25	
LANDSCAPERS	6.00		Pavers	7.50	

WELDERS - receive rate prescribed for craft performing operation to which welding is incidental.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5(a)(1)(ii)).

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Part IX

Department of Agriculture

Food and Nutrition Service

Proposed Revision of Thrifty Food Plan

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Thrifty Food Plan; Proposed Revision

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice of Proposed Revision of Thrifty Food Plan.

SUMMARY: The Human Nutrition Information Service of this Department has developed a revision of the Thrifty Food Plan (TFP) and the Food and Nutrition Service proposes using that revision for Food Stamp Program purposes. This revision makes the "market basket" of foods in the TFP more up-to-date. Further information explaining technical aspects of this revision can be obtained from the Human Nutrition Information Service at the address listed below.

Comments: Comments on the application of this proposed revision of the TFP to the Food Stamp Program should be submitted to: Daniel Woodhead, Supervisor, Issuance and Benefit Delivery Section, Family Nutrition Programs, Food and Nutrition Service, USDA, Alexandria, Virginia 22302. Comments on this technical revision of the TFP may be submitted to Betty B. Peterkin, Deputy Director, Consumer Nutrition Division, Human Nutrition Information Service (HNIS), USDA, Hyattsville, Maryland 20782. Comments must be submitted on or before September 27, 1983.

SUPPLEMENTARY INFORMATION:

Executive Order 12291.

The Department has reviewed this action under Executive Order 12291 and Secretary's Memorandum No. 1512-1. There is no cost involved in this action. It would not result in an annual effect on the economy of $100 million, or more; and it will not have significant adverse effects on competition, employment, investments, productivity, innovation, or on the ability of United Stated-based enterprises to compete with foreign-based enterprises in domestic or export markets. Therefore, the Department has classified this action as "not major".

Regulatory Flexibility Act

The Administrator of the Food and Nutrition Service has certified that this action will not have a significant economic impact on a substantial number of small entities. The action simply results in a change in the "market basket" of food which comprise the TFP. Total cost of the market basket was not changed. However, future cost changes in the components of this revised TFP could make it more or less costly than the current TFP.

Paperwork Reduction Act

This notice does not contain reporting or recordkeeping requirements subject to approval by the Office of Management and Budget (OMB).

FOR FURTHER INFORMATION CONTACT: Questions about the technical aspects or the components of the TFP should be addressed to Betty B. Peterkin at the above address, or by telephone at (301) 436-8474. Questions about the use of this technically revised TFP for the pricing of the food stamp TFP should be addressed to Daniel Woodhead, Supervisor, Issuance and Benefit Section, Program Design and Rulemaking Branch, Program Planning, Development and Support Division, Family Nutrition Programs, Food and Nutrition Service, USDA, Alexandria, Virginia 22302, (703) 756-3461.

Background

The Food Stamp Act of 1977, Pub. L. 95-113, 91 Stat. 958, provides that food stamp allotments be based upon the cost of the TFP for a family of four persons consisting of a man and woman ages 20-54 and children 6-8 and 9-11. The TFP cost for a family of four is then adjusted according to economies of scale for households of less than or greater than four persons.

This document contains a routine technical change in the types of food which comprise the nutritional elements of the TFP. This technical change was foreseen both at the time the TFP was first developed and at the time the TFP was mandated for use in the Food Stamp Program (FSP). Food plan development and revision has been an ongoing process in the Department of Agriculture for about fifty years. This evolutionary aspect of the food plans was recognized in the House Report on the Food Stamp Act of 1977 (House Report No. 95-464 on H.R. 7940, June 24, 1977, p. 247), which expressed the understanding of the House Agriculture Committee that ". . . the nature of the plan itself might well alter over time as new research results were available on diet requisites." The Committee noted that they had considered using dollar amounts for the food stamp allotments other than the TFP costs but they wanted to avoid increased program costs. Also, the Committee decided that although ". . . some households with special nutritional needs might not receive an allotment which, strictly speaking, provided for a fully adequate diet . . . the overwhelming majority of households (would be provided) with the chance to purchase an adequate diet while using the TFP."

The Committee also noted that the dollar levels of the TFP then in use would serve as the basis for food stamp allotments and that dollar adjustments in the plan would be made to take into account changes in the prices of food in the plan. These were the only dollar adjustments that were envisioned by the Committee for the provision that was enacted into law. Thus, the Department has the authority to revise the types and amounts of foods which comprise the TFP based on new research. Food stamp households are not affected by this revision, since they are not required to buy any particular type or amount of food.

General Information: What is the TFP?

The TFP contains foods of different types (approximately 2,400 specified types and precise quantities of foods from 31 food groups) that families might use to provide nutritious meals and snacks for family members. The assortment of foods in the plan is based on food consumption patterns of families with relatively low food costs and allows for a nutritious and economical diet. The plan suggests amounts of food for men, women, and children of different ages, and meets dietary standards.

This revised TFP is the least costly of four food plans developed by the USDA Human Nutrition Information Service in 1983. Tables 1-4 found at the end of this notice describe aspects of this revised TFP. The three more costly plans were recently released. Information on these other plans can be found in "U.S.D.A. 1983 Family Food Plans," *Family Economics Review* No. 2, pp. 12-21 (April 1983), by Linda E. Cleveland and Betty B. Peterkin, U.S. Department of Agriculture, Agricultural Research Service. Announcement of this revised Thrifty Food Plan was delayed until now to provide time to develop and test menus and recipes to illustrate how the revised TFP can be used by low-income families.

In general, compared to the more costly plans, the revised TFP contains more of foods that are low cost sources of nutrients than foods that are high cost sources. The quantities of foods for five general food groups in the revised TFP for men, women, and children of different ages are summarized in Table 1 at the end of this notice. The food quantities for individual household members can be totaled to determine the overall plan for any household. Table 2 shows a food list for a four-person household using the revised TFP.

Table 3 is an example of the monthly food cost estimates prepared by HNIS. Food costs for any household following the plan can be estimated from costs for the plan, which are released monthly by HNIS.

Why Was The Thrifty Food Plan Revised At This Time?

Food plan development requires information on food consumption, food prices, nutritive value of foods, and human nutritional requirements. The food plans are revised when significant new information in one or more of these areas becomes available. Since 1975, when the Thirfty Food Plan was developed, significant information in all four areas has become available. Thus, the 1975 TFP is out of date. Table 5 compares the low income consumption pattern with the 1975 TFP and with the revised 1983 TFP.

Method of Plan Revision and Comparison

Dietary standards: Dietary standards for the 1975 TFP were based on Recommended Dietary Allowances (RDAs) developed in 1974 by the National Academy of Sciences-National Research Council (NAS–NRC). In 1980, the NAS/NRC revised in RDAs, and the 1980 RDA were used to define lower limits for nutrients and levels of food energy for the new TFP. (For exceptions, see Table 4, footnote 3.) Also fat, cholesterol, caloric sweeteners, and sodium were controlled at moderate levels in the new plan. The dietary standards used to revise the TFP were also used to revise the three more costly food plans.

Nutrient Content of Foods: The nutritive value of some foods, such as enriched bread and flour, has changed since 1975. Therefore, the most recent food composition data available in HNIS's Nutrient Data Bank were used to estimate the nutrient content of foods in the new food plan. Levels of food energy, fat, protein, three minerals, and seven vitamins were considered in developing 1975 TFP. In addition to these, the revised TFP takes into account levels of two minerals (zinc and phosphorus), two vitamins (folacin and vitamin E), and cholestrol, caloric sweeteners, and sodium.

Food Consumption Patterns: Consumption patterns are the estimated quantities (as purchased) of food in 31 food groups used for preparing meals and snacks for individuals in each of 11 sex-age categories. This revised TFP was based upon information on food consumption patterns of men, women, and children in 4,400 households eligible for the Food Stamp Program contained in the Nationwide Food Consumption Survey 1977–78. These consumption patterns were the starting points in developing this revised TFP.

Food in the actual consumption patterns met some but not all of the dietary standards. Levels of folacin, calcium, iron, magnesium, and zinc in patterns for some sex-age categories failed to meet goals. Also, levels of fat, cholesterol, caloric sweeteners, and sodium in patterns for most categories exceeded moderate levels desired. Therefore, consumption patterns had to be adjusted in order to develop a food plan that met dietary standards. Information about diets in the low income survey households is presented in *"Food Consumption and Dietary Levels of Low Income Households,* Nov. 1977–March 1978", in NFCS Preliminary Report No. 8; and in *"Food and Nutrient Intakes of Individuals in One Day: Low Income Households,* Nov. 1977–March 78," NFCS Preliminary Report No. 11. For a copy of either report, write to: Human Nutrition Information Service, Federal Building, Hyattsville, Maryland, 20782.

Computer Model: USDA believes that a nutritious and economical food plan will be the most acceptable to households if it disrupts their usual food practices the least. A computerized mathematical model was used to help minimize the changes that households eligible for food stamps needed to make in their consumption patterns to meet the goal of obtaining a nutritious diet at the cost level of the TFP.

Generally, adjustments increased the quantities of economical food sources of those nutritents for which levels were below dietary standards in consumption patterns, especially those food sources containing low to moderate levels of fat, cholesterol, caloric sweeteners, and sodium. For example, the dry beans, cereal, and flour groups are among the most economical sources of folacin, iron, magnesium, and zinc. They also contain little or no fat, cholesterol, and sweeteners. Meat, although a notably good source of iron and zinc, and other nutrients as well, is relatively expensive; its use in both the 1975 and the revised TFP is somewhat curtailed by cost limits. Fats and sugar groups are inexpensive sources of energy but are less attractive energy sources for all of the food plans than are flour, cereal, bread, and dry bean groups, which are better sources of several nutrients and are lower in fat and/or sweeteners. Using January 1981 prices, this revised TFP for a four-person household (man and woman 20–50 years and children 6–8 and 9–11 years) cost the same as 1975 TFP for a similar household.

Differences between this revised TFP and TFP 1975: The differences between this revised TFP and TFP 1975 result primarily from differences in both food consumption patterns and dietary standards used in their development. Lower quantities for most sex-age categories of fats, sugars, bakery products, and eggs in the revised TFP compard to TFP 1975 resulted partly from lower consumption of foods in these foods groups by households in the 1977–78 survey than households in the 1965–66 survey used for the 1975 TFP. Lower standards for fat, sweeteners, and cholesterol for the revised plans were also factors. More meat, dry beans, vegetables, fruit, cereal, and flour were needed in this revised TFP, than in the 1975 TFP partly to help provide desired levels of folacin and zinc, nutrients not considered in the earlier plans. Table 5 illustrates some of the differences between the revised TFP and TFP 1975.

Sample Meal Plans: Sample menus with recipies and list of foods used in their preparation have been developed for families of four persons following the revised TFP. These meal plans, which contain foods available in most stores across the country, illustrate some of the many ways food in this revised TFP can be combined into economical and nutritious meals. The recipies were developed and tested in USDA laboratories. The meal plans incorporate recommendations from families receiving food stamps who used the menus, food lists, and recipes for a trial period. The trials were conducted by the University of Maryland under contract with HNIS. The sample meal plans provide one basis for materials for educators, food stamp recipients, and others who want to translate the plan into practice.

Copies of the meal plans, *"Making Food Dollars Count—Nutritious Meals at Low Cost,* USDA HG–240," are available for 50 cents from the Consumer Information Center, Pueblo, Colorado 81009.

Estimated Costs for the TFP

The overall procedure for estimating costs of the revised TFP is the same as that used for the 1975 TFP. U.S. average costs of foods in the revised TFP (and the three more costly plans) are estimated each month (see, for example, Table 3) and released by USDA. The more costly plans are estimated for 11 sex-age categories including the adult age categories of 20–50 (consistent with the RDAs), whereas the TFP is estimated both for ages 20–50 (for consistency with the other plans as well as the RDAs) and for ages 20–54 (to

meet the requirements of food stamp legislation). This revised TFP is based upon average prices paid for over 2,400 different food type and quantities by households eligible for food stamps across the country in 1977–78. These average prices reflect the assortment of container sizes and brands, the quality of food selected, and the price levels in stores where foods were purchased by survey household eligible for food stamps. These average prices were then updated in order to make them current as of the time of plan development and to provide current monthly estimates of the costs of the plan. Procedures used in updating costs of the plans with these prices are as follows.

1. Prices paid by survey households are updated by using the percentage change in price indexes of food groups from the time of the survey to the month of the estimate. Indexes for these food categories are based on prices collected each month by the Bureau of Labor Statistics (BLS) from a representative sample of stores in selected cities across the country. In other words, each month this Department uses changes in 92 BLS indexes to update the average price paid per pound for 2,400 food items.

2. The updated prices of foods in each food group in the revised TFP are weighted by the average quantities of foods used by the survey households to derive prices per unit—pound, quart, or number—for the food groups.

3. The prices per unit of food groups are then multiplied by the number of units of food groups in the plan for each sex-age category to determine the cost of foods from each food group.

4. Cost for the food groups for each category are totaled, multiplied by 4.333 to convert weekly costs to monthly costs, and rounded to the nearest 10 cents, to estimate the cost for the month.

Relationship to the Food Stamp Program

The TFP has been used as the basis for food stamp allotments since January 1976. Prior to that, the Economy Food Plan was used. When the Economy Plan was first adopted for use in the FSP in 1971, a family of four persons consisting of a man and woman ages 20–54 and children 6–8 and 9–11 was used. There was no research basis to choose this reference family. It was simply one of the "standard" families for which food plan costs were calculated.

Initially, the choice of a *particular* family of four among all of the available standard families was solely an administrative decision. However, Congress incorporated this model family concept in the Food Stamp Act of 1977, which requires that calculations for the TFP Levels for different size households be based on the four-person "model" household. (7 U.S.C. 2012(o)). This statutory requirement that food stamp allotments had to be based upon the cost of the TFP for a particular reference family, was reflected in the **Federal Register** on October 17, 1978 (43 FR 47883).

In developing the revised Thrifty Food Plan for use in the Food Stamp Program, HNIS made the age categories consistent with the requirements of the Food Stamp Act. Because the RDAs developed in 1980 did not show allowance for adults through age 54 and adults 55 plus, the 1980 RDAs could not be used directly as standards for food plans for the 20–54 year category required by the Food Stamp Act. When the family food plans were revised last year, HNIS used the 1980 RDAs to develop food plans for adults 20–50 and 51 plus.

Because the Food Stamp Act requires the use of the 20–54 age categories, the HNIS revised Thrifty Food Plan for adults 20–50 had to be modified for use in the Food Stamp Program. Therefore, HNIS developed a separate but equivalent component for the revised TFP for the 20–54 age categories for use in the food stamp program. HNIS used the same computerized model to develop the special food stamp Thrifty Food Plan for adults ages 20–54 as it did for the other food plans. The data components required were: (1) Total food cost limits, (2) dietary standards, and (3) food consumption patterns for the man and woman 20–54 years. The food cost limits for the 20–54 year olds were the same as for the 20–50 year olds because costs for the 1983 TFP were set to equal the cost for the 1975 TFP (as updated) for the four person household used for food stamp benefit purposes. RDAs for the 20–50 year groups were derived by interpolating between age groups below and above 51 years and assuming a mid-point of 63.5 years for the category above 51. Using this technique, and rounding by procedures used in deriving dietary standards for the other categories the dietary standards for the 20–50 and 20–54 year groups were the same. Food consumption patterns, in terms of food groups, for the two age groups differed only slightly. The quantities of foods in the revised TFP for the four-person households containing adults of 20-50 years and adults of 20–54 years were the same for 7 of the 11 major food groups in Table 5. Differences, which were minimal for the 4 remaining groups, are listed in Table 6. Table 7 lists the monthly amounts of each of the 31 food groups for a four-person food stamp household under the revised TFP 1983.

Section 3(o) of the Food Stamp Act and 7 CFR 273.10(e)(4) require that the cost of the TFP be updated from time to time, reduced by 1 percent and rounded down to the nearest dollar increment. The next update will take effect October 1, 1983. The October 1983 update will be based on the 1975 TFP as adjusted in accordance with Section 3(o) of the Food Stamp Act and 7 CFR 273.10(e)(4) to take into account changes in the price of food. The dollar amounts of the TFP for all household sizes will be published in a **Federal Register** notice in accordance with Food Stamp Program rules published October 19, 1982 (47 FR 46486).

(91 Stat. 958 (7 U.S.C 2011–2029) Catalogue of Federal Domestic Assistance, No. 10.551, Food Stamps)

Dated: July 27, 1983.

John W. Bode,

Deputy Assistant Secretary

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Table 1.--Thrifty food plan, 1983: Quantities of food for a week (summary table)

Food[1]	Child (years)				Male (years)				Female (years)[2]		
	1-2	3-5	6-8	9-11	12-14	15-19	20-50	51 and over	12-19	20-50	51 and over
	Pounds (as purchased)[3]										
Vegetables, fruit:											
Potatoes (fresh weight)	0.47	0.82	1.04	1.11	1.29	2.22	1.50	1.55	1.27	1.16	0.90
Other vegetables	1.13	1.39	2.07	2.49	3.02	2.29	3.60	2.91	2.29	4.61	4.33
Fruit (juices single strength)	2.16	2.16	2.93	3.48	2.19	2.21	2.33	2.41	3.32	2.66	2.72
Grain products:											
Breakfast cereal	.74[4]	.60	.36	.50	.43	.39	.38	.25	.69	.31	.44
Flour, meal, rice, pasta	.99	1.37	1.97	1.84	2.35	2.56	1.96	2.08	1.48	1.96	1.50
Bread	.47	.75	1.10	1.38	1.83	1.50	2.09	1.54	1.25	.93	.58
Other bakery products	.14	.16	.49	.69	.21	.56	.79	.45	.67	.49	.29
Milk, cheese:											
Milk (quarts)[5]	3.51	3.15	3.58	4.34	4.05	4.05	2.23	1.78	4.55	2.38	2.31
Cheese	.04	.05	.08	.11	.11	.11	.13	.12	.27	.29	.32
Meat and alternates:											
Meat, poultry, fish	1.68	1.68	1.81	2.09	2.59	2.97	3.48	3.66	2.63	3.52	3.84
Eggs (number)	3.00	2.90	1.90	2.50	2.20	3.10	4.10	4.30	4.10	4.40	4.10
Dry beans, peas, lentils, nuts (dry/shelled weight)	.36	.42	.31	.39	.96	.72	.62	.81	.44	.69	.51
Other foods:											
Fats, oils	.14	.33	.58	.67	.73	.93	.76	.60	.22	.28	.21
Sugar, sweets	.10	.36	.78	.87	1.20	.95	1.01	.76	.31	.21	.22
Soft drinks, punches, ades (single strength)	.39	.57	.65	.87	.87	1.51	1.17	.32	1.12	.40	.38

[1]Foods in 31 food groups are aggregated here into 15 groups. Small amounts of coffee, tea, and seasonings are not shown, but are included when cost for the plan is estimated.

[2]Pregnant and lactating females usually require added nutrients and should consult a doctor for recommendations about diet and supplements.

[3]Quantities are for food as purchased or brought into the kitchen from the garden or farm. Quantities are in pounds except milk which is in quarts and eggs, which are by number. Food is for preparation of all meals and snacks for a week. About 5 percent of the edible parts of food is assumed to be discarded as plate waste, spoilage, etc.

[4]Cereal fortified with iron is recommended.

[5]Quantities of dry and evaporated milk and yogurt are included as their fluid whole milk equivalent in terms of calcium content. Small amounts of cream and mixtures mostly milk are included.

Table 2.--Thrifty food plan, 1983: Food list for a month[1]

Potatoes	20-3/4 lb
Carrots, fresh	1-3/4 lb
Tomatoes, fresh	2-3/4 lb
Cabbage, fresh	5 lb
Lettuce	4-1/4 lb
Celery, fresh	1 lb
Onions, mature, fresh	3 lb
Other vegetables, fresh	12-1/2 lb
Leafy greens, canned	3/4 lb
Tomatoes, tomato products, canned	2-1/2 lb
Snap beans, canned	3-1/2 lb
Corn, canned	4-3/4 lb
Green peas, canned	2-1/4 lb
Other vegetables, canned and dry	4-1/2 lb
Leafy greens, frozen	1/2 lb
Other vegetables, frozen	2 lb
Vegetable juices, canned and frozen	1-1/4 lb
Citrus fruit, fresh	11 lb
Apples, fresh	9 lb
Bananas, fresh	6 lb
Other fruit, fresh	2 lb
Fruit, canned	3-1/2 lb
Fruit juice, canned	7-1/4 lb
Fruit and fruit juice, frozen (single strength basis)	23-1/4 lb
Fruit, dried	1/4 lb
Whole-grain/high-fiber breakfast cereals	3 lb
Other breakfast cereals	3-3/4 lb
Whole-grain/high-fiber flour, meal, rice, pasta	2-1/4 lb
Other flour, meal, rice, pasta	31-1/4 lb
Whole-grain/high-fiber bread	3-1/2 lb
Other bread	20-1/2 lb
Bakery products, mixtures mostly grain	10-3/4 lb
Milk, yogurt	51-3/4 qt
Cheese	2-3/4 lb
Cream, ice cream, other mixtures	4-3/4 lb
Soups	2-1/2 lb
Meat, variety meats	24-1/2 lb
Poultry	14 lb
Fish, shellfish	2 lb
Bacon, sausage, luncheon meats	6-3/4 lb
Mixtures, mostly meat and alternates	1-1/4 lb
Eggs	4-2/3 doz
Dry beans	4-1/4 lb
Mature beans, canned	3-3/4 lb
Peanut butter	2-1/4 lb
Nuts (shelled weight)	1 lb
Margarine, butter	4 lb
Shortening, oil, salad dressing	6 lb
Sugar	7-3/4 lb
Other sweets	4-3/4 lb
Soft drinks, punches, ades	6-1/4 qt

[1]Provides for the food needs for a four-person household (man and woman 20-50 and children 6-8 and 9-11 years of age). In addition to foods listed, most families use some other foods: coffee, tea, cocoa, leavening agents, and seasonings. Approximately one percent above the cost of the foods on the list is allowed for purchase of these foods when costs for the plan are estimated.

Table 3.--Cost of food at home estimated for the thrifty food plan, 1983[1], June 1982, U.S. average

Sex-age groups	Cost for 1 week	Cost for 1 month
	Dollars	Dollars
HOUSEHOLD[2]		
Household of 2:		
Couple, 20-50 years	35.50	153.90
Couple, 51 years and over	33.90	147.10
Household of 4:		
Couple, 20-50 years and children--		
1-2 and 3-5 years	51.60	223.40
6-8 and 9-11 years	59.00	255.80[3]
INDIVIDUALS		
Child:		
1-2 years	9.30	40.20
3-5 years	10.00	43.30
6-8 years	12.20	53.00
9-11 years	14.50	62.90
Male:		
12-14 years	15.30	66.30
15-19 years	15.90	69.10
20-50 years	16.90	73.30
51 years and over	15.50	67.40
Female:		
12-19 years	15.30	66.20
20-50 years	15.40	66.60
51 years and over	15.30	66.30

[1]The cost of the food plan was first estimated by using average prices paid by households eligible to receive food stamps surveyed in 1977-78. USDA updates these survey prices to estimate the cost for the food plans using information from the Bureau of Labor Statistics: "CPI Detailed Report," table 3.

[2]Costs for "individuals" assume that the individual is in a 4-person household. For individuals in households of other sizes, the following adjustments are suggested: 1-person, add 20 percent; 2-person, add 10 percent; 3-person, add 5 percent; 5- or 6-person, subtract 5 percent; 7-or-more person, subtract 10 percent.

[3]The cost of food in TFP 75 for this household in June 1982 ($256) is the basis for the food stamp allotment effective October 1982. The cost of food in TFP 83 for this household in June 1982 was also $256.

Table 4.--Nutritive value[1] of food in the thrifty food plan, 1983[2]

Food component	Child				Male				Female		
	1-2 years	3-5 years	6-8 years	9-11 years	12-14 years	15-19 years	20-50 years	51 years or more	12-19 years	20-50 years	51 years or more
	Percentage of standard[3]										
Protein	238	204	202	200	202	165	159	155	182	196	186
Vitamin A Value	214	189	167	159	138	126	143	131	172	189	213
Thiamin	194	181	148	158	149	150	149	156	179	176	162
Riboflavin	237	207	171	175	155	150	144	145	205	176	173
Niacin equivalent	290	281	218	224	132	232	235	251	276	306	285
Vitamin B_6[4]	126	120	110	112	100	103	106	104	116	108	118
Vitamin B_{12}[4]	205	155	128	149	156	176	156	164	209	168	190
Folacin[4]	329	195	129	121	112	108	114	105	117	115	111
Ascorbic acid	143	152	174	201	170	143	151	130	186	176	171
Vitamin E[4]	100	130	154	181	180	154	147	128	100	121	102
Calcium	100	100	120	120	100	103	115	100	100	113	104
Iron	100	115	151	136	116	123	209	194	105	100	171
Magnesium[4]	160	129	112	110	119	100	104	101	115	118	104
Phosphorus	144	148	168	165	153	162	203	197	143	202	188
Zinc[4]	100	100	107	105	100	103	100	100	100	100	100
	Composition of diet										
Food energy (kcal)	1,300	1,600	2,100	2,400	2,700	2,800	2,700	2,400	2,100	2,000	1,800
Cholesterol (mg)[4]	230	230	220	270	270	330	350	350	350	350	350
Sodium (mg)[4]	1,600	1,900	2,300	2,700	3,000	3,700	4,000	3,000	3,100	3,000	2,300
	Percentage of energy										
Total fat	32	35	34	34	34	35	35	32	32	35	35
Caloric sweeteners[4]	6	9	12	12	12	11	12	10	8	5	6
Protein	17	14	12	13	14	13	13	15	16	17	18

[1]Nutritive value of the edible portion of food as purchased, adjusted to allow for losses in cooking for vitamins, except folacin. One-half of the drippings and trimmable fat from meat, poultry, and fish was assumed as discard.
[2]Estimated quantities of food as shown in table 1. Nutritive value per pound of food groups is based on the average quantities of foods used by a special group of about 4,400 low-income households (eligible for the Food Stamp Program) surveyed in November 1977-March 1978 as part of the Nationwide Food Consumption Survey 1977-78.
[3]Standards are 1980 RDA with these exceptions: 0.02 mg of vitamin B_6 per gram of protein; 80 percent RDA for folacin, vitamin E, and zinc; and 90 percent RDA for iron for child 1-2 years only.
[4]Based on limited food composition data.

Table 5.—Quantities of Food Purchased in One Week from Eleven Major Food Groups by a Four-Person Household Comparing Actual Consumption with Quantities Purchased under the TFP 1983 and TFP 1975

Food Group	Consumption Pattern (adult 20-50, children 6-8, 9-11)	TFP 1983 (adult 20-50, children 6-8, 9-11)	TFP 1975 (adult 20-54, children 6-8, 9-11)
	-----pounds as purchased-----		
Potatoes (fresh weight)	4.7	4.8	6.2
Other vegetables, fruit	22.7	24.2	20.6
Cereal, flour	5.3	9.3	7.3
Bread	4.2	5.5	6.9
Other bakery products	2.9	2.5	3.9
Milk, cheese, ice cream (in quarts, not pounds)	15.4	14.2	14.5
Meat, poultry, fish	17.2	10.9	8.3
Eggs (in nos. purchased)	16.5	12.9	13.8
Dry beans, peas, nuts (dry, shelled weight)	1.1	2.0	1.7
Fats, oils	2.2	2.3	2.6
Sugar, sweets	3.8	2.9	3.6
Cost (January 1981)*	$68.53	$55.37	$55.37

*Includes cost of coffee, tea, soft drinks, punches, ades, and seasonings as well as foods listed.

Table 6.—Comparison of Two Age Groups (20-50 to 20-54 Years) in Terms of Pounds Purchased Per Week and Cost of the TFP 1983

TFP 1983 for the Four-Person Household with Adults

Food Groups Where a Difference was Detected	20 - 50 Years	20 - 54 Years
	(pounds per week)	
Potatoes (fresh weight)	4.8	4.9
Other vegetables, fruit	24.2	23.9
Cereal, flour	9.3	9.2
Bakery products	2.5	2.6

Costs of TFP 1983 for Four-Person Household with Adults

Individual	Household with adults 20-50 years	Household with adults 20-54 years
Child 6-8	$53.036	$53.036
Child 9-11	62.885	62.885
Man	73.271	73.284
Woman	66.581	66.546
TOTAL	$255.773	$255.751

Table 7.

Thrifty food plan, 1983: Quantities of food for a month for the food stamp household[1]

Food group	Quantity per month Pounds[2]
Vegetables, fruit:	
Potatoes (fresh weight)	21.32
High-nutrient vegetables	24.91
Other vegetables	27.60
Mixtures, mostly vegetable; condiments	1.17
Vitamin-C-rich fruit[3]	25.04
Other fruit[3]	24.70
Grain products:	
Whole-grain/high-fiber breakfast cereals	3.03
Other breakfast cereals	3.68
Whole-grain/high-fiber flour, meal, rice, pasta	2.30
Other flour, meal, rice, pasta	31.07
Whole-grain/high-fiber bread	3.34
Other bread	20.37
Bakery products, not bread	7.24
Grain mixtures	3.94
Milk, cheese, cream:	
Milk, yogurt (quarts)[4]	51.78
Cheese	2.64
Cream, mixtures mostly milk	4.64
Meat and alternates:	
Lower-cost red meats, variety meats	20.02
Higher-cost red meats, variety meats	4.68
Poultry	14.04
Fish, shellfish	.56
Bacon, sausage, luncheon meats	6.76
Eggs (number)	55.90
Dry beans, peas, lentils (dry weight)[5]	5.59
Mixtures, mostly meat, poultry, fish, egg, legume	1.21
Nuts (shelled weight), peanut butter	3.08
Other foods:[6]	
Fats, oils	9.88
Sugar, sweets	12.52
Soft drinks, punches, ades (single strength)	13.65

[1] Provides for food needs for a four-person household (man and woman 20-54 and children 6-8 and 9-11 years of age). Quantities are for food as purchased or brought into the household from garden or farm. Food is for preparation of all meals and snacks for a month.

[2] Quantities in pounds except milk, which is in quarts and eggs, which are by number.

[3] Frozen concentrated juices are included as single strength juice.

[4] Quantities of dry and evaporated milk and yogurt included as their fluid whole milk equivalents in terms of calcium content.

[5] Count one pound of canned dry beans--pork and beans, kidney beans, etc.--as 0.33 pound.

[6] Small quantities of coffee, tea, and seasonings are not shown. Their cost is a part of the estimated cost for the food plan.

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Friday
July 29, 1983

Part X

Department of Agriculture

Animal and Plant Health Inspection Service

Animal Welfare; Marine Mammals; Proposed Rule

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 3

[Docket No. 83-005]

Animal Welfare, Marine Mammals

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the regulations concerning the humane handling, care, treatment, and transportation of marine mammals. The proposed amendments appear to be necessary in order to update the regulations and to provide more appropriate requirements for the humane handling, care, treatment, and transportation of marine mammals.

DATE: Written comments must be received on or before August 29, 1983.

ADDRESS: Written comments concerning this proposal should be submitted to T. O. Gessel, Director, Regulatory Coordination Staff, APHIS, USDA, Room 728, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Written comments received may be inspected at Room 728 of the Federal Building, 8 a.m. to 4:30 p.m., Monday to Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. R. L. Crawford, Animal Care Staff, VS, APHIS, USDA, Room 763, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-7833.

SUPPLEMENTARY INFORMATION:

Background

This document proposes to amend the "Specifications for the Humane Handling, Care, Treatment, and Transportation of Marine Mammals" regulations (contained in 9 CFR 3.100 *et seq.* and referred to below as the regulations). The regulations are established pursuant to authority in the Animal Welfare Act, as amended (contained in 7 U.S.C. 2131 *et seq.* and referred to below as the Act). The Act requires the Secretary to promulgate regulations and to set standards governing the humane handling, care, treatment, and transportation of certain animals by dealers, research facilities, exhibitors, operators of auction sales, carriers, and intermediate handlers. Such standards must include minimum requirements with respect to handling, housing, feeding, watering, sanitation, and other matters specified in section 13 of the Act (7 U.S.C. 2143).

In accordance with section 13 of the Act, the Department solicits recommendations concerning marine mammals from marine mammal experts. Further, most of the proposed changes in this document are adopted by the Department as proposed changes based on recommendations from members of the American Association of Zoological Parks and Aquariums and from other recognized marine mammal experts.

Space Requirements

Section 3.104 sets forth space requirements for primary enclosures housing certain marine mammals. The space requirements are applicable to the housing of these marine mammals except in certain limited circumstances, such as when the animals are under veterinary care or in enclosures for temporary holding. This document proposes to amend the regulations concerning space requirements for cetaceans, pinnipeds, sirenians, polar bears, and sea otters.

Space requirements for primary enclosures for certain marine mammals are calculated by using specified formulas based on the average adult lengths of classes of such animals. Table III in § 3.104(b), captioned "Average Adult Lengths of Marine Mammals Maintained in Captivity," is intended to list species, common names, and average adult lengths of certain marine mammals known by the Department to be maintained in captivity or likely to be maintained in captivity.

For certain marine mammals the primary enclosures may consist entirely of a pool of water, but for others, in addition to a pool of water, the primary enclosures must include certain dry areas. Space requirements for primary enclosure pools are measured by specified criteria which may include minimum horizontal dimension (sometimes referred to below as MHD), depth, pool volume, and surface area. MHD is defined in 9 CFR 1.1(tt) as the diameter of a circular pool of water, or in the case of a square, rectangular, oblong, or other shape pool, the diameter of the largest circle that can be inserted within the confines of such a pool of water.

Cetaceans

Cetaceans are an order of marine mammals which includes whales, dolphins, and porpoises. The regulations provide that primary enclosures housing cetaceans shall contain a pool of water and may consist entirely of a pool of water.

The regulations divide cetaceans into two groups for purposes of determining space requirements. Group I cetaceans, mostly animals that usually inhabit waters near land, are animals for which considerable information has been developed concerning space requirements. Group II cetaceans, animals that live near the surface of the ocean far from land, are animals for which less information has been developed concerning space requirements. Accordingly, the formulas are designed to allow more space for Group II cetaceans than for Group I cetaceans as a precautionary measure in order to help assure that Group II cetaceans have sufficient space in their primary enclosures.

Table III for Cetaceans

Table III of § 3.104(b) currently lists the average adult lengths of Group I and Group II cetaceans as follows:

Species	Common name	Adult length	
		In meters	In feet
Group I Cetaceans:			
Delphinapterus leucas.	Beluga	4.27	14.0
Inia geoffrensis	Amazon Porpoise	3.05	10.0
Lagenorhynchus obliquidens.	Pacific White-sided Dolphin.	2.29	7.5
Tursiops truncatus.	Bottlenose Dolphin	2.74	9.0
Phocoena phocoena.	Harbor Porpoise	1.68	5.5
Grampus griseus.	Risso's Dolphin	3.66	12.0
Globicephala melaena.	Long-finned Pilot Whale.	5.79	19.0
Globicephala macrorhynchus.	Short-finned Pilot Whale.	5.49	18.0
Orcinus orca	Killer Whale	6.86	22.5
Pseudorca crassidens.	False Killer Whale	5.64	18.5
Group II Cetaceans:			
Lissodelphis borealis.	Northern Right Whale Dolphin.	2.74	9.0
Delphinus delphis.	Common Dolphin	2.59	8.5
Stenella longirostris.	Spinnar Dolphin	2.13	7.0
Stenella attenuata.	Spotted Dolphin	2.59	8.5
Stenella plagiodon.	Spotted Dolphin	2.29	7.5
Phocoenoides dalli.	Dall's Porpoise	2.13	7.0

It is proposed to amend Table III for cetaceans as follows:

1. It is proposed to add the following 7 categories to the list of Group I cetaceans:

Species	Common name	Adult length	
		In meters	In feet
Balaenoptera acutorostrata.	Minke whale	8.50	27.9
Kogia breviceps.	Pygmy sperm whale	3.96	13.0
Kogia simus	Dwarf sperm whale	2.90	9.5

Species	Common name	Adult length	
		In meters	In feet
Monodon monoceros.	Narwhale	3.96	13.0
Platanista, all species.	River dolphin	2.44	8.0
Pontoporia blainvillei.	Franciscana	1.52	5.0
Sotalia fluviatilis.	Tucuxi	1.68	5.5

2. It is proposed to amend the listing for Group I cetanceans by changing the specified average adult length of *Inia geoffrensis* (Amazon porpoise) from 3.05 meters (10.0 feet) to 2.44 meters (8.0 feet), by changing the specified average adult length of *Orcinus orca* (killer whale) from 6.86 meters (22.5 feet) to 7.32 meters (24.0 feet), and by changing the specified average adult length of *Pseudorca crassidens* (false killer whale) from 5.64 meters (18.5 feet) to 4.35 meters (14.3 feet).

3. It is proposed to amend the listing for Group I cetaceans by amending the listing for *Tursiops truncatus* (Bottlenose dolphin) to provide for two separate populations, an Atlantic population, and a Pacific population; and to change the specified average adult length for the Pacific animals from 2.74 meters (9.0 feet) to 3.05 meters (10.0 feet) (no change is proposed for the Atlantic animals which would remain at 2.74 meters (9.0 feet)).

4. It is proposed to add 11 additional species to the list of Group II cetaceans as follows:

Species	Common name	Adult length	
		In meters	In feet
Cephalorhynchus commersonii.	Commerson's dolphin	1.52	5.0
Feresa attenuata.	Pygmy killer whale	2.44	8.0
Lagenorhynchus acutus.	Atlantic white-sided dolphin.	2.90	9.5
Lagenorhynchus albirostris.	White-beaked dolphin	2.74	9.0
Lagenorhynchys cruciger.	Hourglass dolphin	1.70	5.6
Lagenorhynchus obscurus.	Duskey dolphin	2.13	7.0
Lagenorhynchus thicolea.	Greys white-sided dolphin.	2.20	7.2
Neophocaena phocaenoides.	Finless porpoise	1.83	6.0
Peponocephala electra.	Melon-headed whale	2.74	9.0
Stenella coeruleoalba.	Striped dolphin	2.29	7.5
Steno bredanensis.	Rough-toothed dolphin	2.44	8.0

5. It is proposed to amend the listing for Group II cetaceans by changing the specified average adult length of *Phocoenoides dalli* (Dall's porpoise) from 2.13 meters (7.0 feet) to 2.00 meters (6.5 feet), and by changing the specified average adult length of *Stenella attenuata* (Spotted dolphin) from 2.59 meters (8.5 feet) to 2.29 meters (7.5 feet).

It is proposed to add the additional cetaceans and their average adult lengths to the list in Table III in § 3.104(b) in order to have a listing for all cetaceans known by the Department to be maintained in captivity or likely to be maintained in captivity. This is necessary so that persons housing cetaceans subject to the provisions of the Act would be able to calculate space requirements for the animals. Also, the proposed changes of average adult lengths for certain cetaceans are made because it appears that the proposed average adult lengths more accurately reflect the actual average adult lengths of the affected animals.

It is also proposed to transfer *Lagenorhynchus obliquidens* (Pacific white-sided dolphin) with an average adult length of 2.29 meters (7.5 feet), and *Phocoena phocoena* (Harbor porpoise) with an average adult length of 1.68 meters (5.5 feet) from the list of Group I cetaceans to the list of Group II cetaceans without any changes in average adult lengths. These animals live near the surface of the ocean far from land, and insufficient information has been developed concerning their space needs. Therefore, it appears that it is necessary to classify them as Group II cetaceans.

Space Requirements for Cetaceans

It is also proposed to amend the minimum horizontal dimension (MHD) and depth requirements for the pool of water for cetaceans as follows:

1. Section 3.104(b)(1)(i) currently provides, among other things, that the required MHD of a primary enclosure pool for Group I cetaceans shall be two times the body length of the average adult of the longest species of cetacean housed therein. It is proposed to amend these provisions to provide that Group I cetaceans be housed in a primary enclosure pool with an MHD of 7.32 meters (24.0 feet) or two times the average adult length of the longest species of Group I cetacean housed therein, whichever is greater; except that such MHD measurement may be reduced from the greater number by up to 20 percent if the amount of the reduction is added to the MHD at the 90-degree angle and if the minimum volume and surface area requirements are met based on an MHD of 7.32 meters (24.0 feet) or two times the average adult length of the longest species of Group I cetacean housed therein, whichever is greater.

2. Section 3.104(b)(1)(ii) currently provides, among other things, that the required MHD of a primary enclosure pool for Group II cetaceans shall be four times the body length of the average adult of the longest species of cetacean to be housed therein. It is proposed to amend these provisions to provide that Group II cetaceans be housed in primary enclosure pools with an MHD of 7.32 meters (24.0 feet) or four times the average adult length of the longest species of Group II cetacean housed therein, whichever is greater; except that such MHD measurement may be reduced from the greater number by up to 20 percent if the amount of the reduction is added to the MHD at the 90-degree angle and if the minimum volume and surface area requirements are met based on an MHD of 7.32 meters (24.0 feet) or four times the average adult length of the longest species of Group II cetacean housed therein, whichever is greater.

3. Section 3.104(b)(2) currently provides that the minimum depth requirements for primary enclosure pools for all cetaceans shall be one-half the body length of the average adult of the longest species to be housed therein, or 1.52 meters (5.0 feet), whichever is greater. It is proposed to amend this provision to provide that the minimum depth requirement for primary enclosure pools for all cetaceans shall be one-half the average adult length of the longest species to be housed therein, or 1.83 meters (6.0 feet), whichever is greater.

It is proposed to amend the requirements for MHD and depth for the pool of water for cetaceans in order to provide what appears to be the minimum space requirements that would generally allow such animals sufficient space, both horizontally and vertically, so that they would be able to make normal postural and social adjustments with adequate freedom of movement. Further, the provisions which would allow up to a 20 percent reduction in the MHD would allow for variation in pool shapes without decreasing the water volume or surface area requirements.

4. Section 3.104(b)(1)(iii) currently provides that: In a pool where a mixture of both Group I and Group II cetaceans are to be housed, the MHD must be computed on the basis of both the average adult length of the longest species of Group I cetacean and of the longest species of Group II cetacean, and the required MHD shall be either

two times the body length of an average adult of the longest species of Group I cetacean to be housed therein or four times the body length of an average adult of the longest species of Group II cetacean to be housed therein, whichever is greater.

Without corresponding changes in § 3.104(b)(1)(iii), the adoption of the proposed provisions concerning the MHD for primary enclosure pools for cetaceans would cause these provisions in § 3.104(b)(1)(iii) to be different from what was intended. It was intended that these provisions require that in a pool housing Group I and Group II cetaceans, the MHD shall be the largest required for any cetacean housed therein. Therefore, it is proposed to amend § 3.104(b)(1)(iii) by providing that in a pool housing Group I and Group II cetaceans, the MHD shall be the largest required for any cetacean housed therein.

Sirenians

Sirenians are an order of marine mammals which includes the dugong and the manatee. Table III in § 3.104(b) currently lists only one species of sirenians, the *Trichechus manatus* (West Indian Manatee), with an average adult length of 3.51 meters (11.5 feet). It is proposed to add two species to the list of sirenians, as follows:

Species	Common name	Average adult length	
		In meters	In feet
Dugong dugong.	Dogong	3.35	11.0
Trichechus inunguis.	Amazon Manatee	2.44	8.0

It is proposed to add the two species of sirenians and their average adult lengths to Table III in order to have a listing for all sirenians known by the Department to be maintained in captivity. This is necessary so that persons subject to the provisions of the Act will be able to calculate space requirements for these animals.

No changes are proposed concerning the space requirements for primary enclosures for housing sirenians. However, calculations are currently based upon requirements for cetaceans and certain of these requirements for cetaceans are proposed to be amended as explained above. Accordingly, if the proposed amendments for cetaceans are adopted, the provisions for calculating space requirements for sirenians would be reworded in order that the requirements for sirenians would not be affected by any amendments made concerning cetaceans.

Pinnipeds

Pinnipeds are an order of marine mammals which includes seals, sea lions, and walruses. The regulations provide that primary enclosures housing pinnipeds shall contain a pool of water and a dry resting or social activity area that must be close enough to the surface of the water to allow easy access for entering or leaving the pool.

Table III for Pinnipeds

Table III in § 3.104(b) currently lists the average adult lengths of certain pinnipeds as follows:

Species	Common name	Adult length	
		In meters	In feet
Eumetopias jubatus.	Steller Sea Lion, Northern Sea Lion.	3.05	10.0
Zalophus californianus.	California Sea Lion	2.44	8.0
Callorhinus ursinus.	Northern Fur Seal	2.44	8.0
Odobenus rosmarus.	Walrus	3.66	12.0
Phoca vitulina	Harbor Seal	1.68	5.5
Mirounga angustirostris.	Northern Elephant Seal	5.18	17.0
Halichoerus grypus.	Gray Seal	2.90	9.5

It is proposed to revise the listing for pinnipeds to read as follows:

Species	Common name	Average adult length			
		In meters		In feet	
		Male	Female	Male	Female
Group I Pinnipeds:					
****Arctocephalus gazella**	Antarctic Fur Seal	1.80	1.20	5.9	3.9
****Arctocephalus tropicalis**	Amsterdam Island Fur Seal	1.80	1.45	5.9	4.75
****Arctocephalus australis**	South American Fur Seal	1.88	1.42	6.2	4.7
****Arctocephalus pusillis**	Cape Fur Seal	2.73	1.83	8.96	6.0
****Callorhinus ursinus**	Northern Fur Seal	2.20	1.45	7.2	4.75
****Eumetopias jubatus**	Steller's Sea Lion	2.86	2.40	9.4	7.9
Hydrurga leptonyx	Leopard Seal	2.90	3.30	9.5	10.8
****Mirounga angustirostris**	Northern Elephant Seal	5.00	3.00	16.4	9.8
****Mirounga leonina**	Southern Elephant Seal	4.67	2.50	15.3	8.2
****Odobenus rosmarus**	Walrus	3.15	2.60	10.3	8.5
****Otaria flavescens**	South America Sea Lion	2.40	2.00	7.9	6.6
Phoca caspica	Caspian Seal	1.45	1.40	4.75	4.6
Phoca fasciata	Ribbon Seal	1.75	1.68	5.7	5.5
Phoca larga	Harbor Seal	1.70	1.50	5.6	4.9
Phoca vitulina	Harbor Seal	1.70	1.50	5.6	4.9
Zalophus californianus	California Sea Lion	2.24	1.75	7.3	5.7
****Halichoerus grypus**	Gray Seal	2.30	1.95	7.5	6.4
Phoca sibirica	Baikal Seal	1.70	1.85	5.6	6.1
Phoca groenlandica	Harp Seal	1.85	1.85	6.1	6.1
****Leptonychotes weddelli**	Weddell Seal	2.90	3.15	9.5	10.3
****Lobodon carcinophagus**	Crabeater Seal	2.21	2.21	7.3	7.3
****Ommatophoca rossi**	Ross Seal	1.99	2.13	6.5	7.0
Group II Pinnipeds:					
Erignathus barbatus	Bearded Seal	2.33	2.33	7.6	7.6
Phoca hispida	Ringed Seal	1.35	1.30	4.4	4.3
Cystophora cristata	Hooded Seal	2.60	2.00	8.5	6.6

**Any Group I animals maintained together will be considered as Group II when the animals maintained together include two or more sexually mature males from species marked with a double asterisk (**) regardless of whether the sexually mature males come from the same species.

The proposed revised listing would add 18 additional species and their average adult lengths to the list of pinnipeds in Table III in § 3.104(b) in order to have a listing for all pinnipeds known by the Department to be maintained in captivity or likely to be maintained in captivity. This is necessary so that persons subject to the Act would be able to calculate space requirements for the animals.

Also, as reflected in the proposed revised listing, it is proposed to change the average adult lengths of the species of pinnipeds currently listed in order to more accurately reflect the actual average adult lengths of these animals. Further, average adult lengths of species of male pinnipeds differ considerably from the average adult lengths of female pinnipeds. Consequently, it appears that the larger animals need more space than the smaller animals. Accordingly, it is proposed to list the average adult lengths of males separately from the average adult lengths of females in order to allow separate calculations for space requirements.

It is also proposed to separate pinnipeds into Group I and Group II pinnipeds. Group I pinnipeds would contain those pinnipeds generally considered to be gregarious and social animals. Group II would contain pinnipeds that are considered to be more aggressive animals. Because of these differences, it is proposed to require more space for Group II pinnipeds than for Group I pinnipeds.

In Table III as proposed, some of the Group I pinnipeds are marked with a double asterisk (**). It is proposed that any Group I pinnipeds maintained together will be considered as Group II when the animals maintained together include two or more sexually mature males from species marked with a double asterisk (**) regardless of whether the sexually mature males come from the same species. This appears to be necessary because such sexually mature male pinnipeds become more aggressive when two or more are housed together.

Space Requirements for Pinnipeds

It is also proposed to amend requirements for the pool of water for pinnipeds and the requirements for the dry resting or social activity area for pinnipeds as follows:

1. Section 3.104(d)(3) currently provides, among other things, that the minimum surface area of a pool of water for pinnipeds shall be two-thirds of the total minimum dry resting and social activity area required for the pinnipeds contained therein. It is proposed to amend these provisions to provide that the minimum surface area of a pool of water for pinnipeds shall be at least equal to the required dry resting or social activity area.

2. Section 3.104(d)(3) also currently provides, among other things, that the minimum horizontal dimension (MHD) of the pool for pinnipeds shall be at least one and one-half (1.5) times the average adult length of the largest species of pinniped to be housed in the enclosure. It is proposed to amend these provisions to provide that the MHD of the pool for pinnipeds shall be at least one and one-half (1.5) times the average adult length of the largest species of pinniped to be housed in the enclosure; except that such MHD measurement may be reduced by up to 20 percent if the amount of the reduction is added to the MHD at the 90-degree angle.

3. Section 3.104(d)(2) of the regulations currently provides that the dry resting or social activity area of the primary enclosure for all pinnipeds (exclusive of the pool of water) shall be calculated as follows:

> The minimum size of the dry resting or social activity area of the primary enclosure for pinnipeds (exclusive of the pool of water) shall be based on the average adult length of each pinniped contained therein, as measured in a horizontal or extended position in a straight line from the tip of its nose to the tip of its tail. The minimum size of the dry resting and social activity area shall be computed using the following method: List all pinnipeds contained in a primary enclosure by average adult length in descending order from the longest species of pinniped to the shortest species of pinniped. Square the average adult length each pinniped. Multiply the average adult length squared of the longest pinniped by 1.5, the second longest by 1.4, the third longest by 1.3, the fourth longest by 1.2, and the fifth longest by 1.1, as indicated in the following examples. Square the average adult length of the sixth pinniped and all additional pinnipeds. Add the figures obtained for all the pinnipeds in the primary enclosure to determine the required minimum dry resting and social activity area required for such pinnipeds. . . .

It is proposed to retain these provisions for calculating the dry resting or social activity area for the primary enclosures housing Group II pinnipeds, or for a mixture of Group I and Group II pinnipeds. It is further proposed that if only a single Group II pinniped is maintained in the primary enclosure, the minimum dry resting or social activity area must be computed for a minimum of two pinnipeds.

It is further proposed to calculate the dry resting or social activity area for Group I pinnipeds as follows:

> Square the average adult length of each pinniped to be contained in the primary enclosure. Add the figures obtained for each of the pinnipeds in the primary enclosure to determine the dry resting or social activity area required for such pinnipeds. If only a single Group I pinniped is maintained in the primary enclosure, the minimum dry resting or social activity area is twice the square of the average adult length of that single Group I pinniped.

Examples:

DRA for one Group I pinniped = 2 × (average adult length of pinniped)^2

(average adult length)^2 of the 1st pinniped + (average adult length)^2 of the 2nd pinniped + (average adult length)^2 of the 3rd pinniped = Total dry resting area for three Group I pinnipeds

4. It is proposed that a primary enclosure housing a mixture of Group I and Group II pinnipeds, or housing Group II pinnipeds with two or more sexually mature males must have the dry resting or social activity area divided into two or more separate areas with sufficient visual barriers (such as fences, rocks, or foliage) to provide relief from aggressive animals.

The proposed provisions for minimum surface area and minimum horizontal dimension (MHD) for the pool of water for pinnipeds, and for the dry resting or social activity area for pinnipeds are intended to provide what appear to be the minimum space requirements that would generally allow the animals sufficient space, both horizontally and vertically, so that they would be able to make normal postural and social adjustments with adequate freedom of movement. Further, as indicated above, the proposed requirements concerning separate areas and visual barriers are for the purpose of allowing the less aggressive animals to escape from the more aggressive animals.

Polar Bears

The regulations provide that primary enclosures housing polar bears shall consist of a pool of water, a dry resting and social activity area, and a den.

Section 3.104(e) currently provides, among other things, that the pool of water for one or two polar bears shall be at least 2.44 meters (8.0 feet) by 3.66 meters (12.0 feet) with a minimum depth of 1.52 meters (5.0 feet). It is proposed that these provisions be amended to provide that the pool of water for one or two polar bears shall have a minimum horizontal dimension (MHD) of not less than 2.44 meters (8.0 feet), a surface area of at least 8.93 square meters (96.0 square feet), and a minimum depth of 1.52 meters (5.0 feet). This would allow for variations in pool shape and it appears that it would still allow the animals sufficient space, both horizontally and vertically, so that they would be able to make normal postural and social adjustments with adequate freedom of movement.

Sea Otters

The regulations provide that primary enclosures for sea otters shall consist of a pool of water and a dry resting area.

Table III in § 3.104(b) currently lists the average adult length for *Enhydra lutris* (sea otter) as 1.98 meters (6.5 feet).

It is proposed to change the average adult length to 1.25 meters (4.1 feet).

Section 3.104(f) currently provides, among other things, that the minimum horizontal dimension (MHD) of the pool of water for sea otters shall be at least twice the length of the average adult sea otter contained therein and that the pool shall not be less than 0.91 meters (3.0 feet) deep. It is proposed to amend these provisions to provide that the MHD of the pool of water for sea otters shall be at least four times the average adult length of the sea otter and that the pool shall not be less than 1.22 meters (4.0 feet) deep.

It is proposed to change the specified length for sea otters in order to more accurately refect the actual average adult length of the animal. Further, it appears that the proposed changes in MHD and depth would generally be necessary to allow the animals sufficient space, both horizontally and vertically, so that they would be able to make normal postural and social adjustments with adequate freedom of movement.

The minimum dry resting area for sea otters is based on the average adult length. In this connection, it should be noted that the proposed reduced length of the sea otter would allow a smaller dry resting area. The regulations currently provide that "when the enclosure is to contain more than two sea otters, the dry resting area for each additional animal shall be computed by multiplying one-half of the square of the sea otter's average adult length by 3.14." Sea otters spend almost all of their time in the water, and it appears that the present standards require excessively large dry resting areas which are seldom used. Therefore, it is proposed that this provision be amended to require that "when the enclosure is to contain more than two sea otters, the dry resting area for each additional animal shall be computed by multiplying one-half of the sea otter's average adult length by 3.14."

Variances

The regulations contain provisions for the granting of variances. A variance is written permission from the Deputy Administrator to operate as a licensee or registrant under the Act without being in full compliance with one or more specified provisions of the regulations. Currently all variances granted under the regulations concern space requirements. The current provisions relating to variances are set forth in § 3.100 and provided that:

(a) All persons subject to the Animal Welfare Act who maintain or otherwise handle marine mammals in captivity must comply with the provisions of this Subpart, unless they are granted a variance,[3] by the Deputy Administrator, from one or more specified provisions. The provisions of this Subpart shall not apply, however, in emergency circumstances where compliance with one or more requirements would not serve the best interest of the marine mammals concerned.

(b) From the effective date of the requirements of this Subpart, all facilities housing marine mammals which are not in full compliance with the standards shall have 60 days during which they may apply to the Deputy Administrator for a variance: *Provided, however,* That such variance may only be granted if application is made to the Deputy Administrator, in writing, listing in detail each requirement of this Subpart which cannot be met, the time period requested for the variance, and the justification for such variance.

(c) The Deputy Administrator shall deny any such application for variance if he determines that it is not justified under the circumstances or that allowing it will be detrimental to the health and well-being of the marine mammals concerned.

(d) Such variance shall not be granted for a period exceeding 3 years from the effective date of these provisions: *Provided, however,* That under circumstances deemed justified by the Deputy Administrator, a maximum extension of 1 year may be granted to attain full compliance. A written request for the extension must be received by the Deputy Administrator at least 60 days prior to the termination of the initial 3-year period.[4]

(e) A research facility may be granted variance from specified requirements of this Subpart when such variance is necessary for research purposes and is fully explained in the experimental design. The 3-year time limitation stated in paragraph (b) of this section shall not be applicable in such case.

[3] Written permission from the Deputy Administrator to operate as a licensee or registrant under the Act without being in full compliance with one or more specified provisions of this Subpart.

[4] Consideration for extension by the Deputy Administrator will be limited to unforeseen or unusual situations such as when necessary public funds cannot be allocated in an appropriate time frame for a facility to attain full compliance within initial 3-year period.

Under the current regulations any outstanding variances issued under these provisions, other than variances for research facilities, are scheduled to expire on September 20, 1983.

A document published in the **Federal Register** on September 19, 1978 (43 FR 42201), explained the reasons for allowing variances, as follows:

The first of these is that there may be existing facilities containing healthy and well kept marine mammals, which do not meet the proposed requirements in every respect. The area of marine mammal care is relatively new to the Department and some of the requirements of the standards may go substantially beyond the requirements of the Animal Welfare Act, i.e., minimum standards for the humane handling, care, and treatment of marine mammals. It would therefore be unfair for the Department to demand that such facilities immediately comply with every standard or face administrative or criminal action for failure to do so. During the time period in which deviation from the requirements would be allowed (a maximum period is 4 years from the effective date of the regulations and standards), the Department would have an opportunity to further research the various aspects of marine mammal care, and to amend the requirements when deemed appropriate. The second reason for proposing to allow permission for deviation from the standards is a purely economic and practical one. If a facility needs to make extensive structural changes to come into full compliance, it may need enough time to be able to accomplish this task since renovation or new construction could entail a great amount of money as well as time.

Therefore, the industry was advised, in accordance with the information included in the document of September 19, that the Department was actively considering changes in space requirements. Under these circumstances, it is understandable if certain marine mammal facilities waited for this rulemaking proceeding prior to making costly construction changes. Further, it appears that the reasons for allowing variances in the past are essentially still valid for allowing variances as set forth below.

Currently all outstanding variances concern space requirements. Further, it does not appear that there is any good reason to consider variances for other than space requirements. Therefore, it is proposed to allow variances only for space requirements.

The proposed space requirements, in comparison with current requirements, would allow smaller primary enclosures for some marine mammals and would require larger primary enclosures for other marine mammals. Accordingly, if the provisions of the proposal were adopted, some of the facilities currently operating under a variance would no longer need a variance and certain other facilities not operating under a variance would need to make adjustments or seek a variance.

It is proposed that variances granted for facilities because of old, ill, or infirm marine mammals that cannot be moved without placing their well-being in jeopardy, or for facilities within 0.3048 meters (1 foot) of compliance with any space requirement, may be granted for up to the life of the marine mammals involved. It is also proposed that any other variances shall be granted for a period not exceeding September 20, 1985, but that under circumstances deemed justified by the Deputy

Administrator, a maximum extension of 1 year may be granted to attain full compliance. However, it is further proposed that consideration for the 1 year extension be limited to unforeseen or unusual situations such as when necessary public funds cannot be allocated in an appropriate time frame for a facility to attain full compliance.

Some marine mammal facilities may have marine mammals which are so old, ill, or infirm that they could not be moved without placing their well-being in jeopardy and may need to be maintained in that facility for the duration of their lives. Further, in some cases it would appear to be unreasonable to require facilities within 0.3048 meters (a foot) of a space requirement to make costly renovations. In such cases, it appears that the purposes of the Act would be best served by allowing the affected animals to remain in that facility for the duration of their lives. Otherwise, it appears that the proposed time limits and criteria appear to be reasonable for facilities to take action to comply with the regulations.

The regulations currently provide that a variance may only be granted if application is made to the Deputy Administrator, in writing, listing in detail each requirement of the regulations which cannot be met, the time period requested for the variance, and the justificaton for such variance. It is proposed to amend these provisions to be more specific and to help assure that applicants submit the necessary information for a determination as to whether a variance should be granted. In this connection it is proposed to require that an application contain the following information:

(1) The species and number of animals involved,

(2) The age and health status of the animals involved,

(3) Each provision of the regulations that is not met,

(4) The time period requested for a variance,

(5) The specific reasons why a variance would be in the best interest of the marine mammals involved, and

(6) The estimated cost of obtaining compliance if construction is involved.

It is also proposed to provide a mechanism for the Deputy Administrator to obtain a recommendation from recognized marine mammal experts before action is taken on a request for a variance in those instances when the Deputy Administrator determines that such expertise in necessary to determine whether the granting of a variance would cause a situation detrimental to the health and well-being of the marine mammals concerned. In this connection it is proposed that after receipt of an application for a variance the Deputy Administrator may require, at the applicant's cost, the submission in writing of a recommendation by two experts recommended by the American Association of Zoological Parks and Aquariums and approved by the Deputy Administrator concerning whether and for how long the marine mammals involved could be housed in the facility in question without causing a situation detrimental to the health and well-being of such marine mammals. It appears that such a mechanism would be very helpful for the Deputy Administrator to make determinations on requests for variances in those instances when the available departmental expertise would not be adequate for such purposes.

It is also proposed to provide that any facility housing marine mammals that does not meet all of the space requirements as of September 20, 1983, must meet all of the requirements by November 20, 1983, or may operate without meeting such requirements until action is taken on an application for a variance if the application is submitted to the Deputy Administrator on or before November 20, 1983. This appears to be necessary to allow facilities a reasonable opportunity to meet the space requirements or obtain a variance.

Miscellaneous

1. Section 3.101(a) sets forth construction requirements for facilities housing marine mammals. Paragraph (a)(3) of § 3.101 currently requires that:

> Any primary enclosure pool, including ramps for entering or leaving the pool, shall be constructed of materials having a nonporous, waterproof finish, which shall facilitate proper cleaning and disinfection, and which shall be maintained in good repair as part of a regular ongoing maintenance program.

It appears that the requirements that the pool be constructed of materials having a nonporous, waterproof finish unnecessarily restricts the materials that may be used in developing marine mammal exhibits and does not allow for the use of natural materials, such as sand. It is proposed to delete the nonporous, waterproof finish requirement and to require instead that such primary enclosure pools, including ramps, be constructed of materials which facilitate proper cleaning and disinfection (i.e., able to be replaced or sterilized) and which will be maintained in good repair. It appears that this would allow more flexibility when choosing materials for pool construction without adversely affecting the animals housed therein.

2. Section 3.116(a) currently provides that:

> An employee or attendant of the shipper or receiver of any marine mammal being transported, in commerce, knowledgeable in the area of marine mammal care, shall accompany cetaceans, sirenians, and sea otters during periods of transportation to provide for their good health and well-being, to observe such marine mammals and to determine whether they need veterinary care and to obtain any needed veterinary care as soon as possible.

It is proposed to extend these provisions to pinnipeds. It appears that the stated reasons for requiring cetaceans, sirenians, and sea otters to be accompanied by such an employee or attendant would equally apply to pinnipeds subject to the provisions of the Act that are transported in commerce.

3. Section 3.116(b) currently requires, among other things, that:

> An employee or attendant of the shipper or receiver of cetaceans or sirenians being transported, in commerce, shall provide for such cetaceans and sirenians during periods of transport by (1) keeping the skin moist with intermittent spraying of water or protecting it by applying a nontoxic amollient, such as lanolin, to prevent drying of the skin. . . .

It was intended that these provisions require that the skin of the cetaceans or sirenians be kept moist, but it was not intended to limit the means of accomplishing this to the spraying of water or the application of emollients. Therefore, it is proposed to amend these provisions to indicate that these methods are examples of ways to keep the skin moist, but that employees or attendants would not be limited to these methods.

4. Section 3.117 contains provisions for holding areas for marine mammals in terminal facilities. This section, among other things, provides that:

> The air temperature around any marine mammal in any animal holding area shall not be allowed to fall below 7.2° C. (45° F.) nor be allowed to exceed 29.5° C. (85° F.) at any time: *Provided, however,* That no marine mammal shall be subjected to surrounding air temperatures which exceed 23.9° C. (75° F.) for more than 4 hours at any time.

The requirements that such air temperature not be allowed to exceed 29.5° C. (85° F.) at any time, and that such air temperatures not be allowed to exceed 23.9° C. (75° F.) for more than 4 hours at any time were designed to prevent the animals from becoming overheated. It is proposed to retain these provisions for polar bears but to

delete them for all other marine mammals.

It appears that air temperatures in certain terminal facilities at times may exceed 29.5° C. (85° F.). However, it appear that the current requirements that the skin of cetaceans, sirenians, and sea otters be kept moist during periods of transport (see § 3.116 (b) and (c)) and that marine mammals cannot be held in a terminal facility for more than 6 hours (see § 3.112(a)) should be sufficient to prevent excess heat buildup in these animals on those occasions when higher temperatures may occur in terminal facilities. Further, it appears that such higher temperatures would not cause excess heat buildup in pinnipeds regardless of whether they are kept moist. In addition, it appears that the current requirements for polar bears should remain applicable since polar bears are subject to the heat tolerances of normal land animals and it would be impracticable to provide extra measures to assure that they would not become overheated.

5. Section 3.118(a) currently provides that carriers and intermediate handlers holding any marine mammal in an animal holding area of a terminal facility, or transporting any marine mammal from the animal holding area of the terminal facility to the primary conveyance and from the primary conveyance to the animal holding area of the terminal facility, including loading and unloading procedures, shall, among other things, provide shelter from rain or snow. There does not appear to be any basis for requiring shelter from rain or snow for marine mammals under such circumstances. Therefore, it is proposed to delete these requirements.

6. It is also proposed to make certain nonsubstantive changes for purposes of clarity and to make additional changes in charts and formulas to correspond with the proposed changes.

Paperwork Reduction Act

In acordance with section 3504(h) of the Paperwork Reduction Act of 1980, (44 U.S.C. 3504(h)), the information collection provisions that are included in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB). Written comments concerning any information collection provisions should be submitted to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, D.C. 20503. A duplicate copy of such comments should be submitted to T. O. Gessel, Director, Regulatory Coordination Staff, APHIS, USDA, Room 728, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. The information collection provisions in this proposed rule will not become effective without OMB approval.

Comments

Written comments are solicited for 30 days after publication of this document in the **Federal Register.** Under the current regulations variances from space requirements for other than research facilities are scheduled to terminate September 20, 1983. It is necessary to expedite the rulemaking process in order to take action prior to September 20 concerning whether to establish a mechanism to continue to allow variances. Therefore, a comment period of 30 days appears to be warranted and adequate under the circumstances.

Executive Order 12291 and Regulatory Flexibility Act

This proposed rule is issued in conformance with Executive Order 12291 and Secretary's Memorandum No. 1512-1, and has been determined to be not a "major rule." Based on information compiled by the Department, it has been determined that this proposal would not have a significant effect on the economy; would not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and would not cause adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Alternatives were considered with respect to the proposal.

Consideration was given whether to propose changes in space requirements as explained above. It is proposed to change such space requirements because it appears that the proposed changes would be the minimum space requirements that would generally allow affected animals sufficient space, both horizontally and vertically, so that they would be able to make normal postural and social adjustments with adequate freedom of movement.

Consideration was given concerning whether to propose to eliminate provisions for variances or to propose to allow variances under conditions explained above. Further, consideration was given as to the length of time that should be allowed for variances. It is proposed to allow variances for up to the life of the animals involved if the animals are so old, ill, or infirm that they could not be moved without placing their well-being in jeopardy, and for facilities within 0.3048 meter (1 foot) of compliance with any space requirement. It appear that if a facility houses animals that are so old, ill, or infirm that they could not be moved without placing their well-being in jeopardy, the facility must be granted a variance for those animals in order to accomplish the purposes of the Act. Further, in some cases it would appear unreasonable to require renovations if the facilities were within 0.3048 meters (1 foot) of compliance. However, if a facility is more than 0.3048 meter (1 foot) from being in compliance and it is not out of compliance because of such old, ill, or infirm animals, it appears that it is necessary to require that adjustments be made within a reasonable amount of time.

Consideration was also given concerning whether a pinniped being transported in commerce should be required to be accompanied by an employee or attendant of the shipper or receiver. It is proposed to establish such a requirement. This appears to be necessary in order that persons are available to observe whether the pinnipeds needed veterinary care, and to obtain any need veterinary care as soon as possible.

It is not anticipated that the adoption of the proposed changes would have a significant impact. Many of the proposed changes would lessen restrictions. Further, it appears that few facilities would have to make changes if the provisions which would increase restrictions were adopted. Also, the adoption of the proposal to require pinnipeds to be accompanied by an employee or attendant of the shipper or receiver during transportation in commerce would not cause a significant impact because this is already a general industry practice.

Under these circumstances, Mr. Bert W. Hawkins, Administrator of the Animal and Plant Health Inspection Service, has determined that this action would not have a significant economic impact on a substantial number of small entities.

List of Subjects in 9 CFR Part 3

Animal welfare, Marine mammals, Humane animal handling.

Subpart E—Specifications, for the Humane Handling, Care, Treatment, and Transportation of Marine Mammals

PART 3—STANDARDS

Accordingly, it is proposed to amend Subpart E of 9 CFR Part 3 as follows:

1. By revising § 3.100 to read as follows:

§ 3.100 Special considerations regarding compliance and/or variance.

(a) All persons subject to the Animal Welfare Act who maintain or otherwise

handle marine mammals in captivity must comply with the provisions of this Subpart, except that they may apply for and be granted a variance,[1] by the Deputy Administrator, from one or more specified provisions of § 3.104. The provisions of this Subpart shall not apply, however, in emergency circumstances where compliance with one or more requirements would not serve the best interests of the marine mammals concerned.

(b) An application for a variance must be made to the Deputy Administrator in writing. The request must specify:

(1) The species and number of animals involved,

(2) The age and health status of the animals involved,

(3) Each provision of the regulations that is not met,

(4) The time period requested for a variance,

(5) The specific reasons why a variance would be in the best interests of the marine mammals involved, and

(6) The estimated cost of obtaining compliance, if construction is involved.

(c) After receipt of an application for a variance, the Deputy Administrator may require the submission in writing of a recommendation by two experts recommended by the American Association of Zoological Parks and Aquariums and approved by the Deputy Administrator concerning whether and for how long the marine mammals involved could be housed in the facility in question without causing a situation detrimental to the health and well-being of such marine mammals. Such a recommendation will be required only in those cases when the Deputy Administrator determines that such expertise is necessary to determine whether the granting of a variance would cause a situation detrimental to the health and well-being of the marine mammals involved. The cost of such recommendation is to be paid by the applicant.

(d) Variances granted for facilities because of ill or infirm marine mammals that cannot be moved without placing their well-being in jeopardy, or for facilities within 0.3048 meters (1 foot) of compliance with any space requirement may be granted for up to the life of the marine mammals involved. Otherwise, variances shall be granted for a period not exceeding September 20, 1985, *Provided, however,* That under circumstances deemed justified by the Deputy Administrator, a maximum extension of 1 year may be granted to attain full compliance. A written request for the extension must be received by the Deputy Administrator by July 20, 1985. Consideration for extension by the Deputy Administrator will be limited to unforeseen or unusual situations such as when necessary public funds cannot be allocated in an appropriate time frame for a facility to attain full compliance by September 20, 1985.

(e) The Deputy Administrator shall deny any such application for a variance if he determines that it is not justified under the circumstances or that allowing it will be detrimental to the health and well-being of the marine mammals involved.

(f) Any facility housing marine mammals that does not meet all of the space requirements as of September 20, 1983, must meet all the requirements by November 20, 1983, or may operate without meeting such requirements until action is taken on an application for a variance if the application is submitted to the Deputy Administrator on or before November 20, 1983.

(g) A research facility may be granted a variance from specified requirements of this Subpart when such variance is necessary for research purposes and is fully explained in the experimental design. Any time limitation stated in this section shall not be applicable in such case.

2. By revising § 3.101(a) (3) and (4) to read as follows:

§ 3.101 Facilities, general.

(a) * * *

(3) Any primary enclosure pool, including ramps for entering or leaving the pool, shall be constructed of materials which facilitate proper cleaning and disinfection, and shall be maintained in good repair as part of a regular ongoing maintenance program.

(4) Facilities which utilize natural water areas, such as tidal basins, bays, or estuaries (subject to natural tidewater action) for housing marine mammals shall be exempt from the drainage requirements of paragraph (c)(1) of this section, but they must meet the minimum standards with regard to space, depth, and sanitation. The water must be monitored for coliforms and for ph and chemical content, if chemicals are added.

* * * * *

3. By revising the introductory text in § 3.104(b) and by revising § 3.104 (b)(1), (b)(2), (b)(3)(i), and (b)(3)(ii), (c), and (d) to read as follows:

§ 3.104 Space requirements.

* * * * *

(b) *Cetaceans.* Primary enclosures housing cetaceans shall contain a pool of water and may consist entirely of a pool of water. In determining the minimum space required in a pool holding cetaceans, four factors must be satisfied. These are MHD, depth, volume, and surface area. For the purposes of this Subpart, cetaceans are divided into Group I cetaceans and Group II cetaceans as shown in Table III in this section.

(1)(i) *The required minimum horizontal dimension* (MHD) of a pool for Group I cetaceans shall be 7.32 meters (24.0 feet) or two times the average adult length of the longest species of Group I cetacean housed therein (as measured in a parallel or horizontal line, from the tip of its lower jaw to the notch in the tail fluke [6]), whichever is greater; except that such MHD measurement may be reduced from the greater number by up to 20 percent if the amount of the reduction is added to the MHD at the 90-degree angle and if the minimum volume and surface area requirements are met based on an MHD of 7.32 meters (24.0 feet) or two times the average adult length of the longest species of Group I cetacean housed therein, whichever is greater.

(ii) The MHD of a pool for Group II cetaceans shall be 7.32 meters (24.0 feet) or four times the average adult length of the longest species of cetacean to be housed therein (as measured in a parallel or horizontal line from the tip of its lower jaw to the notch in the tail fluke), whichever is greater; except that such MHD measurement may be reduced from the greater number by up to 20 percent if the amount of the reduction is added to the MHD at the 90-degree angle and if the minimum volume and surface area requirements are met based on an MHD of 7.32 meters (24.0 feet) or four times the average adult length of the longest species of Group II cetacean housed therein, whichever is greater.

(iii) In a pool housing a mixture of Group I and Group II cetaceans, the MHD shall be the largest required for any cetacean housed therein.

(iv) Once the required MHD has been satisfied, the pool size may be required to be adjusted to increase the surface area and volume when cetaceans are

[1] Written permission from the Deputy Administrator to operate as a licensee or registrant under the Act without being in full compliance with one or more specified provisions of § 3.104.

[6] The body length of a *Monodon monoceros* (narwhale) is measured from the tip of the upper incisor tooth to the notch in the tail fluke. If the upper incisor is absent or does not extend beyond the front of the head, then it is measured like other cetaceans, from the tip of the lower jaw to the notch in the tail fluke. Immature males should be anticipated to develop the "tusk" (usually left incisor tooth) beginning at sexual maturity.

added. Examples of MHD and volume requirements for Group I cetaceans are shown in Table I, and for Group II cetaceans in Table II.

TABLE I—GROUP I CETACEANS [1]

Representative average adult lengths		Minimum horizontal dimension (MHD)		Minimum required depth		Volume of water required for each additional cetacean in excess of two	
Meters	Feet	Meters	Feet	Meters	Feet	Cubic meters	Cubic feet
1.68	5.5	7.32	24	1.83	6	8.11	284.95
2.29	7.5	7.32	24	1.83	6	15.07	529.87
2.74	9.0	7.32	24	1.83	6	21.57	763.02
3.05	10.0	7.32	24	1.83	6	26.73	942.00
3.51	11.5	7.32	24	1.83	6	35.40	1,245.79
3.66	12.0	7.32	24	1.83	6	38.49	1,356.48
4.27	14.0	8.53	28	2.13	7	60.97	2,154.04
5.49	18.0	10.97	36	2.74	9	129.65	4,578.12
5.64	18.5	11.28	37	2.82	9.25	140.83	4,970.33
5.79	19.0	11.58	38	2.90	9.50	152.64	5,384.32
6.71	22.0	13.41	44	3.36	11	237.50	8,358.68
6.86	22.5	13.72	45	3.43	11.25	253.42	8,941.64
7.32	24.0	14.63	48	3.66	12	307.89	10,851.84
8.53	28.0	17 07	56	4.27	14	487.78	17,232.32

[1] All calculations are rounded off to the nearest hundredth. In converting the length of cetaceans from feet to meters, 1 foot equals .3048 meter. Due to rounding of meter figures as to the length of the cetacean, the correlation of meters to feet in subsequent calculations of MHD and additional volume of water required per cetacean, over two, may vary slightly from a strict feet to meters ratio. Cubic meters is based on: 1 cubic foot=0.0283 cubic meter.

TABLE II [1]—GROUP II CETACEANS

Representative average adult length		Minimum horizontal dimension (MHD)		Minimum required depth		Volume of water required for each additional cetacean in excess of four	
Meters	Feet	Meters	Feet	Meters	Feet	Cubic meters [1]	Cubic feet
1.52	5.0	7.32	24	1.83	6	13.28	471.00
1.68	5.5	7.32	24	1.83	6	16.22	569.91
1.83	6.0	7.32	24	1.83	6	19.24	678.24
2.13	7.0	8.53	28	1.83	6	26.07	923.16
2.29	7.5	9.14	30	1.83	6	30.13	1,059.75
2.44	8.0	9.75	32	1.83	6	34.21	1,205.76
2.59	8.5	10.36	34	1.83	6	38.55	1,361.19
2.74	9.0	10.97	36	1.83	6	43.14	1,526.04

[1] Converting cubic feet to cubic meters is based on: 1 cubic foot=0.0283 of a cubic meter.

TABLE III.—AVERAGE ADULT LENGTHS OF MARINE MAMMALS MAINTAINED IN CAPTIVITY [1]

Species	Common name	Average adult length	
		In meters	In feet
Group I Cetaceans:			
Balaenopera acutorostrata	Minke whale	8.50	27.9
Delphinapterus leucas	Beluga whale	4.27	14.0
Monodon monoceros	Narwhale	3.96	13.0
Globicephala melaena	Long-finned pilot whale	5.79	19.0
Globicephala macrorhynchus	Short-finned pilot whale	5.49	18.0
Grampus griseus	Risso's dolphin	3.66	12.0
Kogia breviceps	Pygmy sperm whale	3.96	13.0
Kogia simus	Dwarf sperm whale	2.90	9.5
Orcinus orca	Killer whale	7.32	24.0
Pseudorca crassidens	False killer whale	4.35	14.3
Tursiops truncatus (Atlantic)	Bottlenose dolphin	2.74	9.0
Tursiops truncatus (Pacific)	Bottlenose dolphin	3.05	10.0
Inia geoffrensis	Amazon porpoise	2.44	8.0
Pontoporia blainvillei	Franciscana	1.52	5.0
Sotalia fluviatilis	Tucuxi	1.68	5.5
Platanista, all species	River dolphin	2.44	8.0
Group II Cetaceans:			
Delphinus delphis	Common dolphin	2.59	8.5
Feresa attenuata	Pygmy killer whale	2.44	8.0
Lagenorhynchus acutus	Atlantic white-sided dolphin	2.90	9.5
Lagenorhynchus cruciger	Hourglass dolphin	1.70	5.6
Lagenorhynchus obliquidens	Pacific white-sided dolphin	2.29	7.5
Lagenorhynchus albirostris	White-beaked dolphin	2.74	9.0
Lagenorhynchus obscurus	Duskey dolphin	2.13	7.0
Lagenorhynchus thicolea	Greys white-sided dolphin	2.20	7.2
Lissodelphis borealis	Northern right whale dolphin	2.74	9.0
Neophocaena phocaenoides	Finless porpoise	1.83	6.0
Peponocephala electra	Melon-headed whale	2.74	9.0
Phocoena phocoena	Harbor porpoise	1.68	5.5
Phocoenoides dalli	Dall's porpoise	2.00	6.5
Stenella longirostris	Spinner dolphin	2.13	7.0
Stenella coeruleoalba	Striped dolphin	2.29	7.5
Stenella attenuata	Spotted dolphin	2.29	7.5
Stenella plagiodon	Spotted dolphin	2.29	7.5
Steno bredanensis	Rough-toothed dolphin	2.44	8.0
Cephalorhynchus commersonii	Commerson's dolphin	1.52	5.0

TABLE III.—AVERAGE ADULT LENGTHS OF MARINE MAMMALS MAINTAINED IN CAPTIVITY [1]—Continued

Species	Common name	Average adult length	
		In meters	In feet
Sirenia:			
Dugong dugong	Dugong	3.35	11.0
Trichechus manatus	West Indian Manatee	3.51	11.5
Trichechus inunguis	Amazon Manatee	2.44	8.0
Mustelidae:			
Enhydra lutris	Sea Otter	1.25	4.1

Species	Common name	Average adult length			
		In meters		In feet	
		Male	Female	Male	Female
Group I Pinnipeds:					
***Arctocephalus gazella*	Antarctic Fur Seal	1.80	1.20	5.9	3.9
***Arctocephalus tropicalis*	Amsterdam Island Fur Seal	1.80	1.45	5.9	4.75
***Arctocephalus australis*	South American Fur Seal	1.88	1.42	6.2	4.7
***Arctocephalus pusillis*	Cape Fur Seal	2.73	1.83	8.96	6.0
***Callorhinus ursinus*	Northern Fur Seal	2.20	1.45	7.2	4.75
***Eumetopias jubatus*	Steller's Sea Lion	2.86	2.40	9.4	7.9
Hydrurga leptonyx	Leopard Seal	2.90	3.30	9.5	10.8
***Mirounga angustirostris*	Northern Elephant Seal	5.00	3.00	16.4	9.8
***Mirounga leonia*	Southern Elephant Seal	4.67	2.50	15.3	8.2
***Odobenus rosmarus*	Walrus	3.15	2.60	10.3	8.5
***Otaria flavescens*	South American Sea Lion	2.40	2.00	7.9	6.6
Phoca caspica	Caspian Seal	1.45	1.40	4.75	4.6
Phoca fasciata	Ribbon Seal	1.75	1.68	5.7	5.5
Phoca larga	Harbor Seal	1.70	1.50	5.6	4.9
Phoca vitulina	Harbor Seal	1.70	1.50	5.6	4.9
Zalophus californianus	California Sea Lion	2.24	1.75	7.3	5.7
***Halichoerus grypus*	Gray Seal	2.30	1.95	7.5	6.4
Phoca sibirica	Baikal Seal	1.70	1.85	5.6	6.1
Phoca groenlandica	Harp Seal	1.85	1.85	6.1	6.1
***Leptonychotes weddelli*	Weddell Seal	2.90	3.15	9.5	10.3
***Lobodon carcinophagus*	Crabeater Seal	2.21	2.21	7.3	7.3
***Ommatophoca rossi*	Ross Seal	1.99	2.13	6.5	7.0
Group II Pinnipeds:					
Erignathus barbatus	Bearded Seal	2.33	2.33	7.6	7.6
Phoca hispida	Ringed Seal	1.35	1.30	4.4	4.3
Cystophora cristata	Hooded Seal	2.60	2.00	8.5	6.6

[1] This table contains the species of marine mammals known by the Department to be presently in captivity or that are likely to become captive in the future. Anyone who is subject to the Animal Welfare Act having species of marine mammals in captivity which are not included in this table should consult the Deputy Administrator with regard to the average adult length of such animals.

Note: ** Any Group I animals maintained together will be considered as Group II when the animals maintained together include two or more sexually mature males from species marked with a double asterisk (**) regardless of whether the sexually mature males come from the same species.

(2) *The minimum depth requirement* for primary enclosure pools for all cetaceans shall be one-half the average adult length of the longest species to be housed therein, regardless of Group I or Group II classification, or 1.83 meters (6.0 feet), whichever is greater, and can be expressed as d=L/2 or 6 feet, whichever is greater. Those parts of the primary enclosure pool which do not meet the minimum depth requirement cannot be included when calculating space requirements for cetaceans.

(3) * * *

(i) The minimum volume of water required for up to two Group I cetaceans is based upon the following formula:

$$\text{Volume} = \left(\frac{\text{MDH}}{2}\right)^2 \times 3.14 \times \text{depth}$$

When there are more than two Group I cetaceans housed in a primary enclosure pool, the additional volume of water required for each additional Group I cetacean in excess of two is based on the following formula:

$$\text{Volume} = \left(\frac{\text{MDH}}{2}\right)^2 \times 3.14 \times \text{depth}$$

See Table I for required volumes.

(ii) The minimum volume of water required for up to four Group II cetaceans is based upon the following formula:

$$\text{Volume} = \frac{(\text{Average Adult Length})^2}{2} \times 3.14 \times \text{depth}$$

When there are more than four Group II cetaceans housed in a primary enclosure pool, the additional volume of water required for each additional Group II cetacean in excess of four is based on the following formula:

$$\text{Volume} = (\text{Average Adult Length})^2 \times 3.14 \times \text{depth}$$

See Table II for required volumes.

* * * * *

(c) *Sirenians.* Primary enclosures housing sirenians shall contain a pool of water and may consist entirely of a pool of water.

(1) The required MHD of a primary enclosure pool for sirenians shall be two times the average adult length of the longest species of sirenian to be housed therein. Calculations shall be based on the average adult length of such sirenians as measured in a horizontal line from the tip of the muzzle to the notch in the tail fluke of dugongs and from the tip of the muzzle to the most distal point in the rounded tail of the manatee.

(2) The minimum depth requirements for primary enclosure pools for all sirenians shall be one-half the average adult length of the longest species to be housed therein, or 1.52 meters (5.0 feet), whichever is greater. Those parts of the primary enclosure pool which do not meet the minimum depth requirements cannot be included when calculating space requirements for sirenians.

(3) A pool which satisfies the required MHD and depth shall be adequate for one or two sirenians. Volume and surface area requirements for additional animals shall be calculated using the same formula as for Group I cetaceans, except that the figure for depth requirement for sirenians shall be one-half the average adult length or 1.52 meters (5.0 feet), whichever is greater.

(d) *Pinnipeds.* (1) Primary enclosures housing pinnipeds shall contain a pool of water and a dry resting or social activity area that must be close enough to the surface of the water to allow easy access for entering or leaving the pool. For the purposes of this Subpart, pinnipeds have been divided into Group I pinnipeds and Group II pinnipeds as shown in Table III in this section. In certain instances some Group I pinnipeds shall be considered as Group II pinnipeds. (See Table III).

(2) The minimum size of the dry resting or social activity area of the primary enclosure for pinnipeds (exclusive of the pool of water) shall be based on the average adult length of each pinniped contained therein, as measured in a horizontal or extended position in a straight line from the tip of

its nose to the tip of its tail. The minimum size of the dry resting or social activity area shall be computed using the following methods:

(i) *Group I pinnipeds.* Square the average adult length of each pinniped to be contained in the primary enclosure. Add the figures obtained for each of the pinnipeds in the primary enclosure to determine the dry resting or social activity area required for such pinnipeds. If only a single Group I pinniped is maintained in the primary enclosure, the minimum dry resting or social activity area shall be twice the square of the average adult length of that single Group I pinniped. Examples:

(average adult length) ^{2} of 1st Group I pinniped+
(average adult length) ^{2} of 2nd Group I pinniped=

Total DRA for two pinnipeds

DRA for one pinniped=2 × (average adult length of Group I pinniped) ^{2}

(ii) *Group II pinnipeds.* List all pinnipeds contained in a primary enclosure by average adult length in descending order from the longest species of pinniped to the shortest species of pinniped. Square the average adult length of each pinniped. Multiply the average adult length squared of the longest pinniped by 1.5, the second longest by 1.4, the third longest by 1.3, the fourth longest by 1.2, and the fifth longest by 1.1, as indicated in the following example. Square the average adult length of the sixth pinniped and each additional pinniped. Add the figures obtained for all the pinnipeds in the primary enclosure to determine the required minimum dry resting or social activity area required for such pinnipeds. If only a single Group II pinniped is maintained in the primary enclosure, the minimum dry resting or social activity area must be computed for a minimum of two pinnipeds.

Examples: DRA for 1 Group II Pinniped=
[(Average adult length) ^{2} × 1.5]+
[(Average adult length) ^{2} × 1.4]+

1st pinniped (avg. adult length) ^{2} × 1.5= social and DRA required.
2nd pinniped (avg. adult length) ^{2} × 1.4= social and DRA required.
3rd pinniped (avg. adult length) ^{2} × 1.3= social and DRA required.
4th pinniped (avg. adult length) ^{2} × 1.2= social and DRA required.
5th pinniped (avg. adult length) ^{2} × 1.1= social and DRA required.
Each pinniped over 5 (avg. adult length) ^{2} = social and DRA required.

Total minimum social activity and dry resting area required for all pinnipeds housed in a primary enclosure.

If all the pinnipeds in the primary enclosure are of the same species, the same descending order of calculation shall apply. Example: Hooded seal—average adult length of male= 8.5 feet and female= 6.6 feet. In a primary enclosure containing 2 males and 2 females, the social or DRA required would be the sum of

$$[(8.5)^2 \times 1.5] + [(8.5)^2 \times 1.4] + [(6.6)^2 \times 1.3] + [(6.6)^2 \times 1.2].$$

If two or more sexually mature males are maintained together in a primary enclosure, the dry resting or social activity area shall be divided into two or more separate areas with sufficient visual barriers (such as fences, rocks, or foliage) to provide relief from aggressive animals.

(iii) *Mixture of Group I and Group II pinnipeds.* In a primary enclosure where a mixture of Group I and Group II pinnipeds is to be housed, the dry resting or social activity area shall be calculated as for Group II pinnipeds. The dry resting or social activity area shall be divided into two or more separate areas with sufficient visual barriers (such as fences, rocks, or foliage) to provide relief from aggressive animals.

(3)(i) The minimum surface area of a pool of water for pinnipeds shall be at least equal to the dry resting or social activity area required.

(ii) The MHD of the pool shall be at least one and one-half (1.5) times the average adult length of the largest species of pinniped to be housed in the enclosure; except that such MHD measurement may be reduced by up to 20 percent if the amount of the reduction is added to the MHD at the 90-degree angle.

(iii) The pool of water shall be at least 0.91 meters (3.0 feet) deep or one-half the average adult length of the longest species of pinniped contained therein, whichever is greater. Parts of the pool that do not meet the minimum depth requirement cannot be used in the calculation of the dry resting and social activity area, or as part of the MHD or required surface area of the pool.

* * * * *

4. By revising the fourth sentence in § 3.104(e) to read as follows:

(e) * * * The pool of water shall have an MHD of not less than 2.44 meters (8.0 feet) and a surface area of at least 8.93 square meters (96.0 square feet) with a minimum depth of 1.52 meters (5.0 feet) with the exception of any entry and exit area. * * *

5. By revising § 3.104(f) to read as follows:

* * * * *

(f) *Sea otters.* (1) Primary enclosures for sea otters shall consist of a pool of water and a dry resting area. The MHD of the pool of water for sea otters shall be at least four times the average adult length of the sea otter contained therein (measured in a horizontal line from the tip of its nose to the tip of its tail) and the pool shall be not less than 1.22 meters (4.0 feet) deep. When more than two sea otters are housed in the same primary enclosure, additional dry resting area as well as pool volume is required to accommodate the additional sea otters. (See Table V).

(2) The minimum volume of water required for a primary enclosure pool for sea otters shall be based on the sea otter's average adult length. The minimum volume of water required in the pool shall be computed using the following method: Multiply the square of the sea otter's average adult length by 3.14 and then multiply the total by 1.22 meters (4.0 feet). This volume is satisfactory for one or two otters. To calculate the additional volume of water for each additional sea otter above two in a primary enclosure, multiply one-half of the square of the sea otter's average adult length by 3.14, then multiply by 1.22 meters (4.0 feet). (See Table V).

(3) The minimum dry resting area required for one or two sea otters shall be based on the sea otter's average adult length. The minimum dry resting area for one or two sea otters shall be computed using the following method: Square the average adult length of the sea otter and multiply the total by 3.14. When the enclosure is to contain more than two sea otters, the dry resting area for each additional animal shall be computed by multiplying one-half of the sea otter's average adult length by 3.14. Using 1.25 meters or 4.1 feet (the average adult length of a sea otter), the calculations for additional space will result in the following figures:

TABLE V—ADDITIONAL SPACE REQUIRED FOR EACH SEA OTTER WHEN MORE THAN TWO IN A PRIMARY ENCLOSURE.

Average adult length of sea otter		Resting area		Pool volume	
Meters	Feet	Square meters	Square feet	Cubic meters	Cubic feet
1.25	4.1	1.96	6.44	2.99	105.57

§ 3.116 [Amended]

6. By amending § 3.116(a) by adding the word "pinnipeds," immediately after the word "sirenians,".

7. By amending § 3.116(b)(1) by removing the words, "with intermittent spraying of water or protecting it by applying a nontoxic emollient, such as lanolin, to prevent drying of the skin;" and inserting in lieu thereof "or preventing the drying of the skin by such methods as intermittent spraying of water or application of a nontoxic emollient, such as lanolin;".

8. By amending § 3.116(d) by removing "and pinnipeds" in each of the three places it appears, by removing "pinnipeds and" and by removing "or pinniped".

9. By amending § 3.117 by revising the sixth sentence to read as follows:

§ 3.117 Terminal facilities.

* * * The air temperature around any marine mammal in any animal holding area shall not be allowed to fall below 7.2° C. (45° F.). The air temperature around any polar bear shall not be allowed to exceed 29.5° C. (85° F.) at any time and no polar bear shall be subjected to surrounding air temperatures which exceed 23.9° C. (75° F.) for more than 4 hours at any time. * * *

§ 3.118 [Amended]

10. By removing § 3.118(a)(2) and by redesignating § 3.118(a)(3) as § 3.118(a)(2).

(Secs. 3, 5, 6, 10, 11, 12, 16, 17, 21, 80 Stat. 351, 352, 353, 84 Stat. 1561, 1562, 1563, 1564, 90 Stat. 418, 419, 420, 423; 7 U.S.C. 2133, 2135, 2136, 2140, 2141, 2142, 2143, 2144, 2146, 2147, 2151; 7 CFR 2.17, 2.51, 371.2(d))

Done at Washington, D.C., this 26th day of July, 1983.

J. K. Atwell,

Deputy Administrator, Veterinary Services.

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Reader Aids

Federal Register

Vol. 48, No. 147

Friday, July 29, 1983

INFORMATION AND ASSISTANCE

PUBLICATIONS

Code of Federal Regulations

CFR Unit	202-523-3419
	523-3517
General information, index, and finding aids	523-5227
Incorporation by reference	523-4534
Printing schedules and pricing information	523-3419

Federal Register

Corrections	523-5237
Daily Issue Unit	523-5237
General information, index, and finding aids	523-5227
Privacy Act	523-4534
Public Inspection Desk	523-5215
Scheduling of documents	523-3187

Laws

Indexes	523-5282
Law numbers and dates	523-5282
	523-5266
Slip law orders (GPO)	275-3030

Presidential Documents

Executive orders and proclamations	523-5233
Public Papers of the President	523-5235
Weekly Compilation of Presidential Documents	523-5235

United States Government Manual	523-5230

SERVICES

Agency services	523-5237
Automation	523-3408
Library	523-4986
Magnetic tapes of FR issues and CFR volumes (GPO)	275-2867
Public Inspection Desk	523-5215
Special Projects	523-4534
Subscription orders (GPO)	783-3238
Subscription problems (GPO)	275-3054
TTY for the deaf	523-5229

FEDERAL REGISTER PAGES AND DATES, JULY

30345-30608.....1
30609-30936.....5
30937-31176.....6
31177-31370.....7
31371-31610.....8
31611-31848.....11
31849-32000.....12
32001-32158.....13
32159-32322.....14
32323-32550.....15
32551-32746.....18
32747-32972.....19
32973-33226.....20
33227-33466.....21
33467-33696.....22
33697-33844.....25
33845-34008.....26
34009-34232.....27
34233-34412.....28
34413-34722.....29

CFR PARTS AFFECTED DURING JULY

At the end of each month, the Office of the Federal Register publishes separately a list of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

1 CFR

305.....31179
310.....31179

3 CFR

Administrative Orders:

Memorandums:

July 5, 1983.....31177

Executive Orders:

June 8, 1866
(Revoked in part by PLO 6424).....33297
July 14, 1884
(Revoked in part by PLO 6429).....33299
July 2, 1910
(Revoked in part by PLO 6377; correction).....32830
(Revoked in part by PLO 6404).....32824
(Amended by PLO 6421 and 6431).....33295, 33301
(Revoked in part by PLO 6434).....33710
July 12, 1910
(Revoked in part by PLO 6434).....33710
July 2, 1911
(Revoked by PLO 6409).....32827
February 17, 1912
(Revoked in part by PLO 6404).....32824
November 18, 1912
(Revoked in part by PLO 6404).....32824
November 19, 1912
(Revoked in part by PLO 6404).....32824
September 25, 1913
(Revoked in part by PLO 6404).....32824
March 21, 1914
(Revoked in part by PLO 6404).....32824
May 14, 1915
(Revoked in part by PLO 6430).....33299
Sept. 21, 1916
(Revoked in part by PLO 6434).....33710
October 17, 1916
(Revoked in part by PLO 6434).....33710
December 12, 1917
(Revoked in part by PLO 6428).....33298
February 19, 1920
(Revoked in part by PLO 6428).....33298
1919½ (Revoked by past PLO 6438).....33712
3571 (Revoked by PLO 6424).....33297
3948 (Revoked by PLO 6410).....32828
4203 (Revoked in part by PLO 6443).....33716
5419 (Revoked in part by PLO 6438).....33712
5846 (Revoked by PLO 6444).....33717
10936 (Revoked by EO 12430).....31371
11107 (Superseded by EO 12434.....33229
12154 (Amended by EO 12431).....31849
12430.....31371
12431.....31849
12432.....32551
12433.....33227
12434.....33229

Proclamations:

5072.....32747
5073.....33231
5074.....33233
5075.....34009
5076.....34233
5077.....34413

4 CFR

Proposed Rules:

101.....33720
102.....33720
103.....33720
104.....33720
105.....33720

5 CFR

Proposed Rules:

300.....32288
317.....31862
335.....32288
339.....30398
351.....32304
430.....32288
431.....32288
432.....30398
451.....32288
531.....32288
532.....32288
540.....32288
551.....32280
752.....30398
831.....30398
890.....30406

7 CFR

2.....30345, 30609, 33467
28.....30937
59.....34235

180 ... 30939
245 ... 32323
301 ... 33241
319 ... 34239
354 ... 34241
380 ... 33467
425 ... 33845
701 ... 33846
725 ... 31373
729 ... 33468
790 ... 32323
908 ... 31187, 32159, 33241, 34011, 34240
910 ... 30349, 31373, 32324, 33469, 33848, 34415
924 ... 30940
926 ... 34012
944 ... 34012
946 ... 31851
982 ... 34014
989 ... 32973
999 ... 34014
1001 ... 32159
1046 ... 30346
1131 ... 33849
1136 ... 34015
1434 ... 34415
1736 ... 31852
1887 ... 30348
1901 ... 30941
1944 ... 30941
1948 ... 30941
1980 ... 30941
1990 ... 30941

Proposed Rules:

27 ... 31047, 31863
28 ... 31047, 31863, 32027
51 ... 31658
52 ... 31406, 32355
61 ... 31047, 31863
68 ... 31049
246 ... 31502
271 ... 34650
272 ... 34650
273 ... 34650
275 ... 34650
422 ... 34045
426 ... 34045
439 ... 34282
431 ... 34047
444 ... 31227
445 ... 34051
658 ... 31863
947 ... 32027
967 ... 32028
991 ... 31866
1004 ... 31659
1093 ... 33492
1106 ... 33905
1131 ... 30641
1139 ... 33906
1290 ... 30650
1493 ... 32355
3200 ... 31348

8 CFR

103 ... 33242
109 ... 31187, 32001
204 ... 30349
212 ... 30609
214 ... 30349
231 ... 30349
234 ... 30609
235 ... 30349
238 ... 32001
242 ... 31005

9 CFR

78 ... 30351
92 ... 32002, 32970, 33697
94 ... 31005
113 ... 31007, 33470-33475
114 ... 31009
318 ... 32749
381 ... 32749

Proposed Rules:

3 ... 34710
145 ... 33907
147 ... 33907

10 CFR

20 ... 33850
30 ... 32324
40 ... 32324, 33697, 34710
50 ... 31611, 33850
55 ... 33243
70 ... 32324, 34416
205 ... 31010, 33816
465 ... 32722
600 ... 34402

Proposed Rules:

2 ... 31661
40 ... 32182
50 ... 31050, 33307
55 ... 31661
70 ... 32182
73 ... 32182, 34056
440 ... 32273
600 ... 34198
1017 ... 32843
1035 ... 34198

11 CFR

100 ... 30351
110 ... 30351
9001 ... 31822
9002 ... 31822
9003 ... 30351, 31822
9004 ... 31822
9005 ... 31822
9006 ... 31822
9007 ... 31822
9008 ... 33244
9012 ... 31822

Proposed Rules:

114 ... 32321

12 CFR

5 ... 31187
8 ... 30598
220 ... 32978
265 ... 34016
269 ... 32330
269a ... 32330
269b ... 32330
270 ... 32336
294 ... 32330
303 ... 32160, 34241
304 ... 32160, 34241
329 ... 33477
347 ... 32160, 34241
563b ... 31614
563c ... 31614
563d ... 31614
591 ... 32160
601 ... 32753

Proposed Rules:

30 ... 31232, 32187
225 ... 33004
330 ... 32356

13 CFR

108 ... 31374
301 ... 34416
311 ... 33698

14 CFR

21 ... 31630
33 ... 34241
39 ... 30610, 31190, 31630-31632, 32162-32166, 32553, 33245, 33247, 33699-33703, 34243, 34244
71 ... 31191, 31633, 32167, 32554, 33248, 33704, 34245-34250
73 ... 32168
75 ... 31191, 34250
97 ... 31634, 33249
202 ... 31012
203 ... 31013
204 ... 31013
208 ... 31013
211 ... 31013
212 ... 31014
213 ... 31014
215 ... 31014
222 ... 31635
241 ... 32753
248 ... 32756
291 ... 32756
294 ... 31015
297 ... 32759
298 ... 31015
320 ... 30352, 30355

Proposed Rules:

Ch. I ... 34285
21 ... 31234, 31238
25 ... 31842
39 ... 30667, 31662, 31663, 33720
71 ... 30667, 32187, 32595, 33310, 33311, 33721, 34286
91 ... 34286
97 ... 33838
103 ... 34286
105 ... 34286
207 ... 33004
208 ... 33004
212 ... 33004
221 ... 34060
298 ... 33004
380 ... 33004

15 CFR

2 ... 31636

Proposed Rules:

981 ... 32843

16 CFR

13 ... 30356, 33251, 33477, 34017, 34419, 34424
460 ... 31192
801 ... 34427
802 ... 34427
803 ... 34427
1145 ... 34018

Proposed Rules:

13 ... 31243, 31867, 31871, 32596-32600, 33908
1700 ... 31664

17 CFR

15 ... 32554, 34023
240 ... 34251
270 ... 32555

Proposed Rules:

15 ... 32603
17 ... 32603
18 ... 32603
21 ... 32188
33 ... 32835
229 ... 34478
230 ... 32357, 34478
239 ... 32357, 32359
240 ... 33314, 34478
249 ... 34478
275 ... 33312

18 CFR

2 ... 33252, 34253
35 ... 33252
101 ... 32567
104 ... 32567
141 ... 32759
154 ... 34442
201 ... 32567
204 ... 32567
271 ... 32336-32339, 34023, 34254
282 ... 34256
410 ... 33253

Proposed Rules:

35 ... 33908
45 ... 32604

19 CFR

101 ... 30611, 34463
134 ... 33860
148 ... 34256

Proposed Rules:

Ch. I ... 34061
6 ... 33317
19 ... 33318
22 ... 30668
101 ... 30670, 30671
134 ... 33908
144 ... 33318
172 ... 34061
175 ... 30672
133 ... 31245

20 CFR

416 ... 30356, 33256
675 ... 30357

Proposed Rules:

299 ... 31410
404 ... 33910
602 ... 33832
603 ... 33832
604 ... 33832
632 ... 33182
633 ... 33182
634 ... 33182
635 ... 32837
651 ... 33832
652 ... 33832
653 ... 33832
655 ... 33684
684 ... 33182

21 CFR

73 ... 31374, 33863
74 ... 32759, 34463
81 ... 30357, 30358, 34463-34468
82 ... 34463
172 ... 31376
175 ... 30359, 31382

176 ... 30359, 32340
177 ... 30360, 30361, 31383, 32340, 33478
178 ... 30612, 31382, 31384, 32340
179 ... 30613
193 ... 34024
436 ... 33478
442 ... 33478
510 ... 30615, 33864
520 ... 30362, 32341, 32760, 34469
522 ... 30615, 32342, 32760
524 ... 32761
529 ... 31385
540 ... 30363, 33480, 33864
546 ... 30615
555 ... 30615, 33864
558 ... 30363, 30615, 30616 31386, 32762, 33480, 33865
561 ... 32005, 34024
809 ... 34470
864 ... 31387
866 ... 31388-31391
868 ... 31388, 31392, 31393
870 ... 31394, 31395
882 ... 31396

Proposed Rules:

105 ... 31880
107 ... 31875, 31880
184 ... 31887
201 ... 34479
207 ... 34574
210 ... 34574
225 ... 34574
226 ... 34574
310 ... 32361
312 ... 31890
349 ... 32837
353 ... 33984
429 ... 34479
501 ... 34574
510 ... 34574
514 ... 34574
558 ... 34574
640 ... 33494, 34480
680 ... 32361
803 ... 31412
809 ... 31890

22 CFR

Proposed Rules:

9b ... 32029

23 CFR

Ch. I ... 31588
720 ... 31636
740 ... 34257
1209 ... 31196

Proposed Rules:

635 ... 31667

24 CFR

115 ... 32342
201 ... 32763
203 ... 32763
207 ... 32763
213 ... 32763
220 ... 32763
221 ... 32763
232 ... 32763
234 ... 32763
235 ... 32763
236 ... 32763
241 ... 32763
242 ... 32763
244 ... 32763
450 ... 32006
570 ... 32006

25 CFR

Ch. I ... 34026

Proposed Rules:

211 ... 31978
212 ... 31978
225 ... 31978
278 ... 32006
700 ... 33005

26 CFR

1 ... 31015, 32766, 32981, 33259
5c ... 33705
18 ... 33481
31 ... 31015
301 ... 32770

Proposed Rules:

1 ... 31053, 31054, 31250, 33006, 33007, 33320, 33326, 33911, 33912
15A ... 31054
20 ... 33006
25 ... 33006
31 ... 33007

27 CFR

Proposed Rules:

4 ... 32606, 34063
5 ... 32606, 34063
7 ... 32606, 34063

29 CFR

6 ... 30602
18 ... 32538
1910 ... 30886
1917 ... 30886

Proposed Rules:

1910 ... 31412
2205 ... 32191
2640 ... 31251
2641 ... 31251

30 CFR

221 ... 31798
250 ... 31397, 32774
701 ... 32910
800 ... 32932
801 ... 32932
805 ... 32932
806 ... 32932
807 ... 32932
808 ... 32932
809 ... 32932
816 ... 32910
817 ... 32910
901 ... 34026
935 ... 33481

Proposed Rules:

Ch. II ... 34063
48 ... 33969
55 ... 31171
56 ... 31171
57 ... 31171
75 ... 30589
250 ... 32837
917 ... 31668
934 ... 34077
935 ... 32031
938 ... 33020
942 ... 31054
946 ... 33494
948 ... 31681

32 CFR

289 ... 31019
525 ... 34027
706 ... 31020, 33705, 33706

33 CFR

1 ... 30616
3 ... 32775
92 ... 30616
100 ... 33260-33262, 34258
110 ... 30622, 33263
117 ... 34258
147 ... 33263
157 ... 31637
161 ... 30616
164 ... 34259
165 ... 33264, 34260, 34261

Proposed Rules:

117 ... 31258, 34293
151 ... 30673
155 ... 30673
163 ... 31258
164 ... 31259
320 ... 31890
322 ... 31890
323 ... 31890
325 ... 31890
327 ... 31890
328 ... 31890
330 ... 31890
401 ... 30685, 32607

34 CFR

205 ... 34644
668 ... 31175, 33694

36 CFR

2 ... 31847
7 ... 31020
50 ... 32012
251 ... 31853
262 ... 34262

Proposed Rules:

7 ... 32365-32367, 33722
13 ... 32506
67 ... 30686
254 ... 34481

37 CFR

202 ... 32775

38 CFR

1 ... 30622
3 ... 34471
36 ... 32571
40 ... 31854

Proposed Rules:

17 ... 32198

39 CFR

111 ... 30364
601 ... 32168
3001 ... 33706

Proposed Rules:

10 ... 30407, 33495

40 CFR

33 ... 30364
52 ... 30365, 30622-30631, 31022-31026, 31197-31204, 31398-31401, 31638, 31639, 32572, 32983, 33265, 33708, 33866, 34031
60 ... 30633, 32984, 33868, 34262
61 ... 33868
62 ... 31401
81 ... 31205-31207, 32983, 32986
85 ... 33456
86 ... 33456
125 ... 31403
145 ... 31640, 32343, 32344
146 ... 31403
162 ... 32012, 34000
180 ... 32013, 32014, 32987, 34032-34036
205 ... 32502
256 ... 30633
271 ... 31027, 32345, 32573, 32778, 32988, 33482, 33869, 33871, 34036, 34473
413 ... 32462
423 ... 31403
425 ... 31403, 32346
430 ... 31403
431 ... 31403
433 ... 32462
465 ... 31403
466 ... 31403
720 ... 31641, 33872
791 ... 31786
1500 ... 34263

Proposed Rules:

35 ... 32837
52 ... 30696, 31261, 34293
61 ... 32126, 33112
81 ... 33914, 34295
86 ... 31055
87 ... 32745
123 ... 33021, 34296
162 ... 32032, 34077
180 ... 34078
271 ... 31056, 33023
405 ... 32607
406 ... 32607
407 ... 32607
408 ... 32607
409 ... 32607
411 ... 32607
412 ... 32607
422 ... 32607
424 ... 32607
426 ... 32607
429 ... 32607
430 ... 32607
431 ... 32607
432 ... 32607
433 ... 32607
440 ... 32607
467 ... 34079
600 ... 31263
764 ... 33326
799 ... 30699, 31812, 32838, 34481

41 CFR

Ch. 7 ... 30366
Ch. 18 ... 32780-32820
Ch. 101 ... 30592, 32169
1-3 ... 31209
1-12 ... 31028
1-15 ... 31209
1-18 ... 31028
3-4 ... 32821
3-7 ... 33266
3-16 ... 33266

3-57 ... 33266
9-1 ... 33638
9-3 ... 30369
9-4 ... 33638
9-5 ... 33638
9-7 ... 33638
9-15 ... 33638
9-18 ... 30369
9-50 ... 30369, 33638
101-11 ... 31033
105-735 ... 32989

Proposed Rules:
9 ... 34198
9-1 ... 34396
9-7 ... 34396
9-50 ... 34396
14-1 ... 32032
101-29 ... 33024
101-41 ... 31890
105-60 ... 31890
105-61 ... 32838

42 CFR

Proposed Rules:
21 ... 31669
66 ... 33710
75 ... 31966

43 CFR

Ch. II ... 31854
3000 ... 33648
3040 ... 33648
3110 ... 33648
3120 ... 33648
3140 ... 33648
3150 ... 33648

Public Land Orders:
175 (Revoked in part by PLO 6438) ... 33712
322 (Revoked by PLO 6437) ... 33712
478 (Revoked by PLO 6433) ... 33301
548 (Revoked in part by PLO 6446) ... 33717
723 (Revoked in part by PLO 6438) ... 33712
829 (Revoked in part by PLO 6440) ... 33714
1127 (Revoked in part by PLO 6440) ... 33714
1278 (Amended by PLO 6444) ... 33717
1345 (Revoked in part by PLO 6441) ... 33715
1523 (Revoked in part by PLO 6441) ... 33715
1639 (Revoked in part by PLO 6441) ... 33715
1699 (Revoked in part by PLO 6406) ... 32826
1789 (Revoked in part by PLO 6414) ... 32829
1947 (Revoked by PLO 6420) ... 33295
1982 (Revoked by PLO 6407) ... 32827
2258 (Revoked in part by PLO 6438) ... 33712
2260 (Revoked in part by PLO 6411) ... 32828
2342 (Revoked by by PLO 6447) ... 34268
2744 (Revoked in part by PLO 6442) ... 33716
2921 (Revoked by PLO 6440) ... 33714
3398 (Revoked in part by PLO 6436) ... 33711
5549 (Revoked by PLO 6439) ... 33712
4040 (Revoked in part by PLO 6423) ... 33296
6357 (Corrected by PLO 6419) ... 33295
6365 (Corrected by PLO 6416) ... 32830
6377 (Corrected by PLO 6417) ... 32830
6403 ... 31038
6404 ... 32824
6405 ... 32826
6406 ... 32826
6407 ... 32827
6408 ... 32827
6409 ... 32827
6410 ... 32828
6411 ... 32828
6412 ... 32829
6413 ... 32829
6414 ... 32829
6415 ... 32830
6416 ... 32830
6417 ... 32830
6418 ... 32830
6419 ... 33295
6420 ... 33295
6421 ... 33295
6422 ... 33296
6423 ... 33296
6424 ... 33297
6425 ... 33297
6426 ... 33297
6427 ... 33298
6428 ... 33298
6429 ... 33299
6430 ... 33299
6431 ... 33301
6432 ... 33301
6433 ... 33301
6434 ... 33710
6435 ... 33711
6436 ... 33711
6437 ... 33712
6438 ... 33712
6439 ... 33713
6440 ... 33714
6441 ... 33715
6442 ... 33716
6443 ... 33716
6444 ... 33717
6445 ... 33717
6446 ... 33717
6447 ... 34268

Proposed Rules:
36 ... 32506
426 ... 30408
4100 ... 31892
5400 ... 32607, 34482

44 CFR

2 ... 30385
59 ... 31642
64 ... 30386, 30387, 31645, 32169, 32574
65 ... 30389, 31647
67 ... 30635, 31642, 32015, 34037, 34269
70 ... 30390-30394
205 ... 32734, 33872
206 ... 32734

Proposed Rules:
61 ... 32368, 34482
62 ... 34482
67 ... 30408, 30706-30719, 34080-34081, 34279
81 ... 31892

45 CFR

233 ... 32346, 33302
801 ... 33872

Proposed Rules:
84 ... 30846
302 ... 34302
304 ... 34302
306 ... 34302

46 CFR

50 ... 31648
71 ... 31648
91 ... 31648
107 ... 31648
110 ... 31648
189 ... 31648
522 ... 32350

47 CFR

0 ... 31039
1 ... 34039
2 ... 31214, 32576, 32991, 33873, 34040
13 ... 33902
21 ... 33873
22 ... 33483, 34040
25 ... 31039
68 ... 34044
69 ... 31649, 31856
73 ... 31214, 32169, 32997, 32998, 33305, 33485-33487, 34039
74 ... 33873
83 ... 33903
90 ... 32576, 32831, 32991, 33000, 34040
94 ... 32578
97 ... 32586, 32999, 34281

Proposed Rules:
2 ... 32607, 32610
15 ... 33496
51 ... 32612
52 ... 32612
61 ... 31057
63 ... 32199
73 ... 30722, 32033, 32034, 32199, 33326, 33497-33499, 33915-33920, 34087
81 ... 32607, 32610
83 ... 32607, 32610
90 ... 32614, 34087

48 CFR

Ch. I ... 32831

49 CFR

Ch. X ... 31651
23 ... 33432
25 ... 32171
171 ... 31214
172 ... 31214
173 ... 31214
174 ... 31214
175 ... 31214
176 ... 31214
177 ... 31214
192 ... 30637
195 ... 30637
301 ... 31653
575 ... 32588
1000 ... 30878
1011 ... 31220
1039 ... 31860, 32593, 33306
1042 ... 32175
1104 ... 34474
1105 ... 34474
1151 ... 34474
1152 ... 34474
1155 ... 34474
1160 ... 32175, 34474
1161 ... 32175
1162 ... 32175
1165 ... 32175
1168 ... 32175
1175 ... 30639
1176 ... 30639
1181 ... 32175
1201 ... 32832, 33718
1241 ... 34476
1307 ... 32034

Proposed Rules:
Ch. X ... 31672, 33327, 33328
71 ... 33327
218 ... 30723
571 ... 32200, 32202, 33327, 34306
1102 ... 33923
1300 ... 31265
1301 ... 31265
1302 ... 31265
1303 ... 31265
1304 ... 31265
1305 ... 31265
1306 ... 31265
1307 ... 31265
1308 ... 31265
1309 ... 31265, 34307
1310 ... 31265, 34307
1312 ... 31265

50 CFR

13 ... 31600
17 ... 31600, 34182
18 ... 31220
20 ... 33488
21 ... 31600
29 ... 31653
260 ... 32593
281 ... 32832
285 ... 33001
424 ... 30395
611 ... 31044, 31860
650 ... 31860
651 ... 31860
652 ... 31860, 33001
655 ... 33001
661 ... 32025, 34281
662 ... 34476
663 ... 30395
672 ... 31044
674 ... 31046, 33718
675 ... 31044
681 ... 31655

Proposed Rules:
17 ... 31414, 31417, 32520-32534, 33328, 33501, 34483
18 ... 34486
21 ... 33024
20 ... 31266
21 ... 32034
23 ... 30732

36 32506
301 50409
402 ..... 31275, 32840
611 ..... 50409, 32036
661 31677
662 31680
671 34231
672 50409

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.) Documents normally scheduled for publication on a day that will be a Federal holiday will be published the next work day following the holiday.

Monday	Tuesday	Wednesday	Thursday	Friday
DOT/SECRETARY	USDA/ASCS		DOT/SECRETARY	USDA/ASCS
DOT/COAST GUARD	USDA/FNS		DOT/COAST GUARD	USDA/FNS
DOT/FAA	USDA/REA		DOT/FAA	USDA/REA
DOT/FHWA	USDA/SCS		DOT/FHWA	USDA/SCS
DOT/FRA	MSPB/OPM		DOT/FRA	MSPB/OPM
DOT/MA	LABOR		DOT/MA	LABOR
DOT/NHTSA	HHS/FDA		DOT/NHTSA	HHS/FDA
DOT/RSPA			DOT/RSPA	
DOT/SLSDC			DOT/SLSDC	
DOT/UMTA			DOT/UMTA	

Note: The Office of the Federal Register proposes to terminate the formal program of agency publication on assigned days of the week. See 48 FR 19283, April 28, 1983.

List of Public Laws

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

Last Listing July 28, 1983