8-10-79
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federal register

Friday
August 10, 1979

Highlights

Principles of Regulations Writing Seminar—See the Reader Aids section at the end of this issue.

47034 **Nutrition Programs** USDA/FNS determines eligibility for Free and Reduced Price Meals and Free Milk in Schools; effective 8-10-79

47117 **Medicare Program** HEW/HCFA proposes regulations governing reimbursement for costs of approved internship and residency programs; comments by 10-9-79

47105 **Community Disaster Loans** HUD/FDAA clarifies existing policies and procedures and incorporates new material; comments by 10-9-79

47064 **Federal Health Funds** HEW/PHS sets requirements governing the review and approval or disapproval by health systems agencies; effective 11-8-79

47058 **Employment Discrimination Charges** EEOC amends designation regulations of certain State and local fair employment practices agencies; effective 8-10-79

47046 **Self-Employed Individuals and Shareholder Employees** Treasury/IRS provides regulations relating to contributions to pension, profit sharing, etc. plans

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Highlights

47260 **Waivers on Time Limitations** Labor/ETA places limitations on the length of time a person may participate; effective 9-10-79 (Part V of this issue)

47109 **Outer Continental Shelf Oil and Gas Leases** Interior/GS proposes new regulations governing unitization; comments and recommendations by 10-9-79

47169 **Model Unit Agreement** Interior/GS develops an agreement for use in the unitization of Outer Continental Shelf oil and gas lease operations; comments by 10-9-79

47113 **Organic Chemicals and Plastics Manufacturers** EPA develops a program requiring facilities to monitor process waste water discharges; comments by 9-10-79

47098 **Federal Coal Land** SBA proposes to establish a size standard for Set-Aside Leases; comments by 9-10-79

47232 **Voluntary Pay and Price Standards** CWPS seeks public participation in analyzing and reviewing the program; comments by 8-15-79 (Part III of this issue)

47246 **Late Season Migratory Bird Hunting** Interior/FWS proposes to establish frameworks; comments by 8-20-79 (Part IV of this issue)

47029 **Pay Under Other Systems** OPM makes restrictions regarding reduction of an individual's basic pay to a lower rate; effective 8-10-79; comments by 10-9-79

47123 **National Security Information** Marine Mammal Commission proposes adoption of policy, program, and procedure regulations; comments by 9-10-79

47063 **National Pollutant Discharge Elimination System** EPA defers effectiveness of best mangement practices requirements

47029 **Adverse Actions** OPM implements provisions and provides clarity and ease of understanding; effective 8-10-79

47028 **Sunshine Act Meetings**

Separate Parts of This Issue

47212 **Part II, Labor/ESA**
47232 **Part III, CWPS**
47246 **Part IV, Interior/FWS**
47260 **Part V, Labor/ETA**

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

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 534

Pay Under Other Systems

AGENCY: Office of Personnel Management.

ACTION: Interim regulations with comments invited for consideration in final rulemaking.

SUMMARY: These interim regulations are pursuant to Sec. 407 of Title IV of the Civil Service Reform Act of 1978. They make two restrictions regarding the reduction of an individual's basic pay to a lower pay rate in the Senior Executive Service. First, a senior executive's basic pay rate can only be reduced one rate in the ES basic pay schedule in any 12 month period. Second, a senior executive who converted to the Senior Executive Service under the regulations in Part 317 of 5 CFR cannot, while a member of the Senior Executive Service, have basic pay reduced below the amount he or she was paid just prior to conversion.

DATES. Effective Date: August 10, 1979 and until final regulations are issued.

Comment Date: Written comments will be considered if received no later than October 9, 1979.

ADDRESS: Send written comments to the Associate Director, Executive Personnel and Management Development, Office of Personnel Management, Room 6R48, 1900 E Street, NW., Washington, D.C. 20415.

FOR FURTHER INFORMATION CONTACT: Jack Vincent, (202) 632-6820.

SUPPLEMENTAL INFORMATION: Pursuant to section 553(d)(3) of title 5, U.S.C., the Director finds that good cause exists for making this amendment effective in less than 30 days, in order to provide continuity of operations and to give immediate and timely effect to the appropriate provisions of the Civil Service Reform Act of 1978.

Office of Personnel Management.
Beverly M. Jones,
Issuance Systems Manager.
August 6, 1979.

Accordingly, the Office of Personnel Management is adding a new Subpart D to 5 CFR Part 534, as set forth below:

Subpart D—Setting Individual Basic Pay Under the Senior Executive Service

534.401 Reducing individual pay to a lower rate in the Senior Executive Service.
534.402 Restrictions on reducing the pay of senior executives who converted under Part 317 of this chapter.

Authority: 5 U.S.C. 5385.

Subpart D—Setting Individual Basic Pay Under the Senior Executive Service

§ 534.401 Reducing individual pay to a lower rate in the Senior Executive Service.

Reductions of basic pay under the provisions of section 5383(c) of title 5, United States Code, may not reduce an individual's pay more than one rate in the ES pay schedule in a 12 month period.

§ 534.402 Restrictions on reducing the pay of senior executives who converted under Part 317 of this chapter.

The rate of basic pay of an Executive in the Senior Executive Service who entered the Service under the conversion provisions of Part 317 of this chapter cannot be reduced below the rate of pay for that individual immediately prior to converting to the Service during an appointment in the Service.

[FR Doc. 79-24323 Filed 8-9-79; 8:45 am]
BILLING CODE 6325-01-M

5 CFR Part 752

Adverse Actions

AGENCY: Office of Personnel Management.

ACTION: Final regulations.

SUMMARY: These regulations implement the adverse action provisions contained in subchapters I and II of chapter 75 of the Civil Service Reform Act of 1978. The Office of Personnel Management has amended the interim regulations published January 16, 1979, to reflect public comment and to provide greater clarity and ease of understanding.

EFFECTIVE DATE: These regulations will be effective on August 10, 1979.

FOR FURTHER INFORMATION CONTACT: Cynthia Field, Workforce Effectiveness and Development, Office of Personnel Management, 1900 E Street NW., Washington, D.C. 20415, (202) 623-5623.

SUPPLEMENTARY INFORMATION:

Background

On January 16, 1979, (44 FR 3444) the Office of Personnel Management published interim regulations which implemented subchapters I and II of chapter 75 of title 5, U.S.C., by amending Part 752 of the Civil Service Commissioner's regulations. Comments were received from 21 individuals and organizations. As a result of these comments, as well as of informal suggestions, the Office has modified the final regulations in several respects, as set out below. One agency's suggestion for a change in the general format was not adopted, since OPM believes it preferable to keep the formats of Parts 432 and 752 parallel. The Office intends to issue further guidance and information through the Federal Personnel Manual System which will speak to several recommendations not properly included in regulatory material.

Subpensions for 14 Days or Less

Aside from editorial changes recommended for clarify which OPM has largely adopted, there were five major concerns.

Coverage: First, an organization raised the issue of coverage of National Guard Technicians and certain employees of the Department of Medicine and Surgery. It believes the CSRA did not exclude these employees. It is true that the Act did not exclude these employees; they are excluded by the provisions of their agencies' enabling legislation from the coverage of chapter 75. However, since these employees are in the excepted service, they are excluded from the provisions of subchapter I, which is applicable only to employees in the competitive service. OPM has deleted exclusions of these employees as redundant.

Standard for action: A group or organizations recommended that the

standard for action be clearly defined to exclude actions based on prohibited reasons. OPM agrees and has done so.

Times to answer. Two organizations have stated that there should be five days minimum time for an employee to answer the notice of proposed action. A third recommends seven days. The law in silent on what constitutes a "reasonable time" to answer. OPM has continued the 24-hour time to answer provided by earlier CSC regulation because it is one that the been litigated and upheld in previous appellate decisions and court cases. Many agencies provide a longer time by their own regulations. OPM believes they should be permitted to make their own decisions on this one.

Representation: Two organizations expressed concerns about the provisions for disallowing an employee's representative. They felt the only reason for disallowing a representative should be actual conflict of interest or position, decided by MSPB, OPM, or an arbitrator. A third felt there should be no such provisions at all. In developing these provisions to implement the intention of the Senate that there be no conflict of interest or position in an employee's selection of representative, OPM drew on language from Part 771 which had been adopted several years ago to deal with disallowance of representatives in agency grievances, since it had proved satisfactory and was not new and untried. Nevertheless, one organization in particular was sure that these provisions as written give agencies virtually unlimited discretion to deny representatives unjustly. To address these concerns, as well as others expressed informally, OPM has rewritten "an employee who cannot be released from his or her official duties because of the priority needs of the Government" to read "when priority work assignments preclude the employee's release." OPM believes this narrows and clarifies the meaning of this phrase to set forth the actual cases when this reason would be applicable. OPM does not believe that MSPB, OPM, or an arbitrator should decide on disallowance questions before the actions have been decided on or effected by the agency. An agency disallowance of a representative will, of course, be subject to review by the appropriate body in an appeal or grievance.

Notice of decision: An organization recommended omission of the requirement that the notice of decision be delivered at or before the time the action becomes effective. OPM does not agree that this change should be made. Even the most careful and correctly prepared notice of decision will be of no use to the employee in understanding which reasons were relied on and if his or her reply was considered if it reaches the employee after the action is effected.

Removal, Suspension for More Than 14 Days, Reduction in Grade or Pay, or Furlough for 30 Days or Less

Comments on subchapter II centered in seven areas: coverage; standard for action; provision of material; employee's answer; exceptions to procedural rights; rights to representation and appeal rights.

Regulatory coverage: Based on several suggestions by organizations, OPM has corrected earlier omissions to show several actions which are in fact covered under Subparts C and D.

Two organizations had several concerns with the proposed regulatory *exclusions* from the procedures of subchapter II. They believe that even when an employee is entitled to retained grade, he or she has a right to the procedural protections of Part 752, including an appeal right, since otherwise the employee would not be able to challenge the classification of his or her job. However, the provisions of 5 U.S.C. 5366(a)(2) and (b) specifically exclude actions where there has been saved grade and pay from any right of appeal except for classification appeals or reduction in force appeals when applicable.

An organization stated that the provision excluding a voluntary action from the coverage of Part 752 should include a statement that the employee did not object to the action prior to its completion. OPM thinks this change is unnecessary, since the employee can appeal the action if he or she has any reason to believe that it was less than voluntary.

An organization said that involuntary retirement because of disability should not be excluded from Part 752. OPM notes that involuntary retirement does not fall under Part 752 but is covered by Part 831 and its procedures. Only if the agency's application for an employee's retirement is turned down and the agency move to separate the employee for disability would the procedures of Part 752 be involved.

At the suggestion of one organization, OPM has added an exclusion of the cancellation of a promotion to a position not classified prior to the promotion action. The organization believes, and OPM agrees, that such a promotion is contrary to law and regulation and thus is invalid.

One organization recommends deletion as exclusions of two types of actions taken in accordance with conditions established at the time of appointment (section 752.401(6) and (9)). These actions have for many years not been considered as adverse actions, but employees can and have appealed them if they believe them not in accord with conditions established at the time of appointment.

Two organizations questioned two pay exclusions: those of loss of premium pay for nightwork, and loss of hazard differential pay. OPM pay experts have since pointed out that these are not reductions in *basic* pay for the purposes of Part 752, and thus do not have to be listed as exclusions.

An organization also questioned the exclusion of a reduction in pay from a rate contrary to law or regulation to a rate required or permitted by law or regulation. OPM believes that if the agency has no authority to pay the higher rate, no adverse action is required to reduce the amount of an employee's pay.

Finally, two organizations again raised the question of coverage of National Guard Technicians and certain employees in the Department of Medicine and Surgery of the Veterans Administration. OPM notes again that the provisions of their own enabling statutes, not those of the Reform Act, exclude these two group of employees.

Standard for action: An organization believed that "efficiency of the service" is an ambiguous term which may change in meaning from one administration to the next. Since the term is set by statute, OPM cannot change it by regulation. The Office notes that the term has been in law for many years and its meaning determined by many appellate bodies. It is considered a strict requirement.

Notice of proposal: Several organizations had concerns about the material the agency has relied on to support the reasons given for its action. Two organizations believe that OPM should *require* agencies to give employees a copy of this material, rather than only giving the employees the right to review it. OPM thinks that if the drafters of the legislation had intended this, they would have written the statute to reflect this meaning. In many cases, the employee will not feel a need to have copies of all the material, only to review it. Since in many cases the material is voluminous, it seems a needless waste to supply it where it has not been requested. OPM does not intend to regulate further in this respect.

In the section concerning the notice of proposed action, a group of

organizations recommended that OPM provide for free copies of this material to be given to the employee or his or her representative *upon request*. Again, OPM does not intend to regulate beyond what the statute requires.

Finally, an organization recommended that OPM guarantee the exclusive representative the same right to review the material as is given the employee. This has not been required before by regulation, and OPM believes it is a matter best left to the agencies.

Employee answer: Three concerns were expressed with regard to the employee's answer.

An organization believes that the employee's representative should be given the same rights to official time to review the material, prepare an answer to it, etc., that are given the employee. OPM is already providing more by regulation that the law requires. The Office believes that any further provisions should be left to the agencies.

A group of organizations believes that officials in the same line of authority as the affected employee should be excluded from hearing the employee's oral reply, that the employee should have the right to challenge the officials selected to hear their answers, and that the "hearing or examining officer" may be selected from outside the agency. These comments seem to represent a misunderstanding of the purpose and meaning of this requirement, provided in regulation for several years. The oral answer is a personal plea that the agency not take an action which has been proposed. The regulatory requirement was occasioned by several court decisions that held that the employee was entitled to make his or her answer to an official who could influence or make the decision, not to an investigator, who would only be able to record the answer but not influence any decisions of the agency. If the employee could not make an answer to an official who could take or recommend an action, the whole point of the oral response would be lost. OPM points out that the oral answer is *not* a hearing unless agency regulations so provide. "Hearing or examining officers" would appear to be appropriate only to formal hearings or reviews, which OPM does not require.

An organization recommended that the seven-day time to answer be extended by regulation to 14 days. Again, OPM does not believe it should regulate beyond the specific statutory requirement.

Exceptions to procedural requirements: Several comments were made regarding the exceptions to procedural requirements provided by regulation. One organization recommends that OPM modify the exception to the notice period when the crime provision is invoked to show that the employee's nonduty, pay status is not chargeable to leave and is not limited to 10 days. Administrative leave is by its nature not charged as another form of leave. OPM believes that a longer period of administrative leave could only be provided by new legislation. One organization averred that the exception to the notice period and the time to answer in the case of a furlough due to unforeseeable circumstances was never intended by the Congress. While this exception is not provided in the statute, it has been in regulation for years and has been defined by litigation. It is one that is absolutely required in certain situations. For example, had there been a nuclear incident at the Three Mile Island plant requiring immediate nonduty status of Federal employees in the affected area, 30-day notice periods of paid duty status would have been impossible for these employees. Since furloughs are appealable actions, any allegation that the circumstances requiring a furlough did not meet the regulatory definition would be subject to adjudication by MSPB or under negotiated grievance procedures.

Emergency suspensions: Several organizations commented on the provision for shortening the notice period for an emergency suspension during the period of a removal or indefinite suspension. Two challenged OPM's authority to regulate in this area. One of these recommended deleting this provision and substituting the use of administrative leave for the entire period. OPM does not believe that administrative leave can be granted without legislation. Another recommended deletion of the 10-day limit on the use of administrative leave. As stated above, OPM believes legislation would be necessary to do so. OPM's predecessor had regulated similar provisions for years to handle emergency situations when the employee cannot be kept on the job during the notice period of a removal or indefinite suspension. Actions based on these regulations have been appealed, adjudicated, and upheld. OPM notes that the notice period for the removal or indefinite suspension itself has *not* been shortened. The exception is the employee's status during that period. A third recommended that OPM allow for less than seven days time to answer in appropriate emergency circumstances. OPM sees no need to curtail this right.

Finally, a group of organizations commented that the elimination of the 30-day notice period would allow agencies blank checks to suspend employees either temporarily or indefinitely without notice and that the phrase "detrimental to the interests of the Government" is unduly sweeping and will invite abuse. In response to these two concerns, OPM first notes that the 30-day notice period for suspensions of over 14 days has *not* been eliminated. What has been provided in regulation is a shortening of the notice period for a suspension during the 30-day notice of a suspension for over 14 days, in situations where an employee's misconduct, while not meeting the specifications for using the crime provision, still is serious enough to warrant his or her being kept off the job. With regard to the language cited, OPM has clarified and narrowed the circumstances that this provision will cover by rewording it. An employee against whom action is taken under the emergency exception provisions has the opportunity to appeal both the greater action—removal or indefinite suspension—and the suspension during the notice period.

Right to representation: Comments on disallowance of the employee's representative were parallel to those made on the same provisions under the procedures for short suspensions. OPM has modified these provisions in the same way as those under short suspensions.

Appeal rights: An organization recommended language which would permit agencies to extend agency administrative grievance procedures to cover adverse actions involving employees not covered by collective bargaining agreements. Such employees could then have a choice of appealing or grieving adverse actions like that given by statute to covered employees. OPM believes that this language is not appropriate for Part 752, but should be dealt with, if anywhere, in Part 771, Agency Administrative Grievance System.

The Office of Personnel Management has carefully examined and considered all comments made during the public comment period. The Office has attempted to address the major points organizations have made both in letters and orally. Certain comments and suggestions were made concerning matters more properly handled in guidance and information material which OPM will be issuing later.

Office of Personnel Management.
Beverly M. Jones,
Issuance System Manager.
August 7, 1979.

Accordingly, Part 752 is revised to read as follows:

PART 752—ADVERSE ACTIONS

Subpart A—Principal Statutory Requirements For Suspension For 14 Days or Less

Sec.
752.101 Prinicpal Statutory requirements.

Subpart B—Regulatory Requirements For Suspension For 14 Days Or Less

752.201 Coverage.
752.202 Standard for action.
752.203 Procedures.

Subpart C—Principal Statutory Requirements For Removal, Suspension For More Than 14 Days, Reduction In Grade Or Pay, Or Furlough For 30 Days Or Less

752.301 Principal Statutory requirements.

Subpart D—Regulatory Requirements Implementing Subpart C

752.401 Coverage.
752.402 Definitions.
752.403 Standard for action.
752.404 Procedures.
752.405 Appeal and grievance rights.
752.406 Agency records.

Authority: 5 U.S.C. 7504, 7514.

Subpart A—Principal Statutory Requirements for Suspension for 14 Days or Less

§ 752.101 Principal Statutory requirements.

This supart incorporates the principal statutory requirements for suspensions for 14 days or less, found in subchapter II of chapter 75 of title 5, United States Code.

CHAPTER 75—ADVERSE ACTIONS

Subchapter I—Suspension for 14 Days or Less

§ 7501. Definitions

For the purpose of this subchapter—

(1) "employee" means an individual in the competitive service who is not serving a probationary or trial period under an initial appointment or who has completed 1 year of current continuous employment in the same or similar positions under other than a temporary appointment limited to 1 year or less; and

(2) "suspension" means the placing of an employee, for disciplinary reasons, in a temporary status without duties and pay.

§ 7502. Actions covered

This subchapter applies to a suspension for 14 days or less, but does not apply to a suspension under section 7521 or 7532 of this title or any action initiated under section 1206 of this title.

§ 7503. Cause and procedure

(a) Under regulations prescribed by the Office of Personnel Management, an employee may be suspended for 14 days or less for such cause as will promote the efficiency of the service (including discourteous conduct to the public confirmed by an immediate supervisor's report of four such instances within any one-year period or any other pattern of discourteous conduct).

(b) An employee against whom a suspension for 14 days or less is proposed is entitled to—

(1) an advance written notice stating the specific reasons for the proposed action;

(2) a reasonable time to answer orally and in writing and to furnish affidavits and other documentary evidence in support of the answer;

(3) be represented by an attorney or other representative; and

(4) a written decision and the specific reasons therefor at the earliest practicable date.

(c) Copies of the notice of proposed action, the answer of the employee if written, a summary thereof if made orally, the notice of decision and reasons therefor, and any order effecting the suspension, together with any supporting material, shall be maintained by the agency and shall be furnished to the Merit Systems Protection Board upon its request and to the employee affected upon the employee's request.

§ 7504. Regulations

The Office of Personnel Management may prescribe regulations to carry out the purpose of this subchapter.

Subpart B—Regulatory Requirements for Suspension for 14 Days or Less

§ 752.201 Coverage.

(a) *Actions covered.* This subpart covers suspension for 14 days or less.

(b) *Employees covered.* The following employees are covered by this subpart:

(1) An employee covered by the definition in 5 U.S.C. 7501(1), including an employee of the Government Printing Office; and

(2) An employee with competitive status who occupies a position under Schedule B of Part 213 of this chapter.

(c) *Definitions.* In this subpart, *Day* means calendar day. *Suspension* has the meaning given in 5 U.S.C. 7501(2).

(d) *Exclusions.* This subpart does not apply to actions excluded by 5 U.S.C. 7502, or to a suspension for 14 days or less:

(1) Taken under provision of statute, other than one codified in title 5, United States Code, which excepts the action from subchapter I, chapter 75 of title 5, United States Code; or

(2) Of a reemployed annuitant.

§ 752.202 Standard for action.

(a) An agency may take action under this subpart only as set forth in 5 U.S.C. 7503(a).

(b) An agency may not take a suspension against an employee on the basis of any reason prohibited by 5 U.S.C. 2302.

§ 752.203 Procedures.

(a) *Employee entitlements.* An employee under this subpart whose suspension is proposed under this subpart is entitled to the procedures provided in 5 U.S.C. 7503(b).

(b) *Notice of proposed action.* The notice of proposal shall inform the employee of his or her right to review the material which is relied on to support the reasons for action given in the notice.

(c) *Time to answer.* The employee shall be given a reasonable time to answer but not less than 24 hours.

(d) *Representation.* 5 U.S.C. 7503 (b)(3) provides that an employee covered by this part is entitled to be represented in a suspension action by an attorney or other representative. An agency may disallow as an employee's representative an individual whose activities as a representative would cause a conflict of interest or position; or an employee of the agency whose release from his or her official position would give rise to unreasonable costs to the Government or whose priority work assignments preclude his or her release. 5 U.S.C. 7114(a)(5) and the terms of any applicable collective bargaining agreement govern representation for employees in an exclusive bargaining unit.

(e) *Agency decision.* In arriving at its written decision, the agency shall consider only the reasons specified in the notice of proposed action and shall consider any answer of the employee and/or his or her representative made to a designated official. The agency shall deliver the notice of decision to the employee at or before the time the action will be effective.

(f) *Agency records.* The agency shall maintain copies of the items specified in 5 U.S.C. 7503(c) and shall furnish them upon request as required by that subsection.

Subpart C—Principal Statutory Requirements for Removal, Suspension for More than 14 Days, Reduction in Grade or Pay, or Furlough for 30 Days or Less

§ 752.301 Principal statutory requirements.

This subpart incorporates the principal statutory requirements in subchapter II of chapter 75 of title 5, United States Code, for removal, suspension for more than 14 days, reduction in grade or pay, or furlough for 30 days or less.

CHAPTER 75—ADVERSE ACTIONS

Subchapter II—Removal Suspension for More Than 14 Days, Reduction in Grade or Pay, or Furlough for 30 Days or Less

§ 7511. Definitions; application

(a) For the purpose of this subchapter—

(1) "employee" means—

(A) an individual in the competitive service who is not serving a probationary or trial period under an initial appointment or who has completed 1 year of current continuous employment under other than a temporary appointment limited to 1 year or less; and

(B) a preference eligible in an Executive agency in the excepted service, and a preference eligible in the United States Postal Service or the Postal Rate Commission, who has completed 1 year of current continuous service in the same or similar positions;

(2) "suspension" has the meaning as set forth in section 7501(2) of this title;

(3) "grade" means a level of classification under a position classification system;

(4) "pay" means the rate of basic pay fixed by law or administrative action for the position held by an employee; and

(5) "furlough" means the placing of an employee in a temporary status without duties and pay because of lack of work or funds or other nondisciplinary reasons.

(b) This subchapter does not apply to an employee—

(1) whose appointment is made by and with the advice and consent of the Senate;

(2) whose position has been determined to be of a confidential, policy-determining, policy-making or policy-advocating character by—

(A) the Office of Personnel Management for a position that it has excepted from the competitive service; or

(B) the President or the head of an agency for a position which is excepted from the competitive service by statute.

(c) The Office may provide for the application of this subchapter to any position or group of positions excepted from the competitive service by regulation of the Office.

§ 7512. Actions covered

This Subchapter applies to—

(1) a removal;

(2) a suspension for more than 14 days;

(3) a reduction in grade;

(4) a reduction in pay; and

(5) a furlough of 30 days or less;

but does not apply to—

(A) a suspension or removal under section 7532 of this title,

(B) a reduction-in-force action under section 3502 of this title,

(C) the reduction in grade of a supervisor or manager who has not completed the probationary period under section 3321(a)(2) of this title if such reduction is to the grade held immediately before becoming such a supervisor or manager,

(D) a reduction in grade or removal under section 4303 of this title, or

(E) an action initiated under section 1206 or 7521 of this title.

§ 7513. Cause and procedure

(a) Under regulations prescribed by the Office of Personnel Management, an agency may take an action covered by this subchapter against an employee only for such cause as will promote the efficiency of the service.

(b) An employee against whom an action is proposed is entitled to—

(1) at least 30 days' advance written notice, unless there is reasonable cause to believe the employee has committed a crime for which a sentence of imprisonment may be imposed, stating the specific reasons for the proposed action;

(2) a reasonable time, but not less than 7 days, to answer orally and in writing and to furnish affidavits and other documentary evidence in support of the answer;

(3) be represented by an attorney or other representative; and

(4) a written decision and the specific reasons therefor at the earliest practicable date.

(c) An agency may provide, by regulation, for a hearing which may be in lieu of or in addition to the opportunity to answer provided under subsection (b)(2) of this section.

(d) An employee against whom an action is taken under this section is entitled to appeal to the Merit Systems Protection Board under section 7701 of this title.

(e) Copies of the notice of proposed action, the answer of the employee when written, a summary thereof when made orally, the notice of decision and reasons therefor, and any order effecting an action covered by this subchapter, together with any supporting material, shall be maintained by the agency and shall be furnished to the Board upon its request and to the employee affected upon the employee's request.

§ 7514. Regulations

The Office of Personnel Management may prescribe regulations to carry out the purpose of this subchapter, except as it concerns any matter with respect to which the Merit Systems Protection Board may prescribe regulations.

Subpart D—Regulatory Requirements Implementing Subpart C

§ 752.401 Coverage.

(a) *Adverse actions covered.* This subpart applies to an action set forth in subchapter II of chapter 75 of title 5, United States Code, including but not limited to:

(1) An action based solely on nonperformance related factors;

(2) An action that involves both performance and nonperformance related factors; and

(3) A solely performance-based action which is taken by an agency that is not included within the definition of agency under subchapter I of chapter 43 of title 5, United States Code.

(b) *Employees covered.* The following employees are covered by this subpart:

(1) An employee covered by the definition in 5 U.S.C. 7511(a)(1)(A), including an employee of the Government Printing Office and an employee of the Administrative Office of the United States Courts;

(2) An employee covered by the definition in 5 U.S.C. 7511(a)(4)(B), and

(3) an employee with competitive status who occupies a position in Schedule B of Part 213 of this title.

(c) *Exclusions.* This subpart does not apply to actions and employees excluded by 5 U.S.C. 7511(b) and 7512, or the following:

(1) Action taken under provision of statute, other than one codified in title 5, United States Code, which excepts the action from subchapter II of chapter 75 of title 5, United States Code;

(2) Action which entitles an employee to grade retention under Part 536 of this title, and an action to terminate this entitlement;

(3) Voluntary action initiated by the employee;

(4) Action taken or directed by the Office of Personnel Management under Part 731 or Part 754 of this title;

(5) Involuntary retirement because of disability under Part 831 of this title;

(6) Termination of appointment on the expiration date specified as a basic condition of employment at the time the appointment was made;

(7) Action which terminates a temporary promotion within a maximum period of two years and returns the employee to the position from which temporarily promoted, or reassigns or demotes the employee to a different position not at a lower grade or level than the position from which temporarily promoted.

(8) Cancellation of a promotion to a position not classified prior to the promotion;

(9) Placement of an employee serving on an intermittent, part-time, or seasonal basis in a nonduty, nonpay status in accordance with conditions established at the time of appointment;

(10) Reduction of an employee's rate of pay from a rate which is contrary to

law or regulation to a rate which is required or permitted by law or regulation;

(11) A reemployed annuitant;

(12) A Presidential appointee;

(13) A national Guard Technician; or

(14) A physician, dentist, nurse, or other employee in the Department of Medicine and Surgery, Veterans Administration, who is appointed under chapter 73 of title 38, United States Code.

§ 752.402 Definitions.

In this subpart. *Day* means calendar day. *Furlough* has the meaning given in 5 U.S.C. 7511(5). *Grade* has the meaning given in 5 U.S.C. 7511(3). *Pay* has the meaning given in 5 U.S.C. 7511(4). *Suspension* has the meaning given in 5 U.S.C. 7501(2).

§ 752.403 Standard for action.

(a) An agency may take adverse action under this subpart only as set forth in 5 U.S.C. 7513(a).

(b) An agency may not take an adverse action against an employee on the basis of any reason prohibited by 5 U.S.C. 2302.

§ 752.404 Procedures.

(a) *Statutory entitlements.* An employee against whom action is proposed under this subpart is entitled to the procedures provided in 5 U.S.C. 7513(b).

(b) *Notice of proposed action.* (1) The notice of proposal shall inform the employee of his or her right to review the material which is relied on to support the reasons for action given in the notice. The agency may not use material which cannot be disclosed to the employee or his or her representative or designated physician under Section 297.108(c)(1) of Part 297 of this title to support the reasons in the notice.

(2) When some but not all employees in a given competitive level are being furloughed, the notice of proposal shall state the basis for selecting a particular employee for furlough, as well as the reasons for the furlough.

(c) *Employee's answer.* (1) The agency shall give the employee a reasonable amount of official time to review the material relied on to support its proposal and to prepare an answer and to secure affidavits, if he or she is otherwise in an active duty status.

(2) The agency shall designate an official to hear the employee's oral answer who has authority either to make or recommend a final decision on the proposed adverse action. The right to answer orally in person does not include the right to a formal hearing with examination of witnesses unless the agency provides one in its regulations in accordance with subsection (g) of this section.

(d) *Exceptions.* (1) 5 U.S.C. 7513(b) authorizes an exception to the 30 days' advance written notice when the crime provision is invoked. The agency may require the employee to furnish any answer to the proposed action, and affidavits and other documentary evidence in support of the answer within such time as under the circumstances would be reasonable, but not less than seven days. When the circumstances require immediate action, the agency may place the employee in a nonduty status with pay for such time, not to exceed ten days, as is necessary to effect the action.

(2) The advance written notice and opportunity to answer are not necessary for furlough without pay due to unforeseeable circumstances, such as sudden breakdowns in equipment, acts of God, or sudden emergencies requiring immediate curtailment of activities.

(3) The 30 days' advance written notice is not required for a suspension during the notice period of a removal or of an indefinite suspension when the circumstances are such that retention of the employee in an active duty status during the notice period may be injurious to the employee, his or her fellow workers, or the general public; may result in damage to Government property; or because of the nature of the employee's offense may reflect unfavorably on the public perception of the Federal service. The agency shall include in the notice of suspension the reasons for not retaining the employee in an active duty status during the notice period of a removal or indefinite suspension. The agency may require the employee to furnish any answer to the proposed action and affidavits and other documentary evidence in support of the answer within such time as under the circumstances would be reasonable, but not less than seven days. When the circumstances require immediate action, the agency may place the employee in a nonduty status with pay for such time, not to exceed ten days, as is necessary to effect the suspension.

(e) *Representation.* 5 U.S.C. 7513(b)(3) provides that an employee covered by this part is entitled to be represented by an attorney or other representative. An agency may disallow as an employee's representative an individual whose activities as representative would cause a conflict of interest or position; or an employee of the agency whose release from his or her official position would give rise to unreasonable costs or whose priority work assignments preclude his or her release. 5 U.S.C. 7114(a)(5) and the terms of any applicable collective bargaining agreement govern representation for employees in an exclusive bargaining unit.

(f) *Agency decision.* In arriving at its written decision, the agency shall consider only the reasons specified in the notice of proposed action and shall consider any answer of the employee and/or his or her representative made to a designated official. The agency shall deliver the notice of decision to the employee at or before the time the action will be effective. The notice shall tell the employee of his or her appeal rights.

(g) *Hearing.* Under 5 U.S.C. 7513(c), the agency may in its regulations provide a hearing in place of or in addition to the opportunity for written and oral answer.

§ 752.405 Appeal and grievance rights.

(a) *Appeal rights.* Under the provisions of 5 U.S.C. 7513(d), an employee against whom an action is taken under this subpart is entitled to appeal to the Merit Systems Protection Board.

(b) *Grievance rights.* 5 U.S.C. 7121(e)(1) requires an aggrieved employee to elect to appeal under this subpart or, where applicable, to file a grievance under the negotiated grievance procedure, but not both.

§ 752.406 Agency records.

The agency shall maintain copies of the items specified in 5 U.S.C. 7513(e) and shall furnish them upon request as required by that subsection.

[FR Doc. 79-24771 Filed 8-9-79; 8:45 am]
BILLING CODE 6325-01-M

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 245

[Amdt. 15]

Determining Eligibility for Free and Reduced Price Meals and Free Milk in Schools; Change in the Announcement of Free and Reduced Price Eligibility Criteria

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final Regulation.

SUMMARY: This final regulation amends Part 245, Determining Eligibility for Free and Reduced Price Meals and Free Milk

in Schools, to provide for a change in the required method of announcing eligibility criteria to discourage abuse of free and reduced price meal and free milk benefits.

EFFECTIVE DATE: August 10, 1979.

FOR FURTHER INFORMATION, CONTACT: Margaret O'K. Glavin, Director, School Programs Division, USDA, FNS, Washington, D.C. 20250, (202) 447-8130.

SUPPLEMENTARY INFORMATION:

Background

The National School Lunch Act, enacted in 1946, contained a provision that lunches be served free or at a reduced price to children who were unable to pay the full price of a lunch. With the passage of Public Law 91-248 in May 1970, local school officials were directed to determine who was eligible for free and reduced price benefits "solely on the basis of an affidavit executed in such form as the Secretary may prescribe by an adult member of such household." This affidavit (application) was limited to the information necessary to determine eligibility, namely information on family size and family income, and was to be compared to income poverty standards based on guidelines issued by the Secretary in making a determination of eligibility. These guidelines were required to be sent home with the application. The application process for receiving free and reduced price benefits has remained fundamentally the same since the passage of Pub. L. 91-248. As a result, this simple application process has facilitated the delivery of meals and the expansion of the program to needy children.

This application process has, however, become an area of controversy in the school feeding programs' operations. The Department has received many comments from school personnel and public citizens alleging that applicants have looked at the guidelines and adjusted their reported income level in order to qualify for free and reduced price meals. These allegations of abuse support the concerns expressed in a report prepared by USDA's Office of the Inspector General (OIG). The Semi-Annual Report, Office of the Inspector General, October 1, 1978—March 31, 1979 stated:

> * * * the information on the (free and reduced price) form is not subject to verification unless the school has actual cause to believe that it is erroneous. In a recent experiment, we asked families in one city to justify the income reported on their approved free meal applications. Approximately 9 percent of the families certified for free meals were only eligible for reduced price meals. Another 2 percent of the families were determined to be ineligible for either free or reduced price meals.

The Department believes it is possible that some applicants may be misstating their family size income data, and that persons may be getting benefits to which they are not entitled.

Based on both the public's concerns about potential abuse and the OIG report, the Department has determined that steps must be taken to minimize the potential for abuse of the system by which free and reduced price meals are provided so that the simple application process is not jeopardized.

The Proposal

On May 25, 1979, there was published in the Federal Register (44 FR 30351) a proposed amendment to the regulations to provide for a change in the required method of announcing eligibility criteria for free and reduced price meals in the letter to parents which would discourage abuse in the free and reduced price meal applications process. The Department's May 25 proposal would allow School Food Authorities the option of announcing the maximum family size and income eligibility for only reduced price meals with the explanation to parents, in the parental letter, that children from families whose income is at or below the appropriate criteria are eligible for either free or reduced price meals.

Under this proposal, for example, a School Food Authority could announce in the letter to parents that under current income poverty guidelines, all children from a family whose income is at or below the income level shown for its family size would be eligible to receive free or reduced price benefits. At the School Food Authority's discretion, the income criteria supplied to parents would not distinguish between criteria for free and for reduced price benefits. An exception would be made in those School Food Authorities with schools participating in only the Special Milk Program and in which the School Food Authority has opted to serve free milk. For these schools, the School Food Authority would have to continue to include in the letter to parents the eligibility criteria for free milk. This exception would be made because under the Special Milk Program reduced price milk is not available and therefore only the eligibility criteria for free milk is applicable.

Comment Period

Normally, the Department provides a 60 day comment period for proposed regulations. However, Robert Greenstein, Administrator of the Food and Nutrition Service, determined that a 31 day comment period was necessary for this proposal in order to finalize a regulation to affect free and reduced price meal policies for school year 1979-80. This was because many school districts print public announcements, including their letter to parents, in the summer, after the Department announces its income eligibility standards in July. The resulting comment period extended from May 25 to June 25, 1979.

FNS was unable to immediately supply interested parties with supporting documentation for the proposal on May 25, the day the proposal was published. The supporting documentation, OIG's semi-annual report, was submitted to Congress on May 30 and formally released to the public on June 1. In order to compensate for the delay in making available the supporting documentation and an additional delay in publicizing the proposal over the three day memorial Day weekend, FNS extended the comment period from the original 31 days to 38 days so that the comment period ended on July 2, 1979 (44 FR 36396).

A total of 121 comments was received by the close of the official comment period, July 2. Thirty-one percent of the commentors were in favor of and 69 percent were opposed to the proposal. Forty-seven of the commentors were affiliated with State or local educational systems. Of that number, 33 (70%) supported the proposal. Many comments from education personnel, expressed the belief that fraud exists and/or the potential for fraud exists in the self-certification process.

Further, they concurred with the Department's concern that the potential for abuse is inherent in the current application process. Of those commentors objecting to the proposal, the primary concerns were that the proposal (a) assumes program abuse where none exists, (b) violates the individual's right to information, and (c) interferes with the fair hearing process. In addition, several commentors expressed concern that the proposal should not remain optional at the School Food Authority level. In drafting final regulations, all of these issues received full consideration, and the final regulations have been modified to address some of the concerns raised by the comments.

Many comments received on the proposal expressed a concern that the rule would impair the individual's right to information about eligibility criteria.

We believe a review of the proposal in the context of the existing controls in current regulations which ensure the public's right to information about eligibility criteria may minimize any concern in this regard. First, the current regulations continue to require that School Food Authorities publicly release complete eligibility guidelines for both free and reduced price meals on or about the beginning of the school year, to the local news media and unemployment offices. The same information is to be provided to local employers contemplating or experiencing major layoffs at the beginning of the school year, as well as throughout the year, when employment problems arise.

Also, any interested person may request from the local School Food Authority a copy of the media release which sets forth the complete free and reduced price eligibility criteria. School Food Authorities are required to provide a copy of the media release to any member of the public upon their request. Finally, current regulations require that the parental letter explain to applicants how to challenge and seek appeal of an unfavorable eligibility decision. These provisions are designed to protect the individual's rights with regard to program eligibility. Each of these regulatory provisions comply with the intent of the National School Lunch Act, as expressed in Section 9(b).

In further response to commentors' concerns regarding the individual's right to have access to eligibility criteria for free and reduced price benefits, we believe the rule can be further strengthened. We have therefore in the final regulations, adopted provisions to require School Food Authorities, exercising this option, to notify in writing all applicant parents who have been denied free or reduced price benefits, or who have been approved only for reduced price benefits, of the denial or eligibility determination. In order to protect the fair hearing process, the final regulation requires, in the case of those individuals approved for reduced price benefits as well as those denied free or reduced price benefits, that parents be informed in writing (1) of the eligibility criteria for free and reduced price benefits for their particular family size; (2) their right to appeal; (3) how to appeal; and (4) a statement that parents have the right to apply for such benefits at any time during the school year. Most School Food Authorities currently notify parents in writing of this information but as of the 1980–81 school year, all School Food Authorities will be required to do so.

The Department firmly believes it to be the responsibility of participating School Food Authorities to provide an explanation of the eligibility determinations to parents who are denied free or reduced price benefits or approved for reduced price benefits. This will ensure that persons denied free meals or persons denied reduced price benefits may have access to the free and reduced price eligibility criteria so that they may appeal the eligibility determination if necessary. Persons approved for reduced price benefits must also receive the free and reduced price eligibility criteria so that they may appeal the determination if, in fact, they are eligible for free benefits.

We believe these provisions, along with the existing current regulatory provisions, can have a beneficial program effect. The simple application process will be maintained and also opportunities for program abuse will be minimized.

In response to the concern that the decision should not remain optional at the School Food Authority level, the Department believes this should remain a local decision. Since several commentors believed that fraud did not exist or existed only minimally in their areas, it would not prove beneficial to encourage implementation of this option in a situation that does not warrant regulation.

Several commentors believed the Department should go one step further and request verification of income levels through income tax forms, welfare rolls, etc. This approach, however, is contrary to Section 9(b) of the National School Lunch Act. Moreover, such an approach could substantially increase administrative costs, and could discourage some schools and some needy families from participating in the program.

This amendment also clarifies existing free and reduced price application procedures at the School Food Authority level. These technical changes, made to § 245.6(b), do not affect the substance of the existing paragraph but do change its order to make the free and reduced price application procedure clear.

Accordingly, Part 245 is amended as follows:

1. In § 245.1, the fifth sentence in paragraph (a) is revised and new sentences are added to read as set forth below, preceding the sixth and seventh sentences, which are retained.

§ 245.1 General purpose and scope.

(a) * * * School Food Authorities are required to publicly announce in a letter to parents: (1) The availability of both free and reduced price meals, and free milk, as applicable; and (2) the maximum family-size income eligibility criteria for reduced price benefits with an explanation that children from families whose income is at or below the stated criteria are eligible for either free or reduced price benefits. School Food Authorities may, at their option, also announce in the letter to parents the maximum family-size income eligibility criteria for free meals, and if served, free milk. However, School Food Authorities administering schools that participate in only the Special Milk Program and in which free milk is offered shall announce in the letter to parents in such schools the maximum family-size income eligibility criteria for free milk. School Food Authorities shall also make available to the news media, local unemployment offices, and to any major employers contemplating large layoffs in the area from which the schools within the School Food Authority draw their attendance a public release which contains the family-size and income eligibility criteria for both free and reduced price meals and free milk, as applicable. School Food Authorities shall make determinations with respect to family-size and income on the basis of a statement executed by an adult member of the family.* * *

* * * * *

2. In § 245.5, the first sentence in paragraph (a) up to the colon, paragraph (a)(1) subsection (i) and paragraph (a)(2) are changed as follows:

§ 245.5 Public announcement of the eligibility criteria.

(a) After the State agency, or FNSRO where applicable, has notified the School Food Authority that its criteria for determining the eligibility of children for free and reduced price meals and free milk, as applicable, has been approved, the School Food Authority shall publicly announce such criteria consistent with the requirements of the section: * * *

* * * * *

(1) * * * (i) the maximum family-size and income eligibility criteria for reduced price meals with an explanation that children from families whose income is at or below the stated criteria are eligible for either free or reduced price benefits. School Food Authorities may, at their option, also include in the letter the maximum family-size income eligibility criteria for free meals and, if

served, free milk. However, School Food Authorities administering schools that participate in only the Special Milk Program and in which free milk is offered shall announce in the letter to parents in such schools the maximum family size income eligibility criteria for free milk.

* * * * *

(2) On or about the beginning of each school year and at any other time during the school year when large employment layoffs are anticipated, a public release, containing the family-size and income eligibility criteria for both free and for reduced price meals and free milk, as applicable, and all information included in the letter to parents, shall be provided to the news media, local unemployment offices, and to any major employers contemplating large layoffs in the area from which the schools within the School Food Authority draw their attendance.

* * * * *

3. § 245.6(b) is revised and redesignated (b-1) and new paragraphs (b-2), (b-3), (b-4), (b-5), (b-6), and (b-7) are added to read as follows:

§ 245.6 Application for free and reduced price meals and free milk.

* * * * *

(b-1) When the information furnished by a family in its application indicates that the family meets the eligibility criteria for either free or reduced price meals or free milk, as applicable, the children from that family shall be provided the free or reduced price meals or free milk, as applicable, to which the information indicates they are entitled.

(b-2) School officials may, for cause, seek verification of the data in the application subsequent to the eligibility determination.

(b-3) Any challenge to information on an application or an eligibility determination shall be made under the fair hearing procedure established under § 245.7. The hearing may be requested by either a school official wishing to challenge the continued eligibility of any child for free or reduced price benefits, or by a family wishing to appeal a decision made by the school official with respect to an application for free or reduced price benefits for its children.

(b-4) However, prior to any hearing, school officials or the parents may request a conference to discuss the situation, present information and explain the data submitted in the application or the decision rendered. The request for a conference prior to a hearing shall not in any way prejudice or diminish the right to a fair hearing.

(b-5) The children of a family determined eligible for free or reduced price meals or free milk based on the information contained in the family's application shall continue to receive free or reduced price meals or free milk while any challenge to the application is pending.

(b-6) In School Food Authorities electing not to include the family size and income criteria for free meals in the letter to parents, school officials shall provide written notification to each family denied free or reduced price benefits, or approved for reduced price benefits. At a minimum, this notice shall include: (1) the eligibility criteria for free and reduced price benefits for their particular family size; (2) notification of the right to appeal; (3) instructions on how to appeal; and (4) a statement reminding parents that they may reapply for free or reduced price meal benefits at any time during the school year.

(b-7) Beginning with the 1980-81 school year, all School Food Authorities shall provide written notification to each family denied free or reduced price benefits, or approved for reduced price benefits. At a minimum, this notice shall include: (1) the eligibility criteria for free and reduced price benefits for their particular family size; (2) notification of the right to appeal; (3) instructions on how to appeal; and (4) a statement reminding parents that they may re-apply for free and reduced price meal benefits at any time during the school year.

* * * * *

(Catalog of Federal Domestic Assistance No. 10.555)

Note.—This final rule has been reviewed under the USDA criteria established to implement Executive Order 12044 "Improving Government Regulations." A determination has been made that this action should not be classified "significant" under those criteria. A Final Impact Statement has been prepared and is available from the Director, School Programs Division, 201 14th Street, SW., Room 4122, Washington, D.C. 20250 during regular business hours (8:30 a.m. to 5:00 p.m., Monday through Friday).

(Sec. 6c, Pub. L. 94-105, 89 Stat. 513, 42 U.S.C. 1758)

Dated: August 7, 1979.

Carol Tucker Foreman,

Assistant Secretary for Food and Consumer Services.

[FR Doc. 79-24770 Filed 8-9-79; 8:45]

BILLING CODE 3410-30-M

7 CFR Part 277

[Amdt. 150]

Payment of Certain Administrative Costs of State Agencies; Food Stamp Program

AGENCY: Food and Nutrition Service, USDA.

ACTION: Interim rule; request for comments.

SUMMARY: This emergency rulemaking amends Part 277, Payment of Certain Administrative Costs of State Agencies, to authorize 75 percent funding of costs of Food Stamp Program fraud investigations, prosecutions and fraud hearings. The enhanced funding of State and local costs is mandated by Section 16(a) of the Food Stamp Act of 1977. The funding will be retroactively effective as of October 1, 1978, provided that the State agency submits a budget revision which is approved by the Food and Nutrition Service.

DATES: Effective Date: August 10, 1979.

Comments must be received on or before October 9, 1979 to be assured of consideration.

ADDRESS: Comments should be submitted to Alberta Frost, Acting Deputy Administrator for Family Nutrition Programs, Food and Nutrition Service, United States Department of Agriculture, Washington, D.C. 20250. A final rulemaking will be issued after considering the comments. All written comments, suggestions or objections will be open to public inspection at the Office of the Food and Nutrition Service, USDA, during regular business hours (8:30 a.m. to 5:00 p.m., Monday through Friday) at 500 12th Street SW., Room 758, Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Alberta Frost, Acting Deputy Administrator, Family Nutrition Programs, Food and Nutrition Service, Washington, D.C. 20250, 202-447-8982.

SUPPLEMENTARY INFORMATION: Section 16(a) of the Food Stamp Act of 1977 authorizes the Secretary to pay each State agency not less than 75 percent of the costs of State food stamp program investigations and prosecutions. The Department has determined that State agencies should receive 75 percent of matching funds for allowable costs incurred in fiscal year 1979 and 1980, to encourage fraud investigations and prosecutions to further deter and prevent abuse in the program. After fiscal year 1980, the Department plans to review State investigation and prosecution activities to determine if the 75 percent reimbursement rate is ar

appropriate level of funding. Since regulations implementing the administrative cost provisions of the Food Stamp Act of 1977 have not yet been promulgated, and since State agencies are already incurring costs relating to fraud investigations and prosecutions under the revised Food Stamp Program the Department has determined that an emergency final rulemaking which amends current administrative funding regulations is necessary. As a result, this regulation authorizes increased funding for investigations, prosecutions and fraud hearings retroactive to October 1, 1978 (comprehensive and significant revisions in the Food Stamp Program became effective on October 17, 1978; 43 FR 47846) as an interim measure until administrative funding regulations under the Food Stamp Act of 1977 are published in final form. October 1, 1978, is the first day of fiscal year 1979. For reasons of administrative efficiency and convenience, these funding determinations will be made on a fiscal year basis.

In order to qualify for the 75 percent matching funds, the Department is establishing standards and procedures which require State agencies to precisely identify which organizations, activities and functions are claimed at the higher 75 percent rate. For example, if the State Attorney General's Office handles food stamp fraud investigations, the State agency would identify the units which specifically work on food stamp fraud matters and investigations, describe the relevant food stamp investigative and prosecutorial activities and detail how much time is spent on these food stamp activities. The regulations further provide that State agencies must demonstrate their authority to conduct those investigations and prosecutions and must describe the investigative units access to investigative reports and other applicable records, upon request. The material required by these regulations will be submitted concurrently with the State agency's budget as provided under current regulations. The Department intends to solicit comments on the minimum professional standards for State investigators eligible for 75 percent funding in a proposed rulemaking that will be published shortly.

The rules list some activities which are eligible or ineligible for 75 percent funding. Activities to be funded at the 75 percent level are payroll, equipment, space and other support costs of qualified employees assigned specifically to work on food stamp fraud hearings, and to investigate or prosecute criminal offenses or civil wrongdoings involving loss to the Food Stamp Program, job related training costs for employees assigned to these duties and the cost of fraud hearings. Although the Department believes that functions such as quality control reviews, administrative reviews, establishment and collection of claims against households, and verification of eligibility information are important to the Program, the Department does not believe it is appropriate or useful to include these activities in the 75 percent reimbursement rate.

In December 1977, representatives of legal and investigative units of several State and Federal agencies met to discuss the level and impact of funding for food stamp investigations and prosecutions. Included in recommendations by this group, a copy of which is filed at Program Development Division, FNS 500 12th Street SW., Washington, D.C., Room 658, was the recommendation that FNS provide qualification standards for employees conducting investigations. FNS will promulgate qualification standards at a later date. The public is invited to submit written comments, relevant data and recommendations regarding the establishment by FNS of qualification standards for investigative employees. This enhanced funding policy is mandated by Federal law and the decision to authorize 75 percent funding for FY 79 is based on the Department's support of efforts to reduce and deter instances of fraud and abuse in the Food Stamp Program. However, the Department will accept comments for 60 days from the date of this publication and consider all comments prior to publication as a final rule.

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

Further, this final rule has been designated as "significant," and is being published in accordance with emergency procedures in Executive Order 12044 and Secretary's Memorandum 1955. It has been determined by Robert Greenstein, Administrator of the Food and Nutrition Service, that the emergency nature of this final rule warrants publication with opportunity for public comment concurrent with the effective date. This final rule implements the regulations in Part 277 (formerly Part 275) and a Draft Impact Statement regarding those regulations is available from David Hamer, Director, Financial Monitoring and Reporting Division, Food and Nutrition Service, USDA at 12th and Constitution Avenue, Auditor's Building, Room 3300B, Washington, D.C. This regulation will be reviewed in conjunction with the periodic review of the regulations in Part 277, required under the provisions of Executive Order 12044 and Secretary's Memorandum 1955.

Therefore, Part 277 is amended to read as follows:

PART 277—PAYMENT OF CERTAIN ADMINISTRATIVE COSTS OF STATE AGENCIES

§ 277.16 [Redesignated as § 277.17]

Section 277.16 is redesignated as § 277.17. A new § 277.16 is added to read as follows:

§ 277.16 Food stamp investigations and prosecutions.

(a) *General.* This section established the standards and procedures for Federal funding of State and local costs of Food Stamp Program fraud investigations, prosecutions and fraud hearings.

(b) *Funding.* Upon submission to an approval by FNS of a budget revision and the information required by paragraph (c) below, State agencies will be funded at 75 percent of all allowable direct and indirect costs in accordance with the requirements contained in this section. This higher rate may apply retroactively beginning October 1, 1978 and carry forward to the current period. In no case will 75 percent funding apply prior to October 1, 1978. In cases where an agency other than the State welfare agency is or will be involved, an information statement shall be submitted by each State agency to include this operation.

(c) *State Agency Descriptions.* Concurrent with the budget revision required in paragraph (d) below, the State agency shall submit the following information:

(1) Identification of the organizational units, with a brief description of each investigation or prosecution function assigned, that is claimed at the 75 percent rate;

(2) [Reserved]

(3) A copy of the statutes or court decisions under which food stamp fraud cases are prosecuted.

(4) A detailed description of the coordination between the investigative

units and the prosecuting units and the process by which prosecuting officials present indictments regarding food stamp fraud cases.

(5) Agreement that investigative reports, prepared by the investigation or prosecution units, and other related records will be made available to USDA upon request.

(d) *Budget revision.* The State agency shall prepare and submit a budget revision in compliance with Section 277.12 of this Part to FNS for FNS approval.

(e) *Eligible activity.* The following activities performed at the State or local level shall be eligible for funding at 75 percent of the costs if they are an integral element of food stamp investigations, prosecutions, and fraud hearings.

(1) Payroll, equipment, space and other support costs of qualified employees assigned specifically to the investigation and the prosecution of civil and criminal offenses.

(2) Job related training costs for employees assigned to the above duties.

(3) Cost of fraud hearings.

(f) *Ineligible activity.* The following activities, whether performed at the State or local level, shall be allowable at the 50 percent funding level but ineligible for funding at the 75 percent level.

(1) Administrative reviews, such as fair hearings as required per 7 CFR 273 or Performance Reporting System Reviews required per 7 CFR 275;

(2) Investigations of authorized retail or wholesale food concerns except when performed in coordination with USDA Office of Investigations, or FNS, or both;

(3) Audits;

(4) Verification of eligibility information provided by the household for the purpose of making an eligibility determination; and

(5) Establishing claims against households.

Note.—The reporting and/or record keeping requirements anticipated in this rulemaking which implements a provision in the Food Stamp Act of 1977 will be forwarded to the Office of Management and Budget for approval in accordance with the Federal Reports Act of 1942.

(91 Stat. 958 (7 U.S.C. 2011–2027))

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

Dated: August 7, 1979.

Carol Tucker Foreman,

Assistant Secretary.

[FR Doc. 79-24784 Filed 8-9-79; 8:45 am]

BILLING CODE 3410-30-M

Agricultural Marketing Service

7 CFR Part 910

[Lemon Regulation 211]

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 August 12–18, 1979. Such action is needed to provide for orderly marketing of fresh lemons for this period due to the marketing situation confronting the lemon industry.

EFFECTIVE DATE: August 12, 1979.

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

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

The committee met on August 7, 1979, to consider supply and market conditions and other factors affecting the need for regulation and recommended a quantity of lemons deemed advisable to be handled during the specified week. The committee reports the demand for lemons is easier.

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

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

§ 910.511 Lemon regulation 211.

Order. (a) The quantity of lemons grown in California and Arizona which may be handled during the period August 12, 1979, through August 18, 1979, is established at 251,200 cartons.

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

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

Dated: August 8, 1979.

James S. Miller

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

[FR Doc. 79-24784 Filed 8-9-79; 8:45 am]

BILLING CODE 3410-02-M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

[Rev. 13, Amdt. 28]

Small Business Size Standards Establishing a New Size Standard for Retail Heating Oil Dealers for Purposes of SBA Loan Programs

AGENCY: Small Business Administration.

ACTION: Final Rule.

SUMMARY: This final rule raises the size standard for retail heating oil dealers from $2 million to $6 million in average annual sales. It is necessary because the structure of the industry has shifted due to changes in the accessibility and prices of raw materials, and because of legislated costs imposed on the industry.

EFFECTIVE DATE: August 10, 1979.

FOR FURTHER INFORMATION CONTACT: Robert N. Ray, Jr. (202) 653–6373.

SUPPLEMENTARY INFORMATION: On June 19, 1979 (44 FR 35236) the SBA published a proposed rule in the Federal Register to raise the small business size standard from $2 million to $6 million for retail and heating oil dealers. Since that time the Agency has received four comments, three of which were favorable to the proposed rule change. The fourth comment was also generally favorable to the proposed change but, in addition,

stated that the size standard should be raised to $9 million rather than $6 million, and also be periodically reviewed or tied to a petroleum price index. The Agency's response to these comments is that an increase from $2 million to $6 million is in line with OPEC's announced price increases and that the SBA currently is involved in a study which will review its entire size standards program. Included in that study will be an analysis of the effect that inflation has played with size standards across all industries as well as what procedures the SBA should follow to cope with this problem in the future.

Accordingly, pursuant to authority contained in section 5(b)(6) of the Small Business Act, as amended, 15 U.S.C. 634, Schedule D of Part 121, Chapter I of Title 13, Code of Federal Regulations is amended by changing Major Group 59 to read as follows:

Schedule D.—*Annual Receipts Size Standards for Concerns Primarily Engaged in Retailing*

* * * * *

Major Group 59—Miscellaneous Retail

5961	Mail Order Houses	$7.5
5983	Fuel Oil Dealers	6.0

Dated: August 1,1979.

A. Vernon Weaver,

Administrator.

[FR Doc. 79-24711 Filed 8-9-79; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 655

Adverse Effect Wage Rate for Agricultural Employment in the State of Colorado

AGENCY: Employment and Training Administration, Labor.

ACTION: Final rule.

SUMMARY: On June 5, 1979, there was published in the Federal Register at 44 FR 32233–32235 a proposal to amend 20 CFR 655.207(b) to require the Administrator, United States Employment Service, annually to publish in the Federal Register an adverse effect wage rate for the temporary employment of nonimmigrant aliens in agriculture in the State of Colorado. The Employment and Training Administration adopts that proposal and publishes it as an amendment to 20 CFR 655.207(b)(2). The adverse effect wage rate for Colorado is established and set to prevent the employment of these aliens from having an adverse effect on the wages of similarly employed United States workers.

EFFECTIVE DATE: August 10, 1979.

FOR FURTHER INFORMATION CONTACT: Mr. Aaron Bodin, Chief, Division of Labor Certification, Office of Technical Services, United States Employment Service, Employment and Training Administration, United States Department of Labor, Room 8410, Patrick Henry Building, 601 "D" Street, N.W., Washington, D.C. 20213. Telephone: 202-376-6295.

SUPPLEMENTAL INFORMATION:

Immigration and Naturalization Regulations

1. The Immigration and Naturalization Service (INS) regulations at 8 CFR 214.2(h)(3)(i), require, in support of petitions by employers for admission of certain non-immigrant aliens into the United States to perform temporary labor, that:

Either a certification from the Secretary of Labor or his designated representatives stating that qualified persons in the United States are not available and that the employment of the beneficiary will not adversely effect the wages and working conditions of workers in the United States similarly employed, or a notice that such certification cannot be made shall be attached to every non-immigrant visa petition to accord an alien classification under Section 101(a)(15)(H)(ii) of the [Immigration and Nationality Act] [8 U.S.C. 1101(a)(15)(H)(ii).]

2. Whether to grant or deny a non-immigrant visa petition under 8 U.S.C. 1101(a)(15)(H)(ii) is solely the decision of INS. It is INS policy, however, as expressed in its above-cited regulation, that, before INS will grant or deny such a visa, it first requests the United States Department of Labor (DOL) to advise INS with respect to two issues:

(a) Whether there are a sufficient number of able, willing, and qualified U.S. workers available to do the work proposed to be done by the alien; and

(b) Whether the employment of the alien will adversely affect the wages and working conditions of similarly employed U.S. workers.

3. If DOL determines that there are no able, willing, qualified, and available U.S. workers, and that the employment of the alien will not adversely affect similarly employed U.S. workers, DOL advises INS of these findings, by issuing a temporary labor certification. The employer who is proposing to use the alien for temporary work then attaches the certification as part of the alien's visa petition, pursuant to 8 CFR 214.2(h)(3)(i).

4. If DOL cannot make one or both of the above findings, DOL so advises INS. DOL may be unable to make the two required findings for any one or more reasons, including:

(a) The employer seeking the temporary labor certification on behalf of the alien has not submitted a proper temporary labor certification application, or has not followed the proper procedural steps.

(b) The employer has not met its burden of proof under section 291 of the INA (8 U.S.C. 1361), that is, the employer has not submitted sufficient evidence of attempts to obtain available U.S. workers, and/or the employer has not submitted sufficient evidence that the wages and working conditions which the employer is offering will not adversely affect the wages and working conditions of similarly employed U.S. workers. With respect to the burden of proof, 8 U.S.C. 1361 states, in pertinent part that:

Whenever any person makes application for a visa or any other document required for entry, or makes application for admission, or otherwise attempts to enter the United States, the burden of proof shall be upon such person to establish that he is eligible to receive such visa or such document, or is not subject to exclusion under any provision of this Act. * * *

(c) DOL through its own knowledge and experience, finds that U.S. workers are available and/or that an adverse effect on similarly employed U.S. workers will result, and the employer has not met the burden of rebutting DOL's finding or findings.

U.S. Department of Labor Regulations

5. DOL has published regulations at 20 CFR Part 655, Subpart C, governing the labor certification process for the temporary employment of non-immigrant aliens in the United States in agricultural and logging occupations. Part 655 was promulgated pursuant to the Immigration and Naturalization Service (INS) regulations at 8 CFR 214.2(h)(3)(i), which in turn were issued pursuant to the Immigration and Nationality Act, as amended (INA). 8 U.S.C. 1101 *et seq.*

6. The regulations in 20 CFR Part 655, Subpart C, set forth the factfinding process designed to develop information sufficient to support the granting or denial of a temporary agricultural labor certification. They describe the potential of the Federal-State system of public employment offices for assisting employers in finding available U.S. workers, and how this process is utilized by DOL as a partial basis of information for the certification determination. See

also 20 CFR Parts 602, 621, 651–654, and 656–658.

7. Part 655 also sets forth the responsibilities of employers who desire to employ non-immigrant aliens in temporary agricultural and logging jobs. Such employers are required to demonstrate that they have attempted to recruit U.S. workers through advertising, through the Federal-State public employment service system, and by other specified means. The purpose is to assure an adequate test of the availability of U.S. workers to perform the work, and to insure that aliens are not employed under conditions adversely affecting the wages and working conditions of similarly employed U.S. workers.

Adverse Effect Wage Rates

8. Under 20 CFR 655.207, the Administrator, United States Employment Service (USES), must annually publish adverse effect wage rates for various named States. Adverse effect wage rates set forth the minimum wages which an employer applying for a temporary alien labor certification must offer and pay to aliens and similarly employed U.S. workers in order to ensure that the wages of the U.S. workers are not adversely affected. An adverse effect wage rate is either the prevailing wage for the occupation or a somewhat higher wage, computed by the methodology at 20 CFR 655.207(b).

9. The Secretary of Labor has the authority to set such a rate. See *Florida Sugar Cane League* v. *Usery*, 531 F. 2d 299 (5th Cir. 1976); and *Williams* v. *Usery*, 531 F. 2d 305 (5th Cir. 1976), cert. denied, 429 U.S. 1000.

10. The adverse effect rate is not set to slow the usage of temporary foreign labor in the United States. Its purpose is to insure that the wage rates of similarly employed U.S. workers will not be adversely affected by the importation of low-paid temporary foreign labor.

11. The rate also is not an effort to apply the legal requirements of the Federal minimum wage law to all employers. Adverse effect wage rates apply only to those employers who are seeking to import temporary foreign labor into the United States. Employers applying for temporary labor certifications must agree to comply with all employment-related laws, however. 20 CFR 655.203(b). If the employment is covered by a Federal, State, or local minimum wage law, the employer must comply with the law. See, e.g. 29 U.S.C. 206(a)(5). Thus, a worker in employment under the temporary alien labor certification program which is covered by both an adverse effect wage rate and a minimum wage law must be compensated at the higher of the applicable wage rates.

12. It should be noted that in 1977, DOL conducted a series of hearings relating to the establishment of the regulations at 20 CFR Part 655, Subpart C. See 43 FR 10305 (March 10, 1978); 42 FR 27261 (May 27, 1977); 42 FR 22378 (May 3, 1978); and 42 FR 1619 (March 25, 1977); see also *Agricultural Labor Certification Programs and Small Business: Hearings Before the Senate Select Committee on Small Business*, Part I, 95th Cong., 1st Sess. 38 (statement of William B. Lewis, Administrator, United States Employment Service) (December 20, 1977). In that series, hearings were held in Colorado and elsewhere, and employers, workers, and other parties commented on the regulations, and commented fully on the general issues surrounding adverse effect wage rates.

13. Separate adverse effect wage rates currently are published annually by the Administrator, U.S. Employment Service (USES), for agricultural employment in the six New England States, New York, Maryland, Virginia, West Virginia, Texas and for employment in the sugar cane industry in Florida. 20 CFR § 655.207(b) (1979).

14. While the Administrator, USES, is required to publish adverse effect wage rates for only those States listed in 20 CFR 655.207(b)(2), DOL, for a number of years, has computed rates for the 48 contiguous States, including Colorado, according to the published methodology. The rates were not published, since the numbers of applications for temporary employment of aliens in agriculture had been relatively low in those States. The rates for the 48 contiguous States, including Colorado, were published, at one time, under the regulations in force prior to the promulgation of Part 655, Subpart C. 20 CFR 602.10b(a)(1) (1971); 35 FR 12394 (August 4, 1970).

Adversely Affected Employment in the State of Colorado

15. DOL has found that the employment of nonimmigrant aliens in the State of Colorado has had and will continue to have an adverse effect on the wages of similarly employed United States workers, unless the employers of these aliens are required to offer and to pay their workers an adverse effect wage rate.

16. The use of undocumented alien workers in agriculture in Colorado is substantiated by records of INS. The INS office in Grand Junction, Colorado, was in operation for only nine months of 1978. For about three months of that period (during the summer), budget restrictions limited active apprehension efforts. Even with these limitations, INS apprehended almost 500 undocumented workers in the area. The majority of those actually employed at the time of apprehension were working in agriculture.

17. Records of the INS also indicate that the use of undocumented aliens has depressed the wages of U.S. workers. Hourly wages were recorded on the apprehension records of almost 1000 aliens engaged in agricultural work in the State of Colorado between April and October 1978. Of that number, approximately three-fourths were earning the minimum wage rate established under the Fair Labor Standards Act ($2.65 per hour) or less. Over thirty-five percent were earning less than the FLSA minimum wage rate. These wages are significantly lower than the U.S.D.A. reported average hourly wage of $2.84 paid to field and livestock workers in Colorado in 1978.

18. For the 1978 apple harvest, those agricultural employers in Colorado who placed job orders with the State Job Service guaranteed to pay workers at least $3.36 per hour. This was computed on the basis of a $0.42 per bushel (or $8.40 per twenty-bushel bin) piece rate, for which each worker was assumed to average 3.2 twenty-bushel bins picked per day. Staff of the ETA regional office in Denver, Colorado, conducted interviews with workers employed in the 1978 apple harvest in that State. One ETA staff member interviewed 10 undocumented workers from Mexico. Each of these 10 workers stated that their piece rate of pay was $6.50 per twenty-bushel bin of apples picked. This rate is far below (over 22.6 percent) the $8.40 per twenty-bushel bin offered by employers who placed a job order with the State Job Service. The undocumented workers interviewed by ETA stated that they had no knowledge of the $8.40 per twenty-bushel bin guaranteed piece rate.

19. For the 1979 harvest, some agricultural employers have filed applications for certification to employ nonimmigrant aliens temporarily. Yet, even though the employers agreed for the previous year's harvest to recruit U.S. workers at a guaranteed minimum wage of $3.36 per hour, the employers who have filed these applications are this year generally offering the aliens and U.S. workers only $2.90 per hour (the federally established minimum wage) pending establishment of an adverse effect rate. (29 U.S.C. 206(a)(5).)

20. DOL recently has received applications from some Colorado

employers for certification of the temporary employment of nonimmigrant aliens in agricultural occupations. Without a formally established adverse effect wage rate, it is anticipated that many of these nonimmigrant aliens would be employed at wages close to or below the Federal minimum wage. As expressed in the mandate from Congress (8 U.S.C. 1101(a)(15)(H)(ii), in the policy of INS (8 CFR 214.2(h)(i)), and in the policy of DOL (20 CFR 655.0(e)), employers must use, wherever possible, U.S. workers rather than aliens. Where temporary alien workers are admitted, the terms and conditions of their employment must not result in a lowering of the terms and conditions of domestic workers similarly employed. (20 CFR 655.0(e); 43 FR 10312 (March 10, 1978).)

21. If Colorado employers seeking nonimmigrant aliens for temporary agricultural labor offer those aliens, or U.S. workers, wages below the adverse effect wage rate, DOL will determine that similarly employed U.S. workers will be adversely affected. The wages offered and afforded to temporary aliens and to U.S. workers by specific agricultural employers in Colorado, will be compared to the established adverse effect wage rate. If it is concluded that an adverse effect would result, the ultimate determination of availability of U.S. workers cannot be made. U.S. workers cannot be expected to accept employment under conditions below the established adverse effect levels. 20 CFR 655.0(d).

22. For the above reasons, DOL proposes to annually compute and publish an adverse effect wage rate for agricultural employment in the State of Colorado.

Consideration of Comments

23. Interested parties were invited to submit comments until July 5, 1979, on the proposal to establish an agricultural adverse effect wage were for the State of Colorado. 44 FR 32233 [June 5, 1979]. Four parties commented on the proposed amendment. Of the four, three supported the establishment of an adverse effect rate for Colorado as a way to avoid depressing the wages of U.S. workers. One commenter, the attorney for the Western Colorado Fruit Growers Association, Inc., questioned the validity of the methodology used by the Department. This party's comments were based on the assumption that the adverse effect wage and the prevailing wage are, by definition, identical. The same reviewer questioned the facts presented by the Department as the reasons for establishing a rate for Colorado. The reviewer also requested a hearing on the proposed adverse effect rate. Such a hearing is not required under the Administrative Procedure Act, and the Department is responding to the reviewer's comments in this document. See *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519 (1978).

24. As noted above, the adverse effect rate may be the prevailing wage. However, if the Administrator of the United States Employment Service determines that the use of aliens has depressed the wages of similarly employed U.S. workers, a somewhat higher rate is calculated. The rates that are published annually in the Federal Register are for those States where the Administrator has made such a determination. The Administrator has determined that the use of aliens has depressed the wages of agricultural workers in Colorado (see paragraphs 17 and 18 above).

25. The information regarding INS apprehension was questioned by the reviewer referenced in paragraph 23 as being in conflict with testimony at a recent hearing. According to the testimony, the majority of apprehensions were not in agriculture. If the total apprehensions are considered, the witness' testimony is correct. However, if one considers those aliens who were actually employed at the time of apprehension, the majority were in agriculture. This correction has been made in paragraph 16 above.

26. An error did appear in paragraph 17 of the notice of proposed rulemaking (44 FR 32234). The average production of workers in the apple harvest was assumed to be 3.2 twenty-bushel bins per day (or 8 bushels per hour) rather than the 7½ bins cited in the proposed rule. This correction is reflected in paragraph 18 above.

1979 Colorado Adverse Effect Rate

27. The Administrator, U.S. Employment Service, will announce the 1979 rate of $3.59 per hour for Colorado shortly. Pursuant to 1 CFR 18.2(a), a Federal Register document may not combine material that must appear under more than one category in the Federal Register which requires a separate general notice document.

Development of Regulations

28. These regulations were prepared under the direction and control of Mr. William B. Lewis, Administrator, U.S. Employment Service, Employment and Training Administration, U.S. Department of Labor, Washington, D.C.

Amendment of Regulation

29. These regulations are effective immediately upon publication. The Department has determined that there is good cause for making these regulations effective immediately due to the imminence of the harvest season in the State of Colorado. The employers to whom these regulations are applicable have stated that they will comply with the adverse effect rate when it becomes effective. A later effective date would delay the effect of the rate on crop activities in the State of Colorado and thereby increase the potential for an adverse effect on the wages of U.S. workers.

30. Accordingly § 655.207(b)(2) of Part 655 of 20 CFR Chapter V is amended to read as follows:

§ 655.207 Adverse effect rates.

* * * * *

(b) * * *

(2) *List of States.* Colorado, Connecticut, Maine, Maryland, Massachusetts, New Hampshire, New York, Rhode Island, Texas, Virginia, and West Virginia. Other States may be added as appropriate.

* * * * *

(Secretary of Labor's Order No. 4-75, 40 FR 18515)

Signed at Washington, D.C., this 6th day of August 1979.

Ernest G. Green,

Assistant Secretary for Employment and Training.

[FR Doc. 79-24778 Filed 8-9-79; 8:45 am]

BILLING CODE 4510-30-M

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

21 CFR Parts 201 and 314

[Docket 78N-0109]

Requirements for Dispensing Containers for Prescription Drugs; Stay of Effective Date

AGENCY: Food and Drug Administration.

ACTION: Stay of Effective Date of Final Rule.

SUMMARY: The Food and Drug Administration is staying until February 27, 1980, the effective date of a rule requiring the manufacturer of a prescription drug product to specify on the label the type of dispensing container necessary to maintain the identity, strength, quality, and purity of the drug product. The effective date is being changed in response to a petition

by the Pharmaceutical Manufacturers' Association (PMA). The regulation would have become effective on August 27, 1979.

ADDRESS: The PMA petition may be reviewed at the office of the Hearing Clerk, Food and Drug Administration, Rm. 4-65, 5600 Fishers Lane, Rockville, MD 20857.

EFFECTIVE DATE: August 10, 1979.

FOR FURTHER INFORMATION CONTACT: Robert D. Bradley, Bureau of Drugs (HFD-30), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, MD 20857, 301-4430-6490.

SUPPLEMENTARY INFORMATION: In the Federal Register of August 25, 1978 (43 FR 37985), the Food and Drug Administration (FDA) published a final regulation (21 CFR 201.100, 314.1, and 314.8) requiring a manufacturer of a prescription drug product to include information on the drug label that would tell the pharmacist the type of container to use when dispensing the drug. The regulation was to become effective on August 27, 1979.

The PMA has petitioned FDA to stay the effective date of this regulation for an additional 180 days. It states that its members have, in general, had sufficient time to exhaust inventories of high-volume products but would have to relabel some slower moving products to meet the August 27, 1979 effective date. These products include the low-demand or "service" type drugs and drugs that have not sold as well as predicted.

PMA believes that the added cost for relabeling, which would be passed to the consumer, is not justified because:

1. Pharmacists can be guided by compendial standards which define the terms "tight" and "well closed" with respect to containers. Furthermore, the packaging and storage sections of individual product monographs use these terms.

2. Most retail pharmacists are using tight, light-resistant containers for all prescription drugs, whether the procuct requires them or not. In addition, all glass containers and closures now available meet the tight-seal requirement, the vast majority of containers supplied have been in light-resistant plastic, and for the past several months most closures supplied have met the "tight" requirements.

3. Most prescriptions dispensed are not subject to prolonged storage, but are intended for use only for the duration of therapy.

The agency agrees with PMA that a 180-day stay of the effective date would have little impact on the type of containers currently in use by pharmacists and may eliminate unnecessary increased costs to the consumers. Therefore, the requested stay is granted and the effective date for this regulation is changed from August 27, 1979 to February 27, 1980.

Accordingly, the effective date paragraph of the final rule published in the Federal Register of August 25, 1978 (43 FR 37985) is revised to read as follows:

Effective date. Compliance with this regulation may begin immediately. The regulation is effective for all products introduced or delivered for introduction initially into interstate commerce on or after February 27, 1980.

(Secs. 502, 505, 701(a), 1050-1053 as amended, 1055 (21 U.S.C. 352, 355, 371(a)).)

Dated: August 3, 1979.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 79-24518 Filed 8-9-79; 8:45 am]

BILLING CODE 4110-03-M

21 CFR Part 520

[Docket 79N-0214]

Oral Dosage Form New Animal Drugs Not Subject to Certification; Aminopropazine Fumarate, Neomycin Sulfate Tablets

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: This document amends the animal drug regulations for aminopropazine fumarate, neomycin sulfate tablets to indicate those conditions of use for which approvals for identical products need not include certain types of efficacy data. These conditions of use were classified as probably effective as a result of a National Academy of Sciences/National Research Council (NAS/NRC), Drug Efficacy Study Group evaluation of the product. In lieu of certain efficacy data, approval may require submission of bioequivalence or similar data. An earlier Federal Register publication has reflected this product's compliance with the conclusions of the review.

EFFECTIVE DATE: August 10, 1979.

FOR FURTHER INFORMATION CONTACT: Donald A. Gable, Bureau of Veterinary Medicine (HFV-100), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4313.

SUPPLEMENTARY INFORMATION: The NAS/NRC review of this product was published in the Federal Register of August 14, 1970 (35 FR 12964). In that document, the Academy concluded, and FDA concurred, that the product was probably effective for the antimicrobial action of neomycin sulfate in the treatment of bacterial diarrhea in dogs and in reducing smooth muscle contractions.

That announcement was issued to inform holders of new animal drug applications (NADA's) of the findings of the Academy and the agency, and to inform all interested persons that such articles could be marketed if they were the subject of approved NADA's and otherwise complied with the requirements of the Federal Food, Drug, and Cosmetic Act.

Jensen-Salsbery Laboratories, Division of Richardson-Merrell, Inc., Kansas City, MO 64141, responded to the notice by submitting a supplemental NADA (13-181V) providing current information covering manufacturing and controls and revising the labeling for the safe and effective use of the product in dogs to control bacterial diarrhea caused by organisms susceptible to neomycin and to reduce smooth muscle contractions. The supplemental application was approved by regulation issued in the Federal Register of December 16, 1972 (37 FR 26828). The regulation reflecting this approval (21 CFR 135c.87, recodified 21 CFR 520.82b) did not specify those conditions of use that were NAS/NRC approved.

This document amends the regulations to indicate those conditions of use for which approvals for identical products need not include certain types of efficacy data required for approval by § 514.111(a)(5)(vi) of the new animal drug regulations. In lieu of those data, approval of such products may be obtained if bioequivalency or similar data are submitted as suggested in the guideline for submitting NADA's for generic drugs reviewed by the NAS/NRC. The guideline is available from the office of the Hearing Clerk (HFA-305), Rm. 4-65, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))), and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1) and redelegated to the Director of the Bureau of Veterinary Medicine (21 CFR 5.83), Part 520 is amended in § 520.82b by adding after paragraphs (c)(1), (2), and (3) the footnote reference "[1]" and by

[1] These conditions are NAS/NRC reviewed and deemed effective. Applications for these uses need

Footnotes continued on next page

adding at the end of the section the footnote to read as follows:

§ 520.82b Aminopropazine fumarate, neomycin sulfate tablets.

* * * * *

(c) *Conditions of use.* (1) * * * [1]
(2) * * * [1]
(3) * * * [1]

Effective date. This regulation is effective August 10, 1979.

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

Dated: August 1, 1979.

Terence Harvey,

Acting Director, Bureau of Veterinary Medicine

[FR Doc. 79-24519 Filed 8-9-79; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 540

Penicillin Antibiotic Drugs for Animal Use; Procaine Penicillin G in Oil

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The agency is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) providing for safe and effective use of intramammary procaine penicillin G in oil for treating mastitis in dry cows. The application, filed by G. C. Hanford Manufacturing Co., is in compliance with the conclusions of the National Academy of Sciences—National Research Council (NAS/NRC) evaluation of the product.

EFFECTIVE DATE: August 10, 1979.

FOR FURTHER INFORMATION CONTACT: Richard A. Carnevale, Bureau of Veterinary Medicine (HVF-125), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1788.

SUPPLEMENTARY INFORMATION: G. C. Hanford Manufacturing Co., P.O. Box 1055, Syracuse, NY 13201, is holder of NADA 65-081 for use of a single-dose 10-milliliter disposable syringe containing 100,000 units of procaine penicillin G in sesame oil. This product was the subject of an NAS/NRC evaluation published in the Federal Register of July 22, 1970 (35 FR 11710). The NAS/NRC concluded, and the Food and Drug Administration (FDA) concurred, that the product is probably effective for use in treating mastitis in lactating and dry cows by udder instillation when the mastitis is caused by organisms sensitive to the drug. The NAS/NRC recommended that additional warning statements be added to the labeling of the product.

In response to the NAS/NRC evaluation, Hanford submitted a supplement to its NADA to demonstrate the safety and effectiveness of its product for treatment of mastitis in lactating cows only. Hanford also submitted revisions to the product's labeling as recommended by NAS/NRC. The product was upgraded to effective, and the supplement was approved by a regulation in the Federal Register of October 26, 1973 (38 FR 29578).

The firm has again supplemented its NADA for approval of use of the product in dry cows. The supplement contains published studies providing substantial evidence of the product's efficacy against *Streptococcus agalactiae.* The supplement also contained the labeling revisions recommended by NAS/NRC, and new information regarding manufacturing and controls. The information in the supplement supports upgrading the NAS/NRC classification for use of the product in dry cows from probably effective to effective.

The Director of the Bureau of Veterinary Medicine concludes that approval of this supplemental application poses no increased human risk from exposure to residues of the new animal drug, procaine penicillin G, because the number of food-producing animals receiving medication will not significantly increase because the drug is already regulated for the requested use. Accordingly, under the Bureau's supplemental approval policy (see the Federal Register of December 23, 1977 (42 FR 64367)), this approval did not require a reevaluation of the safety and efficacy data in the parent application.

This document amends § 540.874a (21 CFR 540.874a) to provide for use of the product in dry cows and to identify the conditions of use for which approval for an identical product need not include certain types of effectiveness data as specified by § 514.1(b)(8)(ii) (21 CFR 514.1(b)(8)(ii)) or § 514.111(a)(5) (21 CFR 514.111(a)(5)). Instead, approval may require a demonstration of bioequivalence as discussed in the guideline for submitting NADA's for NAS/NRC-reviewed generic drugs. The guideline is available from the Hearing Clerk (HFA-305), Rm. 4-65, Food and Drug Administration.

In accordance with the provisions of Part 20 (21 CFR Part 20) promulgated under the Freedom of Information Act (5 U.S.C. 552) and the freedom of information regulations in § 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 is available for public examination at the office of the Hearing Clerk (HFA-305), Rm. 4-65, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i) and (n), 82 Stat. 347, 350-351 (21 U.S.C. 360b(i) and (n))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1) and redelegated to the Director of the Bureau of Veterinary Medicine (21 CFR 5.83), Part 540 is amended in § 540.874a by adding new paragraph (c)(4), to read as follows:

§ 540.874a Procaine penicillin G in oil

* * * * *

(c) * * *

(4)(i) *Sponsor.* See No. 010515 in § 510.600(c) of this chapter.

(ii) *NAS/NRC status.* The conditions specified in paragraph (c)(4)(iii) and (iii)(*a*) of this section have been reviewed by NAS/NRC and are deemed effective. Applications for these uses need not include effectiveness data as specified by § 514.111 of this chapter, but may require bioequivalency and safety information.

(iii) *Conditions of use.* It is used for treatment of bovine mastitis caused by *Streptococcus agalactiae* in dry cows as follows:

(A) *Single dose regimen.* Infuse each quarter at time of drying-off with a single, 10-milliliter syringe (sesame oil vehicle).

(B) *Limitations.* Discard all milk for 72 hours (6 milkings) following calving, or later as indicated by the marketable quality of the milk. Animals must not be slaughtered for food within 14 days postinfusion.

Effective date. This amendment is effective August 10, 1979.

(Sec. 512(i) and (n), 82 Stat. 347, 350-351 (21 U.S.C. 360b(i) and (n)).)

Dated: August 2, 1979.

Terence Harvey,

Acting Director, Bureau of Veterinary Medicine.

[FR Doc. 79-24520 Filed 8-9-79; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Hygromycin B

AGENCY: Food and Drug Administration.

Footnotes continued from last page not include effectiveness data as specified by § 514.111 of this chapter, but may require bioequivalency and safety information.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) amends the animal drug regulations to codify two previously approved hygromycin premix levels and to reflect approval of two supplemental new animal drug applications (NADA's) revising the premixes' labeling to extend withdrawal times for chicken and swine feeds. The NADA's are held by Elanco Products Co.

EFFECTIVE DATE: August 10, 1979.

FOR FURTHER INFORMATION CONTACT: Charles E. Haines, Bureau of Veterinary Medicine (HFV-138), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3410.

SUPPLEMENTARY INFORMATION: Elanco Products Co., a Division of Eli Lilly & Co., 740 S. Alabama St., Indianapolis, IN 46206, holds approved NADA's for a chicken feed containing 8 to 12 grams of hygromycin B per ton (11-948) and a swine feed containing 12 grams of hygromycin B per ton (10-918). These medicated feeds are used to control certain worm infections. Their labeling had required zero withdrawal for chickens and 48 hours for swine. Elanco filed supplemental NADA's extending the withdrawal intervals to 3 days for chickens and 15 days for swine. Approval of extensions of withdrawal intervals does not, under the agency's supplemental approval policy, require review of safety data in the parent applications. Accordingly, the regulations are amended to change the withdrawal intervals for complete chicken and swine feeds containing hygromycin B alone and in combination with other drugs. The regulations are further amended to codify the prior approvals, covered by the above-mentioned NADA's, permitting manufacture of chicken and swine feeds from premixes containing 2.4 and 8 grams of hygromycin B per pound.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1) and redelegated to the Director of the Bureau of Veterinary Medicine (21 CFR 5.83), Part 558 is amended in § 558.274 by adding new paragraph (a) and revising the table in paragraph (e)(1) to read as follows:

§ 558.274 Hygromycin B.

(a) *Approvals.* Premix levels of 2.4 and 8 grams per pound granted to sponsor 000986 in § 510.600(c) of this chapter.

* * * * *

(e) * * *
(1) * * *

Hygromycin B in grams per ton	Combination in grams per ton	Indications for use	Limitations	Sponsor
(i) 8 to 12		Chickens; control of infestation of large roundworms (*Ascaris gallii*), cecal worms (*Heterakis gallinae*), and capillary worms (*Capillaria obsignata*).	Withdraw 3 days before slaughter	000986
	Bacitracin 100	Chickens; control of infestation of large roundworms (*Ascaris gallii*), cecal worms (*Heterakis gallinae*), and capillary worms (*Capillaria obsignata*); treatment of chronic respiratory disease (airsac infection), blue comb (nonspecific infectious enteritis).	As bacitracin methylene disalicylate or zinc bacitracin; withdraw 3 days before slaughter	
	Bacitracin plus penicilin (100 to 200 of combination).	1. Chickens; control of infestation of large roundworms (*Ascaris gallii*), cecal worms (*Heterakis gallinae*), and capillary worms (*Capillaria obsignata*); treatment of chronic respiratory disease (airsac infection), blue comb (nonspecific infectious enteritis).	Feed containing not less than 25% of penicilin plus not less than 50% of bacitracin; as procaine penicilin plus bacitracin methylene disalicylate; withdraw 3 days before slaughter	
		2. Chickens; control of infestation of large roundworms (*Ascaris gallii*), cecal worms (*Heterakis gallinae*), and capillary worms (*Capillaria obsignata*); treatment of chronic respiratory disease (airsac infection), blue comb (nonspecific infectious enteritis).	Combination containing not less than 50% nor more than 75% of bacitracin, except that it contains not more than 125 g of penicillin; as procaine penicillin plus zinc bacitracin; withdraw 3 days before slaughter.	
		3. Chickens, control of infestation of large roundworms (*Ascaris gallii*), cecal worms (*Heterakis gallinae*), and capillary worms (*Capillaria obsignata*); treatment of chronic respiratory disease (airsac infection), blue comb (nonspecific infectious enteritis).	Combination containing 50% to 75% bacitracin, but not more than 125 g of penicillin, as procaine penicillin; withdraw 3 days before slaughter.	
	Chlortetracycline 100 to 200	Chickens; control of infestation of large roundworms (*Ascaris gallii*), cecal worms (*Heterakis gallinae*), and capillary worms (*Capillaria obsignata*); treatment of chronic respiratory disease (airsac infection), blue comb (nonspecific infectious enteritis); prevention of synovitis.	Not to be fed to laying chickens; as chlortetracycline hydrochloride; withdraw 3 days before slaughter.	
	Penicillin 100	Chickens; control of infestation of large roundworms (*Ascaris gallii*), cecal worms (*Heterakis gallinae*), and capillary worms (*Capillaria obsignata*); treatment of chronic respiratory disease (airsac infection), blue comb (nonspecific infectious enteritis).	As procaine penicillin; withdraw 3 days before slaughter.	
	Penicillin plus streptomycin (90 to 180 of combination).	do	Feed containing 16.7% of penicillin; as procaine penicillin plus streptomycin sulfate; withdraw 3 days before slaughter.	
(ii) 12		Swine; control of infestation of large roundworms (*Ascaris suum*), nodular worms (*Oesophagostomum dentatum*) and whipworms (*Trichuris suis*).	Withdraw 15 days before slaughter.	000986

Hygromycin B in grams per ton	Combination in grams per ton	Indications for use	Limitations	Sponsor
(ii) 12	Chlortetracycline 100 to 200	Swine; control of infestation of large roundworms (*Ascaris suis*), nodular worms (*Oesophagostenum dentatum*) and whipworms (*Trichuris suis*); treatment of bacterial swine enteritis.	As chlortetracycline hydrochloride; withdraw 15 days before slaughter.	

Effective date. This regulation will be effective August 10, 1979.

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

Dated: July 31, 1979.

Lester M. Crawford,

Director of Veterinary Medicine.

[FR Doc. 79-24245 Filed 8-9-79; 8:45 am]

BILLING CODE 4110-03-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 7636]

Contributions to Pension, Profit-sharing, etc., Plans on Behalf of Self-Employed Individuals and Shareholders-Employees.

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document provides final regulations relating to contributions to pension, profit-sharing, etc., plans on behalf of self-employed individuals and shareholder-employees. Changes in the applicable tax law were made by the Employee Retirement Income Security Act of 1974 and the Tax Reform Act of 1976. These regulations provide necessary guidance to the public for compliance with the law, and affect all individuals who are entitled to receive retirement benefits under certain employee plans.

DATE: The regulations have varying effective dates as indicated. The provisions increasing the deductible limits are effective for employer taxable years beginning after 1973.

FOR FURTHER INFORMATION CONTACT: Kirk F. Maldonado of the Employee Plans and Exempt Organizations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224 (Attention: CC:LR:T) (202-566-3430) (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On April 21, 1975, the Federal Register published proposed amendments to the Income Tax Regulations (26 CFR Part 1) under sections 46, 50A, 72, 401, 404, 901, and 1379 of the Internal Revenue Code of 1954, 40 FR 17576. The amendments were proposed to conform the Regulations to section 2001 of the Employee Retirement Income Security Act of 1974 (88 Stat. 952). A public hearing was neither requested nor held on these regulations. After consideration of all comments regarding the proposed amendments, those amendments are adopted as revised by this Treasury decision.

Allocations

Section 1.72-17A (e)(2)(iv)(E)(*2*) provides the rules for allocating the amounts of a partial distribution to an individual who is, or was, an owner-employee. The order of allocation has been changed so that the amounts received are allocated first to excess contributions, and then to employee contributions.

Contributions for Certain Level Premium Contracts

Section 1.401(e)-4(a) provides the rules regarding contributions for certain level premium contracts purchased on behalf of owner-employees under section 401(e). These rules have been revised to conform with section 1511 of the Tax Reform Act of 1976. The regulation now provides that, for years beginning after December 31, 1975, the overall 25 percent of compensation limit of section 415(c)(1)(B) is not applicable to contributions for these contracts if the conditions of section 415(c)(7) are met. In general, section 415(c)(7) requires that the annual addition for the owner-employee be limited to the contribution for the level premium contract and that the individual not be an active participant in a defined benefit plan maintained by the employer. It is anticipated that regulations will be proposed in the near future under this provision.

$100,000 Limitation

The final regulations under §§ 14.01(e)-5 and 1.401(e)-6 clarify the applicability of the $100,000 limitation of section 401(a)(17) to certain plans maintained by an aggregated employer group. These sections provide, respectively, that all plans of entities aggregated under section 414(c) or all plans of electing Subchapter S corporations aggregated under section 414(b), whichever is applicable, shall be treated as one plan in applying the $100,000 limitation.

Deductions

Section 1.404(e)-1A(b)(1) has been revised to make it clear that only defined contribution plans must determine the amount deductible for self-employed and common law employees separately.

For clarification, § 1.404(e)-1A(b)(2)(ii) has been added to the final regulations. This provision allows defined benefit plans to determine the amount deductible on behalf of the employees without considering each employee's status as a self-employed or common law employee.

Minimum Deduction

Section 1.404(e)-1A has been amended to conform with section 1502 of the Tax Reform Act of 1976 which added section 415(c)(5) of the Code. The final regulations provide that the overall 25 percent of compensation limit of section 415(c)(1)(B) is not applicable to the amount deductible under section 404(e) (relating to the minimum deduction of $750 or 100% of earned income) for contributions on behalf of self-employed individuals. However, section 415(c)(5) provides that this new rule does not apply in any taxable year after December 31, 1975, to any individual whose adjusted gross income for that taxable year exceeds $15,000. For this purpose, the adjusted gross income of an employee is determined separately for each individual, without regard to any community property laws, and without regard to the deduction allowable under section 404(a). It is anticipated that regulations will be proposed in the near future under section 415(c)(5).

Drafting Information

The principal authors of these regulations are Kirk F. Maldonado and Richard J. Wickersham of the Employee Plans and Exempt Organizations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and the

Treasury Department participated in developing these regulations, both on matters of substance and style.

Adoption of Amendments to the Regulations

Accordingly—

1. The following sections of the proposed regulations are withdrawn:

(a) Sections 1.401(c)(d), and (e), all as set forth in paragraph 9 of the April 21, 1975, notice of proposed rulemaking.

(b) Section 1.404(a), as set forth in paragraph 10 of the April 21, 1975, notice of proposed rulemaking.

(c) Section 1.404(e), as set forth in paragraph 11 of the April 21, 1975, notice of proposed rulemaking.

2. The proposed amendments to 26 CFR Part 1 are hereby adopted, subject to the changes indicated below.

Paragraph 1. Section 1.46 is deleted.

Par. 2. The first sentence of section 1.46-1 (c), as set forth in paragraph 2 of the appendix to the April 21, 1975, notice of proposed rulemaking, is revised to read as follows:

§ 1.46-1 Determination of amount.

* * * * *

(c) *Liability for tax.* For the purpose of computing the limitation based on amount of tax, section 46(a)(4) defines the liability for tax as the income tax imposed for the taxable year by chapter 1, reduced by the sum of the credits allowable under section 33 (relating to taxes of foreign countries and possessions of the United States) and section 37 (relating to credit for the elderly). * * *

* * * * *

Par. 3. Section 1.50A is deleted.

Par. 4. The first sentence of section 1.50A-1 (c), as set forth in paragraph 4 of the appendix to the April 21, 1975, notice of proposed rulemaking, is revised to read as follows:

§ 1.50A-1 Determination of amount.

* * * * *

(c) *Liability for tax.* For the purpose of computing the limitation based on amount of tax, section 50A(a)(3) defines the liability for tax as the income tax imposed for the taxable year by chapter 1 of the Code, reduced by the sum of the credits allowable under—

(1) Section 33 (relating to taxes of foregin countries and possessions of the United States,

(2) Section 37 (relating to credit for the elderly),

(3) Section 38 (relating to investment in certain depreciable property), and

(4) Section 41 (relating to contributions to candidates for public office). * * *

* * * * *

Par. 5. Section 1.72 is deleted.

Par. 6. Section 1.72-17A(a) as set forth in paragraph 7 of the appendix to the April 21, 1975, notice of proposed rulemaking, is revised by deleting from the third sentence "(see paragraph (b) of § 1.401(e)-1)" and "(see paragraph (d) of § 1.401(e)-1)", and by deleting the fourth sentence.

Par. 7. Section 1.72-17A(e)(2)(iv)(E)(2), as set forth in paragraph 7 of the appendix to the April 21, 1975 notice of proposed rulemaking, is revised to read as set forth below:

Section 1.72-17A Special rules applicable to employee annuities and distributions under deferred compensation plans to self-employed individuals and owner-employees.

* * * * *

(e) *Penalties applicable to certain amounts received with respect to owner-employees under section 72(m)(5).* * * *

(2) * * *

(iv) * * *

(E) * * *

(*2*) * * *

(*i*) Excess contributions, within the meaning of section 4972(b), designated as such by the trustee;

(*ii*) Employee contributions;

(*iii*) Employer contributions, other than those described in (*i*), and the increments in value attributable to the employee's own contributions and his employer's contributions on the basis of the taxable years of his employer in succeeding order of time whether or not the employee was an owner-employee for any such year.

For purposes of (*iii*) of this subdivision, the time of contributions made on the basis of any employer taxable year shall take into account the rule specified in section 404(a)(6), relating to time when contributions deemed made.

* * * * *

Par. 8. Section 1.72-17A(e)(3)(iii), as set forth in paragraph 7 of the appendix to the April 21, 1975, notice of proposed rulemaking, is revised by striking out "subdivisions (2)(*b*) and (iii)" and inserting in lieu thereof "subdivisions (i)(*b*) and (iii)".

Par. 9. Section 1.401(e)-1(a)(1), as set forth in paragraph 9 of the appendix to the April 21, 1975, notice of proposed rulemaking, is revised by striking out "§§ 1.401(a)-1 through 1.401(a)-20" and inserting in lieu thereof "section 401(a)", by striking out in the two places it appears therein "(j)-1" and inserting in lieu thereof "(j)-1 through (j)-(5)", and by striking out "paragraph (d) of this section" and inserting in lieu thereof "section 401(c)(3)".

Par. 10. Section 1.401(e)-2(a), as set forth in paragraph 9 of the appendix to the April 21, 1975, notice of proposed rulemaking, is amended by striking out "§§ 1.401(a)-1 through 1.401(a)-20" and inserting in lieu thereof "section 401(a)".

Par. 11. Section 1.401(e)-4(a), as set forth in paragraph 9 of the appendix to the April 21, 1975, notice of proposed rulemaking, is revised to read as follows:

§ 1.401(e)-4 Contributions for premiums on annuity, etc., contracts and transitional rule for certain excess contributions.

(a) *In general.* The provisions of this section prescribe the rules specified in section 401(e) relating to certain contributions made under a qualified pension, annuity, or profit-sharing plan on behalf of a self-employed individual who is an owner-employee (as defined in section 401(c)(3) and the regulations thereunder) in taxable years of the employer beginning after December 31, 1975. In addition, such plans are also subject to the limitations on contributions and benefits under section 415 for years beginning after December 31, 1975. However, the defined contribution compensation limitation described in section 415(c)(1)(B) will not apply to any contribution described in this section provided that the requirements specified in section 415(c)(7) and regulations thereunder are satisfied. Solely for the purpose of applying section 4972(b) (relating to excise tax on excess contributions for self-employed individuals) to other contributions made by an owner-employee as an employee, the amount of any employer contribution which is not deductible under section 404 for the employer's taxable year but which is described in section 401(e) and this section shall be taken into account as a contribution made by such owner-employee as an employee during the taxable year of his employer in which such contribution is made.

* * * * *

Par. 12. Section 1.401(e)-4(b)(2)(ii), as set forth in paragraph 9 of the appendix to the April 21, 1975, notice of proposed rulemaking, is revised by deleting "(see paragraph (f)(3) of § 1.401(e)-3)".

Par. 13. Section 1.401(e)-5 as set forth in paragraph 9 of the appendix to the April 21, 1975, notice of proposed rulemaking is amended by revising paragraphs (a) and (c) to read as follows:

§ 1.401(e)-5 Limitation of contribution and benefit bases to first $100,000 of annual compensation in case of plans covering self-employed individuals.

(a) *General rules*—(1) *General rule.* (1) Under section 401(a)(17), a plan maintained by an employer which provides contributions or benefits for employees some or all of whom are employees within the meaning of section 401(c)(1) is a qualified plan only if the annual compensation of each employee taken into account under the plan does not exceed the first $100,000 of such compensation. For purposes of applying section 401(a)(17) and the preceding sentence, all plans maintained by such an employer with respect to the same trade or business shall be treated as a single plan. See also sections 401(d)(9) and (10) (relating to controlled trades or businesses where a plan covers an owner-employee who controls more than one trade or business); section 404(e) (relating to special limitations for self-employed individuals); section 413(b)(7) (relating to determination of limitations provided by section 404(a) in the case of certain plans maintained pursuant to a collective bargaining agreement); and section 413(c)(6) (relating to determination of limitations provided by section 404(a) in the case of certain plans maintained by more than one employer).

(2) *Special section 414 (b), (c) rule.* This subparagraph (2) applies to plans maintained by employers that are trades or businesses (whether or not incorporated) that are under common control within the meaning of section 414(c). All such plans that are described in paragraph (a)(1) and § 1.401(e)-

6(a) (so called "Subchapter S plans") shall be treated as a single plan in applying the limitation of paragraph (a)(1).

* * * * *

(c) *Application of nondiscrimination requirement.* (1) This paragraph shall apply—

(i) In the case of a plan which provides contributions or benefits for employees some or all of whom are employees within the meaning of section 401(c)(1) and

(ii) For a year in which the compensation of any employee covered by the plan exceeds $100,000. In the case of an employee who is an employee within the meaning of section 401(c)(1), compensation includes earned income within the meaning of section 401(c)(2);

(2) In applying section 401(a)(4) under the circumstances described in subparagraph (1) of this subparagraph, the determination whether the rate of contributions or benefits under the plan discriminates in favor of highly compensated employees shall be made as if the compensation for the year of each employee described in the first sentence of subparagraph (1)(ii) of this paragraph were $100,000 rather than the compensation actually received by him for such year.

* * * * *

Par. 14. Section 1.401(e)-6, as set forth in paragraph 9 of the appendix to the April 21, 1975, notice of proposed rulemaking is amended by revising paragraph (a)(1) to read as follows:

§ 1.401(e)-6 Special rules for shareholder-employees.

(a) *Limitation of contributions and benefit bases to first $100,000 of annual compensation in case of plans covering shareholder-employees.* (1) Under section 401(a)(17), a plan which provides contributions or benefits for employees, some or all of whom are shareholder-employees within the meaning of section 1379(d), is subject to the same limitation on annual compensation as a plan which provides such contributions or benefits for employees some or all of whom are self-employed individuals within the meaning of section 401(c)(1). Thus, a plan which provides contributions or benefits for such shareholder-employees is subject to the rules provided by § 1.401(e)-5, unless otherwise specified. See also section 1379. In the case of plans maintained by employers that are corporations described in section 414(b) and that are described in this subparagraph (1), the same rule described in § 1.401(e)-5(a)(2) shall apply.

* * * * *

Par. 15. Section 1.404(e)-1A(b)(1), as set forth in paragraph 13 of the appendix to the April 21, 1975, notice of proposed rulemaking, is revised by adding the words "defined contribution" before the word "plan" in the first sentence.

Par. 16. Section 1.404 (e)-1A, as set forth in paragraph 13 of the appendix to the April 21, 1975, notice of proposed rulemaking, is amended by adding a new subdivision (ii) to paragraph (b)(2), by revising subdivision (i)(C) of paragraph (b)(3), by adding a new subdivision (ii) to paragraph (b)(3), by revising paragraph (c)(4), and by revising paragraph (e). The new and revised provisions are set forth below:

§ 1.404 (e)-1A Contributions on behalf of a self-employed individual to or under a qualified pension, annuity, or profit-sharing plan.

* * * * *

(b) *Determination of the amount deductible.* * * *

(2) * * *

(ii) The amount deductible, by reason of contributions on behalf of employees to a defined benefit plan, shall be determined without regard to the self-employed or common law status of each employee.

(3)(i) * * *

(C) For any employer taxable year in applying the 15 percent limit on deductible contributions set forth in section 404(a)(3) and the 25 percent limit in section 404(a)(7) for any taxable year of the employer, the amount deductible under section 404(e)(4) and paragraph (c)(4) of this section (relating to the minimum deduction of $750 or 100 percent of earned income) shall be substituted for such limits with respect to the self-employed individuals on whose behalf contributions are deductible under section 404(e)(4) for the taxable year of the employer. In addition, although the limitations of section 415 are applicable to the plan for plan years beginning after December 31, 1975, the defined contribution compensation limitation described in section 415(c)(1)(B) shall not be less than the amount deductible under section 404(e)(4) and paragraph (c)(4) of this section with respect to any self-employed individual for the taxable year of the employer ending with or within the limitation year. The special rule in the second sentence of paragraph (3)(A) of section 404(a) is not applicable in determining the amounts deductible on behalf of self-employed individuals.

(ii) The limitations of this subparagraph (3) are not applicable to a defined benefit plan for self-employed individuals.

(c) *Defined contribution plans.* * * *

(4) Under section 404(e)(4), notwithstanding the provisions of subparagraphs (1) and (2) of this paragraph, the limitations on the amount deductible for the taxable year of the employer with respect to contributions on behalf of a self-employed individual shall not be less than the lesser of $750 or 100 percent of the earned income derived by such individual for such taxable year from the trade or business with respect to which the plan is established. If such individual receives in any taxable year earned income with respect to which deductions are allowable to two or more employers, 100 percent of such earned income shall be taken into account for purposes of the limitations determined under this subparagraph. This subparagraph does not apply to any taxable year beginning after December 31, 1975, to any employee whose adjusted gross income for that taxable year is greater than $15,000. In applying the preceding sentence, the adjusted gross income of an employee for a taxable year is determined separately for each individual, without regard to any community property laws, and without regard to the deduction allowable under section 404(a).

* * * * *

(e) *Combination of plans.* For special rules applied if a self-employed individual in any taxable year is a participant in both a defined benefit plan and a defined contribution plan, see section 401(j) and the regulations thereunder.

Par. 16a. Section 1.404 (a)-1A(i) as set forth in paragraph 13 of the appendix to the April 21, 1975, notice of proposed rulemaking, is revised by striking out "Under section 401 (a)(8)" and inserting in lieu thereof "Under section 404(a)(8)"; by striking out "and paragraph (b) of § 1.401(e)-1" in subparagraph (1) thereof; by striking out "and paragraph (d) of § 1.401(e)-1" in subparagraph (2) thereof; and by striking out "and paragraph (c) of § 1.401(e)-1" in subparagraph (3) thereof.

Par. 17. Section 1.901 is deleted.

Par. 18. Section 1.1379 is deleted.

(Sec. 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805))

Jerome Kurtz,

Commissioner of Internal Revenue.

Approved: July 23, 1979.

Donald C. Lubick,

Assistant Secretary of the Treasury.

§ 1.46-1 Determination of amount.

For the purpose of computing the limitation based on amount of tax, section 46(a)(4) defines the liability for tax as the income tax imposed for the taxable year by chapter 1, reduced by the sum of the credits allowable under section 33 (relating to taxes of foreign countries and possessions of the United States) and section 37 (relating to credit for the elderly).

For purposes of this paragraph, the tax imposed by section 56 (relating to minimum tax for tax preferences), section 72(m)(5)(B) (relating to 10 percent tax on premature distributions to owner-employees), section 402(e) (relating to tax on lump-sum distributions), section 408(f) (relating to additional tax on income from certain retirement accounts), section 531 (relating to imposition of accumulated earnings tax), section 541 (relating to imposition of personal holding company tax) or section 1378 (relating to tax on certain capital gains of subchapter S corporations) and any additional tax imposed for the taxable year by section 1351(d)(1) (relating to recoveries of foreign expropriation losses) shall not be considered tax imposed by chapter 1. Thus, the liability for tax and the credit allowed by section 38 for the taxable year are determined before computing any tax imposed by section 56, 72(m)(5)(B), 402(e), 408(f), 531, 541, or 1378 and any additional tax imposed for the taxable year by section 1351(d)(1). In

addition, any increase in tax resulting from the application of section 47 (relating to certain dispositions, etc., of section 38 property) shall not be treated as tax imposed by chapter 1 for purposes of computing the liability for tax. See section 47(c).

* * * * *

§ 1.50A-1 Determination of amount.

* * * * *

(c) *Liability for tax.* For the purpose of computing the limitation based on amount of tax, section 50A(a)(3) defines the liability for tax as the income tax imposed for the taxable year by Chapter 1 of the Code, reduced by the sum of the credits allowable under—

(1) Section 33 (relating to taxes of foreign countries and possessions of the United States,

(2) Section 37 (relating to credit for the elderly),

(3) Section 38 (relating to investment in certain depreciable property), and

(4) Section 41 (relating to contributions to candidates for public office).

For purposes of this paragraph, the tax imposed for the taxable year by section 56 (relating to imposition of minimum tax for tax preferences), section 72(m)(5)(B) (relating to 10 percent tax on premature distributions to owner-employees), section 402(e) (relating to tax on lump sum distributions), section 408(f) (relating to additional tax on income from certain retirement accounts), section 531 (relating to imposition of accumulated earnings tax), section 541 (relating to imposition of personal holding company tax), or section 1378 (relating to tax on certain capital gains of Subchapter S corporations), and any additional tax imposed for the taxable year by section 1351(d)(1) (relating to recoveries of foreign expropriation losses), shall not be considered tax imposed by Chapter 1 of the Code for such year. Thus, the liability for tax for purposes of computing the limitation based on amount of tax for the taxable year is determined without regard to any tax imposed by section 56, 72(m)(5)(B), 402(e), 408(f), 531, 541, 1351(d)(1) or 1378 of the Code. In addition, any increase in tax resulting from the application of section 50A (c) and (d) and § 1.50A-3 (relating to recomputation of credit allowed due to early termination of employment by employer, or failure to pay comparable wages) shall not be treated as tax imposed by Chapter 1 of the Code for purposes of computing the liability for tax. See section 50A (c)(3) and (d)(2).

* * * * *

§ 1.72-17 Special rules applicable to owner-employees.

* * * * *

(g) *Years to which this section applies.* This section applies to taxable years ending before September 3, 1974. For taxable years ending after September 2, 1974, see § 1.72-17A.

§ 1.72-17A Special rules applicable to employee annuities and distributions under deferred compensation plans to self-employed individuals and owner-employees.

(a) *In general.* Section 72(m) and this section contain special rules for the taxation of amounts received from qualified pension, profit-sharing, or annuity plans covering an owner-employee. This section applies to such amounts for taxable years of the recipient ending after September 2, 1974, unless another date is specified. For purposes of this section, the term "employee" shall include the self-employed individual who is treated as an employee by section 401(c)(1), and the term "owner-employee" has the meaning assigned to it in section 401(c)(3). Paragraph (b) of this section provides rules dealing with the computation of consideration paid by self-employed individuals and paragraph (c) of this section provides rules dealing with such computation when insurance is purchased for owner-employees. Paragraph (d) of this section provides rules for constructive receipt and, for purposes of these rules, treats as an owner-employee an individual for whose benefit an individual retirement account or annuity described in section 408 (a) or (b) is maintained after December 31, 1974. Paragraph (e) of this section provides rules for penalties provided by section 72(m)(5) with respect to certain distributions received by owner-employees or their successors. Paragraph (f) of this section provides rules for determining whether a person is disabled within the meaning of section 72(m)(7). See § 1.72-16, relating to life insurance contracts purchased under qualified employee plans, for rules under section 72(m)(3).

(b) *Computation of consideration paid by self-employed individuals.* Under section 72(m)(2), consideration paid or contributed for the contract by any self-employed individual shall for purposes of section 72 be deemed not to include any contributions paid or contributed under a plan described in paragraph (a), or any other plan of deferred compensation described in section 404(a) (whether or not qualified), if the contributions are—

(1) Paid under such plan with respect to a time during which the employee was an employee only by reason of sections 401(c)(1) and 404(a)(8), and

(2) Deductible under section 404 by the employer, including an employer within the meaning of sections 401(c)(4) and 404(a)(8), of such self-employed individual at the time of such payment, or subsequent to such time of payment.

For purposes of this paragraph the term "consideration paid or contributed for the contract" has the same meaning as under subparagraphs (1), (2), and (3) of paragraph (c) of this section.

(c) *Amounts paid for life, accident, health, or other insurance.* Under section 72(m)(2), amounts used to purchase life, accident, health, or other insurance protection for an owner-employee shall not be taken into account in computing the following:

(1) The aggregate amount of premiums or other consideration paid for the contract for purposes of determining the investment in the contract under section 72(c)(1)(A) and § 1.72-6;

(2) The consideration for the contract contributed by the employee for purposes of section 72(d)(1) and § 1.72-13, which provide the method of taxing employee's annuities where the employee's contributions will be recoverable within 3 years; and

(3) The aggregate premiums or other consideration paid for purposes of section 72(e)(1)(B) and § 1.72-11, which provide the rules for taxing amounts not received as annuities prior to the annuity starting date.

The cost of such insurance protection will be considered to be a reasonable net premium cost, as determined by the Commissioner, for the appropriate period.

(d) *Amounts constructively received.* (1) Under section 72(m)(4)(A), if during any taxable year an owner-employee assigns or pledges (or agrees to assign or pledge) any portion of his interest in a trust described in section 401(a) which is exempt from tax under section 501(a), or any portion of the value of a contract purchased as part of a plan described in section 403(a), such portion shall be treated as having been received by such owner-employee as a distribution from the trust or as an amount received under the contract during such taxable year.

(2)(i) Under paragraphs (4)(A) and (6) of section 72(m), if after December 31, 1974, during any taxable year an individual for whose benefit an individual retirement account or annuity

described in section 408(a) or (b) is maintained, assigns or pledges (or agrees to assign or pledge) any portion of his interest in such account or annuity, such portion shall be treated as having been received by such individual as a distribution from such account or trust during such taxable year. See subsections (d) and (f) of section 408 and the regulations thereunder for the tax treatment of an amount treated as a distribution under this subparagraph.

(ii) Notwithstanding subdivision (i) of this subparagraph, if an individual retirement account or annuity, or portion thereof, is subject to the additional tax imposed by section 408(f), that amount shall be deemed not to be a distribution under section 72(m)(4)(A) and subdivision (i) of this subparagraph.

(3) Under section 72(m)(4)(B), if during any taxable year an owner-employee receives, either directly or indirectly, any amount from any insurance company as a loan under a contract purchased by a trust described in section 401(a) which is exempt from tax under section 501(a) or purchased as part of a plan described in section 403(a), and issued by such insurance company, such amount shall be treated as an amount received under the contract during such taxable year. An owner-employee will be considered to have received an amount under a contract if a premium, which is otherwise in default, is paid by the insurance company in the form of a loan against the cash surrender value of the contract. Further, an owner-employee will be considered to have received an amount to which this subparagraph applies if an amount is received from the issuer of a face-amount certificate as a loan under such a certificate purchased as part of a qualified trust or plan.

(e) *Penalties applicable to certain amounts received with respect to owner-employees under section 72(m)(5).* (1) (i) For taxable years of the recipient beginning after December 31, 1975, if any person receives an amount to which subparagraph (2) of this paragraph applies, his tax under chapter 1 for the taxable year in which such amount is received shall be increased by an amount equal to 10 percent of the portion of the amount so received which is includible in his gross income for such taxable year.

(ii) For taxable years of the recipient beginning before January 1, 1976, see subparagraph (3) of this paragraph.

(2) (i) This subparagraph is applicable to amounts, to the extent includible in gross income, received from a qualified trust described in section 401(a) or under a plan described in section 403(a) by or on behalf of an individual who is or has been an owner-employee with respect to such trust or plan—

(A) Which are received before the owner-employee reaches the age of 59½ years, and which are attributable to contributions paid on behalf of such owner-employee by his employer (that is employer contributions within the meaning of section 401(c)(5)(A) and the increments in value attributable to such employer contributions) and the increments in value attributable to contributions made by him as an owner-employee while he was an owner-employee (that is, the increments attributable to owner-employee contributions within the meaning of section 401(c)(5)(B)) but not such contributions; see subdivision (ii) of this subparagraph);

(B) Which are in excess of the benefits provided for such owner-employee under the plan formula (see subdivision (iii) of this subparagraph); or

(C) Which are subject to the transitional rules with respect to willful excess contributions made on behalf of an owner-employee in his employer's taxable years which begin before January 1, 1976 (see subdivision (v) of this subparagraph).

(ii) The amounts referred to in subdivision (i)(A) of this subparagraph do not include—

(A) Amounts received by reason of the owner-employee becoming disabled (see paragraph (f) of this section),

(B) Amounts received by the owner-employee in his capacity as a policyholder of an annuity, endowment, or life insurance contract which are in the nature of a dividend or similar distribution, or

(C) Amounts attributable to contributions (and increments in value thereon) made for years for which the recipient was not an owner-employee.

If an amount is not included in the amounts referred to in subdivision (i)(A) of this subparagraph solely by reason of the owner-employee's becoming disabled and if a penalty would otherwise be applicable with respect to all or a portion of such amount, then for the owner-employee's taxable year in which such amount is received, there must be submitted with his income tax return a doctor's statement as to the impairment, and a statement by the owner-employee with respect to the effect of such impairment upon his substantial gainful activity and the date such impairment occurred. For taxable years which are subsequent to the first taxable year with respect to which the statements referred to in the preceding sentence are submitted, the owner-employee may, in lieu of such statements, submit a statement declaring the continued existence (without substantial diminution) of the impairment and its continued effect upon his substantial gainful activity.

(iii) This subparagraph applies to amounts described in subdivision (i)(B) of this subparagraph (relating to benefits in excess of the plan formula) even though a portion of such amounts may be attributable to contributions made on behalf of an individual while he was not an owner-employee and even if he is deceased and the amounts are received by his successor.

(iv)(A) The rules described in subdivisions (i)(A) and (iii) of this subparagraph, relating to the treatment under section 72(m)(5)(A)(i) of certain premature distributions, may be illustrated by the following example:

Example. (1) A was a member of the X partnership, consisting of partners A through I, and a participant in the partnership's qualified profit-sharing plan which was established on January 1, 1972. A's taxable years, the X partnership's taxable years, the plan years, and other relevant years are all calendar years at all relevant times. For the three calendar years, 1972 through 1974, A was an owner-employee in the X partnership. On January 1, 1975, new partners J and K became partners in the X partnership, and as of that date, each of partners A through K held a 1/11 interest in the capital and profits of the X partnership. On that date, A became a partner who was not an owner-employee. A continued in this status for the 2 calendar years 1975 and 1976. On January 1, 1977, when A was 50 years old and not disabled, he liquidated his interest in the X partnership and became an employee of an unrelated employer. On that date, A received a distribution representing his entire interest in the X partnership's plan of $54,000 cash in violation of the plan provision required by section 401(d)(4)(B). As of that date, the distribution was attributable to the following sources and times, computed by the plan in a manner consistent with the subparagraph:

Calendar years	X contributions on behalf of A deductible under sec. 404	A's contributions made as an employee	Increments in value attributable to column A yearly contributions	Increments in value attributable to column B yearly contributions
	A	B	C	D
1977	0	0	0	0
1976	$7,500	$2,500	$900	$330
1975	7,500	2,500	4,000	1,399
1974	7,500	2,500	1,800	700

Calendar years	X contributions on behalf of A deductible under sec. 404	A's contributions made as an employee	Increments in value attributable to column A yearly contributions	Increments in value attributable to column B yearly contributions
	A	B	C	D
1973	2,500	2,500	1,200	1,200
1972	2,500	2,500	1,300	1,300
Totals	27,500	12,500	8,200	4,600

(2) The amount of the $54,000 distribution to which subdivision (i)(A) of this subparagraph applies is $20,000, computed as follows:

X contributions on behalf of A made in years A was an owner-employee:	
1974	$7,500
1973	2,500
1972	2,500
Total	12,500
Increments in value attributable to such contributions:	
1974	1,800
1973	1,200
1972	1,300
Total	4,300
Increments in value attributable to contributions made by A as an employee for years in which he was an owner-employee:	
1974	700
1973	1,200
1972	1,300
Total	3,200
Grand total	20,000

In this example, the $20,000 amount computed above would be includible in A's gross income for 1977 and would be subject to the 10 percent tax described in subparagraph (1)(i) of this paragraph.

(3) Subdivision (i)(A) of this subparagraph does not apply to the contributions made by X on behalf of A for 1976 and 1975 ($7,500 each year, totaling $15,000) nor to the increments in value attributable to those contributions ($900 for 1976 and $4,000 for 1975, totaling $4,900), because A was not an owner-employee with respect to these two years, 1976 and 1975, on account of which these employer contributions were made. For the same reason, subdivision (i)(A) of this subparagraph does not apply to the increments in value attributable to A's contributions for 1976 and 1975 ($300 and $1,300, respectively, totaling $1,600).

See section 4972(c) for the amount of employee contributions which is permitted to be contributed by an owner-employee (as an employee) without subjecting an owner-employee to the tax on excess contributions.

(4) Subdivision (i)(A) of this subparagraph does not apply to the contributions made by A, as an employee during the years when he was an owner-employee ($2,500 during each of the years 1972, 1973, and 1974, totaling $7,500), because the distribution was received in a taxable year of A ending after September 2, 1974; see subparagraph (3) of this paragraph. Furthermore, because the distribution of the amount of A's contributions ($12,500) constitutes consideration for the contract paid by A for purposes of section 72, the $7,500 amount described in the preceding sentence is not includible in his gross income, and that amount is not subject to the rules of this subparagraph; see subdivision (i) of this subparagraph, and paragraphs (b) and (c) of this section.

(B) The increments in value of an individual's account may be allocated to contributions on his behalf, by his employer or by such individual as an owner-employee, while he was an owner-employee either by maintaining a separate account, or an accounting, which reflects the actual increment attributable to such contributions, or by the method described in (C) of this subdivision.

(C) Where an individual is covered under the same plan both as an owner-employee and as a non-owner-employee, the portion of the increment in value of his interest attributable to contributions made on his behalf while he was an owner-employee may be determined by multiplying the total increment in value in his account by a fraction. The numerator of the fraction is the total contributions made on behalf of the individual as an owner-employee, weighted for the number of years that each contribution was in the plan. The denominator is the total contributions made on behalf of the individual, whether or not as an owner-employee, weighted for the number of years each contribution was in the plan. The contributions are weighted for the number of years in the plan by multiplying each contribution by the number of years it was in the plan. For purposes of this computation, any forfeiture allocated to the account of the individual is treated as a contribution to the account made at the time so allocated. For purposes of this computation, where the individual has received a prior distribution from such account, an appropriate adjustment must be made to reflect such prior distribution.

(D) The method described in (C) of this subdivision may be illustrated by the following example:

Example. B was a member of the XYZ Partnership and a participant in the partnership's profit-sharing plan which was created in 1973. Until the end of 1977, B's interest in the partnership was less than 10 percent. On January 1, 1978, B obtained an interest in excess of 10 percent in the partnership and continued to participate in the profit-sharing plan until 1982. During 1982, prior to the time he attained the age of 59½ years and during a time when he was not disabled, B, who had not received any prior plan distributions, withdrew his entire interest in the profit-sharing plan. At the time his interest was $15,000, $9,600 contributions and $5,400 increment attributable to the contributions. The portion of the increment attributable to contributions while B was an owner-employee is $867.80, determined as follows:

	Contribution	Number of years contributions was in trust	Contribution weighted for years in trust (A x B)
	A	B	C
1982	$1,000	0	0
1981	800	1	800
1980	1,200	2	2,400
1979	600	3	1,800
1978	200	4	800
1977	400	5	2,000
1976	2,000	6	12,000
1975	1,000	7	7,000
1974	1,500	8	12,000
1973	900	9	8,100
Total	9,600		46,900

Total weighted contributions as owner-employee (1978–1982) = $5,800.
Total weighted contributions = $46,900.

$$\$5,400 \times \frac{\$5,800}{\$46,900} = \$867.80$$

(E)(*1*) The rules set forth in subdivision (iv)(E)(*2*) of this subparagraph shall be used to determine the amounts to which subdivision (i)(A) of this subparagraph applies in the case of a distribution of less than the entire balance of the employee's account from a plan in which he has been covered at different times as owner-employee or as an employee other than an owner-employee.

(*2*) Distributions or payments from a plan for any employee taxable year shall be deemed to be attributable to contributions to the plan, and increments thereon, in the following order—

(*i*) Excess contributions, within the meaning of section 4972 (b), designated as such by the trustee;

(*ii*) Employee contributions;

(*iii*) Employer contributions, other than those described in (*i*), and the increments in value attributable to the employee's own contributions and his employer's contributions on the basis of the taxable years of his employer in succeeding order of time whether or not the employee was an owner-employee for any such year.

For purposes of (*iii*) of this subdivision, the time of contributions made on the basis of any employer taxable year shall

take into account the rule specified in section 404(a)(6), relating to time when contributions deemed made.

(v) The amounts referred to in subdivision (i)(C) of this subparagraph are amounts which are received by reason of a distribution of the owner-employee's entire interest under the provisions of section 401(e)(2)(E), as in effect on September 1, 1974, relating to excess contributions on behalf of an owner-employee which are willfully made. Notwithstanding the preceding sentence, an owner-employee's entire interest in all plans with respect to which he is an owner-employee (within the meaning of subsections (d)(8)(C) and (e)(2)(E)(ii) of section 401, as in effect on September 1, 1974) does not include any distribution or payment attributable to his employer's contributions or his own contributions made with respect to his employer's taxable years beginning after December 31, 1975. However, his entire interest in all plans does include all of the distribution or payment attributable to his employer's contributions and his own contributions made with respect to all of his employer's taxable years beginning before January 1, 1976, if any portion thereof is attributable in whole or in part to such a willful excess contribution and such entire interest is received because of a willful excess contribution pursuant to section 401(e)(2)(E)(ii). A distribution or payment is described in the preceding sentence even though it is received in an owner-employee's taxable year beginning after December 31, 1975. For purposes of computing the increments in value attributable to employer taxable years which begin before January 1, 1976, and such increments attributable to such years beginning after December 31, 1975, the rules specified in subdivision (iv)(B), (C), (D), and (E) of this subparagraph shall be applied to the extent applicable. See § 1.401(e)-4(c) for transitional rules with respect to contributions described in this subdivision.

(3)(i) For taxable years of the recipient beginning before January 1, 1976, the tax with respect to amounts to which subparagraph (2) of this paragraph applies shall be computed under subparagraphs (B), (C), (D), and (E) of section 72(m)(5) as such subparagraphs were in effect prior to the amendments made by subsections (g)(1) and (2)(A) of section 2001 of the Employee Retirement Income Security Act of 1974 (88 Stat. 957) except as provided in subdivisions (ii) and (iii) of this subparagraph (see paragraph (e) of § 1.72-17). For purposes of the preceding sentence, amounts to which subparagraph (2) of this paragraph applies in the case of an amount described in section 72(m)(5)(A)(i) shall be determined under subdivisions (i)(*a*) and (ii) of § 1.72-17(e)(1), except as provided in subdivision (ii) of this subparagraph. For purposes of the first sentence of this subdivision, amounts to which subparagraph (2) of this paragraph applies in the case of an amount described in section 72(m)(5)(A)(ii) shall be determined under subdivisions (i)(*b*) and (iii) of § 1.72-17(e)(1), except as provided in subdivision (iii) of this subparagraph.

(ii) For purposes of applying section 72(m)(5)(A)(i), after the amendment made by section 2001(h)(3) of such Act, and subdivisions (i)(*a*) and (ii) of § 1.72-17(e)(1), to a distribution or payment received in recipient taxable years ending after September 2, 1974, and beginning before January 1, 1976, with respect to contributions made on behalf of an owner-employee which were made by him as an owner-employee (that is, employee contributions within the meaning of section 401(c)(5)(B)) the portion of any distribution or payment attributable to such contributions shall not include such contributions but shall include the increments in value attributable to such contributions.

(iii) For purposes of applying section 72(m)(5)(D) and subdivisions (i)(*b*) and (iii) of § 1.72-17(e)(1) to recipient taxable years beginning after December 31, 1973, and beginning before January 1, 1976, in the case of distributions or payments made after December 31, 1973, the amounts to which section 402 (a)(2) or 403(a)(2) applies after the amendments made by section 2005(b) (1) and (2) of such Act (88 Stat. 990 and 991) (which are amounts to which subdivision (i)(*b*) of § 1.72-17(e)(1) does not apply) shall be deemed to be the amount which is treated as a gain from the sale or exchange of a capital asset held for more than 6 months under either of such sections.

(f) *Meaning of disabled.* (1) Section 72(m)(7) provides that an individual shall be considered to be disabled if he is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or to be of long-continued and indefinite duration. In determining whether an individual's impairment makes him unable to engage in any substantial gainful activity, primary consideration shall be given to the nature and severity of his impairment. Consideration shall also be given to other factors such as the individual's education, training, and work experience. The substantial gainful activity to which section 72(m)(7) refers is the activity, or a comparable activity, in which the individual customarily engaged prior to the arising of the disability or prior to retirement if the individual was retired at the time the disability arose.

(2) Whether or not the impairment in a particular case constitutes a disability is to be determined with reference to all the facts in the case. The following are examples of impairments which would ordinarily be considered as preventing substantial gainful activity:

(i) Loss of use of two limbs;

(ii) Certain progressive diseases which have resulted in the physical loss or atrophy of a limb, such as diabetes, multiple sclerosis, or Buerger's disease;

(iii) Diseases of the heart, lungs, or blood vessels which have resulted in major loss of heart or lung reserve as evidenced by X-ray, electrocardiogram, or other objective findings, so that despite medical treatment breathlessness, pain, or fatigue is produced on slight exertion, such as walking several blocks, using public transportation, or doing small chores;

(iv) Cancer which is inoperable and progressive;

(v) Damage to the brain or brain abnormality which has resulted in severe loss of judgment, intellect, orientation, or memory;

(vi) Mental diseases (e.g. psychosis or severe psychoneurosis) requiring continued institutionalization or constant supervision of the individual;

(vii) Loss or diminution of vision to the extent that the affected individual has a central visual acuity of no better than 20/200 in the better eye after best correction, or has a limitation in the fields of vision such that the widest diameter of the visual fields subtends an angle no greater than 20 degrees;

(viii) Permanent and total loss of speech;

(ix) Total deafness uncorrectible by a hearing aid.

The existence of one or more of the impairments described in this subparagraph (or of an impairment of greater severity) will not, however, in and of itself always permit a finding that an individual is disabled as defined in section 72(m)(7). Any impairment, whether of lesser or greater severity, must be evaluated in terms of whether it does in fact prevent the individual from engaging in his customary or any comparable substantial gainful activity.

(3) In order to meet the requirements of section 72(m)(7), an impairment must be expected either to continue for a long

and indefinite period or to result in death. Ordinarily, a terminal illness because of disease or injury would result in disability. The term "indefinite" is used in the sense that it cannot reasonably be anticipated that the impairment will, in the foreseeable future, be so diminished as no longer to prevent substantial gainful activity. For example, an individual who suffers a bone fracture which prevents him from working for an extended period of time will not be considered disabled, if his recovery can be expected in the foreseeable future; if the fracture persistently fails to knit, the individual would ordinarily be considered disabled.

(4) An impairment which is remediable does not constitute a disability within the meaning of section 72(m)(7). An individual will not be deemed disabled if, with reasonable effort and safety to himself, the impairment can be diminished to the extent that the individual will not be prevented by the impairment from engaging in his customary or any comparable substantial gainful activity.

§ 1.401-13 Excess contributions on behalf of owner-employees.

* * * * *

(f) *Years to which this section applies.* This section applies to contributions made in taxable years of employers beginning before January 1, 1976. Thus, for example, in the case of willful contributions made in taxable years of employers beginning before January 1, 1976, paragraphs (e) (1), (2), and (3) of this section apply to such taxable years beginning on or after such date. However, in such a case, because the application of paragraph (e)(4) of this section affects contributions made in taxable years of employers beginning on or after January 1, 1976, paragraph (e)(4) of this section does not apply to such taxable years; see paragraph (c) of § 1.401(e)-4 (relating to transitional rules for excess contributions).

§ 1.401(e)-1 Definitions relating to plans covering self-employed individuals.

(a) *"Keogh" or "H.R. 10" plans, in general*—(1) *Introduction and organization of regulations.* Certain self-employed individuals may be covered by a qualified pension, annuity, or profit-sharing plan. This section contains definitions contained in section 401(c) relating to plans covering self-employed individuals and is applicable to employer taxable years beginning after December 31, 1975, unless otherwise specified.

The provisions of section 401(a) relating to qualification requirements which are generally applicable to all qualified plans, and other provisions relating to the special rules under section 401 (b), (f), (g), (h), and (i), are also generally applicable to any plan covering a self-employed individual. However, in addition to such requirements and special rules, any plan covering a self-employed individual is subject to the rules contained in §§ 1.401 (e)-2, (e)-5, and (j)-1 through (j)-5. Section 1.401(e)-2 contains general rules, § 1.401(e)-5 contains a special rule limiting the contribution and benefit base to the first $100,000 of annual compensation, and § 1.401 (j)-1 through (j)-5 contains special rules for defined benefit plans. Section 1.401(e)-3 contains special rules which are applicable to plans covering self-employed individuals when one or more of such individuals is an owner-employee within the meaning of section 401(c)(3). Section 1.401(e)-4 contains rules relating to contributions on behalf of owner-employees for premiums on annuity, etc., contracts and a transitional rule for certain excess contributions made on behalf of owner-employees for employer taxable years beginning before January 1, 1976. The provisions of this section and of §§ 1.401(e)-2 through 1.401(e)-5 are applicable to employer taxable years beginning after December 31, 1975, unless otherwise specified.

(2) [Reserved]

§ 1.401(e)-2 General rules relating to plans covering self-employed individuals.

(a) *"Keogh" or "H.R. 10" plans; introduction and organization of regulations.* This section provides certain rules which supplement, and modify, the qualification requirements of section 401(a) and the special rules provided by § 1.401(b)-1 and other special rules under subsections (f), (g), (h), and (i) of section 401 in the case of a qualified pension, annuity, or profit-sharing plan which covers a self-employed individual who is an employee within the meaning of section 401(c)(1). Section 1.401(e)-1(a)(1) sets forth other provisions which also supplement, and modify, these requirements and special rules in the case of a plan described in this section. The provisions of this section apply to employer taxable years beginning after December 31, 1975, unless otherwise specified.

(b) [Reserved]

§ 1.401(e)-3 Requirements for qualification of trusts and plans benefiting owner-employees.

(a) *"Keogh" or "H.R. 10" plans covering owner-employes; introduction and organization of regulations.* This section prescribes the additional requirements which must be met for qualification of a trust forming part of a pension or profit-sharing plan, or of an annuity plan, which covers any self-employed individual who is an owner-employee as defined in section 401(c)(3). These additional requirements are prescribed in section 401(d) and are made applicable to such a trust by section 401(a)(10)(B) and to an annuity plan by section 404(a)(2). However, to the extent that the provisions of §§ 1.401(e)-1 and 1.401(e)-2 are not modified by the provisions of this section such provisions are also applicable to a plan which covers an owner-employee. The provisions of this section apply to taxable years beginning after December 31, 1975, unless otherwise specified.

(b) [Reserved]

§ 1.401(e)-4 Contributions for premiums on annuity, etc., contracts and transitional rule for certain excess contributions.

(a) *In general.* The provisions of this section prescribe the rules specified in section 401(e) relating to certain contributions made under a qualified pension, annuity, or profit-sharing plan on behalf of a self-employed individual who is an owner-employee (as defined in section 401(c)(3) and the regulations thereunder) in taxable years of the employer beginning after December 31, 1975. In addition, such plans are also subject to the limitations on contributions and benefits under section 415 for years beginning after December 31, 1975. However, the defined contribution compensation limitation described in section 415(c)(1)(B) will not apply to any contribution described in this section provided that the requirements specified in section 415(c)(7) and § 1.415-6(h) are satisfied. Solely for the purpose of applying section 4972(b) (relating to excise tax on excess contributions for self-employed individuals) to other contributions made by an owner-employee as an employee, the amount of any employer contribution which is not deductible under section 404 for the employer's taxable year but which is described in section 401(e) and this section shall be taken into account as a contribution made by such owner-employee as an employee during the taxable year of his employer in which such contribution is made.

(b) *Contributions described in section 401(e)*—(1) An employer contribution on behalf of an owner-employee is described in section 401(e), if—

(i) Under the provisions of the plan, the contribution is expressly required to be applied (either directly or through a trustee) to pay the premiums or other consideration for one or more annuity, endowment, or life insurance contracts on the life of the owner-employee.

(ii) The employer contributions so applied meet the requirements of subparagraphs (2) through (5) of this paragraph.

(iii) The amount of the contribution exceeds the amount deductible under section 404 with respect to contributions made by the employer on behalf of the owner-employee under the plan, and

(iv) The total employer contributions required to be applied annually to pay premiums on behalf of any owner-employee for contracts described in this paragraph do not exceed $7,500. For purposes of computing such $7,500 limit, the total employer contributions include amounts which are allocable to the purchase of life, accident, health, or other insurance.

(2)(i) The employer contributions must be paid under a plan which satisfies all the requirements for qualification. Accordingly, for example, contributions can be paid under the plan for life insurance protection only to the extent otherwise permitted under sections 401 through 404 and the regulations thereunder. However, certain of the requirements for qualification are modified with respect to a plan described in this paragraph (see section 401(a)(10)(A)(ii) and (d)(5)).

(ii) A plan described in this paragraph is not disqualified merely because a contribution is made on behalf of an owner-employee by his employer during a taxable year of the employer for which the owner-employee has no earned income. On the other hand, a plan will fail to qualify if a contribution is made on behalf of an owner-employee which results in the discrimination prohibited by section 401(a)(4) as modified by section 401(a)(10)(A)(ii).

(3) The employer contributions must be applied to pay premiums or other consideration for a contract issued on the life of the owner-employee. For purposes of this subparagraph, a contract is not issued on the life of an owner-employee unless all the proceeds which are, or may become, payable under the contract are payable directly, or through a trustee of a trust described in section 401(a) and exempt from tax under section 501(a), to the owner-employee or to the beneficiary named in the contract or under the plan. For example, a nontransferable face-amount certificate described in section 401(g) and the regulations thereunder is considered an annuity on the life of the owner-employee if the proceeds of such contract are payable only to the owner-employee or his beneficiary.

(4)(i) For any taxable year of the employer, the amount of contributions by the employer on behalf of the owner-employee which is applied to pay premiums under the contracts described in this paragraph must not exceed the average of the amounts deductible under section 404 by such employer on behalf of such owner-employee for the most recent three taxable years of the employer which are described in the succeeding sentence. The three employer taxable years described in the preceding sentence must be years, ending prior to the date the latest contract was entered into or modified to provide additional, benefits, in which the owner-employee derived earned income from the trade or business with respect to which the plan is established. However, if such owner-employee has not derived earned income for at least three taxable years preceding such date, then, in determining the "average of the amounts deductible", only so many of such taxable years as such owner-employee was engaged in such trade or business and derived earned income therefrom are taken into account.

(ii) For the purpose of making the computation described in subdivision (i) of this subparagraph, the taxable years taken into account include those years in which the individual derived earned income from the trade or business but was not an owner-employee with respect to such trade or business. Furthermore, taxable years of the employer preceding the taxable year in which a qualified plan is established are taken into account.

(iii) For purposes of making the computations described in subdivisions (i) and (ii) of this subparagraph for any taxable year of the employer the average of the amounts deductible under section 404 by the employer on behalf of an owner-employee for the most recent three relevant taxable years of the employer shall be determined as if section 404, as in effect for the taxable year for which the computation is to be made, had been in effect for all three such years.

(5) For any taxable year of an employer in which contributions are made on behalf of an individual as an owner-employee under more than one plan, the amount of contributions described in this section by the employer on behalf of such an owner-employee under all such plans must not exceed $7,500.

(c) *Transitional rule for excess contributions*—(1)(i) The rules of this paragraph are inapplicable to a plan which was not in existence for any taxable year of an employer which begins before January 1, 1976. For taxable years of an employer which begin before January 1, 1976, the rules with respect to excess contributions on behalf of owner-employees set forth in section 401(d) (5) and (8) and in section 401(e), as these sections were in effect on September 1, 1974, prior to their amendment by section 2001(e) of the Employee Retirement Income Security Act of 1974 (hereinafter in this paragraph referred to as the "Act") (88 Stat. 954), shall apply except as provided by subparagraph (2) of this paragraph. Section 1.401–13 generally provides the rules for excess contributions on behalf of owner-employees set forth in these sections.

(ii) Notwithstanding the provisions of subdivision (i) of this subparagraph, the rules set forth in such subsections (d) (5) and (8) and (e) of section 401 with respect to excess contributions for such taxable years beginning before January 1, 1976, apply even though the application of those rules affects a subsequent taxable year. Thus, for example, if, in 1975, a nonwillful excess contribution described in section 401(e)(1) (prior to such amendment) is made on behalf of an owner-employee, the plan will not be qualified unless the provisions required by subparagraphs (A) and (B) of such 401(d)(8) are contained in the plan and made applicable to excess contributions made for such taxable years beginning before January 1, 1976. In such case, the effect of such contribution on the plan, the employer, and the owner-employee would be determined under paragraph (2) of section 401(e), as in effect on September 1, 1974. By reason of section 401(e)(2)(F), as in effect on September 1, 1974, the period for assessing any deficiency by reason of the excess contribution will not expire until the expiration of the 6-month period described in section 401(e)(2)(C), as in effect on September 1, 1974, even if the first day of such 6-month period falls in a taxable year beginning after December 31, 1975. For the rules applicable to a willful excess contribution, which generally divide an owner-employee's interest in a plan into two parts on the basis of employer taxable years beginning before and after December 31, 1975, see § 1.72–17A(e)(2)(v). In the case of a willful excess contribution, the rule

specified in section 401(e)(2)(E)(iii), as in effect on September 1, 1974, shall not apply to any taxable year of an employer beginning on or after January 1, 1976. Thus, for example, if a willful excess contribution was made to a plan on behalf of an owner-employee with respect to his employer's taxable year beginning January 1, 1975, the plan would not meet, for purposes of section 404, the requirements of section 401(d) with respect to that owner-employee for such year, but the 5 taxable years following such year would be unaffected because those years begin on or after January 1, 1976.

(2)(i) For purposes of applying the excess contribution rules with respect to the employer taxable years specified in subparagraph (1) of this paragraph for such an employer taxable year which begins after December 31, 1973, see section 404(e) and § 1.404(e)-1A for rules increasing the limitation on the amount of allowable employer deductions on behalf of owner-employees under section 404. For purposes of applying subparagraphs (A) and (B)(i) of section 401(e)(1) prior to the amendment made by section 2001(e)(3) of the Act (88 Stat. 954), the employer deduction allowable by section 404(e)(4) with respect to an owner-employee in a defined contribution plan shall be deemed not to be an excess contribution (see § 1.404(e)-1A(c)(4)).

(ii) For purposes of applying the excess contribution rules with respect to the employer taxable years specified in subparagraph (1) of this paragraph to an employer's plan which was not in existence on January 1, 1974, or to a plan in existence on January 1, 1974, which elects under section 1017(d) of the Act (88 Stat. 934), in accordance with regulations, to have the funding provisions of section 412 apply to such an existing plan, see section 404 (a) (1), (a)(6), and (a)(7), as amended by section 1013(c)(1), (2), and (3) of the Act (88 Stat. 922 and 923) for rules modifying the amount of employer deductions on behalf of owner-employees.

§ 1.401(e)-5 Limitation of contribution and benefit bases to first $100,000 of annual compensation in case of plans covering self-employed individuals.

(a) *General rules*—(1) *General rule.* (1) Under section 401 (a)(17), a plan maintained by an employer which provided contributions or benefits for employees some or all of whom are employees within the meaning of section 401(c)(1) is a qualified plan only if the annual compensation of each employee taken into account under the plan does not exceed the first $100,000 of such compensation. For purposes of applying section 401(a)(17) and the preceding sentence, all plans maintained by such an employer with respect to the same trade or business shall be treated as a single plan. See also sections 401(d)(9) and (10) (relating to controlled trades or businesses where a plan covers an owner-employee who controls more than one trade or business); section 404(e) (relating to special limitations for self-employed individuals); section 413(b)(7) (relating to determination of limitations provided by section 404(a) in the case of certain plans maintained pursuant to a collective bargaining agreement); and section 413(c)(6) (relating to determination of limitations provided by section 404(a) in the case of certain plans maintained by more than one employer).

(2) *Special section 414(b), (c) rule.* This subparagraph (2) applies to plans maintained by employers that are trades or businesses (whether or not incorporated) that are under common control within the meaning of section 414(c). All such plans that are described in paragraph (a)(1) and § 1.401(e)-6(a) (so called "Subchapter S plans") shall be treated as a single plan in applying the limitation of paragraph (a)(1).

(b) *Integrated plans.* (1) In the case of a qualified plan, other than a plan described in section 414(j), which is integrated with the Social Security Act (chapter 21 of the Code), or with contributions or benefits under chapter 2 of the Code (relating to tax on self-employment income) or under any other Federal of State law, the $100,000 limitation described in subparagraph (a) shall be determined without regard to any adjustments to contributions or benefits under the plan on account of such integration. See also subsections (a)(5), (a)(15), and (d)(6) of section 401 and the regulations thereunder for other rules with respect to plans which are integrated.

(2) In the case of a qualified defined benefit plan described in section 414(j), see section 401(j)(4) for a special prohibition against integration.

(c) *Application of nondiscrimination requirement.* (1) This paragraph shall apply—

(i) In the case of a plan which provides contributions or benefits for employees some or all of whom are employees within the meaning of section 401(c)(1) and

(ii) For a year in which the compensation of any employee covered by the plan exceeds $100,000. In the case of an employee who is an employee within the meaning of section 401(c)(1), compensation includes earned income within the meaning of section 401(c)(2).

(2) In applying section 401(a)(4) under the circumstances described in subparagraph (1) of this paragraph, the determination whether the rate of contributions or benefits under the plan discriminates in favor of highly compensated employees shall be made as if the compensation for the year of each employee described in the first sentence of subparagraph (1)(ii) of this paragraph were $100,000, rather than the compensation actually received by him for such year.

(d) *Examples.* The provisions of this section may be illustrated by the following examples:

Example (1). A, a self-employed individual, has established the P Profit-Sharing Plan, which covers A and his two commonlaw employees, B and C. A's taxable year and the plan's plan year are both the calendar year. For 1976, A has earned income of $150,000, and B and C each receive compensation of less than $100,000 from A. If he wishes to contribute $7,500 to the plan on his behalf for 1976, A must also contribute to the accounts of B and C under the plan amounts at least equal to 7½ percent of their respective compensation for 1976.

Example (2). D, an owner-employee within the meaning of section 401(c)(3), is a participant in the Q Qualified Defined Contribution Plan, which, in 1975, satisfies the requirements of section 401(d)(6) and all other integration requirements applicable to qualified defined contribution plans. The taxable years of D, the employer of D within the meaning of section 401(c)(4), and the plan are all calendar years. The plan provides for an integration level of $13,200 and a contribution rate of 5 percent of compensation in excess of $13,200. For 1975, D has earned income of $115,000. The maximum amount of earned income upon which D's contribution can be determined is $86,800, and the contribution based upon this maximum amount of earned income is $4,340, computed as follows:

Maximum annual compensation which may be taken into account	$100,000
Less: Social Security Act integration level	13,200
Plan contribution base	$86,800
Multiplied by: Contribution rate (percent)	5
Total	$4,340

(e) *Years to which section applies.* This section applies to taxable years of an employer beginning after December 31, 1975. However, if employer contributions made under a plan for any employee for taxable years of an employer beginning after December 31, 1973, exceed the amounts permitted to be deducted for that employee under section 404(e), as in effect on September 1, 1974, this section applies to such taxable years of an employer.

Thus, for example, a plan of a calendar year employer which was

adopted on January 1, 1974, would be subject to this section in 1974, if the employer made a contribution on behalf of any employee within the meaning of section 401(c)(1) for such year in excess of the $2,500 or 10 percent earned income limit, whichever is applicable to that employee, specified in section 404(e)(1) as in effect prior to the amendment to such Code section made by section 2001(a)(1)(A) of the Employee Retirement Income Security Act of 1974 (88 Stat. 952). The plan described in the proceeding sentence would also be subject to this section in 1974, if the employer made a contribution on behalf of any employee within the meaning of section 401(c)(1) which is allowable as a deduction only because of the addition of paragraph (4) to Code section 404(e) made by section 2001(a)(3) of such Act (88 Stat. 952).

§ 1.401(e)-6 Special rules for shareholder-employees.

(a) *Limitation of contributions and benefit bases to first $100,000 of annual compensation in case of plans covering shareholder-employees.* (1) Under section 401(a)(17), a plan which provides contributions or benefits for employees, some or all of whom are shareholder-employees within the meaning of section 1379(d), is subject to the same limitation on annual compensation as a plan which provides such contributions or benefits for employees some or all of whom are self-employed individuals within the meaning of section 401(c)(1). Thus, a plan which provides contributions or benefits for such shareholder-employees is subject to the rules provided by § 1.401(e)-5, unless otherwise specified. See also section 1379. In the case of plans maintained by employers that are corporations described in section 414(b) and that are described in this subparagraph (1), the same rule described in § 1.401(e)-5(a)(2) shall apply.

(2) Subparagraph (1) applies to taxable years of an electing small business corporation beginning after December 31, 1975. However, if corporate contributions made under a plan on behalf of any shareholder-employee for corporate taxable years beginning after December 31, 1973, exceed the lesser of the amount of contributions specified in section 1379(b)(1)(A) or (B), as in effect on September 1, 1974, for that shareholder-employee, subparagraph (1) applies to such corporate taxable years. Thus, for example if an electing small business corporation whose taxable year is the calendar year adopted a plan on January 1, 1974, the plan would be subject to the provisions of subparagraph (1) of this section in 1974, if the corporation made a contribution in excess of $2,500 on behalf of any shareholder-employee for such year.

(b) [Reserved]

§ 1.404(e)-1 Contributions on behalf of a self-employed individual to or under a pension, annuity, or profit-sharing plan meeting the requirements of section 401(a); application of section 404(a)(8), (9), and (10) and section 404 (c) and (f).

* * * * *

(i) *Years to which this section applies.* This section applies to taxable years of employers beginning before January 1, 1974. For taxable years beginning after December 31, 1973, see § 1.404(e)-1A.

§ 1.404(e)-1A Contributions on behalf of a self-employed individual to or under a qualified pension, annuity, or profit-sharing plan.

(a) *In general.* This section provides rules relating to employer contributions to qualified plans on behalf of self-employed individuals described in subsections (a) (8) and (9), (e), and (f) of section 404. Unless otherwise specifically provided, this section applies to taxable years of an employer beginning after December 31, 1973. See section 1.404(e)-1 for rules relating to plans for self-employed individuals for taxable years beginning before January 1, 1974. Paragraph (b) of this section provides general rules of deductibility, paragraph (c) provides rules relating to defined contribution plans, paragraph (d) provides rules relating to defined benefit plans, paragraph (e) provides rules relating to combinations of plans, paragraph (f) provides rules for partnerships, paragraph (g) provides rules for insurance, paragraph (h) provides rules for loans, and paragraph (i) provides definitions.

(b) *Determination of the amount deductible.* (1) If a defined contribution plan covers employees, some of whom are self-employed individuals, the determination of the amount deductible is made on the basis of independent consideration of the common-law employees and of the self-employed individuals. See subparagraphs (2) and (3) of this paragraph. For purposes of determining the amount deductible with respect to contributions on behalf of a self-employed individual, such contributions shall be considered to satisfy the conditions of section 162 (relating to trade or business expenses) or 212 (relating to expenses for the production of income), but only to the extent that such contributions do not exceed the earned income of such individual derived from the trade or business with respect to which the plan is established. However, the portion of such contribution, if any, attributable to the purchase of life, accident, health, or other insurance protection shall be considered payment of a personal expense which does not satisfy the requirements of section 162 or 212. See paragraph (g) of this section.

(2)(i) If contributions are made on behalf of employees, some of whom are self-employed individuals, to a defined contribution plan described in section 414(i) and included in section 404(a) (1), (2), or (3), the amount deductible with respect to contributions on behalf of the common-law employees covered under the plan shall be determined as if such employees were the only employees for whom contributions and benefits are provided under the plan. Accordingly, for purposes of such determination, the percentage of compensation limitations of section 404(a) (3) and (7) are applicable only with respect to the compensation otherwise paid or accrued during the taxable year by the employer with respect to the common-law employees. Similarly, the costs referred to in section 404(a)(1) (A) and (B) shall be the costs of funding the benefits of the common-law employees. Also, the provisions of section 404(a)(1)(D), (3), and (7), relating to certain carryover deductions, shall be applicable only to amounts contributed or to the amounts deductible on behalf of such employees.

(ii) The amount deductible, by reason of contributions on behalf of employees to a defined benefit plan, shall be determined without regard to the self-employed or common law status of each employee.

(3)(i) If contributions are made on behalf of individuals, some or all of whom are self-employed individuals, to a defined contribution plan described in section 414(i) and included in section 404(a) (1), (2), or (3), the amount deductible in any taxable year with respect to contributions on behalf of such individuals shall be determined as follows:

(A) The provisions of section 404(a) (1), (2), (3), and (7) shall be applied as if such individuals were the only participants for whom contributions and benefits are provided under the plan. Thus, the costs referred to in such provisions shall be the costs of funding the benefits of the self-employed individuals. If such costs are less than an amount equal to the amount determined under paragraph (c) of this section, the maximum amount deductible with respect to such individuals shall be the cost of their benefits.

(B) The provisions of section 404(a)(1), (D), the third sentence of section 404(a)(3), (A), and the second sentence of section 404(a)(7), relating to certain carryover deductions are applicable to contributions on behalf of self-employed individuals made in taxable years of an employer beginning after December 31, 1975.

(C) For any employer taxable year in applying the 15 percent limit on deductible contributions set forth section in 404(a)(3) and the 25 percent limit in section 404(a)(7) for any taxable year of the employer, the amount deductible under section 404(e)(4) and paragraph (c)(4) of this section (relating to the minimum deduction of $750 or 100 percent of earned income) shall be substituted for such limits with respect to the self-employed individuals on whose behalf contributions are deductible under section 404(e)(4) for the taxable year of the employer. In addition, although the limitations of section 415 are applicable to the plan for plan years beginning after December 31, 1975, the defined contribution compensation limitation described in section 415(c)(1)(B) shall not be less than the amount deductible under section 404(e)(4) and paragraph (c)(4) of this section with respect to any self-employed individual for the taxable year of the employer wnding with or within the limitation year. The special rule in the second sentence of paragraph (3)(A) of section 404(a) is not applicable in determining the amounts deductible on behalf of self-employed individuals.

(ii) The limitations of this subparagraph are not applicable to a defined benefit plan for self-employed individuals.

(c) *Defined contribution plans.* (1) Under section 404(e)(1) in the case of a defined contribution plan, as defined in section 414(i), the amount deductible for the taxable year of the employer with respect to contributions on behalf of a self-employed individual shall not exceed the lesser of $7,500 or 15 percent of the earned income derived by such individual for such taxable year from the trade or business with respect to which the plan is established.

(2) Under section 404(e)(2)(A) if a self-employed individual receives in any taxable year earned income with respect to which deductions are allowable to two or more employers under two or more defined contribution plans the aggregate amounts deductible shall not exceed the lesser of $7,500 or 15 percent of such earned income. This limitation does not apply to contributions made under a plan on behalf of an employee who is not self-employed in the trade or business with respect to which the plan is established.

(3) Under section 404(e)(2)(B) in any case in which the applicable limitation of subparagraph (2) of this paragraph reduces the amount otherwise deductible with respect to contributions on behalf of any employee within the meaning of section 401(c)(1), the amount deductible by each employer for such employee shall be that amount which bears the same ratio to the aggregate amount deductible for such employee with respect to all trades or businesses (as determined in subparagraph (1) of this paragraph) as his earned income derived from the employer bears to the aggregate of his earned income derived from all of the trades or businesses with respect to which plans are established.

Under section 404(e)(4), notwithstanding the provisions of subparagraphs (1) and (2) of this paragraph, the limitations on the amount deductible for the taxable year of the employer with respect to contributions on behalf of a self-employed individual shall not be less than the lesser of $750 or 100 percent of the earned income derived by such individual for such taxable year from the trade or business with respect to which the plan is established. If such individual receives in any taxable year earned income with respect to which deductions are allowable to two or more employers, 100 percent of such earned income shall be taken into account for purposes of the limitations determined under this subparagraph. This subparagraph does not apply to any taxable year beginning after December 31, 1975, to any employee whose adjusted gross income for that taxable year is greater than $15,000. In applying the preceding sentence, the adjusted gross income of an employee for a taxable year is determined separately for each individual, without regard to any community property laws, and without regard to the deduction allowable under section 404(a).

(d) *Defined benefit plans.* In the case of a defined benefit plan, as defined in section 401(j), the special limitations provided by section 404(e) and paragraph (c) of this section do not apply. See section 401(j) for requirements applicable to defined benefit plans.

(e) *Combination of plans.* For special rules applied if a self-employed individual in any taxable year is a paraticipant in both a defined benefit plan and a defined contribution plan, see section 401(j) and the regulations thereunder.

(f) *Partner's distributive share of contributions and deductions.* (1) For purposes of sections 702(a)(8) and 704 in the case of a defined contribution plan, a partner's distributive share of contributions on behalf of self-employed individuals under such a plan is the contribution made on his behalf, and his distributive share of deductions allowed the partnership under section 404 for contributions on behalf of a self-employed individual is that portion of the deduction which is attributable to contributions made on his behalf under the plan. The contribution on behalf of a partner and the deduction with respect thereto must be accounted for separately by such partner, for his taxable year with or within which the partnership's taxable year ends, as an item described in section 702(a)(8).

(2) In the case of a defined benefit plan, a partner's distributive share of contributions on behalf of self-employed individuals and his distributive share of deductions allowed the partnership under section 404 for such contributions is determined in the same manner as his distributive share of partnership taxable income. See section 704, relating to the determination of the distributive share and the regulations thereunder.

(g) *Contributions allocable to insurance protection.* Under Section 404(e)(3), for purposes of determining the amount deductible with respect to contributions on behalf of a self-employed individual, amounts allocable to the purchase of life, accident, health, or other insurance protection shall not be taken into account. Such amounts are neither deductible nor considered as contributions for purposes of determining the maximum amount of contributions that may be made on behalf of an owner-employee. The amount of a contribution allocable to insurance shall be an amount equal to a reasonable net premium cost, as determined by the Commissioner, for such amount of insurance for the appropriate period. See paragraph (b)(5) of § 1.72-16.

(h) *Rules applicable to loans.* Under section 404(f), for purposes of section 404, any amount paid, directly or indirectly, by an owner-employee in repayment of any loan which under section 72(m)(4)(B) was treated as an amount recieved from a qualified trust or plan shall be treated as a contribution to such trust or under such plan on behalf of such owner-employee.

(i) *Definitions.* Under section 404(a)(8), for purposes of section 404 and the regulations thereunder—

(1) The term "employee" includes an employee as defined in section 401(c)(1)

and the term "employer" means the person treated as the employer of such individual under section 401(c)(4);

(2) The term "owner-employee" means an owner-employee as defined in section 401(c)(3);

(3) The term "earned income" means earned income as defined in section 401(c)(2); and

(4) The term "compensation" when used with respect to an individual who is an employee described in subparagraph (1) of this paragraph shall be considered to be a reference to the earned income of such individual derived from the trade or business with respect to which the plan is established.

§ 1.901—1 Allowance of credit for taxes.

* * * * *

(f) *Taxes against which credit not allowed.*—The credit for taxes shall be allowed only against the tax imposed by chapter 1 of the Code, but it shall not be allowed against the following taxes imposed under that chapter:

(1) The minimum tax for tax preferences imposed by section 56;

(2) The 10 percent tax on premature distributions to owner-employees imposed by section 72(m)(5)(B);

(3) The tax on lump sum distributions imposed by section 402(e);

(4) The additional tax on income from certain retirement accounts imposed by section 408(f);

(5) The tax on accumulated earnings imposed by section 531;

(6) The personal holding company tax imposed by section 541;

(7) The additional tax relating to war loss recoveries imposed by section 1333; and

(8) The additional tax relating to recoveries of foreign expropriation losses imposed by section 1351.

[FR Doc. 79-24484 Filed 8-9-79; 8:45 am]
BILLING CODE 4830-01-M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Part 1601

Procedural Regulations; 706 Designation

AGENCY: Equal Employment Opportunity Commission.

ACTION: Final rule.

SUMMARY: The Equal Employment Opportunity Commission amends its regulations on designation of certain State and local fair employment practices agencies so that they may handle employment discrimination charges within their jurisdiction, filed with the Commission.

EFFECTIVE DATE: August 10, 1979.

FOR FURTHER INFORMATION CONTACT: Dorothy D. Howze, telephone 202 634-6040, Equal Employment Opportunity Commission (State and Local), 2401 E Street, NW., Washington, D.C. 20506.

SUPPLEMENTARY INFORMATION: Publication of this amendment to Section 1601. 74(a) effectuates the designation of the following as a 706 Agency:

South Carolina Human Affairs Commission

Notice of the proposed designation was published in the June 22, 1979 issue of the Federal Register, 44 FR (36432) with notice that written comments must have been filed with the Commission on or before July 9, 1979. The Commission received no comments within the prescribed period for filing written comments regarding the proposed designation.

PART 1601—PROCEDURAL

With the addition of the above mentioned agency, § 1601.74 (a) and (b) are amended and published as follows:

§ 1601.74 Designated and notice agencies.

(a) The designated 706 Agencies are:

Alaska Commission for Human Rights
Alexandria (Va.) Human Rights Office
Allentown (Pa.) Human Relations Commission
Anchorage (Alaska) Equal Rights Commission
Arizona Civil Rights Division
Augusta/Richmond County (Ga.) Human Relations Commission
Austin (Tex.) Human Relations Commission
Baltimore (Md.) Community Relations Commission
Bloomington (Ind.) Human Rights Commission
Broward County (Fla.) Human Relations Division
California Fair Employment Practices Commission
Charleston (W. Va.) Human Rights Commission
Colorado Civil Rights Commission
Colorado State Personnel Board
Commonwealth of Puerto Rico Department of Labor
Connecticut Commission on Human Rights and Opportunities
Corpus Christi (Tex.) Human Relations Commission
Dade County (Fla.) Fair Housing and Employment Commission
Delaware Department of Labor
District of Columbia Office of Human Rights
East Chicago (Ind.) Human Relations Commission
Evansville (Ind.) Human Relations Commission
Fairfax County (Va.) Human Rights Commission
Florida Commission on Human Relations
Fort Wayne (Ind.) Metropolitan Human Relations Commission
Fort Worth (Tex.) Human Relations Commission
Gary (Ind.) Human Relations Commission
Georgia Office of Fair Employment Practices
Howard County (Md.) Human Rights Commission
Hawaii Department of Labor and Industrial Relations
Idaho Commission on Human Rights
Illinois Fair Employment Practices Commission
Indiana Civil Rights Commission
Iowa Commission on Civil Rights
Jacksonville (Fla.) Community Relations Commission
Kansas Commission on Human Rights
Kentucky Commission on Human Rights
Lexington-Fayette (Ky.) Urban County Human Rights Commission
Lincoln (Nebr.) Commission on Human Rights
Madison (Wis.) Equal Opportunities Commission
Maine Human Rights Commission
Maryland Commission on Human Relations
Massachusetts Commission Against Discrimination
Michigan Civil Rights Commission
Minneapolis (Min.) Department of Civil Rights
Minnesota Department of Human Rights
Missouri Commission on Human Rights
Montana Commission for Human Rights
Montgomery County (Md.) Human Relations Commission
Nebraska Equal Opportunity Commission
Nevada Commission on Equal Rights of Citizens
New Hampshire Commission for Human Rights
New Jersey Division on Civil Rights, Department of Law and Public Safety
New Mexico Human Rights Commission
New York City (N.Y.) Commission on Human Rights
New York State Division on Human Rights
Ohio Civil Rights Commission
Oklahoma Human Rights Commission
Omaha (Nebr.) Human Relations Department
Oregon Bureau of Labor
Orlando (Fla.) Human Relations Department
Pennsylvania Human Relations Commission
Philadelphia (Pa.) Commission on Human Relations
Pittsburgh (Pa.) Commission on Human Relations
Prince George's County (Md.) Human Relations Commission
Rhode Island Commission for Human Rights
Rockville (Md.) Human Rights Commission
St. Paul (Minn.) Department of Human Rights
St. Petersburg (Fla.) Office of Human Relations
Seattle (Wash.) Human Rights Commission
Sioux Falls (S.Dak.) Human Relations Commission
South Bend (Ind.) Human Rights Commission
South Carolina Human Affairs Commission [1]

[1] Note that in 41 FR 156, August 11, 1976, it was erroneously proposed that the instant agency (South Carolina Human Affairs Commission) be designated to accept charges for all employers, both public and private. The Notice should have designated the South Carolina Human Affairs Commission to accept charges for public employers only. On March

Footnotes continued on next page

South Dakota Division of Human Rights
Springfield (Ohio) Human Relations Department
Tacoma (Wash.) Human Rights Commission
Tennessee Commission for Human Development
Utah Industrial Commission
Vermont Attorney General's Office, Civil Rights Division
Virgin Islands Department of Labor
Washington Human Rights Commission
West Virginia Human Rights Commission
Wheeling (W. Va.) Human Rights Commission
Wichita (Kans.) Commission on Civil Rights
Wisconsin Equal Rights Division, Department of Industry, Labor and Human Relations
Wyoming Fair Employment Practices Commission

(b) The designated Notice Agencies are:

Arkansas Governor's Committee on Human Resources
North Dakota Commission on Labor
Ohio Director of Industrial Relations
Raleigh (N.C.) Human Resources Department, Civil Rights Unit

(Sec. 713(a) 78 Stat. 265 (42 USC 2000e-12(a)).)

Signed at Washington, D.C. this 7th day of August 1979.

For the Commission:

Eleanor Holmes Norton,

Chair, Equal Employment Opportunity Commission.

[FR Doc. 79-24713 Filed 8-9-79; 8:45]

BILLING CODE 6570-06-M

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 2618

Rules for Administrative Review of Agency Decisions

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Correction to Final Rule.

SUMMARY: This document corrects two errors in the final rules for administrative review of agency decisions that were published in the Federal Register on July 19, 1979.

EFFECTIVE DATE: August 20, 1979.

FOR FURTHER INFORMATION CONTACT: Joan Segal, Staff Attorney, Office of the General Counsel, 2020 K Street, N.W., Washington, D.C. 20006; (202) 254-3010.

SUPPLEMENTARY INFORMATION: In FR Doc. 79-22295, appearing at page 42181 in the issue of July 19, 1979, the following changes should be made under Subpart D—Administrative Appeals on page 42188: (1) In § 2618.51, *Purpose and Scope*, the citation in line 4 should read: "§ 2618.1(b)(5)-(11)"; and (2) in paragraph (c) of § 2618.58—*Appeals affecting third parties*, the citation in line 4 should read: "§ 2618.57."

Issued in Washington, D.C. on this 7th day of August, 1979.

Jeff Hart,

Acting Executive Director.

[FR Doc. 79-24779 Filed 8-9-79; 8:45 am]

BILLING CODE 7708-01-M

Footnotes continued from last page

22, 1979, amendments to the South Carolina Human Affairs Law included charges against private employers. Therefore, such charges will be deferred to that Ageney, effective immediately.

DEPARTMENT OF THE TREASURY

Office of the Secretary

31 CFR Part 8

Amendment of the Regulations Governing Solicitation by Practitioners Before the Bureau of Alcohol, Tobacco and Firearms

AGENCY: Department of the Treasury.

ACTION: Final rule.

SUMMARY: The rule amends the advertising and solicitation provisions of the regulations governing practice by attorneys, certified public accountants and enrolled practitioners before the Bureau of Alcohol, Tobacco and Firearms. The purpose of this amendment is to permit the expansion of advertising and solicitation by those practitioners, consistent with recent judicial determinations and the January 24, 1979 amendments to the regulations governing practice before the Internal Revenue Service on the subject. In addition, the revision places all the solicitation provisions presently in the regulations governing practice before the Bureau of Alcohol, Tobacco and Firearms in one section.

EFFECTIVE DATE: This revision of 31 CFR Part 8 becomes effective on August 10, 1979.

FOR FURTHER INFORMATION CONTACT: Mr. Leslie S. Shapiro, Director of Practice, 202-376-0767.

SUPPLEMENTARY INFORMATION:

Background

On April 10, 1979, the Department of the Treasury published proposed amendments to the regulations governing practice before the Bureau of Alcohol, Tobacco and Firearms (31 CFR Part 8) in the Federal Register (44 FR 21302). The regulations in 31 CFR Part 8 govern the conduct of attorneys, certified public accountants, and enrolled practitioners in their practice before the Bureau of Alcohol, Tobacco and Firearms. The proposed amendment provides authority for expanded advertising and solicitation by those practitioners.

Such proposed amendment was deemed warranted because of recent judicial determinations on the subject of advertising and solicitation by the professions. In addition, on January 24, 1979, amendments to the advertising and solicitation provisions of the regulations governing practice before the Internal Revenue Service (31 CFR Part 10) were finalized by the Treasury Department. The proposed amendment parallels those regulations.

The public was extended a 60-day invitation to comment on the proposed rule. No comments were received. Although there were no comments, the proposed rule reflects the Treasury Department's consideration of public comment and testimony at public hearing in connection with the proposed rule to amend the advertising and solicitation provisions of the regulations governing practice before the Internal Revenue Service.

Therefore the rule, as stated in proposed form, is adopted as a final rule.

Drafting Information

The principal author of this amendment is Mr. Leslie S. Shapiro, Director of Practice, Office of the General Counsel, Department of the Treasury, and members of his staff.

Authority

These amendments are proposed under the authority of: Sec. 3, 23 Stat. 258 (31 U.S.C. 1026); 5 U.S.C. 301, 500, 551-559; and Reorganization Plan No. 26 of 1950, 15 FR 4935, 64 Stat. 1280, as amended, unless otherwise noted.

PART 8—PRACTICE BEFORE THE BUREAU OF ALCOHOL, TOBACCO AND FIREARMS

Accordingly, 31 CFR Part 8 is amended to read as follows:

Paragraph 1. Section 8.35 is revised to read as set forth below:

§ 8.35 Assistance from disbarred or suspended persons and former Treasury employees.

No attorney, certified public accountant or enrolled practitioner shall, in practice before the Bureau, knowingly and directly or indirectly:

(a) Employ or accept assistance from any person who is under disbarment or suspension from practice before any agency of the Treasury Department;

(b) Accept employment as associate, correspondent, or subagent from, or share fees with, any such person;

(c) Accept assistance in a specific matter from any person who participated personally and substantially in the matter as an employee of the Treasury Department.

Paragraph 2. Section 8.41 is revised to read as set forth below:

§ 8.41 Solicitation.

(a) *Advertising and solicitation restrictions.* (1) No attorney, certified public accountant or enrolled practitioner shall, with respect to any Bureau matter, in any way use or participate in the use of any form of public communication containing a false, fraudulent, misleading, deceptive, unduly influencing, coercive or unfair statement or claim. For the purposes of this subsection, the prohibition includes, but is not limited to, statements pertaining to the quality of services rendered unless subject to factual verification, claims of specialized expertise not authorized by State or Federal agencies having jurisdiction over the practitioner, and statements or suggestions that the ingenuity and/or prior record of a representative rather than the merit of the matter are principal factors likely to determine the result of the matter.

(2) No attorney, certified public accountant or enrolled practitioner shall make, directly or indirectly, an uninvited solicitation of employment, in matters related to the Bureau. Solicitation includes, but is not limited to, in-person contacts, telephone communications, and personal mailings directed to the specific circumstances unique to the recipient. This restriction does not apply to: (i) Seeking new business from an existing or former client in a related matter; (ii) solicitation by mailings, the contents of which are designed for the general public; or (iii) non-coercive in-person solicitation by those eligible to practice before the Bureau while acting as an employee, member, or officer of an exempt organization listed in sections 501(c) (3) or (4) of the Internal Revenue Code of 1954 (26 U.S.C.).

(b) *Permissible Advertising.* (1) Attorneys, certified public accountants and enrolled practitioners may publish, broadcast, or use in a dignified manner through any means of communication set forth in paragraph (d) of this section:

(i) The name, address, telephone number, and office hours of the practitioner or firm.

(ii) The names of individuals associated with the firm.

(iii) A factual description of the services offered.

(iv) Acceptable credit cards and other credit arrangements.

(v) Foreign language ability.

(vi) Membership in pertinent, professional organizations.

(vii) Pertinent professional licenses.

(viii) A statement that an individual's or firm's practice is limited to certain areas.

(ix) In the case of an enrolled practitioner, the phrase "enrolled to practice before the Bureau of Alcohol, Tobacco and Firearms."

(x) Other facts relevant to the selection of a practitioner in matters related to the Bureau which are not prohibited by these regulations.

(2) Attorneys, certified public accountants and enrolled practitioners may use, to the extent they are consistent with the regulations in this section, customary biographical insertions in approved law lists and reputable professional journals and directories, as well as professional cards, letterheads and announcements: *Provided,* That (i) attorneys do not violate applicable standards of ethical conduct adopted by the American Bar Association, (ii) certified public accountants do not violate applicable standards of ethical conduct adopted by the American Institute of Certified Public Accountants, and (iii) enrolled practitioners do not violate applicable standards of ethical conduct adopted by the National Society of Public Accountants.

(c) *Fee Information.* (1) Attorneys, certified public accountants and enrolled practitioners may disseminate the following fee information:

(i) Fixed fees for specific routine services.

(ii) Hourly rates.

(iii) Range of fees for particular services.

(iv) Fee charged for an initial consultation.

(2) Attorneys, certified public accountants and enrolled practitioners may also publish the availability of a written schedule of fees.

(3) Attorneys, certified public accountants and enrolled practitioners shall be bound to charge the hourly rate, the fixed fee for specific routine services, the range of fees for particular services, or the fee for an initial consultation published for a reasonable period of time, but no less than thirty days from the last publication of such hourly rate or fees.

(d) *Communications.* Communications, including fee information, shall be limited to professional lists, telephone directories, print media, permissible mailings as provided in these regulations, radio and television. In the case of radio and television broadcasting, the broadcast shall be pre-recorded and the practitioner shall retain a recording of the actual audio transmission.

(e) *Improper Associations.* An attorney, certified public accountant or enrolled practitioner may, in matters related to the Bureau, employ or accept employment or assistance as an associate, correspondent, or subagent from, or share fees with, any person or entity who, to the knowledge of the practitioner, obtains clients or otherwise practices in a manner forbidden under this section: *Provided,* That an attorney, certified public accountant or enrolled practitioner does not, directly or indirectly, act or hold himself out as authorized to practice before the Bureau in connection with that relationship. Nothing herein shall prohibit an attorney, certified public accountant, or enrolled practitioner from practice before the Bureau in a capacity other than that described above.

Dated: July 31, 1979.

Robert H. Mundheim,

General Counsel, Department of the Treasury.

[FR Doc. 79-24695 Filed 8-9-79; 8:45 am]

BILLING CODE 4810-25-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 65

[FRL 1282-6]

Approval of a Delayed Compliance Order Issued by the Virginia State Air Pollution Control Board to Jewell Coal and Coke Co., Plant No. 1

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Administrator of EPA hereby approves a Delayed Compliance Order issued by the Virginia State Air Pollution Control Board ("SAPCB") to the Jewell Coal and Coke Company. The Order requires the company to bring air emissions from its Number One coke plant at Vansant, Virginia into compliance with certain regulations contained in the Federally-approved Virginia State Implementation Plan (SIP). Because of the Administrator's approval, compliance with the Order will preclude suits under the Federal enforcement and citizen suit provisions of the Clean Air Act for violations of the SIP regulations covered by the Order during the period the Order is in effect.

DATES: This rule takes effect on August 10, 1979.

ADDRESS: A copy of the Delayed Compliance Order, any supporting material, and any comments received in response to a prior Federal Register notice proposing approval of the Order are available for public inspection and copying during normal business hours at:

Air Enforcement Branch, U.S. EPA, Region III, Curtis Building, Sixth and Walnut Streets, Philadelphia, Pennsylvania 19106.

FOR FURTHER INFORMATION CONTACT: Mr. Gary Gross, Air Enforcement Branch 3EN12, U.S. EPA, Region III, Curtis Building, Sixth and Walnut Streets, Philadelphia, Pennsylvania 19106, 215/597-8907.

SUPPLEMENTARY INFORMATION: On April 27, 1979, the Regional Administrator of EPA's Region III Office published in the Federal Register, 44 FR 24888, a notice proposing approval of a delayed compliance order issued by the Virginia SAPCB to the Jewell Coal and Coke Company. The notice asked for public comments by May 29, 1979 on EPA's proposed approval of the Order.

No public comments have been received by this office; therefore, the delayed compliance order issued to Jewell Coal and Coke Company's Plant One is approved by the Administrator of EPA pursuant to the authority of Section 113(d)(2) of the Clean Air Act, 42 U.S.C. 7413(d)(2). The Order placed Jewell on a schedule to bring its 168 non-recovery coke ovens, known as Plant One, at Vansant, Virginia into compliance with the Virginia Rules and Regulations for the Control and Abatement of Air Pollution, a part of the Federally-approved Virginia State Implementation Plan, as expeditiously as practicable. The Order also imposes certain interim requirements in accordance with the provisions of 113(d)(1)(C) and 113(d)(7) of the Act, and emission monitoring and reporting requirements.

If the conditions of the Order are met, it will permit Jewell Coal and Coke to delay compliance with the SIP regulations covered by the Order until June 30, 1979. The company is unable to immediately comply with these regulations.

EPA has determined that its approval of the Order shall be effective upon publication of this notice because of the need to immediately place Jewell Coal and Coke Company on a schedule which is effective under the Clean Air Act for compliance with the applicable requirements of the Virginia State Implementation Plan.

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

Dated: July 25, 1979.

Douglas M. Costle,

Administrator.

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

PART 65—DELAYED COMPLIANCE ORDERS

1. By adding the following entry to the table in § 65.511:

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

Source	Location	Order No.	SIP regulation(s) involved	Date of FR proposal	Final compliance date
* *	*	*	*	*	*
Jewell Coal and Coke Co. Plant No. 1.	Vansant, Virginia	None	4.20 and 4.40	4/27/79	6/30/79
* *	*	*	*	*	*

[FR Doc. 79-24780 Filed 8-9-79; 8:45 am]

BILLING CODE 6560-01-M

40 CFR Part 65

[FRL 1282-5]

Approval of a Delayed Compliance Order Issued by the Virginia State Air Pollution Control Board to the Solite Corporation

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Administrator of EPA hereby approves a Delayed Compliance Order issued by the Virginia State Air Pollution Control Board ("SAPCB") to the Solite Corporation. The Order requires the company to bring air emissions from its lightweight aggregate plant at Cascade, Virginia into compliance with certain regulations contained in the Federally-approved Virginia State Implementation Plan (SIP). Because of the Administrator's approval, Solite Corporation's compliance with the Order will preclude suits under the Federal Air Act for violations of the SIP regulations covered by the Order during the period the Order is in effect.

DATES: This rule takes effect on August 10, 1979.

ADDRESS: A copy of the Delayed Compliance Order, any supporting material, and any comments received in response to a prior Federal Register notice proposing approval of the Order are available for public inspection and copying during normal business hours at:

Air Enforcement Branch, U.S. EPA, Region III, Curtis Building, Sixth and Walnut Streets, Philadelphia, Pennsylvania 19106.

FOR FURTHER INFORMATION CONTACT: Gary Gross, Air Enforcement Branch (3EN12), U.S. EPA, Region III, Curtis Building, Sixth and Walnut Streets, Philadelphia, Pennsylvania 19106, Telephone 215/597-8907.

SUPPLEMENTARY INFORMATION: On February 2, 1979, the Regional Administrator of EPA's Region III Office published in the Federal Register, 44 FR 6754, a notice proposing approval of a delayed compliance order issued by the Virginia SAPCB to Solite Corporation. The notice asked for public comments by March 5, 1979 on EPA's proposed approval of the Order.

No public comments have been received by this office; therefore, the Delayed Compliance Order issued to Solite Corporation is approved by the Administrator of EPA pursuant to the authority of Section 113(d)(2) of the Clean Air Act, 42 U.S.C. 7413(d)(2). The Order placed the Solite Corporation on a schedule to bring its five rotary kilns at Cascade, Virginia into compliance as expeditiously as practicable with Sections 4.20 and 4.40 of the Virginia Regulations for the Control and Abatement of Air Pollution, a part of the Federally-approved Virginia State Implementation Plan. The Order also imposes reasonable interim requirements which meet the requirements of Sections 113(d)(1)(C) and 113(d)(7) of the Act, and emission monitoring and reporting requirements. If the conditions of the Order are met, it will permit Solite Corporation to delay compliance with the SIP regulations covered by the Order until March 31, 1979. The Company was unable to

immediately comply with these regulations.

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

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

Dated: July 25, 1979.

Douglas M. Costle,

Administrator.

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

PART 65—DELAYED COMPLIANCE ORDERS

1. By adding the following entry to the table in § 65.511:

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

Source	Location	Order No.	SIP regulations involved	Date of FR proposal	Final compliance date
*	*	*	*	*	*
Solite Corporation	Cascade Virginia	None	4.20 and 4.40	2/2/79	3/31/79
*	*	*	*	*	*

[FR Doc. 79-24781 Filed 8-9-79; 8:45 am]

BILLING CODE 6560-01-M

40 CFR Part 65

[FRL 1282-4]

Delayed Compliance Orders; Approval of a Delayed Compliance Order Issued by the Virginia State Air Pollution Control Board to Dan River, Incorporated

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Administrator of EPA hereby approves a Delayed Compliance Order issued by the Virginia State Air Pollution Control Board to Dan River, Incorporated. The Order requires the company to bring air emissions from its Riverside Power House at Danville, Virginia into compliance with certain regulations contained in the Federally approved Virginia State Implementation Plan (SIP). Because of the Administrator's approval, Dan River's compliance with the Order will preclude suits under the Federal enforcement and citizen suit provisions of the Clean Air Act for violations of the SIP regulations covered by the Order during the period the Order is in effect.

DATES: This rule takes effect on August 10, 1979.

ADDRESS: A copy of the Delayed Compliance Order, any supporting material, and any comments received in response to a prior Federal Register notice proposing approval of the Order are available for public inspection and copying during normal business hours at:

Air Enforcement Branch, U.S. EPA, Region III, Curtis Building, Sixth and Walnut Streets, Philadelphia, Pennsylvania 19106.

FOR FURTHER INFORMATION CONTACT: Gary Gross, U.S. EPA, Region III, Curtis Building, Sixth and Walnut Streets, Philadelphia, Pennsylvania 19106 (215/597-8907).

SUPPLEMENTARY INFORMATION: On February 2, 1979, the Regional Administrator of EPA's Region III Office published in the Federal Register, 44 FR 6754, a notice proposing approval of a Delayed Compliance Order issued by the Virginia State Air Pollution Control Board (SAPCB) to Dan River, Incorporated. The notice asked for public comments by March 5, 1979 on EPA's proposed approval of the Order.

No public comments have been received by this office; therefore, the Delayed Compliance Order issued to Dan River, Incorporated is approved by the Administrator of EPA pursuant to the authority of Section 113(d)(2) of the Clean Air Act, 42 U.S.C. § 7413(d)(2). The Order placed Dan River on a schedule to bring its Riverside Power House at Danville, Virginia into compliance as expeditiously as practicable with §§ 4.20 and 4.30 of the Virginia Regulations for the Control and Abatement of the Air Pollution, a part of the Federally approved Virginia State Implementation Plan. The Order also imposes reasonable interim requirements which meet Sections 113(d)(1)(C) and 113(d)(7) of the Act, and emission monitoring and reporting requirements. If the conditions of the Order are met, it will permit Dan River, Incorporated to delay compliance with the SIP regulations covered by the Order until July 1, 1979. The company is unable to immediately comply with these regulations.

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

Authority: 42 U.S.C. §§ 7413(d), 7601.

Dated: July 25, 1979.

Douglas M. Costle,

Administrator.

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

PART 65—DELAYED COMPLIANCE ORDERS

1. By adding the following entry to the table in § 65.511:

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

Source	Location	Order No.	SIP regulation(s) involved	Date of FR proposal	Final compliance date
*	*	*	*	*	*
Dan River Inc	Danville	None	4.20 and 4.30	2/2/79	7/1/79
*	*	*	*	*	*

[FR Doc. 79-24768 Filed 8-9-79; 8:45 am]

BILLING CODE 6560-01-M

40 CFR Part 65

[FRL 1292-1]

Delayed Compliance Order for Ohio Ferro-Alloys Corporation

AGENCY: U.S. Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: By this rule, the Administrator of U.S. Environmental Protection Agency issues a Delayed Compliance Order to Ohio Ferro-Alloys Corporation (Ohio Ferro-Alloys). The Order requires the Company to bring air emissions from its four electric submerged arc furnaces at Powhatan Point, Ohio, into compliance with certain regulations contained in the federally approved Ohio State Implementation Plan (SIP). Ohio Ferro-Alloys' compliance with the Order will preclude suits under the Federal enforcement and citizen suit provisions of the Clean Air Act (Act) for violations of the SIP regulations covered in the Order.

DATES: This rule takes effect on August 10, 1979.

FOR FURTHER INFORMATION CONTACT: Deborah Garber, Attorney, U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604, Telephone (312) 353-2082.

SUPPLEMENTARY INFORMATION: On June 19, 1979, the Regional Administrator of U.S. Environmental Protection Agency's Region V Office published in the Federal Register (44 FR 35270) a notice setting out the provisions of a proposed Federal Delayed Compliance Order for Ohio Ferro-Alloys. The notice asked for public comments and offered the opportunity to request a public hearing on the proposed Order. No public comments and no request for a public hearing were received in response to the notice.

Therefore, a Delayed Compliance Order effective this date is issued to Ohio Ferro-Alloys by the Administrator of U.S. Environmental Protection Agency pursuant to the authority of Section 113(d)(1) of the Act, 42 U.S.C. 7413(d)(1). The Order places Ohio Ferro-Alloys on a schedule to bring its four electric submerged arc furnaces at Powhatan Point, Ohio, into compliance as expeditiously as practicable with Regulations AP-3-07 and AP-3-12, a part of the federally approved Ohio State Implementation Plan. Ohio Ferro-Alloys is unable to immediately comply with these regulations. The Order also imposes interim requirements which meet Sections 113(d)(1)(C) and 113(d)(7) of the Act, and emission monitoring and reporting requirements. If the conditions of the Order are met, it will permit Ohio Ferro-Alloys to delay compliance with the SIP regulations covered by the Order until January 15, 1980.

Compliance with the Order by Ohio Ferro-Alloys will preclude Federal enforcement action under Section 113 of the Act for violations of the SIP regulations covered by the Order. Citizen suits under Section 304 of the Act to enforce against the source are similarly precluded. Enforcement may be initiated, however, for violations of the terms of the Order, and for violations of the regulations covered by the Order which occurred before the Order was issued by U.S. Environmental Protection Agency or after the Order is terminated. If the Administrator determines that Ohio Ferro-Alloys is in violation of a requirement contained in the Order, one or more of the actions required by Section 113(d)(9) of the Act will be initiated. Publication of this notice of final rulemaking constitutes final Agency action for the purposes of judicial review under Section 307(b) of the Act.

U.S. Environmental Protection Agency has determined that the Order shall be effective upon publication of this notice because of the need to immediately place Ohio Ferro-Alloys on a schedule for compliance with the Ohio State Implementation Plan.

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

Dated: August 3, 1979.

Douglas M. Costle,
Administrator.

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

PART 65—DELAYED COMPLIANCE ORDERS

Adding the following entry to the table in § 65.400:

§ 65.400 Federal Delayed Compliance Orders issued under Section 113(d) (1), (3), and (4) of the Act.

Source	Location	Order No.	Date of FR proposal	SIP regulation involved	Final compliance date
*	*	*	*	*	*
Ohio Ferro-Alloys Corporation	Powhatan Point, Ohio.	EPA-5-79-A-44	6/19/79	AP-3-07 AP-3-12	1/15/80
*	*	*	*	*	*

[FR Doc. 79-24700 Filed 8-9-79; 8:45 am]

BILLING CODE 6560-01-M

40 CFR Parts 122 and 125

[FRL 1294-3]

National Pollutant Discharge Elimination System; Deferral of Effective Date for Best Management Practice Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Deferral of Effective Date.

SUMMARY: EPA recently revised its regulations for the National Pollutant Discharge Elimination System (NPDES) under the Clean Water Act. Certain new requirements relating to best management practices (BMP's) were scheduled to become effective August 13, 1979. Because EPA has not yet published relevant technical information, EPA is today deferring the effectiveness of the BMP requirements.

DATES: The BMP requirements will become effective 60 days after EPA publishes notice in the Federal Register that the BMP technical information is available.

FOR FURTHER INFORMATION CONTACT: Edward A. Kramer (EN-336), Office of Water Enforcement, EPA, 401 M Street SW., Washington, D.C. 20460, (202) 755-0750.

SUPPLEMENTARY INFORMATION: EPA PUBLISHED MAJOR REVISIONS TO ITS NPDES REGULATIONS ON JUNE 7, 1979. 44 FR 32854-32956. IN THE JUNE 7 Federal Register, EPA announced that most provisions of the new regulations would become effective on August 13, 1979. 44 FR 32854, 32856.

One of the requirements scheduled to become effective on August 13 was Subpart K of 40 CFR Part 125—"Criteria and Standards for Best Management Practices Authorized Under Section 304(e) of the Act." Subpart K requires that applications for NPDES permits include a "BMP program" for the control of certain toxic and hazardous pollutants. EPA stated that information on the development of BMP programs was contained in a publication entitled "NPDES Best Management Practices Guidance Document." 44 FR 32955, comment following 40 CFR 125.104(b).

Publication of the Guidance Document has, however, been unavoidably delayed. EPA does not expect that it will be available until a month or two after the August 13 effective date.

EPA accordingly feels compelled to defer applicability of the BMP portions of the NPDES regulations until 60 days after EPA has published Federal Register notice of the availability of the BMP program Guidance Document. The following provisions are hereby deferred: (1) The parenthetical reference to BMP programs in 40 CFR 122.10(a); and (2) all of Subpart K of 40 CFR Part 125 (40 CFR 125.100–104).

Dated: August 7, 1979.

Douglas M. Costle,

Administrator.

[FR Doc. 79-24765 Filed 8-9-79; 8:45]

BILLING CODE 6560-01-M

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Public Health Service

42 CFR Part 122

Health Systems Agency Reviews of Certain Proposed Uses of Federal Health Funds

AGENCY: Public Health Service, HEW.

ACTION: Final regulations.

SUMMARY: These regulations set forth the requirements governing the review and approval or disapproval by health systems agencies of certain proposed uses of Federal funds in accordance with section 1513(e) of the Public Health Service Act as amended by the National Health Planning and Resources Development Act of 1974. These reviews are designed to ensure to the maximum practicable extent that Federal health funds are expended in accordance with State and local health plans developed under the authority of Titles XV and XVI of the Public Health Service Act.

DATE: These regulations are effective on November 8, 1979, as further explained in the discussion under the "Supplementary Information" heading below.

FOR FURTHER INFORMATION CONTACT: Colin C. Rorrie, Jr., Ph. D., Director, Bureau of Health Planning, Center Building, Room 6–22, 3700 East-West Highway, Hyattsville, Maryland 20782, 301–436–6850.

SUPPLEMENTARY INFORMATION: In the Federal Register of May 9, 1978 (43 FR 19988), the Assistant Secretary for Health, Department of Health, Education, and Welfare, with the approval of the Secretary, proposed to add a new subpart E, entitled "Health Systems Agency Reviews of Certain Proposed Uses of Federal Health Funds," to 42 CFR Part 122. These regulations were proposed to implement section 1513(e) of the Public Health Service Act. These proposed regulations set forth the minimum procedures and criteria for health systems agency ("HSA") reviews under section 1513(e) of the Public Health Service Act ("Act") of certain proposed uses of Federal funds; the manner in which these procedures and criteria must be developed and published; the procedures for determination of the proposed uses to which this review must apply; and the procedures the Secretary will follow in considering, upon the request of an applicant, whether to fund applications notwithstanding an HSA disapproval.

As noted in the Preamble to the proposed rules, the Secretary intends to issue a supplementary notice of proposed rulemaking covering proposed uses of funds for research and training activities which would be subject to review and approval or disapproval by HSAs. That notice is expected to be issued within a few weeks. It will include the criteria for determining those proposed uses of funds for research and training which are subject to HSA review and approval. Comments received on the May 9, 1978, proposed rules which relate to research and training activities will be considered as the supplementary notice of proposed rulemaking is developed and will also be considered along with public comments on it. Until these criteria are published as regulations, no proposed uses of Federal funds for research and training activities will be subject to HSA review and approval or disapproval.

Interested persons were invited to submit comments on the proposed regulations not later than June 23, 1978. About 250 comments were received and the comments, the Department's responses and the revisisons made in the regulations are indicated below. For clarity, the comments and responses have been arranged according to the section of the regulations to which they pertain.

Section 122.401 Purpose and applicability. One commenter suggested that the regulations provide for coordination in the development of review procedures and criteria between the State health planning and development agency (SHPDA) and the HSA in States where there is only one HSA. While the Secretary generally encourages the coordination of activities between HSAs and SHPDAs, the SHPDA role in review under section 1513(e) (other than in section 1536 States) is limited to commenting on those HSA disapprovals which are appealed under § 122.415.

Several commenters suggested that § 122.401(a) may be misleading in stating that the primary purpose of the review is to ensure that projects covered by section 1513(e) are consistent with and will help implement the plans of the HSAs, because it is also important that the projects be consistent with the criteria developed pursuant to § 122.412. The Secretary notes that the proposal must, of course, be reviewed against all of the adopted criteria as well as the HSP. The HSP, however, is the principal means of expression of the health care needs of the area and for that reason, consistency with it is the primary purpose of the review. Accordingly, no change has been made in the regulation.

Section 122.402 Definitions. Some commenters requested that the definition of "applicant" be expanded to include institutions, organizations, and legally authorized representatives of applicants. The Secretary points out that the definition of "applicant" refers to the "person," which is defined in § 122.402 to include institutions and organizations.

A respondent suggested inclusion of applicants for "loan authorizations" in the definition. Such a change is unnecessary, since applicants for loans and loan guarantees (included in the definition) are the only applicants who compete for "loan authorizations."

Several commenters said that the terms, "directly result," "substantial," and "significant," used in various of the definitions, are too vague and subjective. The Secretary recognizes that the terms are not precise, but points out that these terms serve to identify those proposed uses subject to HSA review and approval, that decisions on coverage in specific cases will be made by funding agencies within the

Department, and that he will monitor the operation of this review program to ensure that proposed uses which under these definitions should be reviewed by HSAs are reviewed.

Two commenters suggested that the term "substantial and significant increase" be eliminated from the definition of "expansion * * * of health resources," and that it be made clear that any increase at all constitutes an expansion. The Secretary, mindful of the many functions and limited resources of HSAs, has retained the term, believing that the purposes of the review program will be served if all proposed uses which would result in substantial and significant increases in the quantity of health resources are reviewed.

One commenter suggested the expansion of the term "Federal funding agency" to include agencies outside of the Department of Health, Education, and Welfare. Since section 1513(e) applies only to funds proposed to be used under statutes administered by DHEW, the Secretary has not modified the definition.

With regard to the definition of a health service, one commenter suggested that the reference to "alcohol, drug abuse, mental health, preventive and environmental services" be expanded to include screening and counselling, and that this entire category be identified as "non-clinically related services." The same commenter suggested that screening and prevention also be added to the clinically-related services. Another commenter suggested that the term "clinically-related" be deleted and that "health education and promotion" be added. The Secretary first wishes to point out that the definition of a "health service" in this regulation and that found in the regulation for review of new institutional health services (42 CFR 122.301(d)) are not identical. In the Preamble to the latter regulation (42 FR 4007, January 21, 1977) the Secretary noted that he did not feel that mandatory coverage in State certificate of need programs was an appropriate mechanism for emphasizing the importance of and need for preventive health services. However, in the reviews of proposed uses of Federal funds, he does feel that the Department should be exemplary in two respects: to promote a broad definition of health to encompass prevention in addition to the treatment of illness, and to promote greater awareness of the impact on society of the problems associated with mental illness, alcohol abuse, and drug abuse. By so expanding the definition of a health service, the Secretary is recognizing the need for the HSA to address factors of importance in its health service area, and the need for the Department to allocate its resources to those areas where there is a need. For these reasons, the Secretary has adopted a broader definition of "health service" by deleting the term "clinically-related" and adding "screening, prevention" and "health information, education and promotion." With regard to counselling, the Secretary believes that counselling provided in the context of treatment or prevention is already covered, so there is no need to include it in the definition.

One commenter thought the definition of "health professions personnel" too restrictive. The Secretary notes that in his view, individuals who deliver health services are those who constitute "health resources" within the meaning of section 1531(4) of the Act, as opposed to individuals who engage in medical research in a laboratory or who serve as faculty in an institution of higher learning. With respect to the development (i.e., training) of health professions personnel, the Secretary intends to issue a separate Notice of Proposed Rulemaking proposing criteria to determine when reviews of such proposed uses are appropriately undertaken by the HSA. At that time, he will provide any necessary elaboration on health professions personnel for purposes of review by the HSA.

One commenter suggested that the definition of "health care facilities" include the offices of individual or group practices of physicians and dentists. The Secretary points out that these regulations govern review of proposed uses of Federal funds irrespective of the applicant or the setting. Thus, if a physician or dentist were to apply for Federal funds having characteristics described in section 1513(e) of the Act, the proposed use of those funds would be subject to review by the HSA, and therefore, no change is required in the regulation.

Another commenter recommended that the definition of "State program agency" be modified by adding the phrase "by any person" following the word "receipt." The Secretary has revised the regulation accordingly, since funds from some allotment programs are awarded directly to the user and do not go through the State program agency.

Several commenters requested that the regulations include definitions of "non-competing continuation," "new," and "supplemental" applications. The Secretary notes that the PHS grants manual already includes definitions of these terms, and there is no need to define them in regulations. In addition, one commenter suggested that the regulations provide a definition of an "allotment." The Secretary believes that such a definition is not necessary, but notes that the Appendix lists all of the allotment programs subject to review by the SHCC.

One commenter requested that § 122.402 include a definition of an "affected person." The Secretary notes that § 122.410(a)(1) establishes who at a minimum is an affected person. The HSA may, in its adoption of procedures, provide for the routine notice to others of the beginning of reviews.

Section 122.403 General. Section 122.403(a) sets out the statutory requirement that HSAs review and approve or disapprove proposed uses of Federal funds appropriated under the four Federal acts enumerated in section 1513(e). Section 122.403(b) sets out the statutory requirement that an HSA may only review and comment on certain proposed uses of funds by Indian tribes or intertribal organizations.

Certain comments on this section expressed concern about the extent to which HSAs could exercise discretion in choosing whether or not to review proposed uses of Federal funds. The Secretary notes that section 1513(e) of the Act provides that the HSA "shall review and approve or disapprove," and thus does not permit a choice on whether or not to undertake the review function. However, the Secretary believes that HSAs should exercise discretion in determining the type and thoroughness of reviews for various proposals. By thoughtful determinations, the HSAs can efficiently direct staff resources to the review of proposed projects or programs with a potentially significant impact on their health service areas.

One commenter suggested that a minimum dollar threshold be established for review of equipment by the HSA. The Secretary does not find a basis to make such an exemption and therefore, no change is made in the regulation.

One commenter proposed specifying "having direct local application" as a qualifying phrase for "each proposed use of Federal funds" to indicate that there is a minimum threshold which warrants an HSA review, and to avoid multiple HSA reviews where the impact is minimal in some areas. The Secretary has concluded that this would unduly limit the statutory responsibility as well as raise the complex question of defining minimum or threshold impact. However, the Secretary supports the coordination of multiple HSA reviews,

and in § 122.405 and § 122.410(a)(11) has provided for this.

The Secretary notes, in response to a question, that HSA decisions cannot be conditional. Pre-application discussions between agencies and potential applicants are encouraged as a means of resolving questions and reservations.

A second set of comments concerning this section raised issues related to the exceptions provided by the statute and the proposed regulations for projects or programs that Indian tribes or inter-tribal organizations propose to undertake which will be located within or will specifically serve (1) Federally recognized Indian reservations, (2) certain Indian lands or (3) native villages in Alaska. Where proposed uses of Federal funds under Acts specified in section 1513(e) of the Act are applied for by groups other than Indian tribes or inter-tribal organizations, even though they would serve one of the three types of areas or lands listed above, the statute requires HSA review and approval or disapproval. Included under this review and approval are proposals by groups sanctioned or established by tribal governments.

One commenter suggested that the Navajo HSA should have review and approval or disapproval authority for proposed projects or programs on the Navajo reservation. Section 1513(e) makes no provision for this authority.

Various commenters asked that the limitation on HSA review and approval with respect to Indian tribes and inter-tribal organizations be extended to limit HSAs with respect to Alaska Native Regional Non-Profit Corporations, Urban Indian Health Programs and health services for Alaskan Native people not residing in Native villages. It is correct that Alaska Native Regional Non-Profit Corporations have the status of Indian tribes, and proposals of projects by them which are in or are to serve the three types of areas above are subject only to review and comment by HSAs. The Secretary notes that there is no statutory authority for any limitation respecting Urban Indian Health Programs or services to Alaska Native people not residing in Native villages; proposed uses of Federal funds by or for them are subject to HSA review and approval.

One commenter questioned the need for HSA review of proposed area uses of allotment funds, pointing out that there is often citizen participation in the development of the State plans on which these uses are based. The Secretary notes that HSA review and approval of these uses is required by the statute.

Another commenter asked who is responsible for enforcing an HSA disapproval of uses of allotment funds. The Secretary, through his monitoring of the allotment programs, will ensure that HSA disapprovals are not overridden except as provided for by the regulations.

Some commenters asked that these regulations include provisions applicable to the Statewide Health Coordinating Councils (SHCCs). The Secretary notes the following, which was also included in the preamble to the proposed rules. Regulations for SHCC review and approval are not needed, since the statute requires neither that regulations for this function be issued nor that SHCCs adopt review procedures and criteria in accordance with section 1532. Therefore, guidance regarding this function will be issued in the form of guidelines. The Secretary notes that, since the requirement for SHCC review and approval is effective without regulations, each SHCC is required by section 1524(c)(6) to perform this function. Although SHCCs are not required to adopt review procedures and criteria, the Secretary encourages them to do so to conform to the general statutory emphasis on public accountability and participation in the conduct of reviews.

Section 122.404 Section 1536 States. This section covers proposed uses of funds in States, territories, and other jurisdictions in which SHPDAs have been designated under section 1536 of the Act and act as the health systems agency with respect to the review and approval function.

Two commenters noted that this section leaves the impression that the SHCC, the only health planning body required to be representative of the population in section 1536 States, has no role in reviewing proposed uses of Federal funds. Since such a role for the SHCC is specified in 42 CFR 123.502(b)(4), the Secretary agrees that the language of this section should be clarified to reflect this provision. Therefore, the regulation has been modified by adding a requirement that the SHPDA in section 1536 States shall afford the SHCC a reasonable opportunity to review and comment upon SHPDA actions approving or disapproving proposed uses of Federal funds.

However, the Secretary notes that, given the relatively infrequent meetings of the SHCCs in some jurisdictions and the constraints of the 60-day review period, the SHCC may have to make special arrangements for its review.

Section 122.405 Involvement of more than one health systems agency. Commenters were concerned that the absence of more specific guidance to HSAs on coordinating reviews for projects affecting more than one HSA would result in a burdensome process for applicants. The Secretary has considered recommendations to designate one HSA as the designated reviewer, to designate categories of primary and secondary reviewers, to allow the SHPDA or SHCC to designate the HSA to perform the review, and to allow the SHPDA or SHCC to make the review and approval/disapproval decision in these cases. The Secretary has concluded that there is no statutory authority to assign review and approval responsibilities to other than the HSAs.

An appropriate balance is attainable between each HSA's responsibility to review the impact of Federal funds upon its service area, and the burden which multiple reviews would place upon an applicant. Section 122.405 has been revised to require that the HSA in whose area the applicant will administer the project will coordinate the review process. Where the HSA's area is not the one in which a major portion of the funds are proposed to be used, the regulations enable the HSA to delegate the coordinating responsibility to another HSA. In addition, the coordinating responsibilities are specified in a revised § 122.405 to strengthen this function. The Secretary hopes that this will reduce differing decisions from HSAs. However, where disagreements persist, the final decision will be made by the Secretary upon request by the applicant as specified in § 122.415. The Secretary believes that these changes will meet the concerns expressed by commenters and provide for effective reviews.

Section 122.406 Determination of proposed uses subject to review by the HSA. A number of commenters stated that the list of programs subject to HSA review and approval or disapproval, attached as an Appendix to the proposed regulation, should be authoritative and inclusive. The Secretary points out that the statute does not require (or even discuss) a list of programs subject to approval or disapproval by the HSA. Rather it refers to HSA review of *each proposed use* of Federal funds and then sets forth definitive characteristics of a *proposed use* (not a program). Thus, the list is of programs which have been identified as having many (or most or all) of their projects (grants, contracts, loans or loan guarantees) subject to HSA review and approval. It is meant to be a helpful

guide to grant applicants, contract offerors, and others. It is, however, the statute implemented by these regulations which determines whether a proposed use is subject to HSA review and approval, not the program under which the use is proposed.

For these reasons the Appendix has not been codified and will be updated from time to time through publication as general notices in the Federal Register.

Section 122.407 Covered programs; exceptions; determination by Secretary. The Secretary notes that reference to *covered programs* and *exceptions* has, on the basis of comments received, been misleading, and consequently he has revised § 122.406 and § 122.407 of the proposed regulations by combining them and designating the new § 122.406, *Determination of Proposed Uses Subject to review by the health systems agency.* He emphasizes that what the statute covers are the *proposed uses* themselves, not the *programs,* and he does not have the authority to make exceptions for review by the HSA of the proposed uses. The programs which are listed, then, are the programs under which the *proposed uses* are often, or always covered, but not those programs in which there may be occasional covered uses. The Appendix is thus provided for informational and guidance purposes.

The Secretary further notes that through delegation, he is placing with the Federal funding agency the responsibility for notifying an applicant when a particular proposed use requires HSA review. He has instructed that such notification take place, to the extent feasible, through an insert in the application kit sent to each applicant. In the event, however, that an applicant or health systems agency questions whether a particular proposed use is subject to review by the HSA, the new § 122.406(b) provides procedures for an applicant or HSA to request the Secretary to make a determination.

Some commenters recommended that the regulations set forth a number of procedures such as those needed for updating the list of programs and for determining if a particular proposed use is subject to review by the HSA. Such procedures as well as a number of other issues (e.g., notification to applicants of the need for HSA review) are internal to the Department, and therefore need not be established in regulation. The Department is, however, developing such procedures.

Several commenters inquired as to the criteria the Secretary would apply in making a determination whether a particular proposed use of Federal funds is subject to review, and asked whether such criteria should be published in the regulation. The Secretary will be guided by the statute in his determination as to whether a particular proposed use will be subject to review by the HSA. Generally, this means that the Secretary will determine whether a particular proposed use falls under one of the four Acts, whether it is a grant, contract, loan, or loan guarantee or a proposed use made available from allotment funds through grant or contract, and whether it would develop, expand, or support health resources as defined in § 122.402. He has, therefore, made no change in the regulations in this respect. At the same time, the Secretary notes that while he does not have the authority to delete a proposed use from review by the HSA where it is required by statute, he has chosen to subject to review and approval some proposed uses under certain programs where review by the HSA is not required by statute. Those programs are included in the Appendix.

A large number of commenters expressed reservation at the provision that the determination of whether a particular proposed use of funds was subject to review by the HSA rested solely with the Federal funding agency. Some viewed it as a direct conflict of interest. Others viewed the determination as a prerogative of the HSA. Still others expressed the view that a separate agency such as the Bureau of Health Planning, the Office of Management and Budget, or the National Council on Health Planning and Development would be more appropriate to make such a determination. The Secretary believes that the Federal funding agency has the most readily available knowledge to determine whether a proposed use actually would develop, expand, or support health resources, and does not view it as a conflict of interest. In fact, experience has shown that in past review and comment actions, Federal funding agencies were interested in receiving comments from HSAs.

Other commenters requested that the regulations provide for an appeal from the Federal funding agency's determination as to whether a particular proposed use is subject to review by the HSA. The Secretary has concluded that such a change would be inappropriate. As is always the case, however, an applicant may request the agency to reconsider its determination.

Several commenters noted that the proposed regulations did not authorize an HSA to elect not to review a particular proposed use which is covered under section 1513(e). The Secretary notes that the statute provides that an HSA "shall review" each covered proposed use. As a practical matter, however, if the Federal funding agency does not receive an approval or disapproval by the conclusion of the time provided for HSA review, it may make the award of funds or not, based on the funding agency's program criteria and the availability of funds.

One commenter noted that some projects, such as Community Mental Health Centers applications, are already reviewed by community based boards. The Secretary does not view the review by the HSA as a duplicative one to other local reviewers because the HSA will be reviewing the application in the context of the area's Health Systems Plan and Annual Implementation Plan, and its place in the context of other settings and services offered in the area, rather than reviewing it simply from a categorical program perspective. In any case, section 1513(e) does not permit the Secretary to exempt proposed uses from HSA review on any grounds other than those contained in that statute.

One commenter wondered why the SHCC would not be the body to review and approve or disapprove all State plans and applications, including Statewide project grants, since State program agencies were involved. The Secretary notes that the statute generally provides that HSAs review proposed uses of Federal funds in local communities or areas, whereas the SHCCs review State plans and applications for allotments. However, there are a few project grants and contracts which are awarded to agencies of State government which are not allotments, and therefore are subject to review by HSAs. This has caused some confusion and the Secretary wishes to note that while he does not have the authority to require the SHCC to review such grants or contracts or to exempt them from HSA review, he urges that these agencies of State government, insofar as possible, work with the SHCC, since SHCCs are composed in part of representatives of local HSAs.

The Secretary, further, wishes to address some questions raised concerning the review by the HSA of project grants and contracts to agencies of State government. Each HSA will be required to review and approve or disapprove, prior to the award of Federal funds, that discrete portion of a Statewide project grant or contract proposal that pertains to its health service area. If the Federal funds are to be used for the development, expansion or support of health resources

throughout the State generally, all HSAs in the State will have to be provided an opportunity to review and approve or disapprove the proposed use.

In responding to another commenter's inquiry, the Secretary notes that if an HSA has reviewed the Statewide project grant or contract proposal which includes a portion that specifically concerns the HSA's health service area, it is not necessary later for the HSA to review again that portion of the grant or contract proposal (sometimes referred to as "subgrants" and "subcontracts") that specifically applies to its health service area, if it is unchanged.

Two commenters requested that the regulations clarify the relationship of the review by the HSA to that by the clearinghouse established pursuant to Office of Management and Budget Circular A-95. In this respect, the Secretary notes two points: first, there is no one uniform national procedure for coordinating the A-95 reviews and HSA reviews; and second, A-95 reviews cover a larger number of health proposals than are covered by section 1513(e) of the Act. For these reasons, and because of varying local conditions, HSAs and the A-95 clearinghouses have made a variety of agreements for coordinating their review activities. Programs with proposed uses subject to review by A-95 clearinghouses and HSAs will provide notice of these review requirements and submission instructions to all applicants. Applicants should fulfill all of the notice and submission requirements for each type of review agency except where they are instructed otherwise by these agencies. In any event, as part of the monitoring of the performance of individual HSAs through established performance standards as well as in monitoring the effectiveness of the review and approval program, the Secretary will review the coordination achieved and its effectiveness.

One commenter recommended that the regulations include a provision requiring the Secretary to distribute to HSAs a comprehensive set of documents relating to each activity subject to review including basic legislation, implementing regulations, program policy guidelines, applications, application instructions, and reporting forms. The Secretary does not see the need for regulations on this point, but will consider this suggestion and others for technical assistance to assist HSAs in performing their function. Several other commenters requested the Secretary to issue periodic computer printouts by region of currently funded health programs. The Secretary hopes to provide such information through the Grants Data System (GDS) of the Public Health Service.

Several commenters suggested that review of Federal funds other than those required by the statute will increase the workload of the HSA, and therefore additional funds should be made available to them for this purpose. While the Secretary encourages the HSA to make such reviews, he does not require them to do so.

Section 122.408 Procedures for submission of applications. The proposed rules provided at § 122.408(b) that applications be submitted for HSA review in one of three ways, at the option of the Federal funding agency (simultaneously, first to the HSA, or first to the Federal funding agency). The Secretary has decided, for the sake of internal consistency and administrative control, to require as the general procedure that applications be submitted simultaneously to the HSA and the Federal funding agency. On request of a Federal funding agency, alternative procedures may be approved for a type of application in a program where justified.

As noted in discussion above of § 122.406, the statute provides that an HSA shall review "each proposed use" of Federal health funds and it describes the characteristics of the proposed uses which would require review by the HSA. The phrase "each proposed use" was the subject of various interpretations and comments.

Specifically, many comments were received on review by the HSA of non-competing continuation grant applications. Some thought that the HSA should be permitted to review all non-competing continuation grants, while others thought that the HSA should not be permitted to review any. The proposed regulations would have required review of non-competing continuation applications which proposed a 20 percent increase in the funding level over the previous budget period or where the HSA specifically requested it of the Federal funding agency six months in advance of the award date. They also provided that an HSA would receive informational copies of all other non-competing continuation applications.

The Secretary has given consideration to the comments received, in which the following were the chief concerns: (1) The prohibiting of HSA reviews on non-competing applications is not justified by the statute; (2) The administrative burden of tracking applications and notifying the Federal funding agency six months prior to grant award will make it difficult for HSAs to meet their statutory responsibilities under section 1513(e) of the Act; (3) The possibility of multiple application procedures would entail an administrative burden on HSAs as contrasted with a single application procedure; (4) significant changes may occur in a project or its circumstances which do not result in a 20 percent increase in budget; (5) The important change in budget is not the change over the previous year, which may have been planned for and approved, but a change in budget over that previously approved for the requested year; and (6) That over a period of years the resources in the planning area often change significantly even when a project itself does not. A few commenters maintained that HSAs should not be permitted to review any noncompeting continuation applications.

The Secretary believes that a balance must be maintained between the desirability of HSA review of noncompeting continuation applications whenever there is a change which may be significant, on the one hand, and the need for HSAs to direct their limited resources to those reviews which may have the greatest effect in implementing plans. Accordingly, this provision has been modified to require HSA review of noncompeting continuation applications: (1) When there is a change in budget of 20 percent or more; (2) Upon HSA request; (3) When the applicant or the Federal funding agency determines that a significant change is proposed or has taken place in the project; and (4) In any case at least every five years if there has been no submission under any of the previously stated conditions.

The Secretary is mindful of the administrative activity required for an HSA to request review of a specific grant application, but believes that this avenue should remain open to HSAs. It is hoped that the HSA, knowing that applications will be submitted for review when the funding agency detects a significant change, and knowing that if the project should be funded beyond five years it will review it in any case, will minimize individual requests for review. Because the HSA may request the review of any non-competing continuation application, the Secretary believes that the concern regarding changes of resources in the planning area is adequately addressed. As pointed out in the preamble to the proposed rules (43 FR at 19990), the HSA may request review of any application, and therefore it is not prohibited from the performance of any statutory function.

The time for an HSA to request review has been increased from six

months to nine months prior to expected award date. This is not expected to affect the HSA decision-making on requested reviews, because in either case the decision is based primarily on the previous grant application and the award; it may, however, ease the administrative burden of handling such requests. The suggestion that the 20 percent budget change be computed against the previously approved budget for the year has been adopted.

The Secretary points out that noncompeting continuation applications contain only sufficient information to indicate progress in the activities proposed in the original application. Review by the funding agency is primarily a review of progress in the framework of previously approved budget and program activity, rather than a review to approve a proposal or not. Hence the most useful source of project information to the HSA ordinarily will not be the continuation application, but other sources in its community. Because of the limited information in non-competing continuation applications, HSAs may wish to adopt different criteria or a more limited set of criteria to be employed for this type of application. Use of varying criteria according to the purposes of reviews is specifically authorized by § 122.412(b). Further, the Secretary, rather than emphasizing in these cases the HSA review which is initiated by the application, urges HSAs to be alert at all times to the progress of projects in their areas; they may find that progress is not seen as satisfactory by others in the area, or that health resources or needs in the area have changed, or it may be that planning with respect to an area or a type of service has progressed to the point where an HSA is concerned about a project. The Secretary urges HSAs to make this sort of concern known to the funding agency at any time, and as early as possible, not waiting for an application to be submitted. This will provide time for the funding agency to investigate the project, if necessary, to seek further information and views from the HSA and others, as appropriate, and perhaps to reach agreement on any project changes well in advance of the time when the pressure of the grant review cycle may limit their choices.

In summary, the Secretary desires that the HSA be able to be knowledgeable of the activity involving Federal funds in its health service area with minimal effort. On the other hand, the Secretary, mindful of the workload of HSAs, advises them to judge realistically what they can accomplish with their resources. This is particularly important in an HSA deciding whether to review non-competing continuation grant applications. These usually consist only of a proposed budget and a progress report, both normally consistent with previous Federal funding agency approvals. The HSAs are encouraged to screen applications carefully and give a thorough review only to those which are significant in relation to their HSPs and AIPs.

A commenter asked whether or under what conditions a supplemental grant application would be subject to review and approval. The Secretary notes that all *types* of grant applications are subject to review except when the regulations specifically limit or exclude their review. New grant applications and competing continuation applications are subject to HSA review and approval. Non-competing continuation applications are subject to review under the conditions set forth in § 122.408(b). Section 122.403 has been modified to exclude non-competing extension applications from review, since they do not ordinarily involve significant funds or changes in project activity, but rather are extensions for limited times at little or no additional cost. Supplemental applications are subject to HSA review and approval where the additional funds are requested to support a program expansion (expansion of project or program scope). Where requests, however, are for supplemental funds for administrative increases (increased administrative costs that take place during the budget period), the application is not subject to HSA review and approval.

One respondent requested that the regulations make the same provision for review by HSAs of the statewide service contracts of the National Institute on Drug Abuse as it does for non-competing continuation awards generally. He would have these contracts, which are generally very much the same from year to year, subject in any case to full review and approval every three years. The Secretary sees the similarities between these contracts and non-competing continuation grant applications, but does not see a feasible way to require that they be treated the same. He does, however, generally encourage HSAs in reviews of these statewide service contracts to follow his guidance on the significance for review of non-competing continuation grant awards.

A number of comments addressed the related questions of what the HSA reviews, when an application is complete, whether it can request additional information, and if so, how much and where. The Secretary notes that § 122.408(a) establishes the time and manner in which an *application* is to be submitted to the HSA for review. It is the application submitted or to be submitted to the Federal funding agency which is to be reviewed by the HSA. However, the HSA is given in § 122.412 a set of statutory considerations to use in adopting review criteria which will be used in approving or disapproving proposed uses. Thus, the HSA may need additional information, other than that provided in the application itself. Section 122.410(a)(3) provides that the HSA may request this additional information in the form and manner which it, the HSA, prescribes. To summarize, the Federal funding agency determines what is in the application, and the HSA determines what, if any, additional information should be supplied. The Secretary notes further that, in conducting its reviews, the HSA will use procedures and criteria it adopts through a public process and which must be published. Thus, an applicant can be informed well before the review as to the additional information the HSA requires in its review.

Several commenters suggested the need for a single application form. The Secretary notes that each Federal funding agency has separate application forms or supplemental forms for specific programs. Similarly, HSAs will require differing additional information, depending on the content of the HSPs and the other criteria adopted. The Secretary believes that it would not be feasible to prescribe a uniform application format for these many, differing needs.

Another commenter suggested the applicant be required by regulation to address the HSA's criteria in its application. While the applicant should address the review criteria published by the HSA, the Secretary does not believe that this is best accomplished by a specific regulatory requirement. Each Federal funding agency will by policy notice, as part of the application process, instruct its applicants to address the duly adopted HSA review criteria as part of the application.

Commenters were generally concerned that there is a lack of definitive guidance for the review and approval of State allotment applications. The Secretary has added § 122.408(c)(1) and (2) to meet this question but believes that flexibility is required to enable the State program agencies and the HSAs, with their varying relationships, to meet their specific needs. The Secretary expects the

Federal funding agencies to work closely with State program agencies to ensure that their procedures take account of the HSA's information and timing needs.

In response to another suggestion, the Secretary does not believe it is necessary at this time to require special procedures for single State HSA reviews. He notes that single State HSAs provide a mechanism for the structured consideration of a broad range of interests. In addition, they often have sub-area councils for local involvement which can provide additional local participation.

One commenter believed that the review of facilities construction projects places the HSA in a conflict of interest, where it may have recommended in its HSP projects for construction and modernization, and in its review and approval responsibility it would be biased toward approving them. The Secretary notes that one of the HSA's important functions is the promotion of implementation of its HSP, and that an important purpose of the review and approval function is that implementation with respect to certain Federal funds. In the case of an HSA disapproval of a project not in the HSP, the application may be submitted for consideration by the Department despite the HSA disapproval. The provisions of § 122.415 on possible override then become applicable.

Reservations were expressed by some commenters about submitting confidential or proprietary information to HSAs, because all HSA records must be available to the public under section 1512(b)(3) of the PHS Act. The Secretary shares this concern, and has added § 122.408(b)(3), which allows an applicant to submit a summary of the portion of an application which contains this kind of material. The applicant must first obtain a determination by the Federal funding agency that the material is indeed confidential or proprietary, and that the proposed summary is full and accurate.

§ *122.409 Adoption and public notice of health systems agency review procedures and criteria.* A suggestion was received that, since the procedures and criteria found in proposed § 122.410 and § 122.412 are similar to the procedures and criteria previously published in Subpart D of Part 122, which pertains to HSA review of new institutional health services, an HSA should be permitted to use previously adopted procedures and criteria to satisfy the requirements of § 122.409. The Secretary is retaining the present requirement because he feels that it is necessary for the HSA to give specific public notice of the procedures and criteria which it proposes to use in conducting reviews pursuant to section 1513(e) of the Act. However, to the extent that the previously adopted procedures or criteria of an HSA are consistent with the requirements of this Subpart, they may be repeated in the procedures and criteria proposed to apply to section 1513(e) reviews. Also, if previously adopted procedures and criteria are consistent with the requirements of this Subpart and if they were identified by the HSA during the period for public comment as applicable to review of the proposed uses of Federal funds, such procedures and criteria need not be proposed again for adoption, but may be utilized as adopted.

One commenter requested that the Secretary indicate which person or agency has the authority to resolve any controversy which might arise concerning an HSA's proposed procedures or criteria. To the extent that the proposed procedures or criteria are consistent with the requirements of this Subpart, the matter rests with the HSA; to the extent that such procedures or criteria are inconsistent with these requirements, the Secretary will require only that they be made consistent.

One commenter questioned whether there was a distinction as to process for adoption between editorial and substantive proposed changes in procedures or criteria. The Secretary does not feel that any such distinction should be made in the regulation due to the impracticality of defining a substantive change. Furthermore, even seemingly editorial modifications may sufficiently alter the meaning of a procedure or criterion as to substantially affect the review process. For these reasons, it is necessary that an opportunity for public comment be available with respect to all proposed changes. To minimize the cost of administering this process, the Secretary suggests that the HSAs may wish to group proposed changes so that several may be proposed at one time.

Several commenters suggested that the HSA be permitted the flexibility to follow less rigorous review procedures in the case of proposed projects deemed to be "non-substantive." The Secretary agrees and points out that this opportunity is available to the HSA in two ways. The provisions found in § 122.410(b) permit the HSA to adopt review procedures which, while meeting all the requirements of § 122.410, may vary according to the purpose of the review or the type of health service being reviewed. In addition, § 122.411 permits the HSA to seek an exception to the requirements of § 122.410. One possible use of this latter provision is for the HSA to propose alternative procedures which it will utilize in the case of those applications or proposals defined by the HSA to be non-substantive.

Several commenters suggested that the HSA be required to hold a public hearing prior to adoption of proposed procedures or criteria. The Secretary feels that such a requirement would be unduly burdensome to the HSAs and that sufficient opportunity for public comment is provided by the requirements for broad notification of the proposed procedures and criteria for their subsequent adoption at a meeting of the HSA which is open to the public and announced in advance. An HSA is not, in any case, precluded from holding such a hearing.

Two commenters suggested that the requirement for distribution to specified entities of both the proposed and the adopted procedures and criteria would cause excessive printing and postage costs and that the proposed procedures and criteria should be available only upon request. The Secretary does not concur with this suggestion because the number of entities which must receive copies is not large. Also, it is necessary that these entities receive copies of proposed procedures and criteria, without the necessity of making a request for such copies, in order to afford them and their constituencies the maximum amount of time possible for review and comment. The HSAs may minimize the costs involved by grouping proposed procedures and criteria, or revisions thereof, and, in the case of revisions, by distributing only the materials proposed to be revised, rather than an entire review manual, for example.

One commenter indicated that proposed § 122.409(b)(1) did not clearly indicate whether the HSA was required to distribute proposed procedures and criteria to adjacent HSAs if they are located in a different State. The Secretary believes that the language is sufficient to indicate that copies must be distributed to all HSAs serving contiguous health service areas, regardless of the State(s) in which these areas are located.

Several commenters requested that potential applicants be included among those entities to which the HSA is required to distribute proposed or adopted procedures and criteria. The Secretary believes that this requirement would create an undue burden upon the

HSAs, both in determining the identity of all such potential applicants and in distributing copies of procedures and criteria to all of them. However, the Secretary recognizes the benefits which could accrue from involving potential applicants in the process of development of procedures and criteria, and he strongly encourages the HSAs, to the extent practicable, to distribute copies of proposed or adopted procedures and criteria to them. If this is not feasible, the Secretary suggests that the HSAs consider sending individual written notification to all identified potential applicants, informing them of the availability of the proposed or adopted procedures and criteria.

One commenter requested that HSAs be required to distribute procedures and criteria to all State agencies responsible for health-related program areas for which the HSA might be reviewing proposed uses of Federal funds. Again, the Secretary feels that as a requirement this would create an undue burden on the HSAs. However, to the extent practicable, the HSAs are encouraged to distribute copies of procedures and criteria to these State agencies. In addition, the State Health Planning and Development Agency, which will receive a copy of the procedures and criteria, can make their availability known to other interested agencies of the State government.

In response to a number of comments pointing out the cost and difficulty of distributing copies of procedures and criteria to all units of general local government, the Secretary has amended this provision to permit the HSA to meet this requirement by distributing copies to the appropriate regional multi-purpose planning bodies, such as councils of government, which represent smaller units of general local government.

A request was made for an explanation of the purpose for including the Statewide Health Coordinating Council (SHCC) among the entities to which copies of proposed procedures and criteria are required to be distributed. The same person questioned whether the Statewide Health Coordinating Council review period should be limited to 30 days. There are several reasons for including the SHCC; among them are the following. The SHCC must annually review the HSA application for continuation funding and, in order to do this properly, SHCC members should generally understand the manner in which the HSA is functioning, including the procedures and criteria which it proposed to use in conducting reviews. The SHCC is responsible, under section 1524(c)(6) of the Act, for reviewing State plans and applications submitted to the Department for the purpose of receiving allotment funds. Since the HSA, under section 1513(e), will be reviewing the uses of these same funds in its health service area, the procedures and criteria of the SHCC and HSA should be coordinated to the maximum extent possible. Also, the members of the SHCC represent a Statewide consistency, and distribution of proposed procedures and criteria to the SHCC will assist in assuring broad recognition and comment. The comment period available to the SHCC is the same as that available to all other entities—30 days from date of publication as required in § 122.409(b)(3).

Several commenters were concerned that the provision for an exception to the requirement for publication of a notice of availability, found in proposed § 122.409(b)(2), would either lessen the opportunity for interested persons to be informed or would be administratively too cumbersome to be successful. The same provision is found in subpart D (at § 122.305(b)(3)), and experience to date indicates no reason to modify the language of the provision. The Secretary wishes to point out that this provision does not excuse the HSA from providing public notice; instead, it permits the HSA to suggest an alternative method for doing so, and this alternative method must be either less costly or more effective, while still protecting the right of interested persons to be informed.

Several commenters requested that the 30-day period allowed for review, found in § 122.409(b)(3), should be deleted or considerably shortened. The Secretary is retaining this requirement because he feels that, due to the limited number of persons to whom copies are required to be distributed, 30 days will be necessary for all other interested persons to request and obtain copies of the proposed procedures and criteria and to submit written comments on them to the HSA.

One commenter suggested that the HSA be allowed to charge a fee for all copies of proposed or adopted procedures and criteria which are required to be distributed. The Secretary believes that such a fee might defeat the purpose of the required distribution and, accordingly, has modified § 122.409(c) to prohibit it. The HSA, however, may assess a reasonable charge to defray the costs of printing and mailing for copies that are provided to other persons upon request.

Section 122.410 Procedures for health systems agency review. Several commenters offered suggestions concerning the procedures used by Federal funding agencies in processing applications subject to HSA review. Among these were suggestions that the Federal agencies submit to the HSAs copies of cover letters transmitted with application materials sent to prospective applicants and copies of current and previous award notices. While these suggestions have not been incorporated in the regulations since they are technically outside the scope of the HSA review and approval function, the Secretary will consider them in the formulation of internal Department procedures.

Section 122.410(a)(1) Beginning of review. A number of commenters expressed concern that some of the applications submitted to the HSAs at the beginning of the 60-day review period would not contain sufficient information for the HSA to make an adequate assessment of the application; i.e., the application would not be "complete." Suggestions for resolving this problem generally fell into two categories: (1) Permitting the HSA to extend the 60-day review period in order for the applicant to submit additional information during the formal review, and (2) Requiring the applicant to submit a notice of intent well in advance of the submission of an application to permit the HSA to work with the applicant to develop a complete application. Although these are well reasoned suggestions, the Secretary cannot accept either of them for the purpose of these regulations. The basis for this decision is discussed below.

Due to the severe time constraints imposed on Federal funding agencies, which must often provide for simultaneous review of competing applications and which may be required to make an award of funds within a short period of time to prevent loss of their availability, the Secretary is not able to permit extension of the 60-day review period whenever an application is determined incomplete. The Secretary wishes to point out, however, that Federal funding agencies may, as discussed in § 122.413(a), establish longer periods for review with respect to certain programs subject to HSA review and approval. Also, an HSA may request from the Federal funding agency approval of a longer review period with respect to a particular proposed use of Federal funds, and the Federal funding agencies will be encouraged to grant such requests when doing so would not

conflict with their established review schedules or award requirements.

With respect to the suggestion concerning notices of intent, the Secretary does not believe that it is necessary to require, on a nationwide basis, that applicants submit such notices. Some HSAs may develop relationships with potential applicants so that formal notice is not required. Where this is not the case, the Secretary notes that there exist other methods for achieving the objective. The HSA may make provisions among its adopted review procedures for such notices. If this is done, the HSA should communicate this requirement to as many potential applicants as it can identify. Also, the HSA may seek, in developing its agreements with the entities responsible for review activities under OMB Circular A-95, to provide that those entities submit to the HSA copies of the notices of intent which it has received in accordance with the requirements of OMB Circular A-95. In addition, the Secretary will request that all application materials distributed by Federal funding agencies to applicants potentially subject to HSA review include the suggestion that the applicant consult with the appropriate HSAs at the earliest time possible prior to the submission of an application. Finally, HSAs should be aware that they may disapprove applications which do not contain information reasonably sufficient to demonstrate conformance with the HSA's adopted plans, criteria, and standards.

Many commenters expressed concern that seven days is not a sufficient period of time for the HSA to provide written notice of the beginning of a review following receipt of an application. Many causes for this insufficiency were cited, including necessary delays incurred in determining whether the application is one subject to review, the need to establish meeting dates and the lead time required to have a notice printed in a newspaper or to publish a newsletter. The Secretary has weighed these valid concerns against the need to keep the grant cycle to a minimum, in order that applications need not be prepared so far in advance of award dates as to reduce their usefulness to the funding agencies, and has retained the seven-day provision.

The requirement for written notice to affected persons of the beginning of a review cannot be deleted entirely, as several commenters suggested, because this notification is needed to give meaning to the provision for public hearings at § 122.410(a)(7).

Some commenters objected to inclusion of the term "major health and health related institutions and agencies" within the definition of "affected persons," stating that the term was ambiguous. Others noted that this requirement would pose a major, and possibly unnecessary, burden for those HSAs designated for geographically large health service areas. Still others commented that notification to this grouping of institutions and agencies would not necessarily ensure notice to all those affected by the review; in particular, it would not ensure notice to entities presently providing or proposing to provide services similar to those proposed by the applicant (who may request a public hearing under § 122.410(a)(7)). For these reasons, the term "major health and health related institutions and agencies located entirely or in part in the health systems agency's health service area" has been replaced by "entities located in the health systems agency's health service area which provide services or conduct activities similar to the proposed services or activities under review or which, prior to the receipt by the health systems agency of the application for review, have formally indicated an intention to provide similar services or conduct similar activities in the future."

The Secretary points out that the term "entities" is intended to be broader than "health care facilities" and "health maintenance organizations," as it may include organizations, such as home health agencies and community health centers, not contemplated within the definitions of these two terms.

One commenter suggested that the definitions of "affected persons" and "persons directly affected" be combined for consistency. The Secretary points out, however, that the Act makes a distinction between "affected persons," who are to be sent written notification of the beginning of a review, and "persons directly affected," who are entitled to request a public hearing during the review. The Secretary also notes that "affected persons" includes all those who are "directly affected" in addition to the others who are indicated.

In response to a comment that a project conducted in one health service area may have a significant impact on residents of another health service area, even though no project site is located there, the reference to health systems agencies serving health service areas "in which the project will be conducted" has been modified to those HSAs serving health service areas "whose residents are proposed to be served by the project." This is, of course, a minimum requirement, and the HSA may choose to notify also other HSAs serving health service areas whose residents might or should be served by the project.

In response to a request to do so, the Secretary has added to the list of "affected persons," "any agency which establishes rates for health care facilities or health maintenance organizations in its health service area." This parallels the requirements found in Subpart D, pertaining to HSA reviews of new institutional health services.

A few commenters suggested that "affected persons" include members of the public who "have a need for" services to be provided by the proposed project or who "will be affected by the approval or disapproval" of the proposed project. However, the Secretary has retained the language concerning those persons "who are to be served by the proposed project" since the proposed substitute language involves a determination which the HSAs may not be able to make. In any case, all or nearly all HSAs are expected to provide the notice through newspapers of general circulation, which would result in little practical difference, at least for persons in the service area of the proposed project.

Several commenters questioned the basis for including the Federal funding agency among those who must be sent notification of the beginning of a review. This notification will serve to inform the Federal funding agency that the application has been received by the HSA and will also notify that agency when it may expect to receive the HSA's decision. Additionally, notification will establish a channel of communications permitting the exchange of additional information concerning the proposed project.

One commenter requested that "members of the public. . ." be omitted from "affected persons" and that public notice through newspapers not be required. However, the Secretary cannot accept any definition of "affected persons" which does not include those persons who are proposed to be served. Since such persons are included in the difinition, they must be notified of a review at least by newspapers which circulate in their area, since section 1532(b)(1) of the Act requires that written notice be given to all affected persons.

Some commenters suggested that the HSAs require written notification of a review to be posted publicly at the applicant organization's facility. The Secretary has not accepted this suggestion because he believes the

present requirements concerning notification are sufficient. This additional requirement would at best serve to notify only those members of the public who chanced to read the notice while physically present at the applicant organization's facility during the relatively short review period. In the case of applicants without existing health service sites, it would have no effect.

A few commenters suggested that the applicant, rather than the HSA, should be responsible for providing written notice of a review. The Secretary cannot accept this recommendation, since the statute clearly states that notification is the responsibility of the HSA. This does not preclude the HSA from allowing the applicant to supplement this function; for example, in cases where the applicant desires a broader or earlier notification than that normally provided by the HSA. However, the HSA itself is responsible for meeting the minimum requirements concerning notification, as found in these regulations.

One commenter recommended that notification be required to be by registered or certified mail. While the Secretary recognizes the need for reliable and prompt notification by the HSAs to all affected persons, he feels that this amount of detail concerning notification need not be dealt with in regulation but should be left to the discretion of individual HSAs.

Section 122.410(a)(2) Schedules for review. Since most of the comments offered in response to this provision were concerned with either the length of the review period or the process for determining when a period in excess of 60 days is acceptable, the Secretary's response to these comments will be found below in the discussion concerning § 122.413, *Period for health system agency review.*

However, two suggested modifications have been made to this paragraph. The reference to the "Secretary" has been changed to "Federal funding agency" to indicate more clearly the locus of responsibility for extending the review period. Also, the paragraph has been modified to be consistent with § 122.413, which states that the review period may be extended with respect to "a program or particular proposed use of Federal funds covered by this subpart."

Also, with respect to this section, the Secretary wishes to emphasize that the review period begins on the date of written notification made in accordance with § 122.410(a)(1). The HSA may take up to 7 days following receipt of an application to provide this notification.

Section 122.410(a)(3) Submission of information to the HSA. A number of comments were submitted in response to this proposed provision, and the Secretary believes that a statement of the purpose of the provision will address the concerns raised. Since the Federal funding agency will often have objectives different from those of the HSA, the information required by the HSA may not be the same as that requested by the funding agency on its usual application forms. This subparagraph requires that the HSA develop, write down, and make available to the public, a statement describing the information to be presented by the applicant, as well as the form and manner in which it should be presented, which the HSA believes necessary to determine whether a proposed project conforms to the review criteria which it has adopted. Such a statement will serve both the applicant and the HSA. It will serve as a guide to the applicant during preparation of the application, and it will foster the submission of "complete" applications, at the beginning of the review period, so that the HSA need not seek additional information during the review. Although the HSA may require from the applicant information separate and apart from that submitted to the Federal funding agency, the Secretary encourages the HSAs to the maximum extent feasible to utilize the application information in the form that is submitted to the funding agency to minimize unnecessary duplication of effort.

Section 122.410(a)(4) Report on proposal development. Most of the comments received in response to proposed § 122.410(a)(4) indicate some confusion with respect to the purpose of this requirement. This subparagraph requires the HSA to establish some method by which persons preparing applications which are subject to HSA review will notify the HSA of the status of their development in order to alert the HSA to a forthcoming application and permit the HSA to work with the applicant to assure a complete application and an expeditious review. Inasmuch as the Secretary wishes to allow HSAs maximum flexibility in the implementation of this requirement, he has chosen to repeat the language of the statute without embellishment. It is not necessary, for example, for an HSA to require formal, written reports, but it may choose to be satisfied merely by informative telephone calls or the submission of a notice of intent. This provision does *not* require that an HSA monitor the development of projects which have already been reviewed, although the HSA may certainly establish such a monitoring system if it chooses to do so.

Several comments requested that the regulations require a pre-application conference between the HSA and the applicant, as encouraged in the legislative history. The Secretary has not so revised the regulation. While he supports the use of pre-application conferences, he believes to require them in every case by regulation would overburden the HSA. The HSA, on the basis of the periodic reports, can request these conferences as they are needed.

Section 122.410(a)(5) Provision for written findings. One commenter suggested that the HSA's findings should be provided only to the applicant and not directly to the Federal funding agency. As the HSA's decision is to have a direct effect on whether the Federal funding agency will or will not award funds, the Secretary feels that it is imperative that the HSA send directly to that agency a copy of its decision and the findings on which that decision is based.

Several commenters asked for expansion of the requirement concerning the information which the HSA is required to provide to support its decision. These commenters suggested that a requirement to provide more detailed findings in support of the HSA's decision would enhance the HSA's accountability for its decisions. The Secretary does not believe that a more stringent requirement is necessary at this time, since it is his belief that the agencies fully comprehend the magnitude of the decisions made in reviews conducted under this subpart and the need to explain fully the reasons for those decisions. Further, the Secretary believes that any additional instruction to the agencies concerning the statement of findings which support a decision would be more appropriately presented in technical assistance materials.

In response to a question by one commenter, the Secretary notes that the requirement that the HSA's written findings be available upon request does not preclude the HSA from imposing a reasonable charge for copying, if copies of those findings are requested. The regulations on designation of HSAs specifically authorize HSA adoption of uniform fee schedules for this purpose (42 CFR 122.114(a)). This does not, of course, authorize any fee for mere inspection of the findings.

Section 122.410(a)(6) Notification to applicants upon request. Subparagraph (a)(6) requires the HSA to provide to applicants, and other persons subject to

review, information concerning the review in addition to that which is required to be provided by subparagraphs (a)(1) and (a)(5). Since the HSA cannot know when and what additional information the requester may desire, to delete "upon request" from this provision as one commenter suggested would be unwise.

In commenting upon this provision, one commenter suggested that the Secretary establish a requirement that all HSA review committee members receive a copy of the full application under review or have an opportunity to review it. The Secretary does not think it is appropriate for him to establish requirements for review processes which are completely internal to the HSA and, accordingly, he does not accept this suggestion.

Section 122.410(a)(7) Public hearings during review. A number of questions were raised concerning public hearings held during the course of the HSA's review. It is the Secretary's hope that the following discussion will answer those questions. The Act, at section 1532(b)(8), requires that the HSAs make provision for "public hearings in the course of agency . . . review if requested by persons directly affected by the review. . . ." Section 122.410(a)(7) repeats that requirement and includes a definition of "persons directly affected" by the review. While this requires the HSA to hold a hearing if one is requested by one or more "persons directly affected," it does not preclude the HSA from determining to hold a hearing on its own initiative. Further, it does not require that a separate hearing be held for each person requesting it; one hearing will suffice as long as notification of the hearing is given in accordance with the procedures for notification which the HSA has adopted pursuant to § 122.410(a)(1), and as long as opportunity to testify is provided to all persons who so desire. In addition, for the purpose of these regulations, any meeting held by the HSA which is open to the public may constitute a public hearing if the two conditions listed in the preceding sentence are met.

One commenter suggested that those persons permitted to testify be limited to "persons directly affected." The Secretary does not accept this recommendation because it may unnecessarily limit the presentation of useful information to the HSA.

A few commenters suggested that the Secretary specify what constitutes a "reasonable period" for the purpose of allowing persons directly affected to request a hearing. Until experience shows a need to do otherwise, the Secretary will leave this determination to the HSAs, which must in all cases weigh the need of persons directly affected to have sufficient time to make a request against the desirability of holding a hearing, if one is held, early enough in the review process to permit consideration of the testimony presented.

One commenter requested that "members of the public to be served" be limited to those "who in the view of the health systems agency demonstrate a special interest in the project or proceeding." Another asked that the term be broadened to include those "whose health care interests will be affected by the approval or disapproval of the proposed projects." The Secretary has decided to retain the present language. Modification will be considered, however, if the narrowness or broadness of the present definition is demonstrated to impede effective health planning.

One commenter asked why the entities with which the HSA must coordinate its activities pursuant to section 1513(d) of the Act are included among "persons directly affected." The entities cited in section 1513(d), which include professional standards review organizations and agencies responsible for reviews carried out under OMB Circular A-95, also have review responsibilities with respect to the expenditure of Federal funds, which may be strongly affected by section 1513(e) reviews.

Two commenters requested that an HSA be required to hold a public hearing "for good cause shown" following its decisions, if requested. The Secretary has decided not to require this hearing among its procedures for the reasons stated in the Preamble to the proposed rules (43 FR 19990, May 9, 1978).

Section 122.410(a)(8) Publication of reports. One commenter requested that the report to be prepared under § 122.410(a)(8) be required at least bi-monthly. Since this report is merely a summary of the HSA's activities conducted prior to publication and since this information is available through other means, the Secretary does not believe that a requirement for more frequent publication would produce benefits offsetting the increased costs involved. The HSA, of course, may prepare and publish such a report as often as it chooses to do so.

Section 122.410(a)(9) Public access to applications. At the request of several commenters, the language of § 122.410(a)(9) has been modified to indicate that all applications received by an HSA, not merely those which have been reviewed, must be available for public inspection. Also, the term "or summaries thereof" has been deleted, as it could have been improperly interpreted to mean that the HSA was permitted to summarize applications and to allow the public access only to those summaries rather than the full applications. This is not the case, since the HSA must provide public access to all materials which are pertinent to the agency's review, including the full application.

The term "or summaries thereof" was intended as a reference to the fact that, in the case of contract proposals or research grant proposals, it will be acceptable for applicants to present only summaries of proprietary or other confidential information to the HSAs in order to safeguard this information. In these instances, the public will have access only to that which will be available to the HSA, that is, portions of proposals plus summaries of the remaining portions.

Section 122.410(a)(10) Notice of construction projects. A number of commenters requested clarification of the requirement for notice of construction projects. In response, the Secretary offers the following discussion. The requirement in § 122.410(a)(10) is only that the HSAs, in developing their review procedures, include some provision for propective applicants to submit to the HSA letters of intent describing the proposed construction project. These regulations do not impose any direct requirements on the prospective applicants themselves. Also, the HSAs may broaden this to include provision for letters of intent from all applicants, if they so choose. Further, the HSAs may formulate this procedure so that it is consistent with their procedures for performing new institutional health services review, and, in fact, are encouraged to do so by § 122.410(a)(12).

Several commenters noted that it may be difficult for HSAs to enforce this provision concerning notice of construction projects, and one commenter suggested that the Secretary deny Federal funds to those applicants who do not comply with the HSA's requirements. The Secretary is cognizant that enforcement of this provision may present a problem, but he is not able to accept the recommended remedy, since he has no authority to deny Federal funds on that basis. The Secretary notes, however, that since many proposed construction projects will also be subject to review under the provisions

of States' certificate of need programs, it is possible to compel the submission of notices of intent through State law or SHPDA regulations.

Section 122.410(a)(11) Coordination with other health systems agencies. A commenter recommended that this requirement be enlarged to also include coordination and consultation with State program agencies, particularly in the case of allotment funds. The Secretary has not accepted this request for modification because he believes that the interests of the State program agencies are sufficiently protected by other procedural requirements in this section. The purpose of this subparagraph is to facilitate to the extent possible a coordinated review process where the same application is under review by more than one HSA.

Section 122.410(a)(12) Coordination with new institutional health services reviews. In response to the few comments which addressed this subparagraph, the Secretary briefly notes that the purpose of this provision is to encourage HSAs, whenever possible, to coordinate their review processes which are conducted for different review purposes. For example, it is likely that the review of a project which is subject to both new institutional health services review and the HSA review of proposed uses of Federal funds will be conducted during approximately the same time period. In this case, the HSA need issue only a single notification of beginning of review. Of course, the notice must be given to all "affected persons" as these are defined for each type of review, and it must indicate the review is for the two purposes. Similarly, if a public hearing is held during the review process, a single hearing would suffice for both purposes.

Section 122.410(b) Procedures may vary. One commenter requested that the Secretary emphasize in this Preamble that HSAs are to have wide latitude in varying their procedures depending upon the purpose of the review or the type of health service being reviewed. The Secretary agrees that the purpose of this provision is flexibility, so as to facilitate the HSA's performance of the review function; he notes, however, that all procedures to be employed must meet the minimum requirements as set out in § 122.410(a) of this subpart, or must be an exception requested by the HSA and approved by the Secretary in accordance with § 122.411.

Section 122.411 Exceptions to HSA procedures. One commenter objected to the requirement that the HSA provide public notice concerning a proposed procedure and review the comments received in response to that notice prior to requesting from the Secretary an exception which would permit that procedure to be used. The commenter noted that considerable expense could be involved in meeting this requirement. The Secretary is sensitive to the additional work and expense which would be involved; however, in deciding to grant an exception, the Secretary must make a determination that "the proposed substitute procedures . . . do not adversely and substantially affect the rights of persons affected by the subject reviews." The Secretary does not feel that he can properly make this determination unless and until those affected have had an opportunity to offer comments on the proposed substitute procedure.

Section 122.412 Criteria for health systems agency review; general comments. A number of comments were received on the proposed general considerations to be used by the HSA in adopting critieria for conducting its review. Comments ranged from those of a general nature applicable to the entire section to those which addressed a specific consideration.

A number of commenters, seeking to insure that the proposed considerations in § 122.412 were not definitive, recommended that an additional consideration, "or other specific plans and criteria and standards developed by the health systems agency," be added to the regulation. The Secretary notes that § 122.412(a) simply states that *at least* the considerations listed are those to be included in the criteria adopted, and that an HSA may include additional considerations which are not inconsistent with them; no change, therefore, has been made in the regulations.

Several commenters requested that § 122.412(a) be made more specific to make clear that not all of the considerations need to be (1) satisfied individually before an HSA can give approval, or (2) applied to all projects. The Secretary notes that § 122.412(a) addresses the concerns raised by requiring that health systems agencies adopt and utilize *as appropriate* specific criteria for conducting its review. The phrase "as appropriate" permits an HSA to use judgement as to which considerations are applicable in a given review. For example, § 122.412(a)(10) applies only to HMOs which may be provided assistance under Title XIII of the Act and § 122.412(a)(11) clearly applies only to research projects. The Secretary also notes that the criteria adopted by the HSA are factors that may be applied collectively rather than conditions to be met independently, and need to be weighed and balanced by the HSA in reaching a decision for a particular project.

A number of comments were received on whether the HSA and the Federal funding agency should use the same or different criteria in the reviews of a proposal. The Secretary believes that the role of the HSA under section 1513(e) is to approve or disapprove a proposal on the basis of its conformance with the plans and the criteria it has developed and adopted. Generally, the Secretary does not encourage HSAs to involve themselves in evaluation of the technical or scientific merit of the proposals. It is the place of the Federal funding agency in its review of proposals to make determinations of technical and scientific merit, to give consideration to program priorities (sometimes established by statute), and to evaluate and judge the relationship of the proposal to other parts of the program.

A number of suggestions were made for including additional considerations in the regulation, such as the quality and accessibility of care and the evaluation by the applicant of the proposed project. The Secretary believes that factors such as quality and accessibility are best addressed in the Health Systems Plans and has provided appropriate guidance. An HSA may, however, as noted above, use additional considerations in adopting its criteria. With respect to the evaluation of a project, the Secretary believes that performing this function or requiring self-evaluation by applicants is best left with funding agencies. Therefore, no change is made in the regulation.

Another commenter, addressing review by the HSA of noncompeting continuation grant applications, recommended that the regulation provide specific considerations pertaining to them, such as how efficiently the program has been operating and whether the sponsor has been responsive to community concerns. The Secretary wishes to allow flexibility for the HSA in its adoption of review criteria, and feels that adding this additional consideration by regulation would not further that end. An HSA may, of course, wish to include these or other considerations.

One commenter, expressing his view of the lack of integration of mental health, drugs and alcohol with health care in general, wished to insure that the review by the HSA included not only local needs and priorities but also consistency with statewide needs, and recommended that the regulations

require an HSA to seek State program agency comments. While the Secretary recognizes the importance of adequate communication between HSAs and State program agencies, he believes that placing such a requirement in regulation would create an additional burden for State program agencies since the same purpose could be accomplished otherwise. In this respect, the Secretary makes the following points. First, § 1.22.410(a)(1) has been revised to require the definition of "affected person" to include the State program agency. Thus, the State program agency, having been notified of a scheduled review, may submit comments to the HSA. Second, the Secretary notes that an HSA may adopt its own procedures for soliciting comments which may include comments of a State program agency. Third, a State program agency may wish to forward a copy of its plan directly to an HSA if Federal funds are proposed for use in the health service area or for consideration in the development of the Health Systems Plan or Annual Implementation Plan. Fourth, since the State Health Plan is based on the preliminary State Health Plan which is composed, in part, of material from State program agencies, it should be reflective of concerns of those agencies. The Secretary recognizes that this planning process is in a developmental stage and may not be totally reflective of and responsive to the concerns of State program agencies. But to the extent possible, the Secretary encourages coordination and input from all entities concerned to insure an effective and efficient plan development process.

One commenter suggested that the regulations include a section identical to that in the regulations for review of new institutional health services (42 CFR 122.309), "Inpatient facilities; required findings." The Secretary notes that, quite apart from the review of proposed uses of Federal funds, most projects which propose inpatient services will be reviewed under certificate of need programs and would be subject to disapproval in that review unless these findings could be made. To avoid duplication, the Secretary has not changed the regulations in this respect.

Section 122.412(a)(1) Relationship of services reviewed to plans. Comments on the relationship of the project under review to the HSP and AIP of the HSA focused upon: (1) The possible absence in the HSP and AIP of a specific service under review, and (2) Whether the HSP and AIP should be the sole basis for the review and approval decision. The achievement of a comprehensive HSP and AIP is a developmental process. As a result it may be some time before all appropriate services are addressed in an HSA's plans in sufficient detail to provide a basis for decisionmaking in each instance. Therefore, there will be instances in which § 122.412(a)(1) will not be directly applicable. The Secretary does not believe it is appropriate to prescribe by regulation that a finding of inconsistency with a single criterion requires agency rejection of the project. However, it is not expected that projects which are found to be inconsistent with the HSP would be approved by the HSA unless exceptional circumstances or significant inaccuracies in the plan were demonstrated. The general principle remains, as in other kinds of review by HSAs, that approvals, disapprovals and recommendations are to be based on a proposal's substantial conformance with all applicable criteria taken as a whole.

One commenter suggested adding the State Health Plan (SHP) required under section 1523(a)(2) of the Act and also the applicable Federally required State Program Plan to this paragraph. The HSA in the development of its HSP is encouraged to utilize State Program Plans in examining its goals, objectives, resource requirements and recommended actions. In addition, the Secretary encourages State program agencies to make their comments directly to the HSA as specific projects are reviewed. However, the Secretary believes it is important to focus the HSA's decisionmaking on its HSP while encouraging the broadest possible input into the HSP.

The inclusion of the SHP in the HSA's review criteria is not necessary since an SHP dealing with a specific service in a specific area would be derived in large part from the HSP for that health service area, and the HSP will in any case be made consistent with the SHP at the direction of the SHCC following its adoption of the SHP.

Section 122.412(a)(3) Need of the population. One commenter suggested that this consideration be modified, so as not to cover services proposed to be relocated. He stated that in the case of services funded by the State and the Federal government together, a disapproval would in effect dictate to the State Legislative Budget Board, since the State might under certain circumstances have to fund the program itself. The Secretary does not agree. The State budget action occurs independently of the HSA action and the State is not bound by HSA action. In any event the State, through the State agency, is consulted in any appeal to the Secretary of the HSA decision under § 122.415(c). The subject provision recognizes that Federal funds may be used in a project which involves the elimination or relocation of a service, and that it is just as important for the HSA to review the relation of these actions to its plans and criteria as to review the initial offering of services.

Another commenter suggested that the provision should simply repeat the language of section 1532(c)(3) of the Act, the "need that the population served or to be served by such services has for such services." The Secretary believes that the purpose of the agency functions as described in section 1513(a) of the Act are consistent with the considerations expressed in this section. Attention is called especially to section 1513(a)(2), concerned with increasing the accessibility of health services to residents of the health service area. The relocation or closure of a facility may have the opposite effect and would certainly warrant the HSA's consideration in its review. Indeed the Secretary has decided to strengthen this section due to his concern that the movement from inner city areas of institutions creates significant problems of availability and accessibility for inner city residents.

This section now refers both to the needs of the population to be served for the proposed services and to the effect of any reduction or elimination of services on the needs of the population presently served by those services. In addition, this section further describes the "population" served or to be served as including low income persons, racial and ethnic minorities, women, handicapped persons, and other underserved groups. Further discussion of these population groups is set forth in regard to § 122.412(a)(12).

The issue of a separate criterion of need for osteopathic facilities and services was raised by several commenters. The Secretary has concluded that the factors cited in the Preamble to the regulations on review of new institutional health services (42 FR 4018, January 21, 1977) are still applicable, and does not believe a separate criterion is supportable. In summary the factors cited were: (1) Inclusion of such a criterion would seriously interfere with the local planning process; (2) There is ample opportunity for input within the planning and decisionmaking process for special concerns of various groups; and (3) The Secretary will continue to monitor the extent to which projects, review decisions, recommendations and plans reflect the needs of the population

wishing osteopathic services and facilities.

Section 122.412(a)(4) Availability of alternatives. A suggestion was received that the consideration should also include the availability of "less restrictive or more normalizing methods of providing such services." Because health care facilities include those which serve the developmentally disabled, the respondent believed that criteria should be adopted which are appropriate to the needs of this population. The Secretary agrees that it may be appropriate for an HSA to adopt criteria related to this population. He has not, however, required these criteria as part of these regulations because the proposals subject to review under them do not generally relate to the developmentally disabled. Federal assistance for health care services for this population is authorized by other legislation than the four Acts included in the review and approval program.

Other commenters said that it is inappropriate to establish conventional cost-effectiveness assessment of programs whose real goal is research progress. The Secretary wishes to emphasize that all of the criteria developed by HSAs under these regulations are to be applied only as appropriate. He also notes, however, that cost considerations are relevant to research projects, as is, for example, the availability of alternative methods of providing services. If the service delivery incident to a research project were to be significantly more costly in one HSA's area than another's, the Secretary would want to consider this in making the grant award. Similarly, if alternative methods were already available in one HSA's area for the services involved in a research project, but not in another's, this would be a consideration, especially if funding the additional services through the research would be disruptive or, through reducing the patient load, affect the quality of service.

Section 122.412(a)(5) Financial feasibility. Several commenters believed that the proposed provision should be modified to include a more comprehensive cost-containing provision, similar to that in the regulations governing review of new institutional health services (§ 122.308(a)(5)). The Secretary agrees and has added language to include "the probable impact of the proposal on the costs of and charges for providing health services in the health service area."

One commenter said that projects to serve the medically indigent would not ever achieve financial self-sufficiency. The Secretary notes that such projects must in any case be financially feasible, with financial support coming from some source. With proposals where this is not an appropriate consideration, the HSA should, of course, not apply the criterion.

Another commenter pointed out that it would be inappropriate for an HSA to evaluate a biomedical research project in conventional cost-effectiveness and financial feasibility terms. The Secretary agrees, and HSAs would not be expected to apply such criteria where inappropriate.

Section 122.412(a)(7) Availability of resources. A comment was received requesting the elimination of all parts of the paragraph except "alternative uses of such resources for the provision of other health services." The commenter felt that it would be redundant to request an applicant to list the resources since the proposal is a request for Federal resources. The Secretary notes that most Federal grants do not provide one hundred percent Federal funding, and in fact, local and State matching funds are often required. Therefore, he has retained the consideration of resource availability.

Another respondent requested clarification of the intent of requiring an HSA to consider the availability of alternative uses of such resources for the provision of other health services. The Secretary believes that the HSAs will be in a position to determine that certain Federal projects may be too costly compared to others in terms of local resources; for example, a proposed project may compete for manpower that is needed by another project of higher priority. HSAs and their predecessor agencies have provided valuable information of this sort in the past under their review and comment authority, and the Secretary has retained the provision.

Section 122.412(a)(8) Relationship to ancillary and support services. One commenter said that "ancillary and support services" should be defined in order, for example, that HSAs not review and approve housing applications for the mentally ill. The Secretary notes that the intention of this provision is that the HSA consider the proposed health services' *relationship* to ancillary and support services. It would not, however, review the housing and social services themselves unless they were included in the health services proposal. It would, for example, in a community-based mental health service proposal, look for such necessary adjuncts as housing and social services, and if they were not available in a generally satisfactory form, this might be a basis for disapproval. The Secretary has determined, therefore, that definition of "ancillary and support services" is not necessary.

Section 122.412(a) (9) and (11) Special needs: entities serving persons outside the area; biomedical research projects. A number of respondents combined their comments on these two paragraphs, which require that an HSA in developing review criteria consider special needs and circumstances of these two kinds. One urged that HSAs develop criteria to provide much greater specificity on these points. Another urged the Secretary to do so. The Secretary believes that any greater specificity should be left to HSAs as they adopt criteria or review proposals. In one area, an institution, 20 percent of whose patients come from outside the area, may have special needs; in another, 10 percent may give rise to special needs. Similarly, one biomedical research project may have a special need based on a special population, another on particular environmental characteristics, still others on factors not yet thought of.

Another commenter said that HSAs would not be able to determine national need, but that the NIH peer review and council system does this very well. The Secretary agrees that it is the funding agencies which, through various mechanisms, determine national need. The HSAs are to consider, given the national need as defined by the funding program and the special advantages of local conditions as urged by the applicant, the special needs and circumstances of the project in relation to the other criteria and to possibly competing projects.

Section 122.412(a)(10) Health maintenance organizations. The Secretary is responding here to the comments that were received on the proposed regulations regarding the criteria for review and approval for HMOs which may be provided assistance under Title XIII of the Act. However, he urges interested persons to read the more detailed discussion in the Preamble to the amendments to the regulations for review of new institutional health services (including certificate of need) recently published in the Federal Register (44 FR 19306–19326, April 2, 1979). It presents a broader view of the Congressional mandate regarding HMOs. Briefly stated the discussion there notes that Congress, in the HMO Act of 1973 and in the HMO Amendments of 1976 and 1978, and in the National Health Planning and Resources Development Act of 1974,

mandated that the health planning process assist in the development of HMOs as an alternative delivery system. Under the regulations issued under Title XIII of the Act, HSAs, and in some cases SHPDAs, have been conducting reviews of applications for Federal grants and loans for these HMOs and making recommendations on them to the Secretary for several years. Therefore, most health planning agencies are familiar with the HMOs and the Federal requirement, under 42 CFR, Part 110 that prospective HMO grant recipients work closely with HSAs and SHPDAs as they develop their Federal grant applications. The Secretary wishes, however, to stress again the importance of this close communication, as well as the availability of the non-confidential HMO information from the appropriate HEW regional office if the HSAs have need for it in reviews.

One commenter remarked that the effect of the proposed rules as set forth in 42 CFR Parts 122, 123, and 110, is to negate the prerogative of an HSA to recommend disapproval of an application for a new HMO once it has recommended approval of a grant request for a feasibility study under section 1303 of the Act.

The Secretary notes that if the HSA recommends approval of an HMO feasibility or planning grant application under the review and approval program, it does not require the HSA to recommend approval of a certificate of need at a later stage or, still later, to find the HMO's services "appropriate" under the appropriateness review program. The Secretary realizes that the results of the feasibility study or planning activities may reveal that the HMO grantee is not viable or not needed for any one of a number of reasons. Indeed, only about 10 to 15 percent of all HMOs awarded feasibility grants have a subsequent Federal planning grant application approved. The Department's Office of Health Maintenance Organizations monitors and carefully evaluates the results of the feasibility and planning grants. This monitoring is one of the reasons that the Secretary has decided that these applications should not be reviewed under State certificate of need programs.

A number of commenters felt that Title XIII HMOs should be reviewed under the same standards and criteria as those for other providers. They believed that these special criteria were too limited and should include such considerations as financial feasibility, availability of resources, and consideration of alternatives to the proposal, as well as the appropriateness and availability of auxiliary services. They felt that exclusion of these considerations could lead to implementation of projects which are not viable or which would obviate the cost containment principles of both the health planning and the HMO programs. The Secretary believes that these provisions are necessary to implement Titles XIII and XV of the Act. He notes that HSAs may submit additional criteria for his approval.

Another respondent thought that provisions might interfere with implementation of health systems plans (HSPs). The Secretary notes that HSAs, in developing their HSPs, are required to consider the National Guidelines for Health Planning published March 28, 1978. These provide that HSPs must take account of the special needs and circumstances of HMOs. Therefore, HSPs will address the development of HMOs, and these regulations should not adversely affect the HSPs.

Some commenters felt that intentionally limiting the review criteria of HMOs seems to infringe unduly upon the local review process and gives HMOs an unfair advantage. The Secretary does not agree that the proposed criteria exclude HMO proposals from meaningful local review. He believes that they improve opportunities for HMO development and reduce the likelihood of prejudiced decisions regarding HMOs by health planning agencies. He reiterates that planning agencies may submit additional criteria to him for approval.

Still another commenter felt that if planning agencies must consider the needs of HMOs in all reviews, then it is difficult to justify the use of the limited review criteria in the reviews of HMOs. The Secretary reiterates that section 1532(c) of the Act does require that health planning agencies consider the special needs and circumstances of HMOs for which assistance may be provided under Title XIII in conducting all reviews under this subpart. He notes that this is a statutory provision and he has no basis, in light of the Congressional actions on HMOs cited above, to permit health planning agencies to exclude this consideration from their reviews. Finally, the Secretary notes that the limitation of criteria which may be used is consistent with section 117(a) of the HMO Amendments of 1976 (Pub. L. 94-460), which requires that the criteria developed under section 1532(c) of the Act be consistent with the procedures and standards developed under Title XIII.

Several commenters said that the HSA should be required to make certain findings in reviewing HMOs, suggesting that the regulations include the provisions contained in 42 CFR 122.308(a)(10). The Secretary disagrees, believing that the evaluation by the Office of Health Maintenance Organizations will be of sufficient depth and scope that it, with the HSA approval or disapproval, will provide adequate information to reach a sound decision on grant and loan applications.

Some commenters suggested that the terms in § 122.412(a)(10)(ii), "administratively feasible" and "consistent with the basic method of operation" of the HMO, should be clearly defined. The Secretary notes that the methods of operations may differ among HMOs. Some such as staff or medical group model HMOs deliver services at one site or nearby facilities; others, such as IPA model HMOs, provide services at the offices of providers throughout their service areas. The language used is to ensure that HMOs will not be required to enter into agreements which would require them to change these methods or which would be inconsistent with other methods of their organization such as their systems for utilization controls, review of quality of care, or methods of payment.

Section 122.412(a)(12) Needs of medically underserved groups. Several commenters expressed general support for this provision, which would require consideration of the contribution of the project in meeting the needs of minorities, women, and handicapped individuals. Other respondents urged its deletion on grounds that HSAs should not be made compliance agencies for civil rights, this being the duty of HEW or of its several funding agencies. Two commenters urged strengthening the enforcement role of HSAs by requiring that they disapprove applications if there are civil rights complaints or violations. The Secretary notes that the proposed provision does not make HSAs enforcers of civil rights, but only requires that they take into special account the needs of certain groups whose needs have often been neglected.

Various other groups were proposed for inclusion in this provision: Children, pregnant women, the aged or elderly, the indigent, low-income persons, and residents of medically underserved areas. Still other commenters proposed that the provision be broadened to include special populations, with examples to be given in the regulations, or extended to all segments of the population. The Secretary recognizes that there are special populations, other

than the three covered in the proposed rules, which have special needs, and also that not all such populations could be listed in the regulations. He has, therefore, modified the provision to provide for consideration of the needs of "members of medically underserved groups and members of groups which have traditionally experienced difficulties in obtaining equal access to health services." The regulations then cite low income persons, racial and ethnic minorities, women, and handicapped persons as examples of these groups. The Secretary points out that these are only illustrative and that there may be other groups whose needs merit special attention in particular health service areas or States. The regulations then call attention to those group members' health related needs identified in the applicable health systems plan and annual implementation plan as deserving of priority.

The Secretary believes the revision serves several purposes. First, while highlighting several of the more prominent groups which are underserved or have problems of access, it does not limit consideration exclusively to them. Second, it enables agencies to identify the groups in their area which have traditionally experienced access problems and to provide special consideration as to how the health related needs of these groups can be met. Third, while the section is not meant to encourage the planning or carrying out of reviews by population subgroups, it is designed to remind the agencies that the Secretary is vitally interested in the health care that is accorded to these example groups and will be monitoring their situations closely.

Another commenter urged that the term "handicapped" be defined. In view of the many definitions already existing for various program purposes, the Secretary has decided not to add another definition. Rather, he urges the planning agencies to employ the term in a broad, comprehensive manner so as to encompass generally the physically and mentally handicapped.

Section 122.412(a)(13) Construction projects. One commenter asked that the Secretary add a provision on the relationship of the construction project being reviewed to the State Medical Facilities Plan adopted pursuant to section 1603 of the Act. The Secretary has accepted this suggestion, since it will strengthen the planning process both locally and Statewide.

Another commenter requested that the Secretary further study the implications of the proposed § 122.412(a)(13)(i) before including this requirement in the regulations. He said that this type of information is the province of professional architects and engineers, and that an HSA would be unlikely to have these kinds of people on their review committees; alternatively, the HSA would need to contract with an appropriate professional to evaluate this element of the application's project proposal. The Secretary believes, however, that the HSAs can review this information without the need for engineers or architects, or that their advice can be obtained when necessary.

Another commenter said that the HSA should, in construction projects, require only such information as is normally needed by the Federal funding agency. For example, the method of energy provision for construction projects goes beyond the information normally required for Community Mental Health Center grants. The Secretary believes that although requiring energy data is new to Community Mental Health Center projects, it has a high priority within the Federal government, and may have greater importance in the future. He believes that HSAs should have this data before them during reviews, and he believes that it should be available to Federal funding agencies funding construction projects.

Section 122.412(a)(14) Conserving energy. The Secretary notes that Pub. L. 95-619, the National Energy Conservation Policy Act, which became law on November 9, 1978, amends section 1532(b)(2) of the Act to provide that in the case of "non-substantive reviews" there be provision for shortened review periods, i.e., less than "to the extent practicable . . . 90 days." In the Secretary's view, the term "non-substantive reviews" refers to certain categories of reviews which the planning agency may wish to conduct on an expedited basis. The Secretary expects that this provision will have little application to review and approval, because the review period is already limited to 60 days. Use of exceptional procedures, however, requires the Secretary's approval, but once approved and adopted, these procedures are used for proposals in the category they cover. Should an HSA request an exception under § 122.411 for a class or classes or reviews (types of applicants, grants, etc.), the request should clearly define the category of proposals to be covered. An exception of this sort does not affect the other procedures and criteria to be used, except insofar as changes in them are part of the approval exception request.

Public Law 95-619 also added paragraph (c)(10) to section 1532(c) of the Act, providing for an additional criterion. This requires consideration of the special circumstances of health care institutions with respect to the need for conserving energy. This provision has been incorporated into the regulations as § 122.412(a)(14).

Section 122.413 Period for health systems agency review. Numerous comments were received on this section of the proposed regulations, recommending various periods for HSA review and requesting clarification of the requirements for the period of HSA review.

Some stated that a 60-day review period is insufficient for HSA review and recommended various longer time periods. Others suggested that 60 days is too long and would create an expensive and time consuming burden for applicants. The Secretary notes that 60 days is the minimum time period which the Act requires him to allow. However, in order to address the genuine concerns of the applicants, the Federal funding agencies and the State program agencies, the Secretary believes that 60 days should also be the maximum allowable review period except in those instances where the Federal funding agency or State program agency agrees to a longer period. As discussed earlier in this Preamble, an HSA will in fact have as much as 67 days from the date of receipt of an application to complete its review because the agency may take up to 7 days to provide notice of the beginning of the review.

One commenter recommended that additional language be incorporated into subparagraph (a) to indicate that the State program agency could specify a longer period for HSA review of a program or particular proposed use of Federal funds only in those instances where a project is funded from a Federal allotment to the State. The Secretary has included the clarifying language.

Several commenters requested that these regulations specify the process to be utilized in determining whether a longer review period is permissible. The Secretary prefers not to impose rigidity on the process by detailing it in regulations. Thus, the HSA may request a longer period with respect to a program or proposed use, or, alternatively, the Federal funding agency or State program agency may on its own specify a longer period.

Another commenter requested that the 60-day review period be encouraged to run concurrently with the preparation of an application by the applicant rather than begin after the application is

completed. The Secretary notes that the HSA may choose to begin its review prior to completion of an application, but that it is not likely that the HSA will have sufficient information on which to base its decision prior to such completion. Accordingly, the suggestion has not been adopted.

One commenter requested that HSAs be permitted to schedule receipt of applications so that they may develop uniform review cycles, rather than having each cycle begin as an application is received. HSAs may consider establishing these review cycles on a basis which is voluntary for applicants. The Secretary, however, does not adopt the implied suggestion that adherence to any cycles of this sort be mandatory for applicants. This would not be feasible in view of the various Federal funding agency review cycles to which applicants must adhere.

The provision establishing the beginning of the review period has been reworded in response to many comments that it was not clear as to whether the review period begins when notice is sent or when it is received. The provision, that it begins when notice is sent, is consistent with the language defining the beginning of a review period found in the Federal regulations pertaining to State Agency reviews of new institutional health services (subpart D) and with § 122.410(a)(2) of this subpart.

Several commenters viewed the provisions of § 122.413(c) on awards at the end of the fiscal year as a potential source of abuse and recommended that this paragraph be deleted, while others saw the provisions as providing flexibility for the Federal funding agencies and the HSAs in meeting their respective responsibilities. It is the Secretary's intent to provide flexibility wherever possible to promote the efficient and smooth functioning of the health planning program. Therefore, the Secretary has not accepted the recommended deletion of § 122.413(c). However, modification will be considered at a later time if this provision does seem to promote abuse of discretion.

At the request of several commenters, the Secretary has inserted additional conditions which will be met by the Federal funding agency where it makes an award prior to the end of the period for HSA review in order to avoid the lapse of funds (§ 122.413(c)). These conditions should provide for improved coordination and lessen the possibility for abuse. As the paragraph now provides, the funding agency, prior to making an award in such a case, will consult with the appropriate HSA and will determine whether the application could reasonably have been submitted to the HSA in time to allow for the full review period. Also, the period has been changed from 60 days to 120 days, to provide time for the HSA to give notice and to review proposals, and to allow time for the Secretary to consult with the SHPDA in those cases where the HSA has disapproved a proposed use and the applicant requests the Secretary to award the Federal funds involved notwithstanding this disapproval.

Finally, the conditions necessary for the recipient of Federal funds to be entitled to expend those funds have been restated for clarity; viz., no Federal funds may be expended until (1) the HSA has approved the proposed use of funds, or (2) the HSA has told the Federal funding agency that it will not disapprove the proposed use, or (3) the Secretary has determined, following consultation with the SHPDA, to make the funds available, even though the proposed use was disapproved by the HSA.

One commenter requested that, in addition to the Federal funding agency, the State program agency also be permitted to make a conditional award of allotment funds if HSA review could not be completed prior to the end of availability of such funds. The Secretary does not accept that suggestion, not being aware at this time of any circumstances in the award of allotment funds by a State program agency where 67 days could not be available for HSA review.

Several commenters asked for clarification concerning the exact disposition of funds which had been conditionally awarded under the provisions of this paragraph but were subsequently disapproved by the HSA. The Department's internal processes for handling these funds have not yet been determined. For the purpose of these regulations, it is sufficient to state that Federal funds will not be available to be used for a project which has been disapproved by the HSA unless the Federal funding agency, after complying with the procedural requirements of § 122.415(d), decides to fund the project notwithstanding the HSA's disapproval.

Section 122.414 Notification of HSA approval or disapproval. Several comments were received on this section of the proposed regulations, concerning various aspects of notification by the HSA of its decisions respecting the proposed uses of Federal funds.

Many commenters questioned whether an HSA may attach conditions to its decision of approval or disapproval. The Secretary cannot permit conditioned decisions, since the Federal funding agencies have neither the time to negotiate such conditions nor the resources to monitor their implementation. For this reason, an HSA must confine its decision to approval or disapproval of the proposed use of Federal funds which has been presented to it.

Several commenters noted that the HSAs will, in many cases, need to be provided with the names and addresses of the appropriate Federal funding agencies and State program agencies in order to comply with the requirements found in this subpart. The Secretary recognizes this need and will address it in technical assistance materials provided to the HSAs.

Also, many commenters requested that the Federal funding agencies be required to provide to the HSAs information concerning funding awards which are made and those which are not. While he concurs that some such system of notification should be established, the Secretary does not believe that these regulations are the proper place to specify it.

A few commenters requested that the time period in which the HSA must provide notice of its decision following the end of the review period be extended beyond one day. The Secretary does not accept this recommendation because he believes that one business day, which excludes weekends, holidays, and any other days on which the HSA is not open for business, is sufficient. Further, the Secretary notes for clarification that this one-day period follows the end of the allowed review period, not the date on which the HSA's decision is made. Therefore, in all cases except where the decision is made on the last day of the review period, the HSA will usually have longer than one day to prepare and distribute notice of its decision.

Two commenters asked that the HSA be required to provide notice of its decision to all persons who submitted comments on an application or who testified at a public hearing, if one was held. The Secretary does not believe it is necessary to add this requirement to the regulations, since these persons may at any time request a copy of the decision.

At the request of several commenters, § 122.414(b) has been modified to indicate clearly that the HSA must have been provided at least 60 days to complete a review before inaction by the HSA can be concluded to be not a disapproval.

One commenter requested that the Federal funding agencies be required to

take no action on an application until they have received notice from the HSA, indicating either a decision of approval or disapproval or the election not to review. The Secretary does not accept this suggestion, since it would allow HSAs, through the mechanism of inaction, to in effect disapprove an application.

A few commenters noted that the construction of the language in this section—"shall be deemed not to have been disapproved"—contains a double negative and suggested that it be replaced by "shall be deemed approved." The Secretary does not accept this suggestion because the limitation on making Federal funds available (in the statute at section 1513(a)(2) and the regulations at § 122.415(a)) is stated in terms of HSA disapprovals.

Section 122.415 Consequences of health systems agency disapproval. This section describes the procedures which an applicant for Federal funds must use to request a review by the Secretary of an HSA disapproval of its application. It also describes the procedures and criteria for review by the Secretary, and the procedures for his securing SHPDA comments on a disapproved application.

A number of comments on this section concerned the details of internal PHS procedures for reviewing an appeal of an HSA decision to disapprove a proposed use of Federal funds. As discussed previously, those aspects of these PHS procedures of interest to applicant, State Agencies, Federal funding agencies, and other participants will be published or made available separately for their information.

One commenter questioned whether every applicant whose proposed use of Federal funds has been disapproved by an HSA should be able to request a review of the HSA decision. Since the statute makes no provision for restricting applicant requests for review, the present language is retained. As noted in the Preamble to the proposed regulations, however, the Secretary will be guided in his review by the Report of the House Committee, which states that the Committee "does not anticipate" that the Secretary will use the authority to overturn HSA disapprovals with any frequency. An override decision "will be treated as an exception and [will be] carefully justified by the Secretary." (H.R. Report No. 93–1382, Sept. 26, 1974, p. 64.)

The Secretary notes that, even though it may be requested by an applicant, the review is required to take place only if the Secretary is considering making funds available to the applicant. If they are not proposed to be made available, because of lack of merit of the application, unavailability of funds, or other reasons, no further action is required under these regulations, but the applicant will be notified under the regulations and procedures of the Federal funding agency's program.

Several comments were received suggesting that additional time be made available for applicants to request review of HSA disapprovals and for SHPDAs to comment on such disapprovals. The Secretary notes that any extension of these periods would seriously interfere with the review cycles of the funding agencies, and that even the proposed 30-day periods present difficulties in proposed uses with scheduled award dates near the end of the fiscal year. The Secretary notes that § 122.410(a)(5) requires the HSA to send its written findings to the applicant and to the SHPDA as well as to the Federal funding agency. On the basis of these factors, the periods have each been changed to 15 days. The Secretary notes further that two changes in the regulations with respect to these periods will make them easier to administer and will also add a small amount of time. In the first case, the period for an applicant to request a review will run to the date the applicant sends a request for review rather than to the date the Federal funding agency receives it. In the second case, the period for a SHPDA to comment on an HSA disapproval will run to the date the SHPDA sends its comments to the Secretary rather than to the date they are received by the Secretary. The regulations have been revised accordingly at § 122.415(b)(1) and § 122.415(c)(2).

Several commenters requested that authority to override HSA disapprovals of proposed uses of funds under allotments to a State program agency be delegated by the Secretary to the Governor's office or the State program agency. Because section 1513(e) of the Act makes no provision for performance of this function by State officials, and because the Secretary's authority may not be delegated to non-Federal officials, the Secretary has retained the provision unchanged. The Secretary will, however, give considerable weight to SHPDA comments on HSA disapprovals under these programs.

Other commenters asked how HSA disapprovals which were not overridden would be enforced, since a State program agency would have the funds with which to grant or contract. The Secretary wishes to emphasize that, where HSA review and approval or disapproval of a proposed use of Federal allotment funds is required, any grant or contract made from those funds in violation of these regulations will have been made illegally and will be subject to recovery by the Secretary from the State program agency.

One commenter expressed concern that existing programs might be left without funds during the period between an HSA disapproval and a subsequent reversal by the Secretary of the disapproval. The Secretary notes that funding for an existing program will be terminated, if refunding is not ultimately approved by the Federal funding agency, at the end of the existing funding period and not at the time of HSA disapproval of a refunding proposal. The time periods assigned for HSA and subsequent reviews of proposed uses of Federal funds are designed to ensure that final funding decisions are made before funding for an existing program expires.

Several respondents discussed the appropriate content of an applicant's justification for approval by the Secretary of a proposed use of Federal funds, following HSA disapproval. The commenters felt that the applicant's justification should not include new substantive discussion or information. The Secretary believes that the content of an HSA disapproval may, in some instances, justify an applicant's use of new information to support a request for review of that disapproval.

A number of commenters requested that an HSA be notified, for informational reasons, when an applicant has requested a review by the Secretary of the HSA's disapproval. The Secretary agrees that an HSA should receive such information, as well as notification that its disapproval has been overturned. The regulations, therefore, have been modified to provide that the Secretary will notify the HSA at the same time that the request for comment is sent to the SHPDA.

Also, in response to comments suggesting that all those who submitted views to an HSA on a proposed use of Federal funds be notified of a request for review, the Secretary notes that the original review process provides ample opportunity for these individuals to comment on the merits of the proposal. A provision has been added to § 122.415(c)(1), however, to allow opportunity for HSA comment on the applicant's request for review. HSA comments must be submitted in the same time period provided for SHPDA comment. This provision will give the Secretary the benefit procedure of the

HSA's views on the applicant's justification for approval.

In addition to requesting notification as described above, several commenters suggested that a disapproving HSA be given the same opportunity to comment on a request for review as the SHPDA. The Secretary notes that the initial review procedure provides the HSA with an extensive opportunity to inform the Secretary of its criteria for review and its assessment of an application against these criteria. The Secretary also notes that any organization or individual, including an HSA, is free to communicate its views on a request for review to the Secretary or to the SHPDA. The Secretary believes that the statute and these regulations provide sufficient opportunity for HSA review. Therefore, he has not changed the regulations in this respect.

One commenter proposed that the final State comments on a request for review should come from the Statewide Health Coordinating Council (SHCC) rather than the SHPDA. The Secretary notes that although the SHPDA may solicit the views of the SHCC, the statute requires that the comments be provided by the SHPDA.

One commenter suggested that the results of A-95 reviews be forwarded to SHPDAs along with the request for review and the material accompanying it. The Secretary agrees that these results may be helpful to both the SHPDAs and the Department, but notes that they may not be available within the time permitted for review. He has not, therefore, changed the language of the regulations. The results of A-95 reviews will, however, be provided to the SHPDAs, as well as used by the Secretary, to the extent feasible.

One commenter requested that review criteria be provided to guide the SHPDA in commenting on an applicant's request for Secretarial review of an HSA disapproval. The Secretary does not feel that a detailed statement is needed here, but notes that the SHPDA will want to take into account the State Health Plan, other statements concerning Statewide health needs and resource allocations, State program agency plans, and similar considerations.

One commenter suggested that an HSA should have the right to appeal a decision by a Federal funding agency to approve a proposed use of Federal funds despite the disapproval of an HSA. The constraints of the grant cycle make such a provision impracticable. The present language is, therefore, retained. The Secretary notes that any individual or organization may communicate its views on such matters to the Department.

Two commenters suggested that a 60-day or other time period be specifed for the Secretary's review. Since various Federal programs with differing grant cycles and time constraints are affected, the Secretary cannot accept this suggestion. However, in most cases, the agency grant cycles generate substantial time pressures, thereby precluding undue delays in his review.

With respect to the criteria the Secretary will use in reviewing HSA disapprovals, several commenters recommended that the Secretary's review be limited to a determination that agency findings were properly made procedurally, and were based on a reasonable application of the criteria for HSA review. The Secretary believes that additional review criteria are appropriate and that his review should incorporate consideration of regional and national needs.

Before discussing the additional review criteria, the Secretary wishes to assure those who commented on the first two criteria that his reviews of HSA disapprovals will consider whether the determinations were supported by evidence (including testimony at public hearings and other comments by the public) and did take into account the relationship of the proposed project to the Health Systems Plan and Annual Implementation Plan. The Secretary also points out that the regulation, in accordance with the provisions of section 1513(e) of the Act, does require a detailed statement to the applicant, the HSA, and the SHPDA of the reasons for a decision by him to make funds available for a proposed use despite HSA disapproval.

The additional criteria for Secretarial review of HSA disapprovals were the subject of further comments. One commenter contended that the third criterion of subparagraph (d) was redundant, given the requirements of § 122.405 and § 122.412(a)(9). The Secretary observes, first, that this criterion (unlike that implicit in § 122.405) refer to the health status of populations of other health service areas and not just to health resources in those areas. Second, a failure to make a proposed use of Federal funds available in one area might adversely affect the health of residents in other health service areas by overloading facilities in their areas or by denying these residents services offered in the area where the proposed use would have occurred. The latter is the situation described in § 122.412(a)(9). The third criterion is, therefore, not redundant and has been retained.

Another commenter on the third criterion recommended that it be expanded to allow consideration of adverse effect of HSA disapproval on the public interest generally. The Secretary believes that the public interest is appropriately protected by the specific procedural and substantive criteria of the revised regulations.

A further comment on the third criterion recommended that it be expanded to allow consideration of adverse effects of an HSA disapproval on the health status of the residents of the health service area in which the proposed project is to be conducted. Although a similar criterion (at § 122.402(a)(3)) is specified for the HSA review, the Secretary believes that the suggested modification provides a desirable clarification. The regulations have been changed in accord with this suggestion.

A comment on the fourth criterion suggested that the language of the regulation be modified to permit the Secretary to consider "whether the proposed use of Federal funds meets a national or regional need *for which local conditions offer special advantages and which is unlikely to be accomplished* efficiently or effectively in another health service area." The Secretary agrees that this is a desirable clarification, and the regulation has been revised accordingly.

Appendix. The Secretary draws readers' attention to the revisions to the Appendix, which lists those programs having proposed uses which may require review by the HSA, and to respond to specific questions raised by commenters.

As the preceding discussion of § 122.406 indicates, the statute places qualifications on the characteristics used to determine proposed uses of certain research and training activities which would require review by the HSA. Section 122.403(c) of the proposed rules was reserved for that purpose. The Secretary still plans to issue a separate Notice of Proposed Rulemaking which will propose criteria to determine when a particular proposed use of funds for research and training activities would require review by the HSA. Because those proposed rules will be accompanied by proposed additions to the Appendix, all research and training programs which may have some proposed use(s) which would require review by the HSA have, for the time being, been deleted from the Appendix. These deletions were made for certain programs of the Alcohol, Drug Abuse

and Mental Health Administration, National Institutes of Health, and the Health Resources Administration.

The Secretary also notes that the Appendix contains a new category in addition to component agencies of the Public Health Service. It is the Office of the Assistant Secretary for Health (OASH), which administers some grant and contract programs.

The Secretary points out that, since the publication of the proposed rules, authorizing legislation for three programs—Lead-based Paint Poisoning, Home Health, and Research and Development Projects for Primary Care (HURA) has been transferred to the Public Health Service Act (sections 316, 339 and 340, respectively). Therefore, these programs are now required by the regulation to be subject to review and approval or disapproval by the HSA, rather than being voluntarily subjected to review as indicated in the Appendix to the proposed rules.

The Secretary notes changes made in the Appendix for the Alcohol, Drug Abuse, and Mental Health Administration (ADAMHA). The community mental health centers staffing and construction program (OMB #13.240) has been deleted, as construction grants are no longer funded and staffing grants are now covered under the community mental health centers comprehensive services support program (OMB #13.295). The alcohol community service program (OMB #13.251) has been deleted, as these grants are now covered under a revised program: alcoholism treatment and rehabilitation/occupational alcoholism services programs (OMB #13.251). Alcoholism demonstration programs, formerly listed as OMB #13.252, are now listed as OMB 13.898. Alcohol abuse and alcoholism prevention demonstration (OMB #13.899) has been added, because review is required by statute and the program was inadvertently omitted from the NPRM.

The Secretary wishes to clarify several issues with respect to the program, "Health Information and Health Programs," listed in the Appendix under the Center for Disease Control (CDC), and footnoted as administered by the Office of the Assistant Secretary for Health (OASH). A new title XVII, Health Information and Health Promotion, has been added to the Act, which authorizes the Secretary to make grants and contracts to further health promotion generally in the areas of research, community activities and information (sections 1702, 1703, and 1704). The Department is in the process of developing regulations for Title XVII, and it is anticipated that some proposals supported by Title XVII funds will affect health resources in local communities. Due to the preliminary nature of the regulations process, it is not possible to list the specific programs. When these decisions have been reached, applicants and HSAs will be appropriately notified.

Another matter brought to the Secretary's attention is that of his volunteering for review and approval or disapproval by HSAs of projects under the Appalachian health demonstrations program (OMB #23.004). He has deleted the program from the Appendix because he has determined that he does not have the legal authority to require such a review, but he stresses that the Department is working to promote further cooperative working relationships with the Appalachian Regional Council.

The majority of comments received on the Appendix were those in opposition to volunteering for review and approval the Maternal and Child Health Program and the Crippled Children's Programs (OMB Programs #13.211 and 13.232). The Secretary has determined that he does not have the discretion to require review and approval by the SHCC of State plans under those programs, which are mandatory in nature and which are authorized by Title V of the Social Security Act. However, the SHCC may review and comment on such programs and forward its comments to the appropriate State program agency, which may wish to consider the comments, although it is not required to do so. Therefore, the Appendix has been revised to indicate a review and comment by the SHCC of the Maternal and Child Health Program State plans and applications for allotments.

Similarly, the Secretary has concluded that he is not authorized to require HSA review of Maternal and Infant Program or Children and Youth Program projects supported with Title V allotment funds, since those projects (as well as certain family planning, dental health, and newborn intensive care projects) are included in Title V State plans (section 505(a)(8)–(10), Social Security Act). The Secretary has concluded, however, that in determining whether the Title V programs of projects "satisfactorily" meet the respective requirements of section 505(a)(8)–(10) for purposes of State plan approval, he may and will consider any pertinent HSA comments which are made available to him. Accordingly, Title V State program agencies are encouraged to offer HSAs the opportunity to review and comment upon those projects which serve their areas, and to provide the comments to the Secretary when State plans are submitted for review; HSAs which are not consulted by Title V agencies are invited to submit their comments on such projects directly to the Federal funding agency. The Appendix has been revised to indicate this.

One commenter said that the National Health Service Corps Program is authorized by section 329 of the Act, not section 333. The Secretary notes that legislation enacted in 1976 deleted section 329 of the Act and transferred the authority for the National Health Service Corps Program to section 333, effective October 1, 1977.

One commenter suggested that if a program in the Appendix awards only non-competing continuation grants, it should not be listed. Because funding for some non-competing continuation grants may go on for some years, the Secretary has not adopted the suggestion.

Another commenter thought that the proposed use of funds for drug abuse programs, authorized by sections 409 and 410 of the Drug Abuse Office and Treatment Act, should not be subject to review by the HSA and SHCC. With respect to the review by the HSA of proposed uses authorized by these sections, the Secretary notes that the 1976 amendments to the Drug Abuse Office and Treatment Act require this review and he does not have the authority to delete the requirement. As the Secretary noted above, he does have the discretion to request review and comment by the SHCC on the Drug Abuse State Plan and application for the allotment, although, the Federal funding agency may not make obtaining those comments a condition of award. The comments may, however, be forwarded to the State program agency for its use, as appropriate.

Accordingly, title 42, Code of Federal Regulations, is amended by the addition of a new subpart E to part 122 thereof, as set forth below.

Effective date provisions: These regulations are effective on November 8, 1979. This delayed effective date has been adopted to take account of the variations in the funding cycles for grants, contracts, loans, and loan guarantees now being or soon to be reviewed by the Federal funding agencies. Thus, in accordance with this effective date, fully designated HSAs will be required to perform reviews under section 1513(e) of the Act of those proposed uses for which the submission deadlines, as determined by the Secretary, are more than 90 days after the publication of these regulations. In addition, the Secretary will not award

funds for proposed uses which are subject to review under section 1513(e) of the Act and submitted to him after this effective date unless the HSA has been given an opportunity to review and approve or disapprove the proposed use under these regulations. Since the statute requires that the HSAs develop and publish procedures and criteria which they must follow to review certain proposed uses of Federal funds, they must develop and adopt procedures and criteria by the effective date of these regulations.

Dated: June 11, 1979.

Julius B. Richmond,

Assistant Secretary for Health.

Approved: August 2, 1979.

Joseph A. Califano, Jr.,

Secretary.

PART 122—HEALTH SYSTEM AGENCIES

Title 42 is amended by adding a new Subpart E to Part 122 to read as follows:

Subpart E—Health Systems Agency Reviews of Certain Proposed Uses of Federal Health Funds

Sec.

122.401 Purpose and applicability.
122.402 Definitions.
122.403 General.
122.404 Section 1536 States.
122.405 Involvement of more than one health systems agency.
122.406 Determination of proposed uses subject to review by health systems agencies.
122.407 [Reserved]
122.408 Procedures for submission of applications.
122.409 Adoption and public notice of health systems agency procedures and criteria.
122.410 Procedures for health systems agency review.
122.411 Exception to use of health systems agency procedures.
122.412 Criteria for health systems agency.
122.413 Period for health systems agency review.
122.414 Notification of health systems agency approval or disapproval.
122.415 Consequences of health systems agency disapproval.

Authority: Sec. 215, 58 Stat. 690 (42 U.S.C. 216); Sec. 1513(e) of the Public Health Service Act, 88 Stat. 2238 (42 U.S.C. 300 *l*-2(e)).

Subpart E—Health Systems Agency Reviews of Certain Proposed Uses of Federal Health Funds

§ 122.401 Purpose and applicability.

(a) Section 1513(e) of the Public Health Service Act provides that each health systems agency shall review and approve or disapprove certain proposed uses of Federal funds within the health service area for which the health systems agency is designated. In addition, section 1513(e) provides that a health systems agency may only review and comment on certain proposed uses of Federal funds by Indian tribes or inter-tribal organizations. The primary purpose of these reviews is to ensure that, to the extent feasible, these proposed uses of funds which are subject to review under section 1513(e) are consistent with and will help to implement the plans of the health systems agencies.

(b) The regulations of this subpart are applicable to the performance by a health systems agency of any review under section 1513(e) of the Act and in accordance with the designation agreement.

Note.—Under 42 CFR 122.106(c), a health systems agency may not review and approve proposed uses of Federal funds within its health service area during its first year of conditional designation. It may not in any event perform this function until it has established a health systems plan and annual implementation plan in accordance with section 1513(b) (2) and (3) of the Act and has received written authorization from the Secretary.

§ 122.402 Definitions.

In addition to the terms defined in subpart A of this part, as used in this subpart:

[Delete "(a)"] "Applicant" means a person applying to a Federal funding agency for a grant, loan or loan guarantee, or submitting to a Federal funding agency a proposal for a contract, reviewable under this subpart; or, in the case of funds made available by a State from an allotment to the State, a person applying to a State program agency for a grant or contract reviewable under this subpart.

[Delete "(b)"] "Construction" includes:

(1) The construction of new buildings and the acquisition, expansion, remodeling, replacement, and alteration of existing buildings; and

(2) Equipping new buildings and existing buildings, whether or not expanded, remodeled, or altered.

[Delete "(c)"] "Development * * * of health resources" means activities which directly result in the generation of new health resources or the improvement, including consolidation of existing health resources. It includes, but is not limited to, education and training of health professions personnel, the development of facilities or services, and arrangements to provide services.

[Delete "(d)"] "Expansion * * * of health resources" means any activity which will result in a substantial and significant increase in the quantity of health resources.

[Delete "(e)"] "Federal funding agency" means the organizational component of the Department of Health, Education, and Welfare which has the authority to make a grant, contract, loan, or loan guarantee reviewable under this subpart.

[Delete "(f)"] "Health resources" includes health services, health professions personnel, and health care facilities. For purposes of this subpart:

(1) "Health services" means screening, prevention, diagnostic, treatment, habilitative or rehabilitative [delete ")"] services [deleted ","]; it includes alcohol, drug abuse, mental health, preventive and environmental health services, and health information, education and promotion,

(2) "Health professions personnel" means individuals whose main occupation is the delivery of health services, and

(3) "Health care facilities" has the meaning given it in § 122.301(b) of this part.

[Delete "(g)"] "Person" means an individual, a trust or estate, a partnership, a corporation (including associations, joint stock companies, and insurance companies), a State, or political subdivision or instrumentality (including a municipal corporation) of a State.

[Delete "(h)"] "State program agency" means the agency of State government submitting a State plan or application to the Secretary as a condition to the receipt by any person of any funds under allotments made to States reviewable under this subpart.

[Delete "(i)"] "Support of health resources" means the furnishing of resources needed to provide a health resource, including money, manpower, equipment, facilities, supplies or consultative service.

§ 122.403 General.

(a) Except as provided in paragraph (b), (c) and (d) of this section, each health systems agency shall, in accordance with applicable provisions of this subpart, review and approve or disapprove each proposed use within its health service area of Federal funds—

(1) Appropriated under the Public Health Service Act, the Community Mental Health Centers Act, sections 409 and 410 of the Drug Abuse Office and Treatment Act, or the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act of 1970 for grants, contracts, loans or loan guarantees for

the development, expansion, or support of health resources; or

(2) Made available by the State in which the health service area is in whole or in part located (from an allotment to the State under an Act referred to in paragraph (a)(1) of this section) for grants or contracts for the development, expansion, or support of health resources.

Note.—Grants, loans and loan guarantees made directly by the Secretary to applicants within States from allotments to States are subject to review under subparagraph (a)(1) above.

(b) A health systems agency shall review and comment on, but shall not approve or disapprove, each proposed use within its health service area of Federal funds described in subparagraph (a) of this section by an Indian tribe or inter-tribal Indian organization for any program or project which will be located within or will specifically serve—

(1) A Federally-recognized Indian reservation,

(2) Any land area in Oklahoma which is held in trust by the United States for Indians or which is a restricted Indian-owned land area, or

(3) A Native village in Alaska (as defined in section 3(c) of the Alaska Native Claims Settlement Act).

(c) A health systems agency shall not review and approve or disapprove proposed uses of Federal funds which are (i) non-competing extension grant applications, or (ii) supplemental grant applications which are for administrative increases in costs.

(d) [Reserved]

§ 122.404 Section 1536 States.

(a) For any proposed use of Federal funds in the Virgin Islands, Guam, the Trust Territory of the Pacific Islands, American Samoa, the Northern Marianas Islands, or any other State determined by the Secretary to meet the requirements of section 1536(a) of the Act, the requirements of this subpart shall, except where otherwise stated, apply to the State health planning and development agency if that Agency has received a grant from the Secretary under section 1516 of the Act. Under these circumstances the State will be treated as a health service area and the State Agency a health systems agency for the area.

(b) A State Agency in a State covered by paragraph (a) of this section may not review and approve proposed uses of Federal funds within its State during its first year of conditional designation, and may not in any event perform this function until (1) the Statewide Health Coordinating Council (SHCC) has established a State health plan for the State in accordance with section 1524(c) of the Act and 42 CFR 123.110(a), and (2) the Secretary has in writing authorized the State Agency to perform this function.

(c) A State Agency in a State covered by paragraph (a) of this section shall afford the SHCC for the State a reasonable opportunity to review and comment upon each proposed use which it will review before approving or disapproving it.

§ 122.405 Involvement of more than one health systems agency.

Where a proposed use of Federal funds would involve the development, expansion or support of health resources in more than one health service area, references in this subpart to "the health systems agency" refer to the health systems agency for each health service area. The health systems agency in the health service area from which the applicant will administer the project (a) shall coordinate the reviews by all of the health systems agencies involved, except that it may delegate coordinating responsibility to a health systems agency in whose health service area a major portion of the funds will be used, and (b) may be delegated the review authority by the other health systems agencies involved. If some of the health systems agencies involved approve the proposed use and some disapprove, the decision of each health systems agency will apply to the use of funds in its own health service area.

§ 122.406 Determination of proposed uses subject to review by health systems agencies.

(a) The Secretary will publish as uncodified appendices to this subpart, and will revise from time to time, lists of Federal programs which include proposed uses covered by paragraph (a) of § 122.403. These appendices will be for informational purposes only. The fact that a program is not listed does not mean, if paragraph (a) of § 122.403 is otherwise applicable, that the proposed use is not subject to review.

(b) In certain programs which are listed under paragraph (a) of this section, there may be individual proposed uses of Federal funds which are not for the development, expansion, or support of health resources, and therefore are not subject to review under § 122.403(a). Also, there may be proposed uses of Federal funds in unlisted programs which are subject to review under § 122.403 of this subpart. Accordingly, either an applicant or a health systems agency may, in accordance with procedures prescribed by the Secretary, request the Federal funding agency to determine whether any particular proposed use of Federal funds is subject to review and approval or disapproval by a health systems agency. The Federal funding agency will promptly notify both the applicant and the health systems agency of its determination. Where the Federal funding agency concludes on its own initiative that a particular proposed use of Federal funds in a program generally covered by § 122.403(a) is not subject to review and approval or disapproval by a health systems agency, it will promptly notify the applicant and the health systems agency of that determination.

§ 122.408 Procedures for submission of applicants.

(a) *General.* Except as otherwise specified in this section applications for Federal funds must be submitted at the times and in the form and manner prescribed by the Secretary or, in the case of funds made available by a State under an allotment program covered by § 122.403(a)(2), by the State program agency.

(b) *HSA review of direct Federal grants, contracts, loans, and loan guarantees.* [Delete "(1)"] An application for a grant, loan, or loan guarantee or a proposal for a contract which is subject to review by a health systems agency under § 122.403(a)(1) must be submitted simultaneously to the health systems agency and the Federal funding agency. However, the Secretary may, for certain Federal funding programs or types of applications, require that they be submitted first to the health systems agency and then, following approval or disapproval by the health systems agency or the expiration of the period for health systems agency review, whichever comes first to the Federal funding agency, or (ii) directly to the Federal funding agency, which will, before approving the application or proposal and at a time it considers appropriate, submit it or a summary thereof, to the health systems agency: *Provided, that:*

[Delete "(2)"] An application for a noncompeting continuation grant shall be submitted to a health systems agency for review and approval or disapproval in accordance with subparagraph (1) upon the request of the health systems agency [add ","] or when the applicant proposes a change in the funding level of 20 percent or more from that previously approved by the Federal funding agency, or when the applicant or the Federal funding agency

determines that there has been a substantial change in the proposed or actual use of funds, or, if no other submission is made under this paragraph, every five years, beginning with the effective date of these regulations.

(1) A request by a health systems agency for submission to it of an application for a noncompeting continuation grant will be effective only if it is received by the Federal funding agency at least nine months before the scheduled date of the continuation grant award.

(2) A copy of each application for a noncompeting continuation grant not subject to review under this subparagraph shall be provided by the applicant to the health systems agency at the time the application is submitted to the Federal funding agency or, if the application is also submitted to the clearinghouse established pursuant to Office of Management and Budget Circular A-95 at the earlier of the two times.

(3) If an application contains material which the applicant believes to be confidential or proprietary and therefore believes should not become public, the applicant may submit a summary of this material to the Federal funding agency. Upon determination by the Federal funding agency that (1) the material is confidential or proprietary, and (ii) the summary is full and accurate, the applicant may submit the summary to the health systems agency along with the application, deleting the portion of the application which has been summarized.

(c) *Proposed uses of allotment funds.* A proposal for using funds available from a State allotment which is subject to HSA review under § 122.403(a)(2) must be submitted to the HSA by the State program agency, or at the option of the State program agency, by the applicant according to procedures established by the State program agency.

(1) The State program agency must provide an opportunity for the SHCC and the HSAs in the State to comment on its proposed procedures prior to their adoption.

(2) The procedures must provide for a minimum of 60 days for the HSA and SHCC to review the proposed uses of allotment funds subject to review under § 122.403(a)

§ 122.409 Adoption and public notice of health systems agency review procedures and criteria.

(a) Prior to performance of any review under section 1513(e) of the Act, and in accordance with its designation agreement, each health systems agency must, except as provided in § 122.411 of this subpart, adopt review procedures and criteria which meet the requirements of §122.410 and § 122.412, respectively, of this subpart.

(b) Before adopting the review procedures and criteria required by this subpart or any revisions to them, the health systems agency must give interested persons an opportunity to offer written comments on them, or on the revisions, which it proposes to adopt as follows:

(1) The health systems agency must distribute copies of its proposed review procedures and criteria and proposed revisions, to the agencies, institutions and associations with which the agency must coordinate its activities under section 1513(d) of the Act and its designation agreement, to units of general local government within its health service area, or to regional multi-purpose planning bodies which represent such units with respect to health matters, to the State Agency and Statewide Health Coordination Council of each State in which all or any part of the agency's health service area is located, and to health systems agencies designated for health service areas contiguous to its own.

(2) The health systems agency must publish, in one or more newspapers of general circulation in its health service area, a notice stating that reivew procedures and criteria, or revisions to them, have been proposed for adoption and are available at specified addresses for inspection and copying. A health systems agency may request from the Secretary an exception to this requirement. This request must be in writing, shall contain a detailed explanation of the reasons for the request and of the substitute publication procedures that the agency intends to follow if the exception is approved. The Secretary may grant an exception if he determines that the proposed substitute procedures are less costly or more effective and do not adversely and substantially affect the rights of person affected by the reviews.

(3) The health systems agency must allow 30 days from the date of publication of the notice for persons to submit written comments on the proposed review procedures and criteria, or any revision to them, prior to their adoption.

(c) Each health systems agency must distribute copies of its adopted review procedures and criteria, and any revisions, to the agencies and organizations specified in paragraph (b)(1) of this section, and to the Secretary, and must provide copies to other persons upon request. The health systems agency may not impose fees for distribution to the agencies and organizations specified in paragraph (b)(1) or to the Secretary.

§ 122.410 Procedures for health systems agency review

(a) The procedures adopted and used by a health systems agency for conducting reviews under section 1513(e) of the Act and this subpart shall include at least the following:

(1) Written notification to affected persons of the beginning of a review. The health systems agency must send this notification within seven (7) days of receipt of the application. It must include both a review schedule and a dealine for requesting a public hearing by persons directly affected by the review as defined in subparagraph (7) of this paragraph. The manner of providing notification concerning time and place of any requested hearing must also be included. Requests for a hearing must be made within a reasonable period of time from the transmittal of the written notification. For purposes of this subparagraph, "affected persons" include, at a minimum:

(i) the person (hereinafter referred to as the "applicant") whose application for a proposed use of Federal funds (hereinafter referred to as the "project") is being reviewed;

(ii) all other health systems agencies serving health service areas whose residents are proposed to be served by the project;

(iii) the State Agency and the State program agency for each State in which the project is proposed to be conducted;

(iv) entities located in the health systems agency's health service area which provide services or conduct activities similar to the proposed services or activities under review or which, prior to the receipt by the health systems agency of the application for review, have formally indicated an intention to provide similar services or conduct similar activities in the future;

(v) entities with which the health systems agency must coordinate its activities under section 1513(d) of the Act, including the clearinghouses established under Office of Management and Budget Circular A-95;

(vi) any agency which establishes rates for health care facilities or health maintenance organizations (HMOs) in its health service area, and;

(vii) those members of the public who are to be served by the proposed project. Written notification to members

of the public who are to be served by the proposed project. Written notification to members of the public may be provided through newspapers of general circulation in the area and public information channel notification to all other affected persons shall be by mail (which may be as part of a newsletter). The health systems agency must simultaneously provide written notification to the Federal funding agency.

(2) Schedules for reviews which provide that not longer than 60 days will elapse from the date of notification made in accordance with paragraph (a)(1) of this section to the date of the written findings made in accordance with paragraph (a)(5) of this section, unless the Federal funding agency has specified a longer period with respect to a particular program or particular proposed use of Federal funds covered by this subpart.

(3) Provisions for applicants to submit information at the request of the health systems agency concerning the project. This information must be submitted in the form and manner that it prescribes and publishes.

(4) Submission of periodic reports by providers of health services and other persons subject to health systems agency review under this subpart respecting the development of proposals subject to review.

(5) Provision for written findings which state the basis for any final decision or recommendation made by the health systems agency. Those findings must be sent to the applicant, to the State Agency and State program agency for each State in which the project will be conducted, and to the Federal funding agency, and must be available to others upon request.

(6) Notification, upon request, to applicants and other persons subject to health systems agency review under this subpart of the status of the agency review of projects, of findings made in the course of this review, and other appropriate information respecting the review.

(7) Provision for public hearing in the course of agency review if requested by one or more persons directly affected by the review. The agency may not impose fees for a hearing. For purposes of this subparagraph, "persons directly affected" by the review include, at a minimum, the applicant, entities with which the health systems agency must coordinate its activities under section 1513(d) of the Act, entities located in the health systems agency's health service area which provide services or conduct activities similar to the proposed services or activities under review or which, prior to the receipt by the health systems agency of the application for review, have formally indicated an intention to provide similar services or conduct similar activities in the future, and members of the public who are to be served by the proposed project. Where a hearing is requested, the agency must, prior to the hearing, provide notice of it, in accordance with its procedure adopted under paragraph (a)(1) of this section. The procedure for a hearing must provide an opportunity for any person to present testimony.

(8) Preparation and publication, at least annually, of reports by the health systems agency of the reviews being conducted (including a statement concerning the status of each such review) and of the reviews completed by the agency since the publication of the last report and a general statement of the findings and decisions made in the course of these reviews.

(9) Access by the general public to all applications received by the health systems agency and to all other written materials pertinent to any agency review.

(10) Persons proposing construction projects must submit a letter of intent to the health systems agency at the earliest opportunity. The letter of intent must contain sufficient detail to adequately inform the agency about the scope and nature of the project.

(11) Provision during its review for coordination and consultation with other health systems agencies reviewing the same project.

(12) Provision for agency coordination, to the maximum extent possible, of its reviews of projects under this subpart and its reviews of proposed new institutional health services under Subpart D of this Part.

(b) Procedures adopted for reviews in accordance with paragraph (a) of this section may vary according to the purpose for which a particular review is being conducted or the type of health service being reviewed.

§ 122.411 Exceptions to use of health systems agency procedures.

After following the procedure set forth in § 122.409(b) of this subpart an agency may, with respect to any type of group of reviews, request from the Secretary an exception to the requirement of § 122.409(a) that it utilize review procedures which meet the requirements of § 122.410. This request must be in writing, must contain a detailed explanation of the reasons for the request and of the substitute review procedures that the agency intends to follow if the exception is approved, and must be accompanied by copies of all written comments submitted under § 122.409(b) to the agency with respect to the request of an exception. The Secretary may grant such an exception if he determines that the proposed substitute procedures are less costly or more effective, are consistent with the purposes of the Act, and do not adversely and substantially affect the rights of persons affected by the subject reviews. The health systems agency must distribute copies of substitute procedures approved by the Secretary in accordance with the requirements of § 122.409(c) of this subpart.

§ 122.412 Criteria for health systems agency review.

(a) The health systems agency shall adopt and utilize as appropriate specific criteria for conducting the reviews covered by this subpart. The criteria must include at least the following general considerations:

(1) The relationship of the health services being reviewed to the applicable health systems plan and annual implementation plan adopted under section 1513(b) (2) and (3), respectively, of the Act.

(2) The relationship of services reviewed to the long-range development plan (if any) of the person providing or proposing the services.

(3)(i) The need that the population served or to be served has for the services proposed to be offered or expanded, and the extent to which low income persons, racial and ethnic minorities, women, handicapped persons, and other underserved groups are likely to have access to those services. (ii) In the case of a reduction or elimination of a service, including the relocation of a facility or a service, the need that the population presently served has for the service, the extent to which that need will be met adequately by the proposed relocation or by alternative arrangements, and the effect of the reduction, elimination or relocation of the service on the ability of low income persons, racial and ethnic minorities, women, handicapped persons, and other underserved groups to obtain needed health care.

(4) The availability of alternative, less costly, or more effective methods of providing the services.

(5) The immediate and long-term financial feasibility of the proposal and the probable impact of the proposal on the costs of and charges for providing health services in the health service area.

(6) The relationship of the services proposed to be provided to the existing health care system of the area in which such services are proposed to be provided.

(7) The availability of resources (including health manpower, management personnel, and funds for capital and operating needs) for the provision of the services proposed to be provided and the availability of alternative uses of resources for the provision of other health services.

(8) The relationship, including the organizational relationship, of the health services proposed to be provided to ancillary or support services in the health service areas in which the proposed health services will be provided.

(9) The special needs and circumstances of those entities which provide a substantial portion of their services or resources, or both, to individuals not residing in the health service areas in which the entities are located or in adjacent health service areas. These entities may include medical and other health professions schools, multidisciplinary clinics and specialty centers.

(10) The special needs and circumstances of health maintenance organizations (HMOs) for which assistance may be provided under Title XIII of the Act. These needs and circumstances must be limited to:

(i) The needs of enrolled members and reasonably anticipated new members of the HMO or proposed HMO for the health services proposed to be provided by the organization.

(ii) The availability of these health services from non-HMO providers or other HMOs in a reasonable and cost-effective manner which is consistent with the basic method of operation of the HMO or proposed HMO. In assessing the availability of such health services from non-HMO providers or other HMOs, providers, the agency must consider only whether the health services from these providers:

(A) Would be available under a contract of at least five years duration;

(B) Would be available and conveniently accessible through physicians and other health professionals associated with the HMO or proposed HMO. (For example—whether physicians associated with the HMO have or will have full staff privileges at a non-HMO hospital);

(C) Would cost no more than if the health service were provided by the HMO or proposed HMO; and

(D) Would be available in a manner which is administratively feasible to the HMO or proposed HMO.

(iii) Other factors the agency may propose and the Secretary may, in accordance with paragraph (c) of this section, find to be consistent with the purpose of Title XIII of the Act.

(11) The special needs and circumstances of biomedical and behavioral research projects which are designed to meet a national need and for which local conditions offer special advantages.

(12) The contribution of the project in meeting the health related needs of members of medically underserved groups and members of groups which have traditionally experienced difficulties in obtaining equal access to health services (for example, low income persons, racial and ethnic minorities, women, and handicapped persons), particularly those needs identified in the applicable health systems plan and annual implementation plan as deserving a priority.

(13) In the case of a construction project:

(i) The costs and methods of the proposed construction, including the costs and methods of energy provision;

(ii) The probable impact of the construction project reviewed on the costs of providing health services by the person proposing the construction project; and

(iii) The relationship of the construction project to the State medical facilities plan approved under section 1603 of the Act.

(14) The special circumstances of health care institutions with respect to the need for conserving energy.

(b) Criteria adopted for reviews in accordance with paragraph (a) of this section may vary according to the purpose for which a particular review is being conducted or the type of health service reviewed.

(c) Where an agency proposes under paragraph (a)(10)(iii) of this section that it be permitted to base its reviews of health maintenance organizations on criteria which consider factors not set forth in paragraph (a)(10) of this section, it must do so in a written request to the Secretary, specifying the reasons for the proposal. The Secretary will approve the request if he finds the additional factors to be consistent with the purpose of Title XIII of the Act. Unless the Secretary has approved the additional factors, the agency shall base its review solely on the factors set forth in paragraph (a)(10) of this section.

§ 122.413 Period for health systems agency review.

Notwithstanding any provision of any Act referred to in § 122.403, a health systems agency must be allowed not less than 60 days to make the review required by that section.

(a) Unless the appropriate Federal funding agency or (if allotment funds are involved), State program agency specifies in writing a longer period with respect to a program or particular proposed use of Federal funds covered by this subpart, the period for health agency review of any proposed use must be 60 days, except that the health systems agency may, at its option, complete its review in a shorter period.

(b) The period for health systems agency review shall begin on the date that notification of the beginning of the review is sent to affected persons in accordance with § 122.410(a)(1).

(c) Where a proposed use of Federal funds is submitted to a health systems agency for its review less than 120 days prior to the end of the period of availability of the funds involved, the Federal funding agency may, at its option, after consultation with the appropriate health systems agency and following its determination that the application could not reasonably have been submitted to the health systems agency at least 120 days prior to the end of the period of availability of funds, make the grant, loan or loan guarantee or award the contract so as to preserve the availability of the funds. Any such grant, loan, loan guarantee or contract must, however, be subject to the condition that no Federal funds may be expended until (i) the health systems agency has approved the proposed use of Federal funds, or (ii) the health systems agency has notified the Federal funding agency that it will not disapprove the proposed use of Federal funds, or (iii) the period for HSA review has passed without the HSA having notified the Federal funding agency of its disapproval, or (iv) the Secretary has determined, notwithstanding the health systems agency's disapproval to make such funds available in accordance with § 122.415(d).

§ 122.414 Notification of health systems agency approval or disapproval.

Not later than the close of the first business day following the end of the period described in § 122.413 for review of a proposed use of Federal funds, the health systems agency shall provide written notification to the applicant, the appropriate Federal funding agency, the State Agency, and the State program agency for each State in which the

project is proposed to be conducted of its approval or disapproval of the proposed use, setting forth the reasons for such approval or disapproval.

(a) Mailing of the required notification shall be deemed a provision of notification for purposes of this section and § 122.410(a)(6).

(b) Following the end of the review period described in § 122.413, any proposed use of Federal funds with respect to which notification has not been provided by the health systems agency in accordance with this section shall be deemed not to have been disapproved by the health systems agency.

§ 122.415 Consequences of health systems agency disapproval.

(a) *General.* If a health systems agency, in accordance with applicable provisions of this subpart, disapproves a proposed use in its health service area of Federal funds, the Secretary may not make such Federal funds available for such use until he has made, upon the request of the entity making such proposal, a review of the agency decision.

(b) *Procedures for requesting review.* To be effective, a request for review must be:

(1) Provided (including mailing) to the Federal funding agency, in such form and manner as may be prescribed by the Federal funding agency, not later than 15 days after the provision of notice to the applicant of disapproval of the proposed use of Federal funds by the health systems agency in accordance with § 122.414; and

(2) Accompanied by a justification for approval by the Secretary of the proposed use of Federal funds despite the health systems agency's disapproval, including detailed responses to the reasons given by the health systems agency for its disapproval.

(c) *State Agency comments.* In making his review of a health systems agency disapproval under this section, the Secretary will give the appropriate State Agency and health systems agency 15 days in which to consider the disapproval and to provide its comments on the disapproval to the Secretary.

(1) To assist the State Agency in considering a health systems agency disapproval under this paragraph, the Secretary will provide the State Agency with copies of the request for review and any material accompanying the request furnished under paragraph (b) of this section. The Secretary will at the same time provide a copy to the health systems agency and request its comments.

(2) To be considered under this paragraph, comments by a State Agency or health systems agency must be mailed or otherwise provided to the Secretary not later than 15 days after the information described in subparagraph (1) of this paragraph is mailed or otherwise provided to the State Agency.

(d) *Review by the Secretary.* The Secretary, after taking into consideration comments received from the State Agency in accordance with paragraph (c) of this section, may make the Federal funds available for use, notwithstanding the disapproval of the health systems agency. Each decision by the Secretary to make funds available despite the disapproval of a health systems agency will be submitted to the applicant and the appropriate health systems agency and State Agency, and will contain a detailed statement of the reasons for the decision. In reviewing a health systems agency's disapproval under this paragraph, the Secretary will consider at least the following:

(1) Whether the health systems agency substantially adhered to the applicable review procedures adopted by the health systems agency under this subpart.

(2) Whether the proposed use of Federal funds is consistent with the applicable review criteria adopted by the health systems agency under this subpart.

(3) Whether the failure to make the proposed Federal funds available will adversely affect the health of residents of the health service area or of other health service areas.

(4) Whether the proposed use of Federal funds meets a national or regional need for which local conditions offer special advantages and which is unlikely to be accomplished efficiently or effectively in another health service area.

Appendix.—*Alcohol, Drug Abuse, and Mental Health Administration (ADAMHA)*

[Programs with proposed uses of funds subject to review and approval or disapproval*]

Catalog No.	Name of program	Subject to review by—	
		HSA	SHCC
13.235	Drug abuse community service programs (grants and contracts)	X	
13.237	Mental health—hospital improvement grants	X	
13.238	Mental health hospital staff development grants	X	
13.252	Alcohol treatment and rehabilitation—occupational alcoholism services program	X	
13.257	Alcohol formula grants (State plan and application for allotment grant)		X
	Alcohol formula grants (projects funded under allotments)	X	
13.259	Mental health—children's services	X	
13.269	Drug abuse prevention formula grants (projects funded under allotments)	X	
13.275	Drug abuse education programs	X	
13.290	Special alcoholism projects to implement the Uniform Act	X	
13.295	Community mental health centers—comprehensive service support	X	
	State plan required by sec. 237, CMHC Act		X
13.898	Alcoholism demonstration program	X	
13.899	Alcohol abuse and alcoholism prevention demonstration	X	

* Proposed uses of funds under the programs listed above are generally subject to review and approval or disapproval by HSAs, and the Federal funding agencies will notify applicants of this. Funding agencies will also, in accordance with § 122.406, identify on a case-by-case basis those specific activities in the programs listed above that are not subject to review and approval or disapproval, as well as those specific activities in programs not listed above that are subject to review and approval or disapproval.

Notes

Federal grant applications subject to review and comment by request of the Alcohol, Drug Abuse, and Mental Health Administration (ADAMHA).

Secs. 1513(e) and 1524(c)(6) of the PHS Act refer specifically to Federal funds appropriated under the Public Health Service Act, the Community Mental Health Centers Act or the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act of 1970. Sec. 1513(e) also includes secs. 409 and 410 of the Drug Abuse Office and Treatment Act as a result of the 1976 amendments to the Act. The Alcohol, Drug Abuse, and Mental Health Administration has requested the following Federal health programs, not subject to review under secs. 1513(e) and 1524(c)(6), be subject to review and comment. Therefore HSAs review and approve or disapprove both (a) direct proposed uses of funds under these sections 409 and 410 (project grants, contracts, loans and loan guarantees), and (b) proposed uses by grant or contract of funds from allotment grants to States. The Act was not amended, however, to require SHCC review and approval or disapproval of State plans and applications for allotment grants. The Alcohol, Drug Abuse, and Mental Health Administration has, however, requested that the following program be subject to SHCC review and comment.

Catalog No.	Name of program	Subject to review by— HSA	SHCC
13.269	Drug abuse prevention formula grants (State plan and application for allotment grant)		X

Health Resources Administration (HRA)

[Programs with proposed uses of funds subject to review and approval or disapproval*]

Catalog No.	Name of program	Subject to review by— HSA	SHCC
13.220	State medical facilities plan and application for allotment grant (title XVI, PHS Act)		X
13.253	Medical facilities construction—loans and loan guarantees	X	
	Projects funded under allotment (title XVI, PHS Act)	X	
13.887	Medical facilities construction—project grants	X	

* Proposed uses of funds under the programs listed above are generally subject to review and approval or disapproval by HSAs, and the Federal funding agencies will notify applicants of this. Funding agencies will also, in accordance with § 122.406, identify on a case-by-case basis those specific activities in the programs listed above that are not subject to review and approval or disapproval, as well as those specific activities in programs not listed above that are subject to review and approval or disapproval.

Health Services Administration (HSA)

[Programs with proposed uses of funds subject to review and approval or disapproval*]

Catalog No.	Name of program	Subject to review by— HSA	SHCC
	Comprehensive public health services (projects funded under allotments)	X	
13.217	Family planning projects	X	
13.224	Community health centers (includes rural health initiatives and urban health initiatives)	X	
13.246	Migrant health grants	X	
13.258	National health service corps[1]	X	
13.260	Family planning services—training grants and contracts	X	
13.284	Emergency medical services	X	
13.292	Sudden infant death syndrome information and counseling program	X	
13.296	Comprehensive hemophilia diagnostic and treatment centers	X	
13.823	Health underserved research and demonstration projects	X	
13.882	Hypertension programs	X	
13.888	Home health services program	X	
13.890	Genetic disease counseling and education	X	

* Proposed uses of funds under the programs listed above are generally subject to review and approval or disapproval by HSAs, and the Federal funding agencies will notify applicants of this. Funding agencies will also, in accordance with § 122.406, identify on a case-by-case basis those specific activities in the programs listed above that are not subject to review and approval or disapproval, as well as those specific activities in programs not listed above that are subject to review and approval or disapproval.

[1] It should be noted that while this program is authorized by sec. 333 of the PHS Act and would, therefore, be subject to HSA review and approval or disapproval, legislation enacted subsequent to Public Law 93-641 provides that HSAs shall have the opportunity to review and comment on its applications. However, the Bureau of Community Health Services has requested that HSAs review and approve or disapprove these applications.

Notes

Federal grants subject to review and approval by request of the Health Services Administration (HSA).

Secs. 1513(e) and 1524(c)(6) of the PHS Act refer specifically to Federal funds appropriated under the Public Health Service Act, the Community Mental Health Centers Act, or the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation

Act of 1970. Sec. 1513(e) also includes secs. 409 and 410 of the Drug Abuse Office and Treatment Act, as a result of the 1976 amendments to the Act. The Bureau of Community Health Services in Health Services Administration has requested the following two allotment grant programs, not subject to review under secs. 1513(e) and 1524(c)(6), be subject to review and comment by SHCCs. The Bureau has also requested that, for the two project grant programs below, the Title V State program agencies offer HSAs the opportunity to review and comment, and that they provide these comments to the Bureau when the State plan and application is submitted for review. HSAs which are not offered the opportunity for review and comment by the State program agencies are invited by the Bureau to submit their comments directly.

Catalog No.	Name of program	Review and comment by—	
		HSA	SHCC
13.211	Crippled children's services (State plan and application for allotment grant)		X
13.232	Maternal and child health services (State plan and application for allotment grant)		X
	Maternal and infant projects	X	
	Children and youth projects	X	

Center for Disease Control (CDC)

[Programs with proposed uses of funds subject to review and approval or disapproval*]

Catalog No.	Name of program	Subject to review by—	
		HSA	SHCC
13.210	Comprehensive public health services health incentive formula grants (State plan and application)		X
	Comprehensive public health services (projects funded under allotments)	X	
13.266	Childhood lead-based paint poisoning projects grants	X	
13.267	Urban rat control projects grants	X	
13.268	Childhood immunization grants	X	
13.283	Center for Disease Control—investigation, surveillance, and technical assistance (only those programs which are funded in whole or in part under authority of the Public Health Service Act are subject to review	X	
13.977	Venereal disease control grants	X	
13.978	Venereal disease research, demonstration, and public information and education grants	X	
13.979	Influenza immunization grants	X	
13.980	Project grants for preventive health services—fluoridation	X	
	Health Education—Grants for Personal Choice Health Behavior (Lifestyle)	X	

* Proposed uses of funds under the programs listed above are generally subject to review and approval or disapproval by HSAs, and the Federal funding agencies will notify applicants of this. Funding agencies will also, in accordance with § 122.406, identify on a case-by-case basis those specific activities in the programs listed above that are not subject to review and approval or disapproval, as well as those specific activities in programs not listed above that are subject to review and approval or disapproval.

Office of the Assistant Secretary for Health (OASH)

[Programs with proposed uses of funds subject to review and approval or disapproval*]

Catalog No.	Name of program	Subject to review by—	
		HSA	SHCC
13.256	Health maintenance organization development	X	

* Proposed uses of funds under the programs listed above are generally subject to review and approval or disapproval by HSAs, and the Federal funding agencies will notify applicants of this. Funding agencies will also, in accordance with § 122.406, identify on a case-by-case basis those specific activities in the programs listed above that are not subject to review and approval or disapproval, as well as those specific activities in programs not listed above that are subject to review and approval or disapproval.

[FR Doc. 79-24659 Filed 8-9-79; 8:45 am]
BILLING CODE 4110-83-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[BC Docket No. 79-71; RM-3271]

Radio Broadcast Services; FM Broadcast Station in California, Missouri; Changes Made in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Report and Order.

SUMMARY: Action taken herein assigns a first Class A FM channel to California, Missouri, in response to a petition filed by Town and Country Communications, Inc. The channel could be used to provide a first full-time local aural broadcast service to the town of California and to Moniteau County.

EFFECTIVE DATE: September 14, 1979.

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

FOR FURTHER INFORMATION CONTACT: Mildred B. Nesterak, Broadcast Bureau, (202) 632-7792.

SUPPLEMENTARY INFORMATION:

Adopted: August 1, 1979.

Released: August 8, 1979.

In the matter of amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations, (California, Missouri); Report and Order; Proceeding Terminated.

By the Chief, Broadcast Bureau: 1. The Commission has under consideration the *Notice of Proposed Rule Making*, 44 FR 21046, adopted April 2, 1979, proposing the assignment of FM Channel 232A to California, Missouri. The *Notice* was issued in response to a petition filed by Town and Country Communications, Inc. ("petitioner"). Supporting comments were filed by petitioner reaffirming its intention to apply for the channel, if assigned. No oppositions to the proposal were received.

2. California (pop. 3,105), seat of Moniteau County (pop. 10,742),[1] is located in central Missouri, approximately 35 kilometers (22 miles) west of Jefferson City, Missouri. There is no local aural broadcast service in California or Moniteau County.

3. Petitioner claims that there has been a 11.4% population gain in California between 1960–1970. In support of its proposal, petitioner has submitted information with respect to California which is persuasive as to its need for a first FM assignment.

4. We believe the public interest would be served by the assignment of FM Channel 232A to California, Missouri. An interest has been shown for its use, and such an assignment would provide the town of California and Moniteau County with an FM station which could render a first full-time local aural broadcast service.

5. Authority for the action taken herein is contained in Sections 4(i), 5(d)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and § 0.281 of the Commission's Rules.

6. In view of the foregoing, *it is ordered*, That effective September 14, 1979, § 73.202(b) of the Commission's Rules, the FM Table of Assignments, is amended as it pertains to California, Missouri, as follows:

City	Channel No.
California, Missouri	232A

7. *It is further ordered*, That this proceeding is terminated.

8. For further information concerning this proceeding, contact Mildred B. Nesterak, Broadcast Bureau, (202) 632-7792.

(Secs. 4, 5, 303, 48 Stat., as amended, 1066, 1068, 1082; 47 U.S.C. 154, 155, 303)

Federal Communications Commission,

Richard J. Shiben,

Chief, Broadcast Bureau.

[FR Doc. 79-24760 Filed 8-9-79; 8:45 am]

BILLING CODE 6712-01-M

[1] Population figures are taken from the 1970 U.S. Census.

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47 CFR Part 73

[BC Docket No. 79-91; RM-3172]

Television Broadcast Station in Dayton, Ohio; Changes made in Table of Assignment.

AGENCY: Federal Communications Commission.

ACTION: Report and Order.

SUMMARY: Action taken herein reserves the existing television Channel 16 assignment in Dayton, Ohio, for non-commercial education television use, in response to a petition filed by the Ohio Educational Television Network Commissions. It also deletes the reservation on the Channel 45 assignment, making it available for commercial use, for which an expression of interest has been made.

EFFECTIVE DATE: September 14, 1979.

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

FOR FURTHER INFORMATION, CONTACT: Mildred B. Nesterak, Broadcast Bureau, (202) 632-7792.

SUPPLEMENTARY INFORMATION:

Adopted: August 1, 1979.

Released: August 7, 1979.

In the matter of amendment of § 73.606(b), Table of Assignments, Television Broadcast Stations, (Dayton, Ohio); Report and Order; Proceeding Terminated.

By the Chief, Broadcast Bureau: 1. The Commission herein considers the *Notice of Proposed Rule Making*, adopted April 18, 1978, 44 FR 25244, which invited comments on a petition filed by the Ohio Educational Television Network Commission ("OETNC"), proposing the amendment of the Television Table of Assignments by reserving the existing television Channel 16 assignment at Dayton, Ohio, for noncommercial educational use. The *Notice* also proposed the deletion of the reservation on Channel 45 at Dayton. Comments in support of the proposal were filed by Sinder Communications ("Sinder"), Dayton Community Telecasters, Inc. ("DCT"), Meridian Corporation ("Meridian"), and University Regional Broadcasting, Inc. ("URB"). Comments in partial opposition were filed by OETNC, to which Sinder responded.

2. Dayton (pop. 242,917), seat of Montgomery County (pop. 608,413)[1], is located in southwest Ohio, approximately 70 kilometers (45 miles) north of Cincinnati, Ohio. Dayton is currently assigned Channel 2 (WDTN), Channel 7 (WHIO-TV), Channel 16 (WPTD, city of license is Kettering, Ohio, operating as a noncommercial educational station), Channel 22 [WKEF], and Channel *45 (unoccupied and unapplied for).

3. Petitioner points out that it is an independent agency of the government of Ohio authorized to own and operate or contract to provide transmission facilities and interconnect facilities for a statewide educational television network and to provide educational programs for distribution throughout the network. OETNC had been the licensee of the noncommercial educational

[1] Population figures are taken from the 1970 U.S. Census.

station operating on Channel 16, but it assigned the station to University Regional Broadcasting, Inc., a consortium of local universities. In effect, then, OETNC is acting on URB's behalf in proposing the reservation of the channel. According to OETNC, doing so would place Station WPTD on a par with operations throughout the rest of the State. It points out that no change in programming is involved and that Kettering would continue to be served, as well as other portions of the Dayton area.

4. In supporting comments, DCT, Meridian, and Sinder favor the reservation of Channel 16 in Dayton for noncommercial educational use and the deletion of the reservation on Channel 45. They state that the size of Dayton warrants another commercial assignment and has an economic base to support four commercial television stations. DCT, Meridian and Sinder each indicate an interest in filing for the channel if it becomes available for commercial use in Dayton.

5. OETNC opposes the Commission's proposal to delete the reservation on Channel 45. It contends that the needs of the population of Ohio for instructional television programs, vocational training programs, adult education programs, and cultural and alternative programming will soon require additional facilities to those now in operation in Ohio. OETNC asserts that during the past 12 months it has provided over 25,000 hours of programming to the noncommercial educational television stations in the State. It claims that the time is not far off when existing facilities will be unable to meet the needs just described. OETNC adds that it intends to take steps to acquire the funding for and to arrange all other necessary resources for additional noncommercial educational facilities in the major Ohio communities.

6. In reply, Sinder argues that a demand has been shown for an additional commercial television assignment which can be used immediately rather than awaiting a hypothetical future demand for additional noncommercial programming. It asserts that even without the noncommercial reservation, Channel 45 would still be available to OETNC or other applicants for noncommercial use. It notes, however, that the converse would not be true for commercial applicants if the reservation remains.

7. We believe it would be in the public interest to reserve Channel 16 in Dayton, Ohio, for noncommercial educational television use since it would reflect the manner in which it is presently operating. However, we are not persuaded that the reservation on Channel 45 should be retained. An expression of interest has been shown for its use as a commercial assignment. OETNC's reasons for retaining it as a noncommercial channel are conjectural at best, and in any event, the need for two reserved channels for the Dayton area has not been documented.

8. Authority for the adoption of the amendment contained herein appears in sections 4(i), 5(d)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and § 0.281 of the Commission's Rules.

9. Canadian concurrence has been obtained for the reservation of Channel 16 for noncommercial educational television use at Dayton, Ohio.

10. Accordingly, *it is ordered*, That effective September 14, 1979, the Television Table of Assignments (§ 73.606(b) of the Commission's Rules) is amended as follows for the community listed below:

City	Channel No.
Dayton, Ohio	2, 7+, *16+, 22+, 45

11. *It is further ordered*, That this proceeding is terminated.

12. For further information concerning this proceeding, contact Mildred B. Nesterak, Broadcast Bureau, (202) 632-7792.

(Secs. 4, 303, 307, 48 Stat., as amended, 1066, 1082, 1083; 47 U.S.C. 154, 303, 307.)

Federal Communications Commission,
Richard J. Shiben,
Chief, Broadcast Bureau.

[FR Doc. 79-24761 Filed 8-9-79; 8:45 am]
BILLING CODE 6712-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

Migratory Bird Hunting; Final Regulations Describing Non-Toxic Shot Zones for Waterfowl Hunting Seasons Commencing in 1979; Correction

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Correction of final rule.

SUMMARY: This document corrects descriptions of non-toxic shot zones in Wisconsin and Illinois, published by the Service on July 17, 1979.

EFFECTIVE DATE: September 1, 1979.

FOR FURTHER INFORMATION CONTACT: Robert I. Smith, Office of Migratory Bird Management, Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240 (202-254-3207).

SUPPLEMENTARY INFORMATION: In the Federal Register of July 17, 1979 (44 FR 41461-67) two errors were detected and are being corrected at this time.

1. On page 41464, Column 2, lines 4 and 5; the words *Rend Lake and Wildlife Management Areas* are deleted.

2. On page 41466, Column 2, line 20 should contain the words *Green Bay* and read as follows: * * * *open water of Lake Michigan and Green Bay are* * * *

These corrections were authored by Robert I. Smith, Office of Migratory Bird Management, Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240 (202-254-3207).

Dated: August 6, 1979.

Lynn A. Greenwalt,
Director, U.S. Fish and Wildlife Service.

[FR Doc. 79-24615 Filed 8-9-79; 8:45 am]
BILLING CODE 4310-55-M

DEPARTMENT OF INTERIOR

Fish and Wildlife Service

50 CFR Part 32

Hunting; National Wildlife Refuges in Kentucky, North Carolina, South Carolina, and Tennessee

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Special regulations.

SUMMARY: The Director has determined that the opening of certain national wildlife refuges to migratory game bird and resident game hunting in Kentucky, North Carolina, South Carolina, and Tennessee is compatible with the objectives for which the areas were established, will utilize a renewable natural resource, and will provide additional recreational opportunity to the public. The name of each affected refuge and the special regulations for each refuge are set forth below.

EFFECTIVE DATES: See the dates listed for each refuge under Supplementary Information below.

FOR FURTHER INFORMATION CONTACT: The Area Manager or appropriate Refuge Manager at the address or telephone number listed below:

William C. Hickling, Area Manager, U.S. Fish and Wildlife Service, 279 Federal Building, Asheville, N.C. 28801. Telephone: 704-258-2850, Ext. 321.

Steven W. Frick, Refuge Manager, Swanquarter National Wildlife Refuge, Rt. 1, Box N-2, Swanquarter, N.C. 27885. Telephone: 919-926-4021.

Marvin T. Hurdle, Refuge Manager, Carolina Sandhills Naitonal Wildlife Refuge, Route 2, Box 130, McBee, South Carolina 29101. Telephone: 803-335-8401.

George R. Garris, Refuge Manager, Cape Romain National Wildlife Refuge, Rt. 1, Box 191, Awendaw, S.C. 29429. Telephone: 803-928-3368.

Paul Ferguson, Refuge Manager, Santee National Wildlife Refuge, Route 2, Box 66, Summerton, S.C. 29148. Telephone: 803-478-2217.

J. C. Bryant, Refuge Manager, Hatchie National Wildlife Refuge, Box 187, Brownville, Tennessee 38012. Telephone: 901-772-0501.

Wendell C. Crews, Refuge Manager, Reelfoot (and Lake Isom) National Wildlife Refuge, P.O. Box 98, Samburg, Tennessee 38254. Telephone: 901-538-2481.

Vandiver, L. Childs, Refuge Manager, Tennessee National Wildlife Refuge, Box 849, Paris, Tennessee 38242. Telephone: 901-642-2091.

John C. Fields, Refuge Manager, Pungo National Wildlife Refuge, P.O. Box 267, Plymouth, North Carolina 27962. Telephone: 919-793-2143.

SUPPLEMENTARY INFORMATION:

General

Hunting on portions of the following refuges shall be in accordance with applicable State and Federal regulations, subject to additional special regulations and conditions as indicated. Portions of refuges which are open to hunting are designated by signs and/or delineated on maps. Special conditions applying to individual refuges and maps are available at refuge headquarters or from the Office of the Area Manager (addresses listed above).

The Refuge Recreation Act of 1962 (16 U.S.C. 460k) authorizes the Secretary of the Interior to administer such areas for public recreation as an appropriate incidental or secondary use only to the extent that it is practicable and not inconsistent with the primary objectives for which the areas were established. In addition, the Refuge Recreation Act requires that before any area of the refuge system is used for forms of recreation not directly related to the primary purposes and functions of the area, the Secretary must find that: (1) Such recreational use will not interfere with the primary purposes for which the area was established; and (2) funds are available for the development, operation, and maintenance of the permitted forms of recreation.

The recreational use authorized by these regulations will not interfere with the primary purposes for which these refuges were established. This determination is based upon consideration of, among other things, the Service's Final Environmental Impact Statement on the Operation of the National Wildlife Refuge System, published in November 1976.

Funds are available for the administration of the recreational activities permitted by these regulations.

§ 32.12 Special regulations; migratory game birds; for individual refuge areas.

North Carolina

Swanquarter National Wildlife Refuge

Hunting will be permitted on the Swanquarter National Wildlife Refuge on approximately 7,055 acres.

The hunting season will be the same as the regular, split North Carolina waterfowl season. Only ducks and coots may be taken. Hunting will be restricted to the use of non-toxic (steel) shot shells, only. No lead or other toxic shot shells will be permitted on the refuge. Shooting hours will be from one-half hour before sunrise until sunset.

Permanent and seasonal blinds will be prohibited. Temporary blinds, carried in and out daily or made of vegetation, will be permitted. Hunters will be prohibited from hunting closer than 100 yards from other hunters. The use of retrievers will be permitted, but dogs must be under control at all times. Hunters under 16 years of age must be under close supervision of an adult.

South Carolina

Cape Romain National Wildlife Refuge

Rail hunting will be permitted on approximately 12,000 acres of the Cape Romain National Wildlife Refuge. The hunting season will be from the opening day of the State season until October 31, 1979. Only rails may be taken. A refuge permit will be required. Dogs will be permitted only in the hunting area. Hunters under 18 years of age must be under the close supervision of an adult.

§ 32.22 Special regulations; upland game; for individual refuge areas.

Kentucky

Reelfoot National Wildlife Refuge

Squirrel and raccoon hunting will be permitted on approximately 2,034 acres of the Reelfoot National Wildlife Refuge.

Squirrels (gray and fox) may be taken from August 25 through October 14, 1979. Only shotguns incapable of holding more than three shells and .22 caliber rimfire rifles will be permitted. A refuge permit will be required. Hunting will be permitted from sunrise to sunset.

Raccoons may be taken on the Long Point refuge unit from September 26 through September 29, 1979, and from October 3 through October 6, 1979. There is no bag limit. Hunting will be permitted from 7:30 p.m. to midnight. The use of dogs will be permitted. Axes, saws, and other cutting implements will be prohibited. Hunters will be required to check in and check out at the designated check station. A refuge permit will be required; permits will be issued nightly at the check station.

Hunters under 17 years of age must be under the close supervision of an adult.

Tennessee

Hatchie National Wildlife Refuge

Squirrel and raccoon hunting will be permitted on approximately 11,555 acres of the Hatchie National Wildlife Refuge.

Squirrels may be taken from August 25 through September 23, 1979. Hunting will be permitted from one hour before sunrise to 30 minutes past sunset.

Raccoons may be taken from October 12 through November 11, 1979. Hunting will be permitted from sunset to midnight. Axes, saws, and other cutting implements will be prohibited. The use of dogs will be permitted. Dogs must wear a collar showing the owner's name, address and telephone number.

Hunters under 18 years of age must be under the close supervision of an adult.

Lake Isom National Wildlife Refuge

Squirrel and raccoon hunting will be permitted on approximately 1,850 acres of the Lake Isom National Wildlife Refuge.

Squirrels may be taken from August 25 through October 14, 1979. Only shotguns incapable of holding more than three shells and .22 caliber rifles will be permitted. Dogs will be prohibited. A refuge permit will be required. Hunting will be permitted from sunrise to sunset.

Raccoons may be taken from October 3 through October 6, 1979. There is no bag limit. Hunting will be permitted from 7:30 p.m. to midnight. The use of dogs will be permitted. Axes, saws and other cutting implements will be prohibited. Hunters will be required to check in and check out at the designated check station. A refuge permit will be required; permits will be issued nightly at the check station.

All hunters under 17 years of age must be under close supervision of an adult.

Reelfoot National Wildlife Refuge

Squirrel and raccoon hunting will be permitted on approximately 9,565 acres of the Reelfoot National Wildlife Refuge.

Squirrels may be taken from August 25 through October 14, 1979. Only shotguns incapable of holding more than three shells and .22 caliber rifles will be permitted. Dogs will be prohibited. A refuge permit will be required. Hunting will be permitted from sunrise to sunset.

Raccoons may be taken on the Long Point refuge unit from September 26 through September 29, 1979 and from October 3 through October 6, 1979. Raccoons may be taken on the Grassy Island refuge unit from September 26 through September 29, 1979. There will be no bag limit. Hunting will be permitted from 7:30 p.m. to midnight. The use of dogs will be permitted. Axes, saws and other cutting implements will be prohibited. Hunters will be required to check in and check out at the designated check station. A refuge permit will be required; permits will be issued nightly at the check station.

Hunters under 17 years of age must be under the close supervision of an adult.

§ 32.32 Special regulations; big game; for individual wildlife refuge areas.

North Carolina

Pungo National Wildlife Refuge

White-tailed deer hunting will be permitted with bows on approximately 12,000 acres and with shotguns and primitive weapons on approximately 7,000 acres. The archery hunt will be from September 17 through October 3, 1979. The shotgun and primitive weapons hunt will be October 10–12, 17–19, and 25–26, 1979. The bag limit will be one deer either sex per day; two deer per season. All deer must be checked at field headquarters prior to removable from the refuge.

Shooting hours will be from sunrise to sunset. Entry into the hunting area will be permitted from one hour before sunrise to one hour after sunset. Permits for shotgun and primitive weapon hunting will be issued on the basis of a public drawing. No permits will be required for bow hunting.

All shotgun and primitive weapons hunters must wear outer garments consisting of at least 500 square inches of a daylight fluorescent orange material above the waist. Hunters under 18 years of age must be under the close supervision of an adult. Hunting from a blind permanently attached to a tree will be prohibited.

South Carolina

Cape Romain National Wildlife Refuge

White-tailed deer hunting will be permitted on approximately 2,500 acres of the Bulls Island Unit of the Cape Romain National Wildlife Refuge. The archery hunts will be November 5–10, 1979, and December 3–8, 1979. The bag limit will be two deer, either sex. Hunting is prohibited within 100 feet of the Walking Trail and the Beach Road.

A refuge permit will be required. Camping will be permitted, with a refuge permit, from 9:00 a.m. on the day preceeding the hunt until noon on the day following the hunt. Hunters will be restricted to the camping area from 7:00 p.m. to 4:30 a.m. Hunters under 18 years of age must be under the close supervision of an adult. Dogs, nails, paint, and flagging will be prohibited.

Carolina Sandhills National Wildlife Refuge

White-tailed deer hunting will be permitted on approximately 43,767 acres of the Carolina Sandhills National Wildlife Refuge.

The archery hunt will be October 15–20, 1979; the bag limit will be two deer, either sex. No permits are required.

The early gun hunt will be from October 29 through November 1, 1979; the bag limit will be two bucks with three-inch antlers visible above the hairline.

The late gun hunt will be November 5–6, 1979; the bag limit will be two deer, either sex. Permits will be required for all gun hunts. Only shotguns using slugs or centerfire rifles using soft-nosed ammunition will be allowed. Only still hunting will be permitted during gun hunts.

Hunters will be allowed on the hunting area from one hour before sunrise until one hour after sunset. Hunters must enter the hunting area at designated entrance points and must park their vehicles on the hunting area. Hunting will be prohibited from road rights-of-way and within 500 feet of the paved visitor drive. All deer must be checked prior to removal from the refuge. Hunters under 18 years of age must be under the close supervision of an adult. All hunters must wear an outer garment containing a minimum of 500 square inches of daylight fluorescent orange material above the waist. Hunting from a stand that is permanently attached to a tree will be prohibited. Camping will be permitted in the designated area.

Santee National Wildlife Refuge

White-tailed deer hunting will be permitted on approximately 3,257 acres of the Santee National Wildlife Refuge. The archery hunt will be October 6 through 12, 1979. The combined archery and primitive weapons hunt will be October 20 through 26, 1979. The bag limit will be two deer, either sex. Crossbows or drugged arrows will be prohibited. No handguns or other firearms will be permitted. Primitive weapons include bow and arrow, muzzleloading shotguns (20 gauge or larger), and muzzle-loading rifles (.36 caliber or larger).

Hunters may scout the area without weapons on September 22 through 23, 1979. Hunters must enter the refuge at designated entry points and park in designated parking areas. Deer must be checked in at the designated check station. Hunters under 18 years of age must be under the close supervision of an adult.

Tennessee

Hatchie National Wildlife Refuge

White-tailed deer hunting will be permitted on approximately 11,555 acres of the Hatchie National Wildlife Refuge. The archery deer hunt will be from September 30 through October 14, 1979. The bag limit will be two deer, either sex. Hunting hours will be from one hour before sunrise to 30 minutes after sunset. Hunting from a permanent tree stand will be prohibited. The use of dogs will be prohibited. Hunters under 18 years of age must be under the close supervision of an adult.

Tennessee National Wildlife Refuge

White-tailed deer hunting will be permitted on approximately 3,500 acres. Approximately 2,800 acres will be open for muzzleloading rifles only and 700 acres for bow hunting only. The bag limit will be one deer, either sex. The driving of deer will be prohibited.

All hunters must wear protective clothing of daylight fluorescent orange material of at least 500 square inches on the upper portion of the body and head. All hunters under 18 years of age must be under the close supervision of an adult. A refuge permit will be required for entry to all hunt areas. Hunters will be permitted on the public hunting area from sunrise to one-half hour after sunset. Hunters must check in and out at the designated check stations.

The provisions of these special regulations supplement the regulations which govern hunting on wildlife refuge areas, generally, which are set forth in Title 50 Code of Federal Regulations, Part 33. The public is invited to offer suggestions and comments at any time.

Dated: August 3, 1979.

William C. Hickling,

Area Manager.

[FR Doc. 79-24250 Filed 8-9-79; 8:45 am]

BILLING CODE 4310-55-M

Proposed Rules

Federal Register
Vol. 44, No. 156
Friday, August 10, 1979

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

[7 CFR Part 1427]

[Cotton Loan Program Regs., Amendment 2]

Cotton; Price Support Program

AGENCY: Commodity Credit Corporation, Department of Agriculture.

ACTION: Proposed Rule.

SUMMARY: The purpose of this rule is to add another eligibility requirement to the cotton price support program. This rule would amend the program regulations governing warehouse stored cotton loans to limit excessive sampling of cotton effective for the 1980 and subsequent crops. This proposed rule is necessary in order to prevent contamination of the cotton from outside sources and to prevent excessive quantities of cotton from being removed from bales. This notice invites comments on the proposed amendment.

DATES: Written comments must be received on or before October 9, 1979, in order to be sure of consideration.

ADDRESS: Director, Price Support and Loan Division, ASCS, U.S. Department of Agriculture, P.O. Box 2415, Washington, D.C. 20013.

FOR FURTHER INFORMATION CONTACT: Dalton Ustynik, ASCS, (202) 447-6761.

SUPPLEMENTARY INFORMATION: This rule will add a new paragraph to § 1427.6, "Eligible Cotton" to provide that each bale of cotton sampled by warehousemen when received which has not been sampled by the ginner shall not have more than one sample hole on each side of the bale. If more than one sample is desired when the bale is received by the warehouseman the sample shall be cut across the width of the bale broken in half and otherwise drawn in accordance with AMS dimension and weight requirements. This requirement will not prohibit the sampling of cotton at a later date if authorized by the producer.

This change is necessary in order to prevent contamination of cotton in the bale, to prevent excessive sampling of cotton resulting in excessive quantities of cotton being removed from bales and to improve the appearance of the American cotton bale which has been a target of extreme criticism in world markets.

Proposed Rule

Accordingly, it is proposed effective for 1980-crop upland cotton to amend 7 CFR, Part 1427, by adding a new paragraph (p) to § 1427.6 to read as follows:

§ 1427.6 Eligible cotton.

* * * * *

(p) Each bale of upland cotton sampled by the warehouseman upon initial receipt which has not been sampled by the ginner must not show more than one sample hole on each side of the bale. If more than one sample is desired when the bale is received by the warehouseman the sample shall be cut across the width of the bale, broken in half and otherwise drawn in accordance with AMS dimension and weight requirements. This requirement will not prohibit sampling of the cotton at a later date if authorized by the producer.

(Secs. 4, 5, 62 Stat. 1070, as amended (15 U.S.C. 714 b and c); secs. 101, 103, 401, 63 Stat. 1051, as amended (7 U.S.C. 1441, 1444, 1421).)

Prior to making these determinations, consideration will be given to any data, views and recommendations. All written comments will be made available for public inspection at the Office of the Director, Room 3741 South Building during regular business hours (7 CFR 1.27(b)).

Note.—This proposal has been determined not significant under USDA criteria for implementing Executive Order 12044, "Improving Government Regulations." A Draft Impact Analysis is available from Dalton Ustynik, ASCS, (202) 447-6611.

Signed at Washington, D.C., on August 1, 1979.

John W. Goodwin,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 79-24693 Filed 8-9-79; 8:45 am]
BILLING CODE 3410-05-M

Food Safety and Quality Service

[7 CFR Part 2859]

Miscellaneous Amendments

AGENCY: Food Safety and Quality Service, USDA.

ACTION: Proposed rule.

SUMMARY: The amendment to the regulations governing the mandatory inspection of eggs and egg products provides for the termination of plant approval for egg products plants, under the mandatory inspection program, that do not operate under certain conditions for over 90 days. In addition, other amendments to the regulations are proposed to make minor changes in plant operating procedures and to make some changes of an administrative or housekeeping nature.

DATES: Comments must be received on or before October 10, 1979.

ADDRESSES: Written comments to: Office of the Executive Secretarist, Attn.: Annie Johnson, Room 3807, South Building, Food Safety and Quality Service, U.S. Department of Agriculture, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT: Ashley R. Gulich, Poultry and Dairy Quality Division, Food Safety and Quality Service, U.S. Department of Agriculture, Washington, D.C. 20250, (202) 447-3506. (See also comments under Supplementary Information.)

SUPPLEMENTARY INFORMATION:

Comments

Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in duplicate to the Executive Secretariat and bear a reference to the date and page number of this issue of the Federal Register. All comments made pursuant to this proposal will be made available for public inspection in the Office of the Executive Secretariat during regular business hours.

Background

The Egg Products Inspection Act requires continuous USDA inspection of all plants processing liquid, frozen, and dried egg products. Occasionally, due to financial, management, or marketing problems, a plant will cease operations. This may continue indefinitely, often without any assurance that operations

will ever be resumed. Under the present regulations, such plants must be listed as official plants and must continue to be visited periodically to determine their status unless they voluntarily request termination of plant approval or until formal withdrawal proceedings are completed. The proposed amendments would provide for the termination of plant approval at plants that do not operate for a period of over 90 days. This would not apply to seasonal operations which operate for a period, shut down operations, and then begin again, or where operations have ceased due to extraordinary circumstances such as damage to the plant by fire or flood.

Some miscellaneous amendments making minor changes in plant operating procedures or solely for housekeeping purposes are also proposed in the mandatory egg and egg products inspection regulations as follows: (1) Egg products plants applying for inspection where the operations thereof may result in any discharge into the navigable waters of the United States are required to obtain certification that such discharge will comply with the provisions of the Federal Water Pollution Control Act as cited in the present regulations. Because the Act has been amended and is currently named the Clean Water Act, the proposed amendments reflect the new name of the Act, correct references to sections in the Act, as amended, and delete unnecessary wording. The amendments to the Act do not affect the requirements for plant certification; therefore, the adjustments in the proposal are only editorial. (2) Several references to the labeling of ingredients in egg products by volume have been clarified to indicate weight, rather than volume. (3) An alternative method for refuse disposal, other than requiring refuse rooms, has been provided to relieve a restriction in certain operations. Such operations as moving refuse by conveyors directly to an enclosed truck have proved to be satisfactory. In small plants, the volume of refuse may be so small that it can be handled in sealed plastic bags or by other means. (4) "Drums" or other containers, excluding tanks and vats, would no longer be considered as acceptable receptacles for holding liquid eggs since industry practice has shown that they are are often not satisfactory for this purpose. Drums or other containers which are designed primarily for shipment or transport have been found to be unsatisfactory for holding liquid eggs. In addition, the installation of thermometers and agitators in holding receptacles such as drums has for the most part been impractical and unsatisfactory.

In consideration of the foregoing, the proposed amendments to Part 2859 are as follows:

1. In § 2859.160 (7 CFR 2859) paragraphs (d) and (e) would be amended to read:

§ 2859.160 Refusal, suspension, or withdrawal of service.

* * * * *

(d) Any applicant for inspection at a plant where the operations thereof may result in any discharge into the navigable waters in the United States is required by subsection 401(a)(1) (33 U.S.C. 1341) of the Clean Water Act, as amended (86 Stat. 816, 91 Stat. 1566; 33 U.S.C. 1251 *et seq.*), to provide the Administrator with a certification, as prescribed in said subsection, that any such discharge will comply with the applicable provisions of sections 301, 302, 303, 306, and 307 of the Act (33 U.S.C. 1311, 1312, 1313, 1316, and 1317). No grant of inspection can be issued unless such certification has been obtained, or is waived, because of failure or refusal of the State, interstate agency, or the Administrator of the Environmental Protection Agency to act on a request for certification within a reasonable period (which shall not exceed 1 year after receipt of such request). Further, upon receipt of an application for inspection and a certification as required by subsection 401(a)(1) of the Clean Water Act, the Administrator (as defined in § 2859.5) is required by subparagraph (2) of said subsection to notify the Administrator of the Environmental Protection Agency for proceedings in accordance with that subsection. No grant of inspection can be made until the requirements of 401(a)(1) and (2) have been met.

(e) Inspection may be suspended or revoked and plant approval terminated as provided in subsection 401(a) (4) and (5) of the Clean Water Act, as amended (33 U.S.C. 1341(a) (4) and (5)).

* * * * *

2. A new § 2859.161 (7 CFR 2859), would be added to read as follows:

§ 2859.161 Termination of plant approval.

When inspection service is not performed at any plant for a period of at least 90 days, plant approval shall terminate upon notice by the Administrator without further proceedings; provided, however, that this section shall not apply to any plant where the Administrator determines that such a plant operates on a seasonal basis and the inspection service has not been used as a result of such seasonal operation, or where operations have ceased due to extraordinary circumstances such as damage to the plant by flood or fire.

§ 2859.411 [Amended]

3. Paragraph (c)(1) in § 2859.411 (7 CFR 2859), would be amended by adding the words "by weight" to the end of the first sentence and changing the word "volume" in the second sentence to read "weight."

4. In § 2859.500 (7 CFR 2859), paragraph (o) would be amended to read as follows:

§ 2859.500 Plant requirements.

* * * * *

(o) Refuse rooms shall be provided for the accumulation and storage of shells, trash, and other refuse. They shall be separate rooms completely enclosed without doorways opening into breaking rooms or rooms where egg products or packaging materials are handled or stored and have concrete floors with approved drains, facilities for cleaning, and an approved exhaust system vented to the outside. Alternative systems of handling refuse may be approved by the Administrator when such systems adequately contain all refuse and provide equivalent sanitary methods for the handling and removal of refuse.

5. In § 2859.532 (7 CFR 2859), paragraph (a) would be amended to read as follows:

§ 2859.532 Liquid egg holding.

(a) Tanks and vats used for holding liquid eggs shall be of approved construction, fitted with covers, and located in rooms maintained in a sanitary condition.

* * * * *

6. In § 2859.950 (7 CFR 2859), paragraph (a)(4) would be amended to read:

§ 2859.950 Labeling of containers of eggs or egg products for importation.

(a) * * *

(4) for egg products the word "Ingredients" followed by a list of the ingredients in order of descending proportions by weight;

* * * * *

(84 Stat. 1620 *et seq.*, 21 U.S.C. 1031–1056.)

Note.—This proposal has been reviewed under the USDA criteria established to implement Executive order 12044, "Improving Government Regulations." Under those criteria, this action has not been classified significant. An approved draft Impact Analysis has been prepared and is available from Ashley R. Gulich, Poultry and Dairy Quality Division, Food Safety and Quality Service, U.S. Department of Agriculture, Washington, D.C. 20250.

Done at Washington, D.C., on: August 7, 1979.

Donald L. Houston,

Acting Administrator, Food Safety and Quality Service.

[FR Doc. 79-24775 Filed 8-9-79; 8:45 am]

BILLING CODE 3410-DM-M

[9 CFR 318 and 381]

Use of Certain Proteolytic Enzymes in Certain Meat and Poultry Products; Reopening of Comment Period

AGENCY: Food Safety and Quality Service, USDA.

ACTION: Notice: reopening of comment period.

SUMMARY: On June 1, 1979, the Department published in the Federal Register (44 FR 31665–31667) a proposal to permit the use of certain proteolytic enzymes to tenderize the muscle tissue of mature poultry and certain cuts of meat. This notice advises that the Department is reopening the comment period for 30 days.

DATE: Comments must be received on or before September 10, 1979.

ADDRESSES: Written comments and data must be sent, in duplicate, to the Executive Secretariat, Attn: Annie Johnson, Food Safety and Quality Service, U.S. Department of Agriculture, Room 3807, South Agriculture Building, Washington, D.C. 20250. Oral comments on poultry inspection regulations to Mr. Irwin Fried, (202) 447–6042.

FOR FURTHER INFORMATION CONTACT: Mr. Irwin Fried, Acting Director, Meat and Poultry Standards and Labeling Division, Compliance Program, Food Safety and Quality Service, U.S. Department of Agriculture, Washington, D.C. 20250, (202) 447–6042.

SUPPLEMENTARY INFORMATION: On June 1, 1979, the Department requested comments on its proposal to permit the use of certain proteolytic enzymes to tenderize the muscle tissue of mature poultry and certain cuts of meat. Interested persons were given until August 1, 1979, to comment. During that period, the Department was requested to extend the period of time within which data, views, or arguments may be submitted or oral views presented. The request stated that additional time was needed in order to gather the technical expertise and data that would be necessary to comment fully on the proposed rule.

Since the Department is interested in receiving factual and meaningful data, the Department has determined that these circumstances are sufficient justification for reopening the comment period on this proposed rule until September 10, 1979.

In all other respects, the procedure specified in the proposal published on June 1, 1979, shall continue to apply in this rulemaking proceeding.

Done at Washington, D.C., on: August 3, 1979.

Donald L. Houston,

Administrator, Food Safety and Quality Service.

[FR Doc. 79-24466 Filed 8-9-79; 8:45 am]

BILLING CODE 3410-DM-M

SMALL BUSINESS ADMINISTRATION

[13 CFR Part 121]

Second Proposed Rule to Establish a Size Standard for Small Business for Set-Aside Leases on Federal Coal Land

AGENCY: Small Business Administration.

ACTION: Proposed Rule.

SUMMARY: On December 8, 1978, and March 14, 1979, SBA published in the Federal Register (43 FR 57611 and 44 FR 15513, respectively) an advanced notice of proposed rulemaking and a proposed rule to solicit public comment on this definition of small business. The Agency is proposing an additional criterion for this definition and for this reason is resubmitting the entire rule for comment.

DATE: All comments must be received on or before September 10, 1979.

ADDRESS: All comments to: Kaleel C. Skeirik, Chief, Size Standards Division, Small Business Administration, 1441 L Street, NW., Washington, D.C. 20416.

FOR FURTHER INFORMATION CONTACT: Roland E. Berg, (202) 653–6078; or Harvey D. Bronstein, (202) 653–6373.

SUPPLEMENTARY INFORMATION: The announcement of March 14, 1979, proposed a 250-employee definition of small business. The present proposal is the same as the March 14 one, but with the addition of a criterion that the firm obtaining a small business lease also must manage and control the mining operations. This criterion was added to prevent leaseholders from turning over operation of the tract to another party.

Accordingly, pursuant to authority contained in Section 5(b)(6) of the Small Business Act, as amended, 15 U.S.C. 634 et seq., Section 3 of Part 121, Chapter I of Title 13, Code of Federal Regulations, it is proposed to add the following new paragraph (d) and to change the title of § 121.3–9, as follows:

§ 121.3–9 Definition of small business for sales or lease of Government property.

* * * * *

(d) Any firm bidding to lease Government land for purposes of coal mining is classified as small if:

(i) It is independently owned and operated;

(ii) It is not dominant in its field of operation;

(iii) Together with its affiliates, its number of employees does not exceed 250 persons;

(iv) It maintains management and control of the actual mining operations at the tract; and

(v) Any transfer of the lease from the holder of the original set-aside must be to another small business within the meaning of this paragraph.

Dated: August 1, 1979.

A. Vernon Weaver,

Administrator.

[FR Doc. 79-24710 Filed 8-9-79; 8:45 am]

BILLING CODE 8025-01-M

FEDERAL TRADE COMMISSION

[16 CFR Part 13]

[Docket No. 9089]

Atlantic Richfield Co.; Consent Agreement With Analysis To Aid Public Comment

Correction

In FR Doc. 79-23756, published at page 45181, on Wednesday, August 1, 1979, the following corrections should be made:

1. On page 45182, in the third column, in paragraph (e), the second line reading, "of all primary production from mines in" should be corrected to read "of all primary copper production from mines in";

2. On page 45183, in the second column, in paragraph (o), the sixth line reading "year fails to exceed 110,000 short tons or" should be corrected to read "year fails to exceed 110,000 short tons of";

3. On page 45191, in the first column:

a. In the second paragraph, the fourteenth line reading "cause to permit the deterioration of the" should be corrected to read "cause or permit the deterioration of the";

b. In the last paragraph, in the second line, "modes-sized" should be corrected to read "modest-sized".

BILLING CODE 1505-01

[16 CFR Part 802]

Premerger Notification Rules, Regulations, Statements, and Interpretations Under the Hart-Scott-Rodino Antitrust Improvements Act of 1976; Minimum Dollar Value

AGENCY: Federal Trade Commission.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: This notice of proposed rulemaking explains the Commission's proposal to amend § 802.20 of the Commission's premerger notification rules, by raising certain minimum dollar value figures which define exemptions from the reporting requirements of the Act. This proposed amendment will eliminate the requirement that Premerger Notification and Report Forms be filed with the Federal Trade Commission and the Antitrust Division of the Department of Justice with respect to certain relatively small transactions.

DATES: Comments must be received on or before September 10, 1979.

ADDRESSES: Written Comments should be submitted to both (1) the Secretary, Federal Trade Commission, Room 172, Washington, D.C. 20580 and (2) Assistant Attorney General, Antitrust Division, Department of Justice, Room 3208, Washington, D.C. 20530.

FOR FURTHER INFORMATION CONTACT: Malcolm R. Pfunder, Assistant Director for Evaluation, Premerger Notification Office, Bureau of Competition, Room 301, Federal Trade Commission, Washington, D.C. 20580. Telephone: (202) 523-3894.

SUPPLEMENTARY INFORMATION: Section 7A of the Clayton Act, 15 U.S.C. 18a (Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976), requires that persons contemplating certain acquisitions or mergers file Notification and Report Forms with the Federal Trade Commission and the Department of Justice and wait designated periods of time before consummating the transactions. Specifically, transactions between persons with $100 million or more in sales or assets, and persons with $10 million or more in sales or assets, are reportable to both agencies, if as a result of the transaction, the acquiring person would hold 15% or more of the assets or voting securities of the acquired person or if the acquiring person would hold an aggregate total amount of the assets and securities of the acquired person in excess of $15 million. See Clayton Act, section 7A(a)(3).

With the concurrence of the Assistant Attorney General in charge of the Antitrust Division of the Justice Department, the Commission has the authority to "exempt, from the requirements of (the Act), classes of persons, acquisitions, transfers, or transactions which are not likely to violate the antitrust laws * * *." Section 7A(d)(2)(B). The Commission is also authorized to "prescribe such other rules as may be necessary and appropriate to carry out the purposes" of the Act. Section 7A(d)(2)(C). Accordingly, in promulgating the original rules pursuant to that authority, the Commission included § 802.20 of the premerger notification rules, the minimum dollar value rule, after determining that:

> Certain relatively small transactions (frequently involving only a portion of the stock or assets of the acquired person) that might be reportable under the act are sufficiently unlikely to have a significant anticompetitive impact that imposition of the act's requirements would not represent an appropriate use of public resources. Statement of Basis and Purpose to the Commission's Premerger Notification Rules. 43 FR 33490 (1978).

Section 802.20, as it presently reads, applies only to those transactions where 15% or more of the assets or voting securities of a person are acquired, but where the aggregate total amount of the assets and securities held as a result of the acquisition is not valued in excess of $15 million. The rule presently provides three exemptions with regard to these relatively small transactions. First, § 802.20(a) exempts from the reporting and waiting requirements those assets acquisitions where at least 15% of the acquired person will be held as a result of the transaction, if those assets are valued at $10 million or less. Second, subsection (b) exempts acquisitions of 50% or more of the voting securities of an issuer, if the issuer has both sales and assets of less than $10 million and the resulting holdings of voting securities are valued at $15 million or less. Finally, an acquisition of less than 50% of the voting securities of an issuer is exempt without regard to the size of the issuer's sales or assets, so long as the value of the holdings resulting from the acquisition is $15 million or less.

Upon reviewing the forms submitted during the first nine months of the program, the Commission found that the majority of transactions in which either agency issued second requests pursuant to section 7A(e) of the Act were relatively large transactions. On the other hand, a significant number of transactions in which neither agency issued second requests were—even given the exemption provided in § 802.20—relatively small. The Commission has therefore concluded that the minimum dollar value of $10 million used in § 802.20 could be increased somewhat so as to increase the number of exempted transactions, without impairing the effectiveness of the premerger program. At the same time, this change would reduce the burden associated with preparing and processing the filings for the public and the agencies. The resulting reduction in the number of filings received will enable the agencies to allocate their resources more effectively.

Specifically, the Commission proposes to raise the minimum dollar value exemption in the case of an assets acquisition covered by subsection (a) from $10 million to $15 million. In the case of an acquisition of 50% or more of the voting securities of an issuer covered by subsection (b), the Commission proposes to raise the minimum dollar value exemption figure for sales and assets of the issuer from $10 million to $25 million.

The proposed rule will change the first two exemptions provided by § 802.20. First, acquisition resulting in the acquiring person holding 15% or more of the assets of an acquired person would be exempt if the assets held as a result of the acquisition are valued at $15 million or less. Under the new subsection (b), acquisitions of 50% or more of the voting securities of an issuer with both sales and assets of less than $25 million would be exempt if the voting securities held as a result of the acquisitions are valued at $15 million or less. The third exemption in the present version of § 802.20 would not change. The acquisition of less than 50% of the voting securities of an issuer will continue to be exempt, as long as the holdings resulting from the acquisition are valued at $15 million or less.

The Commission hereby formally proposes to amend § 802.20 of Title 16, Chapter I of the Code of Federal Regulations to read as follows:

§ 802.20 Minimum dollar value.

An acquisition which would be subject to the requirements of the act and which satisfies section 7A(a)(3)(A), but which does not satisfy section 7A(a)(3)(B), shall be exempt from the requirements of the act if as a result of the acquisition the acquiring person would not hold:

(a) Assets of the acquired person valued at more than $15 million; or

(b) Voting securities which confer control of an issuer, which together with all entities it controls, has annual net sales or total assets of $25 million.

The Federal Trade Commission invites and encourages the submission of written comments on the proposed rule. In particular, any party recommending this or any alternative amount to which the minimum dollar value might be changed should accompany its recommendations with a justification for the specific level supported. Written comments on the proposal by an interested person should carry the subject "Premerger Notification." Written comments should be submitted to both addresses listed at the beginning of this notice. All written comments received on or before September 10, 1979, will be considered. Comments and other written materials with respect to the proposed rule will be available for examination by interested persons during normal business hours in the Public Reference Branch, Room 130, Federal Trade Commission, 6th Street at Pennsylvania Avenue, NW., Washington, D.C., and will be considered by the FTC and the Assistant Attorney General in the Commission's determination (with the concurrence of the Assistant Attorney General) to issue a final version of the rule. All interested persons are urged to express their approval or disapproval of the proposed rule, or to recommend specific versions, and to give a full statement of their views thereon.

Issued July 30, 1979.

By direction of the Commission.

Carol M. Thomas,

Secretary.

[FR Doc. 79-24774 Filed 8-9-79; 8:45 am]

BILLING CODE 6750-01-M

SECURITIES AND EXCHANGE COMMISSION

[17 CFR Part 270]

[Release IC-10809, File No. S7-795]

Exemptions for Certain Investment Advisers and Principal Underwriters of Investment Companies

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rules.

SUMMARY: The Investment Company Act of 1940 requires, in part, that an investment advisory contract or an underwriting contract with an investment company shall provide that it will terminate upon its assignment. However, in many circumstances such events, while norminally assignments, do not cause a change of actual control or management of the investment adviser or underwriter. Accordingly, the Commission is proposing a rule which states that a transaction which does not result in a change of actual control or management of an investment adviser or principal underwriter of an investment company would not be deemed such an assignment.

Moreover, the Investment Company Act of 1940 also provides that a person may not act under an investment advisory contract unless it has been approved by a majority of the investment company's voting securities. Consequently, an unavoidable lapse of time may occur between the date of an unforeseeable assignment of an investment advisory contract by an investment adviser or its termination by an investment company and the date on which an investment adviser may act pursuant to a subsequent contract which has been approved by the investment company's shareholders. Accordingly, the Commission is also proposing a rule to permit a person temporarily to act, under specified circumstances, as investment adviser to an investment company without the shareholders' prior approval of the investment advisory contract.

DATE: Comments must be received by October 5, 1979.

ADDRESSES: Send comments in triplicate to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, 500 N. Capitol Street, Washington, D.C. 20549. (Refer to File NO. S7-795.) All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 1100 L Street, NW., Washington, D.C. 20549.

FOR FURTHER INFORMATION CONTACT: Mark B. Goldfus, Special Counsel, Investment Company Act Study Group or Susan G. Loitherstein, Law Clerk, Division of Investment Management, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549, (202) 755-0230.

SUPPLEMENTARY INFORMATION: The Commission today is publishing for public comment proposed rule 2a-6 [17 CFR 270.2a-6] under the Investment Company Act of 1940 [15 U.S.C. 80a-1 et seq.] ("Act"), which would deem certain transactions not to involve the assignment of an investment advisory contract or an underwriting contract for purposes of section 15(a) and section 15(b) of the Act [15 U.S.C. 80a-15(a) and (b)] where there is no actual change of control or management of an investment adviser or the principal underwriter. The Commission today also is publishing for public comment proposed rule 15a-4 [17 CFR 270.15a-4] which would permit a successor investment adviser to serve a maximum of 90 days prior to receiving a vote of the investment company's shareholders when certain events cause the termination of a previous investment advisory contract. This proposed rule would, in effect, provide a temporary exemption from the requirement that an investment advisory contract must be approved by the investment company's shareholders. Both proposed rules were prepared by the Division of Investment Management's Investment Company Act Study Group in the context of its re-examination of the regulation of investment companies.

Background

Section 15(a) of the Act, in part, prohibits a person from acting as an investment adviser to an investment company, except pursuant to a written contract which has been approved by the vote of a majority of that company's outstanding voting securities.[1] This provision, in part, also requires that the contract provide, in substance, that it (1) may be terminated without penalty at any time by the directors or by a majority of the outstanding voting securities of the investment company on not more than 60 days' written notice, and (2) will be automatically terminated in the event of its assignment.

Section 15(b) of the Act [15 U.S.C. 80a-15(b)] similarly requires that any underwriting contract between an open-end investment company and its principal underwriter must provide, in substance, for its automatic termination in the event of its assignment.

These statutory provisions in section 15(a) were designed to inhibit trafficking in investment advisory or underwriting contracts.[2] Moreover, Congress specifically declared in section 1(b)(6) of the Act [15 U.S.C. 80a-1(b)(6)] that "the national interest and the interest of investors are adversely affected . . . when the control or management [of investment companies]

[1] Section 2(a)(20) of the Act [15 U.S.C. 80a-2(a)(20)], in part, excludes from the definition under the Act of the term "investment adviser" a company which furnishes such services at cost to one or more investment companies, insurance companies or other financial institutions. This exclusion refers to a company which is in the *business* of providing such services at cost—such as a company which is owned by, and provides services exclusively to, such financial institutions. It was not intended to provide an exclusion for investment advisers who provide services temporarily at cost to particular clients only. See American Law Institute, Federal Securities Code, § 250A, comment (3)(c) (Tentative Draft No. 6, April 1, 1977).

[2] See Hearings on S. 3580 before a Subcomm. of the Senate Comm. on Banking and Currency, 76th Cong., 3d Sess. 253 (statement of David Schenker, Chief Counsel, Investment Trust Study).

is transferred, without the consent of security holders."

Discussion

Proposed Rule 2a-6

Proposed rule 2a-6 would deem not to be an assignment of an investment advisory contract or underwriting contract for purpose of section 15 of the Act certain transactions which do not involve a charge in the actual control or the management of an investment adviser or principal underwriter.

The term "assignment" is defined in section 2(a)(4) of the Act [15 U.S.C. 80a-2(a)(4)] to include any direct or indirect transfer of a controlling block of the assignor's outstanding voting securities by a security holder of the assignor. From time to time, an investment adviser or a principal underwriter to an investment company may be involved in certain transactions—particularly, modifications of corporate structure—which may be considered to involve a direct or indirect transfer of a controlling block of the investment adviser's voting securities, but which would not affect the actual control or management of the investment adviser. Absent proposed rule 2a-6, such a transaction might be viewed as an assignment within the meaning of section 2(a)(4) for purposes of terminating automatically the investment advisory contract or an underwriting contract with the investment company.[3]

Nonetheless, such a transaction would not contain any of the abusive elements which Congress would have considered to be trafficking in investment advisory or underwriting contracts. Moreover, where there is no change in the actual control or management of the investment adviser or principal underwriter—and, hence, the actual managment of the investment company—as a result of the transaction, the transaction would not appear to conflict with the Congressional concerns embodied in the Act.[4]

Accordingly, proposed rule 2a-6 would deem a transaction not to involve an assignment of an investment advisory contract for purposes of section 15(a)(4) or of an underwriting contract for purposes of section 15(b)(2), respectively, where there is no actual change in the control or management of an investment adviser or a principal underwriter.[5]

Proposed Rule 15a-4

Proposed rule 15a-4 would provide a temporary exemption from the requirement in section 15(a) of the Act, regarding prior shareholder approval of an investment advisory contract, in certain situations during which an investment company otherwise would be without an investment adviser.

When an investment advisory contract is not renewed, when it is terminated by action of the investment company's directors or shareholders,[6] or when it is terminated by an unforeseeable assignment of the contract by the investment adviser,[7] the investment company may be incapable of managing its operations. Moreover, the investment company would be unable lawfully to enter into a new investment advisory contract to secure the services of a new investment manager until it had satisfied the requirement of section 15 of the Act that the advisory contract receive the approval of a majority of its outstanding voting securities. A significant lapse of time may occur and substantial costs may be incurred in preparing the appropriate proxy solicitation documents and conducting a shareholder meeting. During this interim period, an investment company may suffer serious adverse consequences from the gap in receiving investment advisory services.

Thus, the Commission believes that under certain circumstances—delimited by proposed rule 15a-4—it would be appropriate for a successor investment adviser to provide investment advisory services to an investment company on an interim basis until the shareholders have approved a new investment advisory contract.[8] The proposed rule would provide an exemption from the requirements of section 15(a) of the Act to the extent necessary for an investment adviser to serve pursuant to a written contract which has not received shareholder approval for a maximum of ninety days after the non-renewal, or termination by the investment company, or the unforeseeable assignment by the investment adviser, of the previous investment advisory contract.[9]

Proposed rule 15a-4 would not provide, however, an exemption in certain circumstances as to which the Commission previously has provided individual exemptive orders upon

[3] The Commission's staff, however, has provided no-action assurances pertaining to numerous such transactions. E.g., staff responses to inquiries by FMR Corp. (Dec. 16, 1977) [merger into newly-formed subsidiary to effect change in state of incorporation]; Equitable of Iowa Variable Annuity Account A (Nov. 25, 1977) [formation of a holding company]; Securities Management and Research, Inc. (Dec. 30, 1976) [capital contribution to subsidiary]; ITT Variable Annuity Insurance Company-Separate Account (Jan. 24, 1972), [1971-1972 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶78,683 [transfer of stock between subsidiaries].

[4] However, for purposes of section 1(b)(6) of the Act, the role of a principal underwriter in the management of an investment company is less obvious than the role of an investment adviser. By treating underwriting contracts in a manner similar to investment advisory contracts in section 15 of the Act, Congress apparently recognized the significance of underwriting to the success of an open-end company. Moreover, Congress in section 1(b)(2) of the Act [15 U.S.C. 80a-1(b)(2)] declared, in part, that the national interest and the interest of investors are adversely affected when investment companies are organized, operated or managed in the interest of underwriters.

[5] Generally the question of whether there is an actual change in control or management is primarily factual in nature. The variety of possible documentation or testimony which counsel for an investment company or investment adviser might wish to obtain and preserve would vary greatly with the specific facts and circumstances presented. Because the Commission's staff would not be in a position to make the investigation necessary to ascertain, verify or evaluate the requisite factual information, the staff ordinarily will not be able to express any opinion in response to inquiries as to whether a particular transaction would satisfy rule 2a-6. In determining whether a transaction is within the purview of the rule, rule 2a-6 should be construed narrowly in light of the investor protection concerns Congress intended to be fulfilled, as expressed in section 1(b), section 2(a)(4) and section 15 of the Act.

[6] E.g., Ivy Fund, Inc., Investment Company Act Release No. 10276 (June 14, 1978), 15 SEC Docket 60.

[7] E.g., Leon B. Allen Fund, Inc., Investment Company Act Release No. 8296 (Apr. 3, 1974), 4 SEC Docket 60 [death of controlling partner of investment adviser].

[8] The proposed rule would not, of course, extend the period during which an investment company must comply with the requirements of section 15(c) regarding the continuance of an investment advisory contract. See rule 15a-2 under the Act [17 CFR 270.15a-2] [annual continuance of contracts].

[9] No similar exemption would be necessary from the prohibitions of section 15(b) of the Act which, in part, requires that a contract between an open-end investment company and its principal underwriter (1) terminate upon assignment and (2) continue for longer than two years only so long as annual continuances are approved by the board of directors or by vote of a majority of the outstanding voting securities of the investment company. In case of a termination of such an underwriting contract, there is no requirement that a subsequent contract may not be effected until shareholders' approval has been secured.

Moreover, no exemption is proposed from the requirements of section 15(c) of the Act [15 U.S.C. 80a-15(c)], which, in part, states that the terms of an investment advisory contract or an underwriting contract with an investment company having a board of directors be approved by the vote of a majority of directors, who are not parties to the contract or interested persons of any such party, cast in person at a meeting called for the purposed of voting on such approval. Additionally, that section states that disinterested directors must request and evaluate, and an investment adviser must furnish, such information as may reasonably be necessary to evaluate the terms of any investment advisory contract. The Commission believes that these important responsibilities should be addressed and met whatever the circumstances under which the board of directors is considering an investment advisory contract.

Finally, the proposed rule would not affect any provisions of paragraphs (1) to (4) of section 15(a) or paragraphs (1) and (2) of section 15(b) regarding specified provisions required to be included in such written contracts.

application.[10] The proposed rule, for example, would not provide an exemption from the requirements of section 15 where an investment adviser intends to assign a contract under certain reasonably foreseeable circumstances—such as pursuant to a sale of an interest in the investment adviser or pursuant to certain reorganization involving mergers with previously unrelated corporations—in which there is a direct or an indirect transfer or hypothecation of a controlling block of the investment adviser's outstanding voting securities. Such foreseeable assignments typically occur in circumstances where the investment adviser or a controlling person of the investment adviser will receive money or other tangible or intangible benefits in the course of the transaction. In reconsidering the matter, the Commission believes that, rather than being asked after the fact to ratify an existing advisory relationship, the investor protection concerns expressed by Congress with respect to section 15(a) are better fulfilled when investment company shareholders are provided the opportunity to approve any successor investment advisory contract prior to the successor adviser's serving the company. Additionally, when an assignment of the investment advisory contract is foreseeable, an investment adviser, pursuant to its fiduciary responsibilities to the investment company, may well be obliged to continue to provide advisory services to the investment company until such shareholder approval is secured for the successor investment adviser's contract.[11] Therefore, it may be inappropriate for the Commission to continue to grant exemptive orders from the shareholder voting requirement of section 15(a) of the Act under circumstances in which it was practicable for an investment adviser to secure prior approval by the investment company shareholders of a successor advisory contract.

However, when an investment advisory contract, in effect, has been assigned by virtue of an occurrence which may not be reasonably foreseeable—such as the sudden death of a controlling person of the adviser—or when it has been terminated or not renewed by the investment company, proposed rule 15a-4 would provide a sufficient period of time during which a successor investment adviser's services may be secured.[12]

An advisory contract exempted in reliance on the proposed rule may provide for compensation to the investment adviser at a rate not exceeding that which was provided in the most recent investment advisory contract which had been approved by the investment company's shareholders. If the successor investment adviser would not provide all services that were provided under the terminated advisory contract, the investment company's directors should reduce the new adviser's compensation accordingly.[13]

Text of Proposed Rules

I. It is proposed to amend Part 270 of Chapter II of Title 17 of the Code of Federal Regulations by adding § 270.2a-6 as follows:

§ 270.2a-6 Certain transactions not deemed assignments.

A transaction which does not result in a change of actual control or management of the investment adviser to, or principal underwriter of, an investment company is not an assignment for purposes of section 15(a)(4) or section 15(b)(2) of the act respectively.

II. It is proposed to amend Part 270 of Chapter II of Title 17 of the Code of

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[10] Such individual exemptive orders typically provided that the investment company's shareholders ratify the payment of fees paid to the investment adviser, during the period immediately preceding the shareholders' approval of the new investment advisory contract. Certain exemptive orders have provided that, during that period, the investment adviser would serve at cost, but that additional compensation for such services could be presented to the investment company's shareholders for their subsequent consideration. E.g., Pligrowth Fund, Inc., Investment Company Act Release No. 10146 (Mar. 1, 1978), 14 SEC Docket 291. But see, supra, n.1. Other such orders have provided that the exemption would be effective retroactively from the date of the assignment. E.g., Shearson Income Fund, Inc., Investment Company Act Release No. 8511 (Sept. 20, 1974), 5 SEC Docket 176. Additionally, the Division of Investment Management has provided "no-action" assurances under similar circumstances regarding certain assignments of investment advisory contracts. E.g., staff response to inquiry of United Underwriters, Inc. (Mar. 10, 1976).

[11] In effecting any assignment of the investment advisory contract, the investment adviser should act in a manner consistent with its fiduciary relationship to the investment company and which is the least disruptive of the interests of the investment company. See Rosenfeld v. Black, 445 F.2d 1337 (2d Cir. 1971), cert. denied, 409 U.S. 802 (1972); and Hearings on S. 3580 before a Subcomm. of the Senate Comm. on Banking and Currency, 76th Cong., 3d Sess. 253 (statement of David Schenker, Chief Counsel, Investment Trust Study). As has been noted, "The evil that Congress sought to eradicate in its regulatory scheme was the assignment of advisory contracts without the informed consent of the shareholders of the funds involved." Schlusselberg v. Colonial Management Assoc., Inc., 389 F. Supp. 733, 739 (D. Mass. 1974). Moreover, in such circumstances the investment adviser's fiduciary responsibilities to the investment company may require that it defer assigning the advisory contract until a successor contract is approved by the investment company's shareholders.

Nonetheless, at any time, an investment adviser, or an affiliated person thereof, may sell an interest in such investment adviser which results in an assignment of an investment advisory contract with an investment adviser if the standards of section 15(f) [15 U.S.C. 80a-15(f)] are satisfied. Among these standards is the requirement that there not be imposed an unfair burden on the investment company as a result of such transaction.

[12] The Commission anticipates that 90 days should provide an ample period of time to secure an investment company's shareholders' vote on the successor investment advisory contract. If the shareholders were to decline to approve a contract which is the subject of such a vote, the rule would not provide any automatic extension of time during which the board of directors of the investment company could seek and secure additional advisory services satisfactory to them. However, the 90-day period would appear to provide sufficient time so that, if the shareholders disapproved the first proposed successor investment advisory contract, an application for exemption from the prohibitions of section 15(a) may be filed by the investment company with the Commission. In such an event, the Commission could consider each such matter on an individual basis.

Moreover, section 15(a)(3) of the Act requires that an investment advisory contract provide, in substance, that an investment company may terminate the contract on not more than sixty days' written notice to the investment adviser. This maximum period of 60 days may not provide the investment company directors sufficient time to seek out and secure services of a successor investment advisory contract satisfactory to them and to obtain the investment company's shareholders' approval of a successor investment advisory contract. Thus, the proposed rule effectively would allow investment company directors who wished to terminate the existing investment advisory contract an additional period of time to complete these tasks.

[13] In the event that an investment advisory contract is terminated prematurely as a result of actions taken by an investment adviser at least in part for its own benefit (a circumstance not within the purview of proposed rule 15a-4), the Commission believes that serious questions would arise if the old or the successor investment adviser (or some arrangement which would apportion the costs between them) did not bear all the costs of effecting the new investment advisory contract and of conducting the special shareholders' meeting to obtain shareholder approval of the new contract. If an investment company were to bear any of the costs—including costs associated with conducting a special shareholder's meeting—caused by such a transaction, such payments might constitute compensation to the investment adviser within the meaning of the Act. See U.S. v. Deutsch, 451 F.2d 98, 114 (2d Cir. 1971), cert. denied, 404 U.S. 1019 (1972). Such an arrangement may be within the purview of section 15(a)(1) [investment advisory contract must precisely describe all compensation to be paid thereunder], section 15(f) [receipt of any amount or benefit in connection with a sale of securities of, or a sale of any other interest in, an investment adviser resulting in an assignment of an investment advisory contract], and section 36(b) [15 U.S.C. 80a-35(b)] [investment adviser's fiduciary duty with respect to the receipt of compensation for services, or of payments of a material nature, paid by such investment company, or by the security holders thereof] of the Act. Finally, an investment company's paying the expenses associated with a special shareholders' meeting may involve the investment company in the transaction in which the investment adviser assigns the contract, and thus may constitute a violation of section 17(d) of the Act [15 U.S.C. 80a-17(d) and rule 17d-1] [17 CFR 270.17d-1] thereunder. See Fulton, Reid & Staples Fund, Inc. [1970-1971 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶77,995.

Federal Regulations by adding § 270.15a–4 as follows:

§ 270.15a–4 Temporary exemption for certain investment advisers.

Notwithstanding section 15(a) of the act, a person may act as investment adviser for an investment company pursuant to a written contract which has not been approved by a majority of the outstanding voting securities of such company during the ninety day period after the termination of an investment advisory contract by an event (other than an assignment by an investment adviser in connection with which such investment adviser, or a controlling person thereof, directly or indirectly receives money or other benefit) described in paragraphs (3) or (4) of section 15(a) of the act or by the failure to renew such contract; *Provided*, That:

(a) Such contrct has been approved by the investment company's board of directors, including a majority of the directors who are not interested persons thereof; and

(b) The compensation to be received under that contract does not exceed the compensation which would have been received under the most recent investment advisory contract that had been approved by the vote of a majority of the outstanding shares of the investment company.

Statutory Basis: Rule 2a–6 is proposed pursuant to section 6(c) [15 U.S.C. 80a–6(c)] and 38(a) (15 U.S.C. 37(a)) of the Act. Rule 15a–4 is proposed pursuant to section 6(c) of the Act.

By the Commission.

August 6, 1979.

George A. Fitzsimmons,

Secretary.

[FR Doc. 79–24649 Filed 8–9–79; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF THE TREASURY

Customs Service

[19 CFR Part 134]

Marking Imported Bolts, Nuts, and Rivets With Their Country of Origin

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

ACTION: Notice of proposed rulemaking.

SUMMARY: Unless expressly exempted, all articles of foreign origin imported into the United States must be marked to indicate their country of origin. Bolts, nuts, and rivets are among those articles that have been exempted from the country of origin marking requirements based on a finding by the Secretary of the Treasury that they were imported in "substantial quantities" during the five-year period immediately preceding January 1, 1937, and were not required to be marked as to their country of origin during that period. This document requests public comment on a proposal to delete bolts, nuts, and rivets from the list of exempted articles. If the proposal is adopted, these articles would be required to comply with the marking requirements in order to be imported.

DATE: Comments must be received on or before September 6, 1979.

ADDRESSES: Written comments should be addressed to the Commissioner of Customs, Attention: Regulations and Legal Publications Division, U.S. Customs Service, 1301 Constitution Avenue, N.W., Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Samuel Orandle, Entry Procedures and Penalties Division, U.S. Customs Service, 1301 Constitution Avenue, N.W., Washington, D.C. 20229 (202–566–5765.)

SUPPLEMENTARY INFORMATION:

Background

All articles of foreign origin imported into the United States are required by section 304, Tariff Act of 1930, as amended (19 U.S.C. 1304), unless expressly excepted, to be marked in a conspicuous place in a legible, indelible, and permanent fashion so as to indicate, in English, to the ultimate purchasers in the United States the country or origin of the articles. Among the exceptions to the country of origin marking requirements are articles which the Secretary of the Treasury, pursuant to public notice published in the Treasury Decisions before July 1, 1939, determined "were imported in substantial quantities during the five-year period immediately preceding January 1, 1937, and were not required during such period to be marked to indicate their origin * * *" (19 U.S.C. 1304(a)(3)(J)). Under 19 U.S.C. 1304(a)(3)(J), notice that bolts, nuts, and rivets were imported in substantial quantities during the five-year period immediately preceding January 1, 1937, and were not required during the period to be marked to indicate their country of origin was given in T.D. 49896 (4 FR 2509). The full list of articles exempted from marking requirements under 19 U.S.C. 1304(a)(3)(J) is set forth in section 134.33, Customs Regulations (19 CFR 134.33), referred to as the "J-List".

Discussion

The Treasury Department has received a petition which alleges that bolts, nuts, and rivets were not imported into the United States in substantial quantities from 1932 to 1936 and, therefore, should not be exempted from country of origin marking requirements. The petitioner states that during the period in question, domestic shipments of bolts, nuts, rivets, and washers totalled 1,647,500 net tons, valued at $189,027,000, and that import statistics reflect that imports covering the classification categories which include bolts, nuts, and rivets, as well as washers, studs, steel points, etc., totalled only 1,798 net tons, valued at $135,478.

The petitioner compares domestic production to imports for the 2 years for which production data is available, 1933 and 1935, and notes the following:

Years	Imports	Domestic production	Ratio of imports to production (percent)
1933	$19,220	$39,665,700	0.048
1935	27,816	67,856,600	.041
Total	47,036	107,522,200	.044

The petitioner also states that most imported bolts, nuts, and rivets are of sufficient size to be readily marked with the country of origin, and that a variety of bolts and nuts presently are required to bear grade markings in order to meet standards specifications of recognized standards organizations. Based on the above evidence, Customs proposes that imported bolts, nuts, and rivets be removed from the "J-List" maintained in § 134.33. At the same time it is possible that other exceptions to the country of origin requirements may apply to some or all of these items.

Comments

Customs invites written comments (preferably in quadruplicate) from all interested parties on the questions of whether imported bolts, nuts, and rivets should be removed from the "J-List" and required to be marked as to their country or origin.

Commenters should address themselves, among other things, to the question whether bolts, nuts, and rivets were erroneously included on the "J-List", and whether other general exceptions to the country of origin marking requirements apply. See 19 CFR 134.32.

The petition, as well as all comments received in response to this notice, will be available for public inspection in accordance with § 103.8(b), Customs Regulations (19 CFR § 103.8(b)), during regular business hours at the Regulations and Legal Publications Division, Room 2335, Headquarters, U.S. Customs Service, 1301 Constitution Avenue, N.W., Washington, D.C. 20229.

Proposed Amendment

If the proposed change is adopted, section 134.33, Customs Regulations (19 CFR 134.33), would be amended by deleting bolts, nuts, and rivets from the "J-List".

Inapplicability Of E.O. 12044

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

Drafting Information

The principal author of this document was Leonard L. Rosenberg, Regulations and Legal Publications Division, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

Authority

This document is issued under authority of R.S. 251, as amended, (19 U.S.C. 66), and section 304(a)(3)(J), Tariff Act of 1930, as amended (19 U.S.C. 1304(a)(3)(J)).

William T. Archey,
Acting Commissioner of Customs.

Approved: July 23, 1979.

Richard J. Davis,
Assistant Secretary of the Treasury.

[FR Doc. 79-24763 Filed 8-9-79; 8:45 am]
BILLING CODE 4810-22-M

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[21 CFR Part 203]

[Docket No. 79N-0186]

Prescription Drug Products; Patient Labeling Requirements; Public Hearings

AGENCY: Food and Drug Administration.

ACTION: Notice of Public Hearings.

SUMMARY: The Food and Drug Administration (FDA) announces that public hearings will be held in Chicago, IL, on September 10, 1979, in Los Angeles, CA, on September 12, 1979, and in Washington, DC, on September 14, 1979, to receive information and views from interested persons on the agency's proposed patient labeling regulations published in the Federal Register of July 6, 1979 (44 FR 40016).

DATES: A written notice of participation should be filed by September 4, 1979. Public hearings will be held on September 10, 12, and 14, 1979.

ADDRESS: Written notices of participation should be sent to the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-65, 5600 Fishers Lane, Rockville, MD 20857.

The addresses for the public hearings are provided under "Supplementary Information" below.

FOR FURTHER INFORMATION CONTACT: Steven R. Moore, Bureau of Drugs (HFD-107), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4893.

SUPPLEMENTARY INFORMATION: FDA will hold informal public hearings on its proposed patient labeling regulations that were published in the Federal Register of July 6, 1979. The proposed regulations would require dispensers of prescription drug products to provide labeling about the products to patients.

The July 6 proposal asked that written comments on the proposed regulations be submitted to FDA's Hearing Clerk by October 4, 1979. It also announced that a public hearing would be held during the comment period to permit FDA to receive data, information, and views on the proposed regulations from interested persons. The agency believes that a public hearing during the comment period will provide a forum for comment and discussion of the proposal and thus permit greater public participation in the rulemaking proceeding.

The agency would like to receive comments during the hearings about each aspect of the patient labeling proposal. However, it wishes particularly to receive comments about the proposed implementation schedule of the requirements. The proposal identifies four criteria that the agency believes are most useful in determining the order in which the patient labeling requirements should be applied to drug products. The proposal also identifies 69 drug products or classes that the agency, after applying those criteria, considers appropriate for inclusion in the first phase of the program. Since publication of the proposal, the agency has selected from this list 10 drug products or classes to which the final patient labeling requirements would be applied initially. Therefore, the agency requests that comments be made with the following list in mind: oral anticoagulants (class labeling), chloramphenicol, chlorpropamide, clofibrate, diazepam, digoxin, furosemide, hydantoins (phenytoin), indomethacin, and tetracycline.

The hearing scheduled for Chicago on September 10, 1979, will start at 9:30 a.m. in the Water Tower Hyatt House, Terrace Room, Terrace A and B, 800 N. Michigan Ave., Chicago, IL 60611. The hearing scheduled for Los Angeles on September 12, 1979, will start at 9:30 a.m. in the Los Angeles Convention and Exhibition Center, Rm. 211, 1201 South Figueroa St., Los Angeles, CA 90015. The hearing scheduled for Washington, DC on September 14, 1979, will start at 9:30 a.m. in the auditorium, HEW North Building, 330 Independence Ave. SW, Washington, DC 20201. These informal hearings are open to the public and will be held under Part 15 (21 CFR Part 15) of FDA's administrative practices and procedures. Individuals and organizations will be allotted time for a presentation at only one hearing.

Those persons wishing to make a presentation at a hearing should file a written notice of participation under 21 CFR 15.21 with the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-65, 5600 Fishers Lane, Rockville, MD 20857, by September 4, 1979. The envelope containing the notice of participation should be prominently marked "Patient Labeling Hearing."

The notice of participation should be identified with Docket No. 79N-0186 and contain the following information:

1. Name, address, and telephone number of the person desiring to make a presentation.
2. Business affiliation, if any.
3. A summary of the presentation.

4. The approximate amount of time requested for the presentation (no more than 15 minutes, unless more time can be justified).

Individuals and organizations with common interests are urged to consolidate or coordinate their presentations. The agency may require joint presentations by persons with common interests. The time available for the hearing will be allocated among the persons who properly file a notice of participation, and a schedule of the hearing will be made available to them. Formal written statements or extensions of remarks (preferably four copies) may be presented to the presiding officer on the day of the hearing for inclusion in the hearing record of this proceeding. The presiding officer at each hearing will be Lloyd Millstein, Ph.D., Director, Prescription Drug Labeling Staff, Bureau of Drugs (HFD-107). At the discretion of the presiding officer, and as time permits, any person in attendance may be heard with respect to issues under consideration.

Dated: August 7, 1979.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 79-24789 Filed 8-8-79; 8:45 am]

BILLING CODE 4110-03-M

[21 CFR Part 808]

[Docket No. 78P-0222]

Medical Devices; Oral Hearing on Proposed Regulation on Massachusetts and Rhode Island Applications for Exemption From Preemption of Hearing Aid Requirements

AGENCY: Food and Drug Administration.

ACTION: Notice of Hearing.

SUMMARY: A public hearing will be held on the proposed rule on the applications of Massachusetts and Rhode Island for exemption from preemption for requirements governing the labeling and conditions for sale of hearing aids. In preparing a final regulation, the agency will consider the administrative record of the hearing along with all comments and other information received.

DATES: Written notices of appearance should be filed by September 10, 1979. The hearing will be held on October 16, 1979, and, if necessary, on October 17, 1979.

ADDRESS: Written notices of appearance should be sent to the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-65, 5600 Fishers Lane, Rockville, MD 20857. The hearing will be held from 9 a.m. to 5 p.m., Conference Room 1, John W. McCormack State Office Building, 1 Ashburton Place, Boston, MA 02108.

FOR FURTHER INFORMATION CONTACT: Joseph M. Sheehan, Bureau of Medical Devices (HFK-70), Food and Drug Administration, Department of Health, Education, and Welfare, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7114.

SUPPLEMENTARY INFORMATION: In the Federal Register of April 13, 1979 (44 FR 22119), the Food and Drug Administration (FDA) published a proposed regulation responding to applications by the States of Massachusetts and Rhode Island for exemption from Federal preemption for certain State hearing aid requirements.

In the same issue of the Federal Register, FDA published a notice of opportunity for interested persons to request an oral hearing on the proposed rule. The notice explained that interested persons could request an oral hearing on or before May 14, 1979. FDA has received several requests for an oral hearing.

Accordingly, FDA announces that an oral hearing regarding the Massachusetts and Rhode Island applications for exemption from preemption of their hearing aid laws and regulations will be held on October 16, 1979 and, if necessary, to accommodate all those who request to make a presentation, October 17, 1979, from 9 a.m. to 5 p.m., Conference Room 1, John W. McCormack State Office Building, 1 Ashburton Place, Boston, MA 02108. The oral hearing will be chaired by David M. Link, Director, Bureau of Medical Devices, Food and Drug Administration.

After reviewing the comments and the notices of appearance, FDA will schedule each appearance and notify each person of the time allotted for each appearance. The procedures to govern the hearing are those applicable to a public hearing before the Commissioner of Food and Drugs under Part 15 (21 CFR Part 15).

Interested persons who wish to participate may, on or before September 10, 1979, submit a notice of appearance with the Hearing Clerk, Food and Drug Administration, Rm. 4-65, 5600 Fishers Lane, Rockville, MD 20857. All notices submitted should be identified with the Hearing Clerk docket number found in brackets in the heading of this notice and should contain the name, address, telephone number, any business affiliation of the person desiring to make a presentation, a brief summary of the presentation, and the approximate time requested for the presentation.

Groups having similar interests are requested to consolidate their comments and present them through a single representative. FDA may require joint presentations by persons with common interests. FDA will allocate the time available for the hearing among the persons who properly file a notice of appearance.

The administrative record of the proposed regulation will be open for 30 days after the hearing to allow comment on matters raised at the hearing.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 521, 90 Stat. 574 (21 U.S.C. 360k)) and under authority delegated to the Commissioner (21 CFR 5.1).

Dated: August 2, 1979.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 79-24364 Filed 8-9-79; 8:45 am]

BILLING CODE 4110-03-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Federal Disaster Assistance Administration

[24 CFR Part 2205]

[Docket No. R-79-694]

Federal Disaster Assistance; Community Disaster Loans

AGENCY: Federal Disaster Assistance Administration, Department of Housing and Urban Development.

ACTION: Proposed Rule.

SUMMARY: This rule redesignates and recodifies the existing § 2205.56 as a new Subpart F at 24 CFR 2205.90. The new Subpart incorporates material published previously in a FDAA Handbook concerning the Community Disaster Loan Program. Portions of the material such as loan eligibility, applications, administration, cancellations, and repayment have been revised to clarify existing policy and procedures.

DATE: Comments due: September 24, 1979.

ADDRESS: Send comments to: Rules Docket Clerk, Office of General Counsel, Department of Housing and Urban Development, Room 5218, 451 Seventh Street, SW., Washington, D.C. 20410.

FOR FURTHER INFORMATION CONTACT: Gene Morath, Office of Public.

Assistance, FDAA-HUD, Washington, D.C. 20410, telephone (202) 634-7835.

SUPPLEMENTARY INFORMATION: The rule revises and recodifies the material in the existing § 2205.56 as a new Subpart F. The proposed rule is expanded to incorporate material previously published in the FDAA Community Disaster Loan Handbook, 3300.14, concerning loan eligibility, applications, administration, cancellations, and repayment. Portions of the material have been revised to clarify existing policy and procedures.

Interested parties and government agencies are encouraged to submit written comments, suggestions, data or arguments regarding this rulemaking to the Rules Docket Clerk, Office of General Counsel, Room 5218, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410. All submissions received on or before September 24, 1979, will be evaluated. All comments will be available for inspection at the Office of the Rules Docket Clerk. FDAA will evaluate all such comments and experiences to date and will then prepare a Final Rule. This Final Rule will then be issued after HUD departmental review and clearance.

A finding of Inapplicability of section 102(2)(c) of the National Environmental Policy Act of 1969 has been made in accordance with "Procedures for Protecting and Enhancement of Environmental Quality". Interested parties may obtain and inspect copies of this Finding of Inapplicability at the Office of the Rules Docket on the Department of Housing and Urban Development in Washington, D.C. 20410.

Part 2205—FEDERAL DISASTER ASSISTANCE (PUBLIC LAW 93-288)

Accordingly, Federal regulations, 24 CFR Part 2205, are proposed to be revised by deleting § 2205.56 and adding a new Subpart F as follows: (FDAA anticipates that these regulations; when final, will be published in Subchapter D of Title 44 of the Code of Federal Regulations.)

Subpart F—Community Disaster Loan

2205.90 Purpose.
2205.91 Loan Program.
2205.92 Responsibilities.
2205.93 Eligibility criteria.
2205.94 Loan application.
2205.95 Loan Administration.
2205.96 Loan cancellation.
2205.97 Loan repayment.

Authority. Secs. 601 and 414, Disaster Relief Act of 1974, as amended, Pub. L. 93-288, (42 U.S.C. 5201, 5184); Executive order 11795 (39 FR 25939, dated July 11, 1974); and the Delegation of Authority (39 FR 28227, August 5, 1974).

Subpart F—Community Disaster Loan

§ 2205.90 Purpose.

This subpart provides policies and procedures for local governments and State and Federal officials concerning the Community Disaster Loan program under section 414 of the Act.

§ 2205.91 Loan Program.

(a) *General.* The Administrator may make a Community Disaster Loan to any local government which may suffer a substantial loss of tax and other revenues as a reult of a major disaster or emergency and demonstrates a need for financial assistance in order to perform its governmental functions.

(b) *Amount of loan.* The amount of the loan is based on need, not to exceed 25 percent of the operating budget of the local government for the fiscal year in which the disaster occurs. The term "fiscal year" as used in this subpart means the local government's fiscal year.

(c) *Interest rate.* The interest rate is the rate determined by the Secretary of the Treasury in effect on the date that the loan (i.e. Promissory Note) is executed. This Treasury rate takes into consideration the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity adjusted to the nearest ⅛ percent.

(d) *Time limitation.* The Administrator may approve a loan in either the fiscal year in which the disaster occurred or the fiscal year immediately folowing that year, as requested by the local government. Only one loan may be approved for any local government as the result of a single disaster.

(e) *Term of loan.* The term of the loan is three years, unless otherwise approved by the Administrator. The Administrator may consider requests for an extension of the term based on the local government's financial condition. The total term of any loan may not exceed 10 years.

(f) *Use of loan funds.* The local government shall use the loaned funds to carry on existing local government functions of a municipal operation character or to expand such functions to meet disaster-related needs. Neither the loan nor any cancelled portion of the loan can be used as the non-Federal share of any Federal program, including those under the Act.

(g) *Cancellation.* The Administrator shall cancel repayment of all or part of a Community Disaster Loan to the extent that revenues of the local government during the three fiscal years following the disaster are insufficient to meet the operating budget of that local government because of disaster-related revenue losses and additional municipal operating expenses.

(h) Any community disaster loans including cancellations made under this subpart shall not reduce or otherwise affect any commitments, grants or other assistance under the Act or these regulations.

§ 2295.92 Responsibilities.

(a) The local government shall submit the financial information required by FDAA and, if a loan is made, comply with the assurances on the application and the terms of the promissory note.

(b) The Governor's Authorized Representative shall certify on the loan application that the local government can legally assume the proposed indebtness and that any proceeds will be used and accounted for in compliance with the Federal-State Agreement.

(c) The Regional Director shall review each loan application or loan cancellation request received from a local government and monitor the local government's use of the loan. He/She shall inform the Administrator and submit recommendations when appropriate.

(d) A loan officer, designated by the Administrator, shall execute a Promissory Note with the local government, establish and maintain a loan account, and administer the loan until repayment or cancellation is completed and the Promissory Note is discharged.

(e) The Administrator, or a person designated by the Administrator, shall approve or disapprove each loan request, taking into consideration the information provided in the local government's request and the recommendations of the Governor's authorized Representative and the Regional Director. The Administrator, or the Administrator's designee, shall approve or disapprove a request for loan cancellation in accordance with the criteria for cancellation in these regulations.

§2205.93 Eligibility criteria.

(a) *General.* The local government must be located within the area designated by the administrator as being eligible for assistance under a major disaster or emergency declaration. In addition, State law must not prohibit the local government from incurring the

indebtedness resulting from a Federal loan.

(b) *Local Government eligibility.* Only those local governments which are communities, such as a county, city, village or town or Indian Tribe or Alaska Native Village, are eligible for a Community Disaster Loan. It also must need assistance in meeting its operating expenses where damage from a major disaster or emergency is expected to result in substantial loss of tax and other revenues (including revenues of local government-owned utilities). Criteria considered by FDAA in determining the eligibility of a local government for a Community Disaster Loan include the possession of tax authority, its functions as a political jurisdiction, the maintenance of an annual operating budget, and its responsibilities for providing essential municipal operating services to the community. Eligibility for other assistance under the act does not, of itself, establish entitlement to such a loan.

(c) *Loan eligibility*—(1) *General.* To be eligible, the local government must show that it may suffer or has suffered a substantial loss of tax or other revenue as a result of a major disaster and must demonstrate a need for financial assistance in order to perform its governmental functions. Loan eligibility is based on the financial condition of the local government and a review of financial information and supporting justification accompanying the application.

(2) *Substantial Loss of Tax and Other Revenues.* The fiscal year of the disaster or the succeeding fiscal year are the base period for determining whether a local government may suffer or has suffered a substantial loss of revenue. Guidelines include the following disaster-related factors:

(i) A large enough reduction in cash receipts from normal revenue sources, excluding borrowing, which affects significantly and adversely the level and/or categories of essential municipal services provided prior to the disaster.

(ii) A revenue loss of over 5 percent of total revenue estimated for the fiscal year in which the disaster occurred or for the succeeding fiscal year.

(3) *Demonstrated need for financial assistance.* The local government must demonstrate a need for financial assistance in order to perform its governmental functions. Guidelines include the following:

(i) Sufficiency of funds to meet current fiscal year operating requirements,

(ii) Availability of cash or other liquid assets which can be applied from the prior fiscal year,

(iii) Current financial condition considering projected expenditures for governmental services, and availability of other financial resources,

(iv) Fixed debt requirements,

(v) Debt ratio (relationship of annual receipts to debt service),

(vi) Ability to obtain financial assistance or needed revenue from State and other Federal agencies for direct program expenditures,

(vii) Displacement of revenue-producing businesses due to property destruction,

(viii) Necessity to reduce or eliminate essential municipal services,

(ix) Danger of municipal insolvency.

§ 2205.94 Loan application.

(a) *Application.* (1) The local government shall submit an application for a Community Disaster Loan through the Governor's Authorized Representative. The loan must be justified on the basis of need and shall be based on the actual and projected expenses, as a result of the major disaster, for the fiscal year in which the disaster occurred and for the three succeeding fiscal years. This loan request shall be prepared by the affected local government and certified as legal by the Governor's Authorized Representative.

(2) *Waiver of State review.* The Regional Director may waive the requirement for a State review if an otherwise eligible applicant is not subject to State administrative authority and the State cannot legally participate in the loan application process.

(b) *Financial requirements.* (1) The loan application shall be developed from financial information contained in the annual operating budget (§ 2205.94(b)(2) below) and shall include a Summary of Revenue Loss and Disaster-Related Expenses, a Statement of the Applicant's Operating Results-Cash Position, a Debt History, Tax Assessment Data, Other Information, a Certification, and the Assurances listed on the application. Copies of the local government's financial statements must accompany the application.

(2) *Operating budget.* For purposes of the loan, the operating budget is that document or documents approved by an appropriating body, which contains an estimate of proposed expenditures, other than capital outlays for fixed assets for a stated period of time, and the proposed means of financing the expenditures.

(3) *Operating budget increases.* Budget increases due to increases in the level of, or additions to, municipal services not rendered at the time of the disaster or not directly related to the disaster shall be identified.

(4) *Tax assessment information.* The applicant shall provide information concerning its method of tax assessment to include assessment dates and the dates payments are due. Tax revenues assessed but not collected or those which the taxing authority chooses to forgive, stay, or otherwise not exercise the right to collect are not legitimate revenue loss for purposes of evaluating the loan application.

(5) *Estimated disaster-related expenses.* Disaster-related expenses of a municipal operation character should be estimated. These are discussed in § 2205.96(b).

(c) *Federal Review.* (1) The Administrator shall approve a community disaster loan to the extent it is determined that the local government may suffer a substantial loss of tax and other revenues and demonstrate a need for financial assistance needed to perform its governmental function.

(2) The loan shall not exceed the lesser of (i) the amount of projected loss plus the projected disaster-related expenses of a municipal operating character or (ii) 25 percent of the annual operating budget for the fiscal year in which the major disaster occurred.

(3) Promissory Note. Upon approval of the loan by the Administrator, the FDAA Loan Officer will execute a Promissory Note with the applicant. The applicant should indicate its funding requirements on the Schedule of Loan Increments.

§ 2205.95 Loan administration.

(a) *Funding.* (1) FDAA will disburse funds to the local government when requested, generally in accordance with the Schedule of Loan Increments. As funds are disbursed, interest will accrue.

(2) When each incremental payment is requested, the local government shall submit copy of its most recent financial statement (if not submitted previously) for consideration by FDAA in consultation with the borrower of whether or not the level and frequency of periodic payments continue to be justified. The local government shall also provide the latest available data on anticipated and actual tax collections for the most recent taxing period. Desired adjustments in the disbursement schedule shall be submitted in writing at least 30 days prior to the proposed disbursement date

in order to ensure timely receipts of the funds.

(b) *Financial management.* Each local government with an approved Community Disaster Loan shall establish necessary accounting records, consistent with the local government's financial management system, to account for loan funds received and disbursed and to provide an audit trail.

(c) *Loan servicing.* Whether or not all loan funds have been drawn, FDAA will reevaluate the total loan justification periodically. The purpose of the reevaluation is to determine whether projected revenue losses, disaster-related expenses, operating budgets, and other factors have changed significantly to warrant adjustment of the scheduled payments of the loan proceeds.

(d) *Inactive loans.* If no funds have been disbursed from the Treasury, and if the local government does not anticipate a need for such funds, the note may be cancelled at any time upon a written request to FDAA. However, since only one loan may be approved, cancellation precludes submission of a second loan application request by the same local government for the same disaster.

§ 2205.96 Loan cancellation.

(a) *Policies.* (1) FDAA shall cancel repayment of all or any part of a Community Disaster Loan to the extent that revenues of the local government during the full 3 fiscal year period following the disaster are insufficient, as a result of the major disaster to meet the operating budget of the local government, including additional disaster-related expenses of a municipal operating character.

(2) If the local government reduces the tax rates or the tax assessment valuation of property which was not damaged or destroyed by the major disaster, the tax rates and tax assessment valuation factors applicable to such property in effect at the time of the major disaster or emergency shall be used without reduction for purposes of computing revenues received. This may result in decreasing the amount of any potential loan cancellations as a result of a general reduction in property tax.

(b) *Disaster-related expenses of a municipal operation character.* (1) For purposes of this loan, expenses of a municipal operation character are those incurred for general government purposes, such as police and fire protection, trash collection, collection of revenues, maintenance of public facilities, flood and other hazard insurance, and those other expenses normally budgeted for in special revenue, enterprise, and general funds, as defined by the Municipal Finance Officers Association.

(2) Disaster-Related Expenses do not include expenditures associated with debt service, any major repairs, rebuilding, replacement or reconstruction of public facilities or other capital projects, intragovernmental services, special assessments, and trust and agency fund operations. Disaster expenses which are eligible for reimbursement under other Federal programs are not eligible for loan cancellation.

(c) *Cancellation application.* A local government which has drawn loan funds from the Treasury may request cancellation of the principal and related interest by submitting an Application for Loan Cancellation prior to the expiration date of the loan through the Governor's Authorized Representative to the Regional Director.

(1) Financial information submitted with the application shall include the following:

(i) Annual Operating Budgets for each fiscal year,

(ii) Operating Statements (Revenue and Expenditure) for each fiscal year,

(iii) Audit reports for each fiscal year certifying to the validity of the Operating Statements. Such audit report must have been prepared by a certified public accountant, a state audit organization, or a public accountant licensed by a regulating authority of a state or other political subdivison of the United States. As required by the American Institute of Certified Public Accountants standards, or the equivalent thereof, the auditor must be independent within the meaning of the code of professional ethics of the AICPA.

(iv) Other financial information specified in the Application for Loan Cancellation.

(2) *Narrative justification.* The applicant may include an appropriate narrative presentation to amplify the financial material accompanying the application and to present any extenuating circumstances which the local government wants to be considered.

(3) *Audit report.* The audit report accompanying the application shall certify to the fiscal integrity of financial transactions and reports and to compliance with applicable laws, regulations, and administrative requirements. The report should not include recommendations concerning cancellation or repayment.

(d) *Determination.* (1) If, based on a review of the Application for Loan Cancellation State and/or Federal audit, the Administrator determines that all or part of the Community Disaster Loan funds should be cancelled, the principal amount which is cancelled will become a grant and the related interest will be forgiven.

(2) A loan or cancellation of a loan does not reduce or affect disaster grants or other assistance. However, no cancellation may be made that would result in a duplication of benefits to the applicant.

(3) The uncancelled portion of the loan must be repaid in accordance with § 2205.97 below.

§ 2205.97 Loan repayment.

(a) *Prepayments.* The local government may make prepayments against the loan at any time.

(b) *Repayment.* To the extent not otherwise cancelled, Community Disaster Loan funds become due and payable in accordance with the terms and conditions of the Promissory Note. The note shall include the following provisions:

(1) The term of a loan made under this program is three years, unless extended by the Administrator. Interest will accrue on outstanding cash from the actual date of its disbursement by the Treasury.

(2) Each payment made against the loan will be applied first to the interest computed to the date of the payment, and then to the principal. Prepayments of scheduled installments, or any portion thereof, may be made at any time and shall be applied to the installments last to become due under the loan and shall not affect the obligation of the borrower to pay the remaining installments.

(3) The Administrator may defer payments of principal and interest until he makes his final determination with respect to any application for loan cancellation which the borrower may submit.

(4) Any costs incurred by the Federal Government in collecting the note shall be added to the unpaid balance of the loan, bear interest at the same rate as the loan, and be immediately due without demand. Default under any other debit of the Borrower owing to, or insured by, the Federal Government. Upon any such default, the Federal Government may declare all or part of the note immediately due.

Issued at Washington, DC, July 19, 1979.

William H. Wilcox,

Administrator, Federal Disaster Assistance Administration.

[FR Doc. 79-24727 Filed 8-9-79; 8:45 am]

BILLING CODE 4210-22-M

DEPARTMENT OF THE INTERIOR

Geological Survey

30 CFR Part 250

Oil and Gas and Sulphur Operations in the Outer Continental Shelf

AGENCY: U.S. Geological Survey, Department of the Interior.

ACTION: Proposed rule.

SUMMARY: The Department of the Interior is proposing new regulations governing the unitization of Outer Continental Shelf oil and gas leases. The Department of the Interior recently completed a review of past and current criteria and procedures for the unitization of operations under OCS oil and gas leases. The results of that review led (1) to the proposed revision of the regulations found in 30 CFR 250.50 and 250.51 and (2) to the development of a model unit agreement which the Department of the Interior proposes to use in the unitization of operations under OCS oil and gas leases. The proposed new regulations will implement the Department of the Interior's responsibility to assure prompt and efficient exploration and development of unitized areas. The model unit agreement, which is not a part of the proposed regulations, is being published for review and comments under a separate notice appearing in today's Federal Register.

DATE: Written comments and recommendations should be submitted on or before October 9, 1979.

ADDRESS: Interested persons are invited to submit written comments and recommendations with respect to the proposed regulations. Responses should identify the subject matter and be directed to the Chief, Conservation Division, U.S. Geological Survey, National Center, Mail Stop 620, Reston, Virginia 22092.

FOR FURTHER INFORMATION CONTACT: Gerald D. Rhodes, Conservation Division, U.S. Geological Survey, National Center, Mail Stop 620, Reston, Virginia 22092 (703/860-7531).

SUPPLEMENTARY INFORMATION: Principal Author: W. P. Elliott, Office of the Solicitor, U.S. Department of the Interior, Washington, D.C. 20240 (202/343-4506).

Environmental Impact and Regulatory Analysis Statements

The Department of the Interior has determined that the revision of the regulations in 30 CFR 250.50 and 250.51 as proposed in this notice will not have a significant impact on the quality of the human environment and, therefore, will not require preparation of an Environmental Impact Statement. The Department has also determined that this notice of proposed rule is not a significant rule and does not require preparation of a regulatory analysis under Executive Order 12044 and 43 CFR Part 14.

Joan M. Davenport,

Assistant Secretary.

Dated: August 3, 1979.

It is proposed to modify §§ 250.50 and 250.51 of Chapter II of Title 30 of the Code of Federal Regulations to read as follows:

§ 250.50 Unitization.

(a) Unitization may be requested by lessees or required by the Director for the prevention of waste and conservation of the natural resources of the Outer Continental Shelf, and for the protection of correlative rights therein, including the protection of Federal royalty interests. When unitization is initiated by lessees, it shall be effective upon the consent of the leaseholders and approval of the Director.

(b) Unit agreements shall be executed on model unit agreement forms, a copy of which may be obtained from the Director. However, for good cause the Director may require or, upon request, approve a departure from the model unit agreement form. Any request for approval of a departure from the model unit agreement form shall be made at the time an executed unit agreement is submitted for approval and shall include an explanation of the reasons for the departure.

(c) A request for approval of a unit agreement shall be accompanied by an executed unit agreement and by the geological and geophysical data and information and any other information necessary to show that approval of the proposed unit is appropriate. An executed unit agreement shall include a counterpart signed by each person having an interest in the proposed unit by virtue of a lease, operating agreement, or other contractual arrangement under which the person is vested with the right or authority to explore for, develop, and produce oil and gas.

(d) The Director may, after notice and an opportunity for hearing, and after making findings of fact based upon substantial evidence on the record, issue an order or orders requiring the unitization of leases after finding that unitization is required in accordance with § 250.50(a).

(e) When the Director or any person to whom he has delegated this authority makes findings of fact or issues an order or orders as set forth in paragraph (d) of this section, this shall be considered final Agency action within the scope of Chapter 5 of Title 5 of the United States Code, and the regulations of the Department under Part 4 of Title 43 of the Code of Federal Regulations will be inapplicable. Testimony at hearings shall be under oath and subject to cross-examination by affected parties and by the Director or his designee.

(f) A unit shall consist of a part of the Outer Continental Shelf including one or more oil and gas reservoirs or one or more potential hydrocarbon accumulations subject to two or more leases.

(g) The area encompassed by the unit shall be the minimum required to include one or more oil and gas reservoirs or one or more potential hydrocarbon accumulations to be served by an optimal number of artificial islands, installations, or other devices necessary for the efficient exploration for or development and production of oil and gas. The area subject to the unit agreement may be contracted by the Director to achieve the minimum area necessary to meet this standard. The Director shall condition approval of a unit development and production plan on acceptance of this contraction. If a contraction excludes one or more reservoirs from the unit, lessees may apply within 90 days of the contraction to create a new unit or units to include these reservoirs.

(h) No unit may be formed until the Director finds that the delineation of the reservoir(s) or the potential for hydrocarbon accumulation has been reasonably established.

(i) Unit production, with the Director's approval, may be allocated to participating leases according to such participating percentages as agreed upon by the operating interests. In the absence of any such agreed basis for participation under unitization terms and provisions otherwise agreed upon or under unitization required by the Director, unit production shall be allocated on a just and equitable basis as determined by the Director and

supported by substantial evidence in the record compiled in accordance with the procedural requirements set forth in paragraphs (a) and (b) of this section. The owners of the operating interests in the unitized leases shall be responsible for unit investments and unit operating expenses in the same proportions that unit production is allocated to lease tracts; subject to the right of the participating operating owners to agree on some other basis of participation in unit investment and expenses in an operating agreement. In the event the parties cannot agree on the designation of operator, such designation shall be made by the Director.

(j) Production, drilling, and well-reworking operations performed within a unit in accordance with an approved exploration plan or development and production plan shall be deemed to be performed for the benefit of all whole leases or portions of leases included in the unit. Plans may provide for cessation of drilling between discovery and delineation and the initiation of production for a reasonable period necessary for the design, fabrication, and installation of artificial islands, installations, and other devices needed for development and production operations; however, when these plans involve leases beyond their primary term, they shall be accompanied by a request for a suspension of operations pursuant to § 250.12.

(k) Each whole lease or portion of a lease which is a part of a unit shall continue in force for the term provided in the lease and as long thereafter as the lease or portion of the lease remains part of the unit and the unit remains in effect.

(l) Upon termination of a unit, each lease and portion of a lease committed thereto may be continued in force and effect only in accordance with the terms and conditions of the Act, the regulations, and the lease.

(m) When a portion of a lease is included in a unit pursuant to this section, that portion of the lease not included may be maintained thereafter only in accordance with the terms and conditions of the Act, the regulations, and the lease. When a portion of a lease is eliminated from a unit, that portion of the lease which is eliminated may be maintained thereafter only in accordance with the terms and conditions of the Act, the regulations, and the lease. Operations conducted on the unit and suspensions approved or ordered for the unit shall not serve to maintain a lease interest in a portion of a lease excluded or eliminated from the unit.

(n) When no oil or gas is being produced in paying quantities from a Unitized Area and when all or part of the unit is comprised of leases beyond the primary term, a continuous drilling or well-reworking program shall be maintained with lapses of no more than 90 days between such operations unless a suspension of operations has been ordered or approved.

§ 250.51 Pooling or drilling agreements.

(a) Pooling or drilling agreements may be made between lessees for the purposes of:

(1) Utilizing a common drilling platform to develop adjacent or adjoining tracts;

(2) Permitting operators or pipeline companies to enter into contracts involving a number of tracts sufficient to justify operations on a large scale for the discovery, development, production, or transportation of oil and gas, sulphur, or other minerals or to finance these operations; or

(3) For other purposes in the interest of conservation.

(b) A pooling or drilling agreement shall not be deemed to affect the requirements for production, drilling, or well-reworking operations set out in the Act, the regulations, or the lease.

(c) Pooling and drilling agreements shall be filed with the Director.

(43 U.S.C. 1331 et seq.)

[FR Doc. 79-24698 Filed 8-9-79; 8:45 am]
BILLING CODE 4310-31-M

DEPARTMENT OF AGRICULTURE

Forest Service

[36 CFR Part 261]

Permits for Tuolumne River, and Technical Changes to Existing Regulation, California; Prohibitions

AGENCY: Forest Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed amendment would prohibit rafting and similar activities on a portion of the Tuolumne River without a permit. There would be an exception for certain noncommercial uses by individuals or groups of less than six people. Conforming and updating technical changes would also be made.

Unregulated rafting and similar activities on the Tuolumne River have been found by the Forest Service to create safety, health, and sanitation problems for users of the National Forest System and to increase the fire hazard and risks of pollution to Stanislaus National Forest land near the river. By requiring a permit for these activities, the Forest Service hopes to insure that the pilots are properly trained and experienced and to specify necessary health, safety, sanitation and fire prevention requirements.

DATE: Comments must be received by September 10, 1979.

ADDRESS: Send comments to Regional Forester, U.S. Forest Service, 630 Sansome Street, San Francisco, California 94111.

FOR FURTHER INFORMATION CONTACT: Bill Derr, Telephone 415-556-4963.

SUPPLEMENTARY INFORMATION:

Background

We do not want to regulate the individual rafter or any small group of individuals who may informally join together for a noncommercial rafting trip when no fee or other consideration is charged. Our intent is to regulate all commercial participants. We also feel it is necessary to require permits for all groups of six or more people because of the increased fire, pollution and safety problems that a larger group can create.

In the past we have been unable to regulate some of these activities because we could not establish that they were a business enterprise for which a permit is required under 36 CFR 261.10(c). This regulation would overcome that problemm and would shift to the users the burden of establishing any exemption from the permit requirements.

Other regions of the Forest service have faced similar problems and have issued regulations prohibiting using or occupying National Forest land for the purpose of entering the river in a floatable object. See 36 CFR 261.77 and 261.78. We propose instead to regulate use of the river itself. This should make the regulation easier to understand and follow as now required by Executive Order No. 12044. Forest Service regulatory control over the river is not dependent on holding title to it. It is enough that the conduct to be regulated would affect, threaten or endanger Forest Service property or a person using the National Forest System. 36 CFR 261.1(a); *United States* v. *Alford*, 274 U.S. 264 (1926); *United States* v. *Lindsey*, 595 F.2d 5 (9th Cir. 1979).

Technical Changes

This proposal would amend 36 CFR 261.75. Proposed technical changes in the existing regulation would (1) conform it to the new provisions, (2) refer to the revised property description of the "River Area" for the Middle Fork

of the Feather Wild and Scenic River, (3) update paragraph (b)(2) to refer to the newer prohibition in 36 CFR 261.10(k), and (4) delete reference in the title to the California Region of the Forest Service because it is now known administratively as the Pacific Southwest Region.

Impact Analysis and Public Effect

Based on an analysis of this proposal, I have concluded that:

(1) The proposed course of action and its impacts are obvious;

(2) It does not meet this Department's criteria for designating the regulation as "Significant";

(3) A regulatory analysis under Executive Order No., 12044 is not required;

(4) It is not a major federal action significantly affecting the quality of the human environment; and

(5) The proposed regulation is written in plain English and is understandable to those who must comply.

Public participation and assistance in developing and final regulation is most welcome. All written submissions made pursuant to this notice are available for public inspection in Room 656, 630 Sansome Street, San Francisco, California 94111, from 7:45 a.m. to 4:15 p.m., Monday through Friday except holidays. 7 CFR 1.27(b).

Penalty for Violation

Any violation of this regulation would be punishable by a fine of not more than $500 or imprisonment for not more than six months, or both. See 16 U.S.C. 551.

Proposed Rule

In consideration of the foregoing and pursuant to 36 CFR 261.70 and the authority delegated to me at 42 FR 3009, in order to prevent or control fires and disease, protect property, health, and public safety, and establish reasonable rules of public conduct, I propose to amend 36 CFR 261.75 as follows: The title of the section and paragraph (a) are revised; the title of paragraph (b) is amended; paragraph (b) (2) is revised; and paragraph (c) is added, all as set forth below:

§261.75 Regulations applicable to Region 5 as defined in § 200.2 of this chapter.

(a) *Definitions.* In this section:

(1) "Commercial use" means a use for which any type of consideration is collected or requested by an individual or by a profit or nonprofit organization or group. This definition does not include use by an unorganized group of people if the users share equally in the actual and direct expenses incurred for an activity and there is no other consideration.

(2) "Middle Fork of the Feather River" means the river and land area in or adjacent to Plumas National Forest described as the "River Area" in the notice at 35 FR 4219 as corrected and amended by the notice at 43 FR 57169, or any amendment to those notices.

(3) "Motorized equipment" means any equipment having or using an engine or motor, except small battery-powered handheld devices such as cameras, shavers, flashlights, and Geiger counters.

(4) "Wild river zone" means the area described as the Bald Rock Canyon Wild River Zone or as the Upper Canyon Wild River Zone in the notice at 45 FR 4219 or any amendment to that notice

(b) *Plumas National Forest.* (1) * * *

(2) Paragraph (b)(1) of this section does not apply to any equipment authorized by a permit from the Forest Supervisor, Plumas National Forest, containing such terms and conditions as the Supervisor considers necessary for the protection or preservation of the wild river zone or the health, safety or welfare of its user. See § 261.10(k) concerning violations of this permit.

(c) *Stanislaus National Forest.* (1) Being on, using, or placing any floatable object in the Tuolumne River between the South Fork Bridge and the western boundary of the Stanislaus National Forest is prohibited.

(2) Paragraph (c)(1) of this section does not apply to any person who either:

(i) Establishes to the satisfaction of the Groveland District Ranger, Stanislaus National Forest, that the activity is by less than six people and not a commercial use; or

(ii) Operates under a permit from the Groveland District Ranger, Stanislaus National Forest, authorizing the use and containing such conditions as the Ranger considers necessary for the protection or administration of the National Forest system, or for the promotion of public health, safety or welfare. See § 261.10(k) concerning violations of this permit.

* * * * *

Zane G. Smith, Jr.,

Regional Forester.

[FR Doc. 79-24709 Filed 8-9-79; 8:45 am]

BILLING CODE 3410-11-M

ENVIRONMENTAL PROTECTION AGENCY

[40 CFR Part 65]

[FRL 1292-2]

State and Federal Administrative Orders Permitting a Delay in Compliance With State Implementation Plan Requirements; Proposed Delayed Compliance Order for Columbus Products Co.

AGENCY: Environmental Protection Agency.

ACTION: Proposed Rule.

SUMMARY: U.S. EPA proposes to issue an Administrative Order to Columbus Products Company. The Order requires the Company to bring its boilers (the source) into compliance with OAC 3745-17-10, part of the federally approved Ohio State Implementation Plan (SIP). Because the Company is unable to comply with this regulation at this time, the proposed Order would establish an expeditious schedule requiring final compliance by April 15, 1980. Source compliance with the Order would preclude suits under the Federal enforcement and citizen suit provisions of the Clean Air Act (Act) for violation of the SIP regulation covered by the Order.

The purpose of this notice is to invite public comment and to offer an opportunity to request a public hearing on U.S. EPA's proposed issuance of the Order.

DATES: Written comments must be received on or before the thirtieth day from the date of this notice and requests for a public hearing must be received on or before the fifteenth day from the date of this notice. All requests for a public hearing should be accompanied by a statement of why the hearing would be beneficial and a text or summary of any proposed testimony to be offered at the hearing. If there is significant public interest in a hearing, it will be held after twenty-one days prior notice of the date, time, and place of the hearing has been given in this publication.

ADDRESSEES: Comments and request for a public hearing should be submitted to Director, Enforcement Division, U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604. Material supporting the Order and public comments received in response to this notice may be inspected and copied (for appropriate charges) at this address during normal business hours.

FOR FURTHER INFORMATION CONTACT: Peter J. Kelly, Attorney, Enforcement Division, U.S. Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604, at (312) 353-2082.

SUPPLEMENTARY INFORMATION: Columbus Products Company owns boilers at Columbus, Ohio. The proposed Order addresses emissions from this facility, which is subject to OAC 3745-17-10 of the Ohio Implementation Plan. The regulation limits the emissions of particulate matter and is part of the federally approved Ohio State Implementation Plan. The Order requires final compliance with the regulation by April 15, 1980, and the source has consented to its terms.

The proposed Order satisfies the applicable requirements of Section 113(d) of the Act. If the Order is issued, source compliance with its terms would preclude further U.S. EPA enforcement action under Section 113 of the Act against the source for violations of the regulations covered by the Order during the period the Order is in effect. Enforcement against the source under the citizen suit provisions of the Act (Section 304) would be similarly precluded.

Comments received by the date specified above will be considered in determining whether U.S. EPA should issue the Order. Testimony given at any public comment period and any public hearing concerning the Order will also be considered. After the public hearing, the Administrator of U.S. EPA will publish in the Federal Register the Agency's final action on the Order in 40 CFR Part 65.

Dated: July 25, 1979.

John McGuire,

Regional Administrator, Region V.

1. In consideration of the foregoing, it is proposed to amend 40 CFR Chapter I, as follows:

PART 65—DELAYED COMPLIANCE ORDERS

By adding the following entry to the table in Section 65.400:

§ 65.400 Federal delayed compliance orders issued under section 113(d) (1), (3), and (4) of the Act.

2. The text of the order reads as follows:

U.S. Environmental Protection Agency

In the Matter of Columbus Products Company, a Division of White Consolidated Industries, Inc., Columbus, Ohio; Proceeding under Section 113, Clean Air Act, as amended; Order No. EPA-5-79.

Order

The following ORDER is issued this date pursuant to Section 113 of the Clean Air Act, as amended, 42 U.S.C. Section 7413 (hereinafter referred to as the "Act"). Public notice and opportunity for public hearing have been provided. The ORDER contains a schedule with a timetable for compliance and interim requirements. Final compliance is required as expeditiously as practicable, but not later than April 15, 1980. The source is hereby notified that it may be required (depending on the applicability of Section 120) to pay a noncompliance penalty in the event it fails to achieve final compliance by July 1, 1979. In the event of such failure, the Company will be formally notified, pursuant to Section 120(b)(3) and any regulations promulgated thereunder of its noncompliance. Nothing in this Order shall be construed as a waiver of the right of the Company to contest the validity of any noncompliance penalty, or the legality, constitutionality or reasonableness of the imposition of noncompliance penalties. The State of Ohio has been given thirty (30) days notice of this ORDER.

On April 13, 1978, Mr. James O. McDonald, Director, Enforcement Division, Region V, the United States Environmental Protection Agency (hereinafter referred to as U.S. EPA), pursuant to authority delegated to him by the Administrator, issued a Notice to the White-Westinghouse Corp., Columbus Products Company, (now known as Columbus Products Company, a division of White Consolidated Industries, Inc., hereinafter, the "Company") and the State of Ohio that the boilers owned by the Company and located and operated at 300 Phillipi Road, Columbus, Ohio 43228, were found in violation of the federally enforceable Ohio Implementation Plan as defined in Section 110(d) of the Act. The boilers are subject to Ohio Air Pollution Control Regulation OAC 3745-17-10 (formerly AP-3-11), dealing with the control of particulate matter.

Pursuant to Section 113(a)(4) of the Act, opportunity to confer with the representatives of the U.S. EPA was given the Company and a conference was held on May 3, 1978.

It is the conclusion of the U.S. EPA that violations have continued beyond the 30th day after the date of notification by the Director, Enforcement Division.

After a thorough investigation of all relevant facts, it has been determined that because immediate compliance is infeasible, compliance in accordance with the schedule hereinafter set forth is reasonable.

Therefore, in consideration of the above, it is hereby ordered:

I. That the Company will continue to use multiple cyclone collectors on its operational coal-fired boilers and will install gas/oil conversion burners on at least two boilers. The use of supplemental gas or oil firing will reduce the emission of particulate matter to the level required by Rule 3745-17-10. The Company further agrees to reduce, by April 15, 1980, the emission of particulate matter to .15 lbs per million BTU actual heat input; or .17 lbs per million BTU actual heat input if only two boilers are operational (i.e., not permanently decomissioned).

II. That the Company will achieve compliance with all applicable particulate emissions regulations in accordance with the following compliance schedule:

1. Place order for supplemental gas/oil burner equipment and installation, April 21, 1979.

2. Complete installation of gas/oil conversion burner on one boiler, September 15, 1979.

3. Complete testing of firing efficiency and participate emission levels on one boiler, December 29, 1979.

4. Complete installation of gas/oil conversion burner on second boiler, March 15, 1980.

5. Demonstrate compliance with Rule 3745-17-10, April 15, 1980.

The Company's time for performance of its obligations as to any interim requirements under this ORDER shall be extended upon the occurrences of, and to the extent of any delay caused by, the following event or events: Acts of God or public enemy; accidental fire or explosion war, insurrection, or riot; strike by the employees of the Company, any action by a governmental authority that is not within the reasonable control of the Company, including, but not limited to, the failure or refusal of any governmental authority or agency to issue any permit or licenses required by law; delays in availability or defects in material or workmanship supplied by others; breaches of any contractual obligations by any supplier of material or services for the construction and installation of the units referred to herein including, without limitation, delivery dates; unusually severe weather conditions.

Immediately upon the occurrence of any such delay, the Company shall report as provided by the reporting requirements of this Order, the following information:

1. The nature of the event or circumstances causing the delay.

2. Those actions taken by the Company to diminish or avoid delay in achieving interim increments of progress.

3. Those actions taken by the Company to diminish or avoid delay in achieving final compliance with this Order.

Notwithstanding the above, in no event may the time for final compliance be extended beyond April 15, 1980.

III. That commencing immediately and throughout the term of this Order, the Company shall (consistent with good operating practice and using coal contracted for) operate any boiler not in compliance with Rule 3745-17-10 so as to reduce particulate emissions to the maximum extent possible.

IV. That, by April 15, 1980, the Company shall install and operate continuous opacity monitors in accordance with the requirements of 40 CFR Part 60, Appendix B, on each stack venting flue gas from any boiler burning coal. Data recorded by said monitors shall be retained by the Company for a period of two years after it is obtained.

V. That quarterly progress reports be submitted to the Air compliance Section, Enforcement Division, U.S. EPA, Region V,

230 South Dearborn Street, Chicago, Illinois 60604 with copies to the Ohio Environmental Protection Agency, beginning July 15, 1979. Said reports shall include certification of compliance with each increment falling due during the previous quarter or detailed reasons for failure to do so.

VI. This ORDER in no way affects the Company's responsibilities to comply with other Federal, State, and local regulations.

VII. In the event that any revision to the Ohio State Implementation Plan is approved by U.S. EPA such that any of the facilities covered by Part I hereof comply with said plan as revised and approved, this Order shall terminate upon a demonstration of compliance with said revised plans.

Date: ————.

————,

Administrator.

The Company by the duly authorized undersigned, agrees that the foregoing is a reasonable means by which to comply with Ohio Air Pollution Control Regulation 3745-17-10 but does not hereby admit to any violation of any regulation now or in the past.

Date: ————.

————,

Columbus Products Company, A Division of White Consolidated Industries, Inc.

[FR Doc. 79-24767 Filed 8-9-79; 8:45 am]

BILLING CODE 6560-01-M

[40 CFR Part 86]

[Docket No. OMSAPC-79-2; FRL 1294-2]

Control of Air Pollution From New Motor Vehicles and New Motor Vehicle Engines: Certification and Test Procedures; Emission Regulations for 1983 and Later Model Year Light-Duty Trucks; Public Hearing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Public Hearing.

SUMMARY: This document announces the time and place for a public hearing on the EPA notice of proposed rulemaking for control of HC and CO emissions from light-duty trucks, published on July 12, 1979 (44 FR 40784).

DATES: September 10 and 11, 1979.

LOCATION: The hearing will be held at the Holiday Inn, 2900 Jackson Road, Ann Arbor, Michigan 48103. On Monday, September 10, 1979, the hearing will be convened at 9:00 a.m. and will be adjourned at 5:30 p.m. If a second day is necessary to complete the business of the hearing, the hearing will reconvene at 9:00 a.m. on Tuesday, September 11, 1979.

FOR FURTHER INFORMATION CONTACT: Gregory J. Dana, Regulatory Management Staff, Office of Mobile Source Air Pollution Control (ANR-455), Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460, Telephone: (202) 755-0596.

SUPPLEMENTARY INFORMATION: *Background Information:* Section 202(a)(3)(A)(i) of the Clean Air Act, as amended (the Act), directs the Administrator of the EPA to "prescribe regulations . . . applicable to emissions of carbon monoxide, hydrocarbons and oxides of nitrogen from classes or categories of heavy-duty vehicles or engines manufactured during and after model year 1979." Section 202(a)(3)(A)(ii) of the Act further provides that "regulations . . . applicable to emissions from [heavy-duty] vehicles or engines manufactured during and after model year 1983, in the case of hydrocarbons and carbon monoxide, shall contain standards which require a reduction of at least 90 per cent . . . from the average of the actually measured emissions from heavy-duty gasoline-fueled vehicles or engines, or any class or category thereof, manufactured during the baseline model year [1969]." This mandate applies to the heavier end (6,000 to 8,500 lbs. GVWR) of the light-duty truck class.

Under the general authority of Section 202(a)(1) of the Act, these standards were proposed for the rest of the light-duty truck class. EPA published proposed regulations appliacable to 1983 and later model year light-duty trucks on July 12, 1979 (44 FR 40784).

Section 307(d)(5) of the Act requires the Administrator to "give interested persons an opportunity for the oral presentation of data, views, or arguments . . ." relating to the July 12, 1979 proposal. Notice of a public hearing to provide this opportunity is hereby given.

Participation in the Public Hearing: Any person desiring to make a statement at the hearing or to submit material for inclusion in the record of the hearing should provide written notice of such intention, together with at least one copy of the proposed statement or material for inclusion in the record. All such documents should be submitted to EPA at the address above no later than Friday, August 31, 1979. It is strongly requested, but not required, that at least 100 copies accompany any documents which cannot be submitted prior to the start of the hearing.

Participants are advised to adhere to these guidelines if possible. Documents submitted late may not receive full staff consideration prior to the hearing. Further, participants who submit documents on the scheduled day of appearance, without the requested 100 copies, may be rescheduled for a later time or session of the hearing if duplication of the documents cannot be completed by EPA prior to the scheduled time of appearance.

The record of the hearing will be left open for 30 days following the close of the hearing to allow submission of rebuttal and supplementary information.

Comments should address how the change in useful life will affect compliance with emission standards for diesel particulates and evaporative hydrocarbons.

Mr. Michael P. Walsh is hereby designated as the Presiding Officer of the hearing. He will be responsible for maintaining order, excluding irrelevant or repetitious material, scheduling presentations, and, to the extent possible, notifying participants of the time at which they may appear. The hearing will be conducted informally. Technical rules of evidence will not apply.

Dated: August 7, 1979.

David G. Hawkins,

Assistant Administrator, for Air, Noise, and Radiation.

[FR Doc. 79-24764 Filed 8-9-79; 8:45 am]

BILLING CODE 6560-01-M

[40 CFR Parts 414 and 416]

[FRL 1294-1]

Self-Monitoring and Process Waste Water in Organic Chemicals Manufacturing and Plastic Industries

AGENCY: Environmental Protection Agency—Office of Water Planning and Standards; Effluent Guidelines Division.

ACTION: Notice of Self-Monitoring Program.

SUMMARY: EPA is required by the Clean Water Act, as amended in 1977 to regulate the organic chemical and plastics industries. EPA is developing a program which will require facilities which manufacture organic chemicals and plastics to monitor their process waste water discharges. This includes monitoring as raw waste and after existing treatment. EPA is requesting comments on its approach to the development of this program. Comments are welcome on all aspects of the program, and particularly on four significant questions identified in the supplementary information.

DATES: Comments must be received by September 10, 1979.

ADDRESSES: Send comments to: Maria M. Irizarry, Effluent Guidelines Division

(WH-552), Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Maria M. Irizarry (202) 426-2497.

SUPPLEMENTARY INFORMATION: The purpose of this notice is to notify interested parties of and to obtain comments on a proposed program to require facilities which manufacture organic chemicals (40 CFR Part 414) and plastics (40 CFR Part 416) to monitor their process waste water discharges both as raw wastes and after existing treatment. The information collected will be used in the development of regulations for the control of water pollution based on best available technology economically achievable (BAT), best conventional pollutant control technology (BCT), new source performance standards (NSPS), pretreatment standards for new and existing sources, and best practicable control technology currently available (BPT), as required by the Clean Water Act.

A. Background

1. Statutory Requirements

Under the Clean Water Act, as amended in 1977 (33 U.S.C. 1251 *et. seq.)* EPA is required to issue regulations establishing effluent limitations guidelines for industrial categories. These regulations must set forth BPT, BCT, and BAT under Sections 301 and 304 of the Act, NSPS under Section 306, and pretreatment standards under Section 307(b). Under the Settlement Agreement in *Natural Resources Defense Council* v. *Train*, 8 ERC 2120 (D.D.C. 1976) as modified (12 ERC 1833 (1979)) (hereafter the Settlement Agreement), EPA is required to set BAT effluent limitations guidelines, pretreatment standards, and NSPS for 65 toxic pollutants in 21 industries, including the organic chemicals and plastics industries.

2. Development of Information on the Organic Chemicals and Plastics Manufacturing Industries

In order to develop the information necessary to issue the regulations required by law, EPA must gather information on the industries it regulates, their manufacturing processes, and pollutant discharges. Accordingly the Agency, through its contractors, Catalytic, Inc. and Envirodyne Engineers, has surveyed the plants in the organic chemicals industry under the authority of Section 308 of the CWA on two occasions. One survey, initiated in October of 1976, established the pre-BPT (1977) state-of-the-art treatment in the industry. A second survey was begun in December of 1977 to begin implementation of the BAT program set out in the Settlement Agreement.

Data obtained in these surveys in conjunction with screening and verification sampling conducted by EPA and its contractors has indicated potentially significant problems due to the production and use of toxic compounds in this industry. Regulations to control the discharge of toxic pollutants will be essential for large segments of these industrial categories because of the significant quantities of these pollutants discharged.

The initial program conducted by EGD for the development of new regulations has consisted of a screening phase and a verification phase. First, the manufacturing processes in the industries were separated into specific identified processes, usually identified in part by the product produced. These are known as product/processes. Then screening sampling was conducted on the various product/processes. The screening sampling consisted of a 72, a 24 or 12 hour composite sample of the raw waste water from a particular product/process, such as phenol by cumene peroxidation. Screening results provided qualitative information, quantifiable to a limited degree, about toxic pollutants present in a given product/process effluent. A plant may have any number of product/process combinations.

Verification sampling comprised 3 days of 8, 10, 12 or 24 hour composite sampling at one particular plant for each of one or more product/processes, and the treatment systems at the plant site.

The data which have been obtained through our verification efforts represent only an initial step in the quantification of the priority pollutants in organic chemicals and plastics plant process waste waters and the effectiveness of the existing systems for removal of the pollutants. These data have been collected over a maximum period of three days. Because of process and analytical variability these three day averages may vary significantly from the long term averages.

B. The Next Steps and the Need for New Data

EPA must now develop additional data on the various product/process combinations in the organic chemicals and plastics industries. There are several reasons why the additional data are required.

First, EPA and its contractors are developing a computer model which can be used to predict the size and type of end-of-pipe waste treatment systems which will be needed for various combinations of product/processes. Known as the "generalized plant configuration," or GPC, these combinations of product/processes will enable EPA to assess the costs of treatment on an industry-wide basis, as required by law, much more precisely than would be possible without the model. The model, in turn, depends on accurate and complete data on wastes flowing to actual treatment systems in the industry.

Second, EPA needs additional data regarding raw waste loads (RWL's) resulting from various product/processes, end-of-pipe treatment systems, and on effluent from several in-process treatment systems, including steam striping, liquid/liquid extraction, carbon absorption, and metals precipitation. These data will be necessary to assess the efficiency of these treatment systems and to predict the size and cost of the systems which might be required where raw wastes with similar characteristics are encountered. The efficiency and cost of these systems must be evaluated in connection with possible use in establishing effluent limitations allowing direct discharge from a product/process after in-process treatment, in setting pretreatment standards, and in setting effluent limitations based upon the combination of the in-process treatment and end-of-pipe treatment.

Estimates of cost and treatment efficiency are both sensitive to the adequacy of the data base. Thus, EPA must arrive at the best estimates of treatment efficiency it can, using the available data. Obtaining additional data will increase the precision of those results, and will enable EPA to assess and allow for variability in effluents. Similarly, the reliability of cost estimates for the industry will depend upon the completeness of the RWL and in-process treatment efficiency data.

C. The Proposed Self-Monitoring Program

1. Coverage

EPA has identified a number of product/processes in the organic chemicals industry, and a number of subcategories in the plastics industry, which produce process waste water containing significant quantities of toxic pollutants and for which EPA believes self-monitoring is appropriate. These product/processes and subcategories for

Organic Chemicals Manufacturing are listed in Table II. Those for Plastics and Synthetics Manufacturing are listed in Table III.

2. Description of the Program

The product/processes listed in Tables II and III are distributed among approximately 600 plants in the two industries. EPA intends to obtain, for selected important product/processes, data from five different facilities selected at random. Each facility would be required to conduct sampling of raw wastes from these product/processes for 30 days, to analyze the samples, and to report the results to EPA. In addition where certain in-process treatment techniques (see part B, above), are currently in place, EPA will require sampling and analysis of the influent to treatment and the effluent from treatment. EPA will specify analytical methods based on gas chromatography or GC/MS, and will allow participants some flexibility in fashioning analytical protocols tailored to their wastes. Data will be required to be submitted within 120 days of EPA's 308 letter.

The 30-day sampling period will, EPA believes, provide adequate data to meet the regulations development requirements identified above. At the same time, it is not so long as to impose an undue burden on the affected facilities.

3. Costs

There are two types of sampling involved: process sampling and treatment technology sampling. In most cases a plant will be required to do only one kind of sampling. However some plants may be required to do both.

Based on an analysis by EPA's contractor, Envirodyne Engineers, EPA has developed cost estimates for the self-monitoring program. EPA estimates that the program will cost a plant less than $40,000 per product/process. This estimate assumes that two sampling locations will be required, with 30 samples at each location.

This cost estimate was based on Envirodyne Engineers' current verification sampling and analysis program costs. A detailed breakdown of the cost estimate is given in Table I.

Extrapolating Table I figures to the organic chemicals and plastics industries as a whole yields a total cost of less than $22.4 million for the cost of self-monitoring at no more than five production units for approximately two thirds of the product/processes. The specific categories for which the agency will request monitoring will be selected from Table II and III.

EPA will make every effort to distribute the monitoring burden as equitably as possible. Where only five (or less than five) plants have a certain product/process, it may be necessary to require all of them to carry out the proposed 30-day monitoring program. Where a product/process occurs in more than five plants, EPA will attempt to assign monitoring responsibilities to those plants which are being required to monitor the minimum number of the other product/processes. However, as is inevitable in a program of this nature, some plants will be required to do more monitoring than others.

D. Significant Issues

Because of the scope and cost of this program, and its importance to the development of regulations, EPA is soliciting comments on its approach. Comments are welcome on all aspects of the program, and particularly the following issues:

1. Will the 30 daily observations proposed by EPA be sufficient to characterize the effectiveness of in-process treatment technologies?

2. Will 30 daily observations adequately characterize the raw wastes from a process so as to predict what treatment will be required, for toxic, conventional, and non-conventional pollutants as well as the cost of that treatment?

3. Has EPA correctly estimated the costs of sampling and analysis?

4. Should EPA set out criteria for the selection of plants for monitoring?

A copy of the analytical methods and supporting material may be obtained from the agency contact designated below. The comment period will extend until September 10, 1979.

All comments should be sent to: Maria M. Irizarry, Effluent Guidelines Division (WH-552), Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460 (202) 426-2497.

Dated: August 6, 1979.

Thomas C. Jorling,

Assistant Administrator for Water and Waste Management.

Table I.—*Cost Estimate of 30-Day Self-Monitoring*

	Man hours	Cost, dollars
Preparation for Sampling	70	$935
Field Sampling (8 hours)	240	4,062
Equip Cleaning	6	92
Sample Log	22	359
Extraction & Prep	634	7,961
GC Anal.	537	8,722
AA Anal.	126	2,047
Data Mgmt.	6	1,121
Lab Mgmt.	120	3,667

Table I.—*Cost Estimate of 30-Day Self-Monitoring*—Continued

	Man hours	Cost, dollars
Reporting	20	371
Total	1,835	29,227
Supplies		1,250
Subtotal		30,477
Methods shakedown	72	2,260
Subtotal		32,737
QA/QC—Replicates	133	2,114
Spikes	67	1,280
GC/MS	72	3,000
Total	2,245	33,131

Acetaldehyde:
1.(a) from ethylene by oxidation
2.(b) from propylene by oxidation (acrolein byproduct).
Acetic acid:
3.(a) from acetaldehyde by oxidation
4.(b) by product terephthalic acid
5.(c) by product polyvinyl alcohol
Acetic anhydride:
6. from acetic acid via ketene by dehydrogenation
Acetone:
7.(a) from cumene via cumene hydroperoxide
8.(b) from isopropanol by oxidation
Acetylene:
9.(a) from methane by partial oxidation
10.(b) by cracking naphtha/light hydrocarbons
Acrolein:
11. from propylene by oxidation
Acrylic acid:
12.(a) from acetylene + CO + hydrogen
13.(b) from propylene via acrolein by oxidation
14.(c) from acrolein by oxidation
Adipic acid:
15.(a) from cyclohexanol/cyclohexanone by oxidation
16.(b) from cyclohexanol by oxidation
Adiponitrile:
17.(a) from adipic acid by ammonation/dehydration
18.(b) from acrylonitrile by hydrodimerization
Alkyl (C_{12}–C_{18}) amines:
19. from C_{12}–C_{18} olefins + HCN/dehydrogenation
Alkyl (C_8—C_9 phenols:
20. from C_8,C_9 olefins + phenol by alkylation
Alkylphenol ethoxylates:
21. from alkylphenols + ethylene oxide
Allyl alcohol:
22. from acrolein + sec-butanol by redox
Allyl chloride:
23. from propylene + chlorine
Amyl acetate:
24. from acetic acid + amyl alcohols
Amyl alcohols:
25. (n-pentanol/2-methylbutanol) from C_5 aldehydes by OXO/hydrogenation
Aniline:
26. from nitrobenzene by hydrogenation
Benzene:

27.(a) by cracking light hydrocarbons/BTX extraction
28.(b) from toluene/xylenes (mixed) by hydrodealkylation
29.(c) from catalytic reformate/BTX extraction
30.(d) by cracking naphtha/BTX extraction
31.(e) from coal tar light distillate/BTX extraction

Benzyl chloride:
32. from toluene + chlorine

Bisphenol A:
33. from phenol + acetone

Butadiene:
34.(a) by cracking light hydrocarbons/extractive distillation from C_4 pyrolyzates
35.(b) by cracking naphtha/extractive distillation from C_4 pyrolyzates

n-Butanol:
36.(a) from propylene by OXO/hydrogenation

sec-Butanol:
37. from butene by indirect hydration

n-Butyl acrylate:
38. from acrylic acid + n-butanol

n-Butyl methacrylate:
39. from methacrylic acid + n-butanol

n-Butylbenzyl phthalate:
40. from phthalic anhydride + n-butanol + benzyl chloride
41. by cracking naphtha/distillation from C_4 pyrolyzates

Caprolactam:
42.(a) from cyclohexanone via oxime
43.(b) from phenol via cylohexanone oxime

Carbon tetrachloride:
44.(a) from methane + chlorine
45.(b) from 1,2-dichloroethane + (coproduct of tetrachloroethylene)

Chlorobenzene:
46. from benzene + chlorine

Chloroform:
47. from methane + chlorine

m-Chloronitrobenzene:
48. from nitrobenzene + chlorine

Creosote:
49. from coal tar by distillation

Cumene:
50. from benzene + proplylene by alkylation

Cyclohexanol/cyclohexanone:
51. from cyclohexane by oxidation

Cyclohexanol:
53.(b) from phenol by hydrogenation

Cyclohexanone:
54.(a) from cyclohexanol by dehydrogenation
55.(b) from phenol by hydrogenation

o-Dichlorobenzene:
56. from benzene + chlorine

p-Dichlorobenzene:
57. from benzene + chlorine

1,2-Dichloroethane:
58.(a) from ethylene + chlorine
59.(b) from ethylene by chlorination/oxychlorination

Dicyclopentadiene:
60. by cracking naphtha/dimerizing cyclopentadiene from C_5 pyrolyzate

Diethylene glycol:
61. from ethylene glycol by hydrolysis

Diethyl phthalate:
62. from phthalic anhydride + ethanol

Diisopropyl benzene:
63. from benzene + propylene (byproduct cumene)

Diketene:
64. by dimerizing ketene

Dimethylterephthalate:
65. from terephthalic acid and methanol

2,4-Dinitrotoluene:
66. from toluene by nitration

Dinitrotoluenes:
67. (mixed 2,4/2,6) from toluene by nitration

Diphenylisodecyl phosphate:
68. from phosphorus oxychloride + phenol + isodecanol

Epichlorohydrin:
69. from allyl chloride via propylene chlorohydrin

Ethanol:
70. from ethylene by direct hydration

Ethyl amines:
71. from ethanol + ammonia

Ethyl acrylate:
72. from acrylic acid + ethanal
73.(a) from benzene + ethylene
74.(b) by cracking naphtha/from mixed xylenes by BTX extraction
75. from n-butyraldehyde by aldol condensation/hydrogenation

2-Ethylhexyl acrylate:
76. from acrylic acid + 2-ethylhexanol

bis (2-Ethylhexyl) phthalate:
77. from phthalic anhydride + 2-ethylhexanol

Ethylene:
78.(a) by cracking light hydrocarbons
79.(b) by cracking naphtha
80.(c) by cracking naphtha/light hydrocarbons

Ethylene diamine:
81. from 1,2-dichloroethane + ammonia

Ethylene glycol:
82. from ethylene oxide by hydrolysis

Ethylene oxide:
83.(a) from ethylene via chlorohydrin
84.(b) from ethylene by air oxidation

Formaldehyde:
85. from methanol by oxidation

Glycerin:
86.(a) from epichlorohydrin by caustic hydrolysis
87.(b) from allyl alcohol by oxidation with hydrogen peroxide

Hexamethylene diamine:
88. from adiponitrile by hydrogenation

Hydroquinone:
89. from aniline via quinone by oxidation with manganese dioxide/sulfuric acid/iron
90. from propylene by OXO/hydrogenation

Isobutylene:
91.(a) by cracking naphtha, gas oil/extractive distillation of C_5 pyrolyzate
92.(b) from t-butanol by dehydration

Isoprene:
93. by cracking naphtha, gas oil/extractive distillation of C_5 pyrolyzate

Isopropanol:
94. from propylene by indirect hydration

Linear alcohol ethoxylates:
95. from C_{11}, C_{12} alcohols + ethylene oxide

Maleic anhydride:
96. from benzene by oxidation

Methacrylic acid:
97. from acetone + HCN via hydrolysis of acetone cyanohydrin

Methanol:
98. from methane via synthesis gas by partial oxidation

Methyl chloride:
99. from methane + chlorine

Methylene chloride:
100. from methane + chlorine

Methylethyl ketone:
101.(a) from sec-butanol by dehydration
102.(b) from sec-butanol, byproduct allyl alcohol

Methylmethacrylate:
103. from acetone + HCN via methanolysis of acetone cyanohydrin

a-Methylstyrene:
104. coproduct from cumene oxidation

Naphthalene:
105.(a) by cracking naphtha/distillation from C_6–C_{10} pyrolyzate
106.(b) from coal tar light distillate by distillation

Neopentanoic acid:
107. from isobutylene via neopentanal by OXO/hydrogenation and oxidation

Nitrobenzene:
108. from benzene by nitration

Nylon salt:
109. (methanolic) from adipic acid + hexamethylenediamine

Phenol:
110. from cumene via cumene hydroperoxide

Phthalate esters:
111. (C_{10}–C_{14}) from phthalic anhydride + alcohol

Phthalic anhydride:
112. from naphthalene by oxidation

Pitch tar:
113. from coal tar/distillate residual

Polyethyleneamines (DETA, TETA, TEPA):
114. from ammonia + 1,2-dichloroethane, byproducts of ethylene diamine

Polymeric methylene diphenylamine (MDA):
115. from aniline + formaldehyde

Polymeric methylene diphenylisocyanate (MDI):
116. from polymeric MDA + phosgene

Polyoxypropylene glycols:
117.(a) from propylene glycol + PO
118.(b) from triol (e.g. glycerin) + propylene oxide

n-Propanol:
119. from propionaldehyde by hydrogenation

Propionic acid:
120. from propionaldehyde by oxidation

Propionaldehyde:
121. from ethylene by OXO process

Propylene:
122.(a) by cracking light hydrocarbons
123.(b) by cracking naphtha/gas oil
124.(c) by cracking naphtha/light hydrocarbons

n-Propyl acetate:
125. from acetic acid + n-propanol

Propylene oxide:
126. from propylene via chlorohydrin

Styrene:
127. from ethylbenzene by dehydrogenation

Terephthalic acid:
128. from p-Xylene by oxidation

Tetrachloroethylene:

129. from 1,2-dichloroethane by chlorination/dehydrochlorination (via pentachlorethane)
Tetrachlorophthalic anhydride:
130. from phthalic anhydride + chlorine
Tetraethylene glycol:
131. from ethylene glycol still bottoms by distillation (refining only)
Toluene:
132.(a) from catalytic reformate/BTX extraction
133.(b) by cracking naphtha, light hydrocarbons/BTX extraction
134.(c) from coal tar light distillate/BTX extraction
2,4-Toluene diamine:
135. from 2,4-dinitrotoluene by hydrogenation
Toluene diamines (2,4/2,6)
136. from dinitroluenes by hydrogenation
2,4-Toluene diisocyanate:
137. from 2,4-toluene diamine + phosgene
Toluene diisocyanates (2,4/2,6):
138. from toluene diamine + phosgene
1,2,4-Trichlorobenzene:
139. from p-dichlorobenzene + chlorine
1,1,1-Trichloroethane:
140. from 1,1-dichloroethane + chlorine
1,1,2-Trichloroethane:
141.(a) from ethylene + chlorine (coproduct 1,2-dichloroethane)
142.(b) from 1,1-dichloroethane + chlorine (coproduct 1,1,1-trichloroethane)
Trichloroethylene:
143. from 1,2-dichloroethane by chlorination/dehydrochlorination
Triethylene glycol:
144.(a) from ethylene glycol still bottoms by distillation (refining only)
145.(b) from ethylene oxide by hydrolisis
Vinyl acetate:
146. from acetic acid + ethylene
Vinyl chloride:
147.(a) from 1,2-dichloroethane (direct chlorination) by thermal cracking
148.(b) from 1,2-dichloroethane (chlorination/oxychlorination) by thermal cracking
Vinylidene chloride:
149. from 1,2-dichloroethane by chlorination/dehydrochlorination (via 1,1,2-trichloroethane)
Xylenes (mixed):
150.(a) m,p-xylenes by cracking naphtha/BTX extraction
151.(b) by cracking naphtha, light hydrocarbons/BTX extraction
152.(c) from coal tar light distillate/BTX extraction
o-Xylene:
153. by distillation from mixed xylenes obtained from catalytic reformate, or pyrolysis gasoline by BTX extraction
p-Xylene:
154.(a) from catalytic refomate by BTX extraction/crystallization
155.(b) from catalytic refomate by BTX extraction/isomerization of m-xylene

Table III—Plastics and Synthetic Materials

1. ABS resin by emulsion; SAN resin by suspension.
2. Acrylic fibers (85% acrylonitrile) by suspension.
3. Acrylic resins (polymethylmethacrylate sheets) by mass.
4. Cellulose acetate resins/fibers by cellulose derivatization.
5. Epoxy resins by mass.
6. Phenolic resins (resolves/novolaks) by mass.
7. Polyamide resins/fibers (nylon 6/66) by mass/solution.
8. Polyester resins/fibers by mass.
9. Polyethylene resins, HDPE by suspension.
10. Polyprolylene resins by suspension.
11. Polystyrene resins (crystal/impact) by mass, suspension.
12. Polyvinyl acetate resins (latex) by emulsion.
13. Polyvinyl alcohol resins by hydrolysis of polyvinylacetate.
14. Polyvinyl chloride resins by suspension.
15. Styrene-butadiene resins (latex) by emulsion.
16. Unsaturated polyester resins by mass.
17. Urea resins by mass.
18. Alkyd resins by mass.
19. Petroleum hydrocarbon resins by solution.
20. Polyacrylate/methacrylate resins (latex) by emulsion.
21. Rayon fiber.

[FR Doc. 79-24726 Filed 8-9-79; 8:45 am]
BILLING CODE 6560-01-M

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Health Care Financing Administration

[42 CFR Part 405]

Medicare Program; Reimbursement for Costs of Approved Internship and Residency Programs

AGENCY: Health Care Financing Administration (HCFA), HEW.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend regulations governing provider reimbursement under the Medicare program (Title XVIII of the Social Security Act), by allowing providers not to deduct grants for primary care internships and residency programs in calculating reimbursable cost. The intent of the rule is to avoid nullifying the purpose of specific grants for these training programs.

DATES: Consideration will be given to written comments or suggestions received by October 9, 1979.

ADDRESSES: Address comments: Administrator, Health Care Financing Administration, Department of Health, Education, and Welfare, P.O. Box 2372, Washington, DC 20013. In commenting, please refer to file code MAB-71-P.

Comments will be available for public inspection, beginning approximately 2 weeks from today, in Room 5231 of the Department's offices at 330 C Street, SW, Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (202-245-0950).

FOR FURTHER INFORMATION, CONTACT: Mr. William Goeller (301) 597-2886.

SUPPLEMENTARY INFORMATION: Under Medicare, a provider is reimbursed on the basis of the costs it incurs in furnishing services to Medicare beneficiaries. Current Medicare regulations specify that, in determining the costs reimbursed under Medicare, the provider may include the net costs of educational activities approved in accordance with the regulations at 42 CFR 405.421. Net cost is currently determined by deducting all grants, tuition, and specific donations from the provider's incurred costs for the educational activity (42 CFR 405.421(b)(2)). However, we have found that these deductions undermine the purpose of some grant programs designed to support primary care internship and residency programs. The purpose of this amendment is to avoid that result.

The problem this regulation is designed to solve arises as follows. Medicare reimbursement (which does not cover all of the costs of these residency programs) is based on the provider's projected costs, with a retroactive adjustment made on the basis of the provider's report of actual, incurred expenditures. However, during the retroactive adjustment, deductions are presently being made to offset grants the provider has received to help it pay for these residency programs. For example, a provider may receive a grant under title VII of the Public Health Service Act to cover part of the cost of these programs. Under 42 CFR 405.421(b)(2), however, the provider's total costs are adjusted by deducting the amount of the title VII grant. This deduction reduces the provider's costs recognized for Medicare reimbursement, thereby preventing the provider for realizing the full benefit of the grant. We believe this thwarts the purpose of title VII, which is to foster the development of programs designed to train physicians in primary care specialities.

The proposed regulation would alter the manner in which net costs are determined for approved primary care internship and residency educational programs (family practice, general practice, general internal medicine, and general pediatrics). We have selected these four areas because they have been identified by the Congress as critical to meeting the nation's health manpower

requirements. In the Findings and Declaration of Policy by Congress in the Health Professions Educational Assistance Act of 1976 (Pub. L. 94–484), Congress stated that the availability of high quality care to a substantial extent depends on an adequate number of primary care physicians, and that physician specialization has resulted in inadequate numbers of physicians engaged in the delivery of primary care.

Many primary care services are now furnished in high-cost institutional settings, such as hospital outpatient departments, because of the shortage of primary care physicians. As the supply of these physicians increases, these services can be furnished in more appropriate and less expensive settings, such as free-standing clinics, physicians' offices, or patients' homes. In keeping with the intent of Congress, we have developed this proposal which specifies that, in determining a provider's net cost, deductions will not be required for any grants or monetary donations the provider receives and applies to internship and residency programs in these four areas.

Because the proposed revision would increase total Medicare and Medicaid reimbursement for primary care program costs, the possibility exists that some providers might recover, from all sources, more than 100 percent of their primary care training costs. To deal with this possibility, a method of measuring primary care program costs has been developed.

Under this proposal a provider would be required to identify in its cost reports both its total program costs and total revenues applicable to its primary care residency programs, including patient care revenues and non-federal grants. The provider would have to identify specifically the donor of any grants designated to support primary care training costs. After reviewing the cost report, the Medicare intermediary would calculate Medicare reimbursement on the basis of net costs, which do not include an offset for such grants. The intermediary would also determine whether the provider's revenues, including grants, exceeded its total costs or if, in fact, the provider did not recover its full costs. If the answer were that the provider had a surplus of revenues over costs, and the provider had a title VII grant from PHS, HCFA would notify PHS, which would either recover its funds (to the extent of the surplus) or re-designate them for the succeeding year of the program. If there were no title VII grant, or if the surplus exceeded the amount of the title VII grant, HCFA would notify the other grant donors. HCFA would not make any adjustments in the Medicare reimbursement received by the provider.

Since most State Medicaid programs generally follow Medicare reimbursement principles, this proposal would automatically apply to Medicaid reimbursement in those States. We invite specific comment on whether special rules would be required to apply this proposal to States whose reimbursement methods do not follow Medicare principles.

It is our intention to make this rule applicable for cost reporting periods beginning on or after January 1, 1978. In our view, there has been confusion about the proper implementation of the existing regulations and some providers have been adversely affected by inconsistent implementation. Implementing this rule with respect to cost reporting periods beginning on or after January 1, 1978 will help ameliorate this situation and will not have a detrimental effect on the Medicare and Medicaid programs or on providers not directly affected by it.

In this NPRM, we have also restated the basic principle for reimbursement of approved educational activities (paragraph (a)) to clarify existing policy. There is no change intended in how the regulation is currently implemented. However, we have had some serious disagreements with providers over the proper application of this principle to the costs of certain educational activities. We are reviewing this problem carefully and plan to issue a subsequent NPRM, revising § 405.421, in the near future.

42 CFR 405.421 is amended by revising paragraph (a), by deleting paragraphs (b)(2) and (b)(3), and by adding a new paragraph (g) to read as follows:

§ 405.421 Cost of educational activities.

(a) *Principal.* A provider's allowable cost may include its net cost of approved educational activities, as calculated under paragraph (g) of this section.

(b) *Definitions.—Approved educational activities.* Approved educational activities means formally organized or planned programs of study usually engaged in by providers in order to enhance the quality or patient care in an institution. These activities must be licensed where required by State law. Where licensing is not required, the institution must receive approval from the recognized national professional organization for the particular activity.

* * * * *

(g) *Calculating net cost.* (1) Except as specified in paragraph (g)(2) of this section, net costs of approved educational activities are determined by deducting, from a provider's costs, revenues it receives from grants, tuition, and donations. For this purpose, a provider's costs include trainee stipends and compensation of teachers.

(2) Grants and donations received by a provider specifically to support internship and residency programs in family practice, general practice, general internal medicine, or general pediatrics are not deducted in calculating net costs.

(Secs. 1102, 1814(b) and 1833(a)(2) of the Security Act, 42 USC 1302, 1395f(b), and 1395d(a)(2)).

(Catalog of Federal Domestic Assistance Programs No. 13773 Medicare Hospital Insurance, No. 13.774 Medicare Supplementary Medical Insurance).

Dated: April 25, 1979.

Leonard D. Schaeffer,

Administrator, Health Care Financing Administration.

Approved: August 2, 1979.

Joseph A. Califano, Jr.

Secretary.

[FR Doc. 79-24758 Filed 8-9-79; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

[47 CFR Part 87]

[PR Docket No. 79-186; FCC 79-458]

Clarifying the Use of Certain Frequencies by Aircraft for the Control of Airport Lights

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: Amendment of the rules to permit aircraft to transmit brief keyed RF signals (momentarily depressing the microphone push-to-talk button) for the control of airport lights *only* on an authorized frequency which is assigned to an aeronautical radio station located at the particular airport. As a result of a number of informal inquiries, this action is being proposed to avoid the possible interference and inconvenience which would result where aircraft use a frequency assigned to a station at one airport to activate runway lights at another airport.

DATES: Comments must be received on or before September 10, 1979, and reply comments must be received on or before September 20, 1979.

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

FOR FURTHER INFORMATION CONTACT: Robert McNamara, Private Radio Bureau, (202) 632-7175.

SUPPLEMENTARY INFORMATION:

Adopted: July 24, 1979.

Released: August 2, 1979.

In the matter of amendment of § 87.183 of the rules to clarify the use of certain frequencies by aircraft for the control of airport lights.

By the Commission: 1. In this Notice we are proposing to limit the frequencies on which aircraft may transmit brief keyed RF signals for control of airport lights. Essentially, this proposal will require that the frequency used by aircraft for the activation of airport lights be assigned to an aeronautical station located at the concerned airport.

Background

2. Section 87.183(cc) of the rules makes available a number of aeronautical frequencies for the control of airport lighting by aircraft.[1] Aircraft may transmit brief RF signals (i.e., momentarily depressing the microphone "push-to-talk" button) on these frequencies to turn on the airport lights, provided that harmful interference is not caused to voice communications. Thus, aircraft approaching an uncontrolled or unmanned airfield at night or in poor weather conditions, may activate the airport lights on and as needed basis. Usually these radio controlled systems will operate for approximately 15 minutes after activation. By employing these lighting systems an airport may remain open at night without the expense of leaving the airport lights on for extended periods of time or having a person monitor a radio frequency for requests to activate the lights. These radio controlled runway lighting systems are becoming increasing popular with the aviation community. The FAA and many individual airport operators are installing such systems at various uncontrolled airfields as well as airfields with part-time control towers.

Problem

3. Although § 87.183(cc) of the rules limits aircraft use of air traffic control (ATC) frequencies for activation of airport lights to a frequency assigned to a facility on the given airport, no such limitation applies to the other available frequencies. Recently we have received a number of informal inquiries as to the feasibility of using an aeronautical advisory frequency or an aviation instructional frequency other than that assigned to a station at the airfield for activation of an airport lighting system. We have been discouraging such practices even though there is no prohibition of such frequency utilization.

4. The problem with aircraft utilizing a frequency not assigned to a station on that particular airport, is that the brief RF signals (microphone clicks) occur on a frequency which, in many areas, is assigned at a neighboring airport. Thus the 3 to 7 microphone clicks used by most of the subject lighting systems may interfere with and annoy those using another facility. This appears to be the primary reason why an airport operator selects a frequency not assigned at his airfield. Another disadvantage in employing a frequency not assigned to the particular airport is that the pilot must switch to a frequency other than that normally monitored when approaching or departing the airport. FAA recommends that approaching and departing aircraft, as a standard practice, monitor the appropriate field radio facility when within 15 miles of the airport. This aural alertness is considered to enhance safety of flight. It would seem reasonable that aircraft utilize the frequency customarily monitored in the vicinity of a given airport to operate the airport's lights, or at a minimum use another frequency assigned at the airport in order to avoid interferring with or merely annoying those using another airport.

5. In the rare situation where an airport without air-ground communications on any of the available frequencies installs a radio controlled lighting system, aircraft will be permitted to utilize any one of the aviation instructional frequencies for system activation.

Proposal

6. Accordingly, we propose to amend § 87.183 of the rules to permit aircraft to transmit brief keyed RF signals for the control of airport lights only on an authorized frequency assigned to an aeronautical station located at the concerned airport. An editorial change in Section 87.201 will also result.

7. This proposed amendment of the Commission's rules, as set forth in the attached Appendix, is issued pursuant to the authority contained in Sections 4(i) and 303(r) of the Communications Act of 1934, as amended.

Comments

8. Pursuant to the applicable procedures set forth in § 1.415 the Commission's rules, interested persons may file comments on or before September 10, 1979, and reply comments on or before September 20, 1979. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. In reaching its decision, the Commission may take into consideration information and ideas not contained in the comments, provided that such information or a writing indicating the nature and source of such information is placed in the public file, and provided that the fact of the Commission's reliance on such information is noted in the Report and Order.

9. In accordance with the provisions of § 1.419 of the Commission's rules, an original and 5 copies of all statements, briefs, or comments shall be furnished the Commission. All comments received in response to this Notice of Proposed Rule Making will be available for public inspection in the Docket Reference Room in the Commission's Office in Washington, D.C.

Questions

10. Regarding questions on the matters covered in this document contact Robert McNamara, (202) 632-7175.

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix

Part 87 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

PART 87—AVIATION SERVICES

1. In Section 87.183 paragraph (cc) is amended to read as follows:

§ 87.183 Frequencies available.

* * * * *

(cc) Brief keyed RF signals (keying the transmitter by momentarily depressing the microphone "push-to-talk" button without voice or audio tone transmission) may be transmitted from aircraft for the control of airport lights on the frequencies specified below, provided the frequency is assigned to a station at the airport and no harmful

[1] Essentially, air traffic control frequencies, aeronautical advisory frequencies and aviation instructional frequencies may be used for control of airport lights by aircraft. Air traffic control frequencies are utilized for communications between aircraft and the Federal Aviation Administration (FAA) relating to the safe, orderly and expeditious movement of air traffic. Aeronautical advisory frequencies provide for communications between private aircraft and non-Government ground facilities (aeronautical advisory stations, also called unicoms) primarily concerning runway conditions, weather information, types of fuel available and on a secondary basis communications pertaining to efficient portal-to-portal transit, such as requests for ground transportation and food. Aviation instructional frequencies are used for communications between aircraft and non-Government ground stations (aviation instructional stations) for the necessities of pilot training, and coordination of soaring and ballooning activities.

interference is caused to voice communications:

(1) Any air traffic control frequency listed in § 87.183(i);

(2) Any air traffic control frequency or aeronautical advisory frequency listed in § 87.201(b) or (c): and

(3) Any aviation instructional frequency (121.95, 123.3 and 123.5 MHz) listed in § 87.341.

In the event that no station utilizing any of the available frequencies is located at the concerned airport, aircraft may use one of the aviation instructional frequencies for the control of airport lights.

§ 87.201 [Amended].

2. The last paragraph in § 87.201(c), beginning with "In addition . . .," is deleted.

[FR Doc. 79-24759 Filed 8-9-79; 8:45 am]
BILLING CODE 6712-01-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1065

[Ex Parte No. 55 (Sub-No. 8B)]

Motor Common Carriers of Property, Routes and Services

AGENCY: Interstate Commerce Commission

ACTION: Notice of denial of petition to modify the gateway regulations at 49 CFR 1065.

SUMMARY: The Commission is denying the joint petition filed by three conferences of the American Trucking Association, which sought modification of the application of the gateway elimination rules (49 CFR 1065) to proceedings for the transfer or acquisition of motor carrier authority. The petitioners and those commenting in support of the petition failed to demonstrate that the modification sought would be in the public interest. In denying the petition the Commission is clarifying the effect of the gateway elimination rules where a buyer acquires two pieces of irregular route authority which the seller was permitted to tack pursuant to the "300 mile exemption", 49 CFR 1065.1(b). The buyer will be permitted to continue to provide this service, but is required to indicate the ability to perform this service in its application to acquire the irregular routes.

FOR FURTHER INFORMATION CONTACT: Michael Erenberg, 202-275-7245.

SUPPLEMENTARY INFORMATION:

The Petition

The Common Carrier Conference-Irregular Route, Steel Carriers Conference, and Heavy-Specialized Carriers Conference of the American Trucking Association, Inc., seek modification of the application of the Gateway Elimination Rules (49 CFR 1065) as they apply to acquisitions under 49 U.S.C. 11343 [formerly section 5(2) of the Interstate Commerce Act] and transfers under 49 U.S.C. 10926 [formerly section 212(b)].

They request that public convenience and necessity *not* be a requirement for the joinder of the unified rights where the circuity through joinder would not exceed 20 percent. Secondly, petitioners want the Commission to apply the "300 mile exemption" to gateways resulting from acquisitions and mergers in which the applications were filed after November 23, 1973.

Notice of the petition was published in the Federal Register on May 1, 1978, at 43 FR 18581. Twenty-two statements were filed in response to the public notice.

Background

As a result of the Commission's decision in *Gateway Elimination,* 119 M.C.C. 170 and 530 (1974), tacking of certificates issued to irregular route carriers pursuant to applications filed after November 23, 1973 is prohibited unless an application is filed under 49 U.S.C. 10922 demonstrating that public convenience and necessity requires the direct service. As to gateway applications filed before then, and where the circuity sought to be eliminated was 20 percent or less of the total distance through the gateway, a showing of public convenience and necessity was not required.

In a policy statement concerning gateway eliminations as they relate to finance applications [see 39 FR 42958, December 9, 1974], the Commission issued procedures requiring the parties in finance applications filed after November 23, 1973, to file a directly related gateway elimination application. These procedures were upheld in *Common Carrier Conference-Irregular Route* v. *United States,* 534 F.2d 981 (D.C.Cir. 1976), *cert. denied* 429 U.S. 921 (1976).

The Comments

Of the 22 comments filed, 1 was received from the U.S. Department of Justice, 5 from attorneys and practitioners, 4 from motor carrier organizations, and 12 (representing 19 separate parties) from motor carriers. These comments address five basic issues.

I. Competition

One party argues that adoption of the proposals will increase competition in the motor carrier industry because the elimination of a number of remaining restrictions against tacking will permit motor carriers to provide a through service which is presently prohibited. It is argued that the rationale for the 20 percent presumption used in the gateway rules remains applicable today. It is further asserted that an increase in competition will result and that this is good since 98 of the largest motor carriers earned an average return on equity of 19.66 percent in calendar year 1977.

In opposition to these arguments, it is asserted that the reason behind the gateway elimination proceeding was not to create additional services, but rather to conserve fuel. Further, it is argued that the E letter-notice procedures permitted efficient performance of services being held out to the public; however, the application of the 20 percent test to newly acquired authority would amount to the authorization of new service without proof of need. Similarly, adoption of the proposals would create new certificated rights severable by sale without proof of public need. It is also contended that it is improper to use the 20 percent presumption as to acquisitions and mergers because such applications require proof of the actual rendition of services.

II. Deterrence

Two parties assert that the application of the public convenience and necessity criteria, regardless of the amount of circuity, is a major deterrent to the filing of acquisition applications. These parties argue that rather than go through the application process, carriers are willing to continue to interline over circuitous routes.

Opposing parties argue that the *McNicholas* case (122 M.C.C. 786) makes it clear that a harmonious result will be reached as between an acquisition and a directly related gateway elimination application as long as the parties meet their liberalized burdens of proof in the acquisition application. Consequently, no deterrence in filing acquisition applications should be present. Another party contends that under the proposals any carrier could publish a tariff, hold out interline service, never move a load, and file the necessary applications based on the 20 percent presumption.

This result would authorize new servicees without any proof of public need.

III. Discrimination

A number of parties assert that the gateway elimination rules discriminate in favor of regular route carriers because an irregular route carrier seeking to acquire an adjacent irregular route certificate has the burden of proving public convenience and necessity for the direct service resulting from elimination of the gateway formed even where no circuitry exists. No such burden is placed on the regular route carrier due to the automatic operation of the Superhighway and Deviation Rules at 49 CFR 1042.

However, it is noted that unlike irregular route carriers, regular routes carriers are not prohibited from tacking. This is because, in some instances, (such as consolidated less-than-truckload operations), circuitous operations by regular route carriers are entirely practical and efficient. It is argued the petitioners would have the Commission abolish the distinction between regular and irregular route carriers.

IV. Arbitrariness

Several parties assert that the rationale behind the gateway elimination rules is as applicable today as it was years ago. Consequently, the fact that the Commission used the 20 percent rationale years ago, but refuses to use it now, is an arbitrary and unwarranted action. One petitioner argues that an application should only have to demonstrate the existence of a tariff plus the holding out of interline service to be able to use the 20 percent presumption. This is all that was required for the holders of irregular route certificates issued pursuant to applications filed before November 23, 1973. It argues that this difference in treatment is without a rational basis.

V. 300 Mile Exemption

Most parties argue that a buyer who seeks to purchase two pieces of irregular route authority under which tacking operations are being conducted pursuant to the "300 mile exemption" of 49 CFR 1065.1(b) should be permitted to continue such tacking (and eliminate the gateway). The reasons given are that (1) there is no sound reason to deny a buyer the right to continue to conduct operations in the same manner as the seller, (2) 300 mile operations did not require the filing of letter-notices; consequently, there is no record of the seller holding any such authority, and (3) to do otherwise constitutes a confiscation of operating rights without compensation or due process.

Discussion and Conclusions

Since the effective date of the gateway regulations, tacking of irregular route authorities (with certain defined exceptions) has been prohibited. This applies to all certificates issued pursuant to applications filed after November 23, 1973, however acquired (for instance, by extension application or by purchase transaction). The *Gateway Elimination* rulemaking, *Supra*, fully explained the rationale behind the rules, the backqground of tacking, the exceptions to the rules, and the procedures to be used. One of these was the F letter-notice procedure in situations where the circuity to be eliminated was under 20 percent. E letter-notices "grandfathered in" tacking operations which had been held out to the public since approximately 1940. In 1974, these procedures were necessary to preserve the competitive conditions then existing. Virtually all E letter-notices (over 30,000) have been processed.

The various gateway notices and proceedings have made it clear that in a finance context before a gateway may be eliminated a tacking point must be created in an application to purchase operating rights. Many of these acquisition applications occur when the seller and buyer have conducted interline operations which the buyer as a result of the proposed transaction seeks to conduct by itself. The buyer may simultaneously file a gateway elimination application to undo any circuity in the interline operation. The applications will be processed together. Under the Commission's decision in *J. V. McNicholas Transfer Co.–Control-Tom's Exp.*, 127 M.C.C. 309 (1978), and Appellate Division 3's prior decision in the same proceeding (122 M.C.C. 786 (1977)), if the acquisition application is approved, a more liberalized standard of proof will apply to the gateway elimination application.

Both applications are necessary now because new operations may not be conducted by a single carrier without meeting the dictates of 49 U.S.C. 10922, even if the new operations result from a purchase transaction authorized under 49 U.S.C. 11344. We have attempted to make this dual analysis as simple and harmonious as possible within the statutory framework.

Under petitioners' proposal, the same rationale that the Commission used in arriving at the 20 percent figure in 1974 would apply today. Carrier operations resulting from the purchase of certificate(s) involving 20 percent or less circuity would be presumed to have the ability to compete effectively with direct-line operators and could be authorized without demonstrating public convenience and necessity. However, that rationale, and the E letter-notice procedure, were relevant only in the context of "grandfathering in" prior carrier capabilities to tack. The gateway regulations forbid tacking and its resulting circuity. The development of gateway regulations did not constitute "a revocation of operating authority" without due process. Since 1974, all motor carriers have been on notice that if they wish to eliminate gateways, regardless of the degree of circuity, a gateway elimination application pursuant to the requirements of 49 U.S.C. 10922 is necessary. Petitioners seek to eliminate that statutory burden.

There are two ways to expand lawful operations: (1) apply for new operating authority or (2) purchase authority from another carrier. In either case, the gateway effect is the same: one carrier holds two operating rights it seeks to combine without traversing a common point of service. A single statutory standard, public convenience and necessity, now applies to the elimination of gateways. The reason is that new services require operating authority, and the authority must come from an application under 49 U.S.C. 10922 regardless of the amount of circuity involved.

There is no valid statutory way of disregarding the public convenience and necessity standard, either as to operations meeting the 20 percent circuity amount, or as to operations of less than 300 miles [see Ex Parte No. 55 (Sub. No. 28), *Motor Common Carriers of Property—Routes and Service—Petition to Institute a Rulemaking Proceeding to Amend Existing Regulations and Eliminate Circuitous Route Restrictions*, order entered January 12, 1978, and served January 23, 1978 (not printed), and also see No. MC-F-12120, *Gale Delivery, Inc.—Purchase (Portion)—Express/S.D.Z., Inc., Irving Klein, Trustee*, order entered November 16, 1976 and served November 23, 1976, by Division 3 (not printed)].

I. Competition

Gateway elimination means providing direct service rather than circuitous service. It does not involve the provision of new service. Those supporting petitioners' position argue that the proposal will permit carriers to offer more efficient through services. What is actually involved is a carrier's ability to render *new* services not previously

performed. We believe our present procedures conform to statutory requirements.

Those procedures have been upheld by the courts. See *Common Carrier Conference—Irregular Route* v. *United States, supra.* In that case the court stated: "The requirement of a showing of public convenience and necessity, at least where because of tacking the application initiates what amounts to a new service for the carrier involved is not contrary to the scheme of the Act, in our view, and we have no basis in the record before us for concluding either that this is unreasonable on its face or that it will be unreasonably applied." Our present procedures separate the public interest standard of 49 U.S.C. 11344 from the public convenience and necessity standard of 49 U.S.C. 10922. They offer the most efficient administrative method for handling a matter requiring two different statutory findings.

II. Deterrence

The decisions in *McNicholas, supra,* reflect the Commission's intention of handling, to the extent possible, a directly related gateway elimination application so as not to negate the benefits of the transaction proposed in a finance application. Consequently, our present requirements should not constitute a hindrance to finance transactions, particularly in light of the Commission's liberal approach in deciding directly related gateway elimination applications.

III. Discrimination

When a regular route carrier acquires another piece of regular route authority, that authority *must* be tacked to provide scheduled service *from and to* all points that the carrier is authorized to serve regardless of the amount of circuity involved. This is the common carrier obligation of regular route carriers under 49 U.S.C. 11101. Regular route carriers are the segment of the motor carrier industry that handles the great bulk of LTL traffic. Circuitous regular-route operations often are more efficient than delivering individual LTL shipments directly. When irregular route carriers were permitted to tack their authorities on call and demand, they were not required to tack. See *Gateway Elimination, supra,* at 179.

Because of their *obligation* to serve, regular route carriers receive a benefit—the Superhighway and Deviation Rules—which permit them to perform their scheduled obligations more efficiently. Because of their *ability* to serve, irregular route carriers receive a benefit—the Gateway Elimination rules—which permit them to perform their call and demand services more efficiently. The benefits are different because the authority, operations, and obligations of these carriers are different.

When a regular route carrier applies for *new* authority, it must demonstrate that the public convenience and necessity requires the service. When a regular route carrier wishes to operate in a less circuitous manner over certificates it already holds, it may either take advantage of the Superhighway and Deviation Rules or file an alternate route application for operating authority where it has the burden of proving public convenience and necessity. The Superhighway and Deviation Rules permit regular route carriers to provide service *for which they have already proven a public need* more efficiently. Petitioners' proposal would permit an applicant to provide service as to operations for which a public need was never shown. This, we believe, points out the essential fallacy of the supporting parties' discrimination argument.

IV. Arbitrariness

As we stated before, the purpose of the cut-off date was to "grandfather in" tacking operations which had previously been held out to the public. The cut-off date was necessary because the Commission did not want to restrict unfairly those carriers who had filed applications prior to the cut-off date relying on the tackability of the rights they sought to acquire. See *Gateway Elimination, supra,* at 553. Consequently, adequate notice was given carriers as to what authority would and would not be tackable. Carriers have been on notice that tacking after the effective date of the rules is prohibited, unless the appropriate application is filed.

As we have already pointed out, the underlying rationale and purpose of the gateway rules (and the 20 percent presumption) applied to a different factual context than that to which petitioners would now have us apply it. Since the effective date of the gateway rules, irregular route motor carriers cannot eliminate gateways (perform new services) unless they first show a public need. That is a prerequisite to consideration of the competitive impact issue. Petitioners would have us put the cart before the horse.

Grandfather cut-off dates are usually somewhat arbitrary. However, our choice of the cut-off date was based on a number of equitable considerations. See *Gateway Elimination, supra,* at 195 and 553.

The mere existence of an outstanding tariff plus the holding out of an interline service (even though no traffic may have moved under the interline) cannot be sufficient for motor carriers to justify gateway elimination. The current rules for handling acquisition and directly-related gateway elimination proposals are not arbitrary, but are based on the necessity to prove a public need as to new services, on the necessity to prove substantiality of pas operations to meet an applicant's burden of proof as to the issue of dormancy in finance applications, and on the factual and historical context which led to the gateway regulations.

V. 300 Mile Exemption

We are persuaded by the arguments advanced by the parties that a buyer should be able to perform the same services that a seller is performing under the "300 mile exemption" of the gateway regulations. These are operations for which no E letter-notice filings were originally required. Consequently, where a seller holds two certificates issued pursuant to applications pending on or before November 23, 1973, where each certificate authorizes irregular route service, and where the movement resulting from tacking the two certificates is 300 miles or less, a buyer acquiring both certificates will also be allowed to continue tacking of the two certificates as long as the application requirements of 49 U.S.C. 11343 are met. The application must expressly note this tacking authority. A certificate issued in this instance will state expressly that such tacking is permitted. If, on the other hand, a buyer seeks to join an irregular route to be acquired with its own irregular route, the buyer must seek to eliminate the involved gateways through a directly related gateway application.

It is ordered, The petition is denied.

Decided: July 25, 1979.

By the Commission, Chairman O'Neal, Vice Chairman Brown, Commissioners Stafford, Gresham, Clapp and Christian. Vice Chairman Brown not participating in the disposition of this proceeding. Commissioners Gresham and Christian dissenting.

Agatha L. Mergenovich,

Secretary.

Commissioner Gresham, dissenting:

The majority's decision is both unpersuasive and unrealistic. Some of the conclusions in this decision appear to result from intellectually strained interpretations both of legal and factual matters.

Unlike the majority, I am convinced that the 20 percent rule and the 300 mile exemption are equally as valid today as they were several years ago when they were adopted by the Commission. As such, their continued applicability to gateway elimination applications which are directly related to finance cases is more than simply warranted—it it imperative. This decision unfortunately epitomizes the "head-in-the-sand" approach to a problem because it fails to give serious or adequate weight to the current and continuing energy problems of this country.

Finally, obviously I do not believe that the continued application of these previously adopted gateway guidelines to finance cases will result in ruinous or destructive competition. If I believe otherwise, I would fight long and vigorously for their demise.

Commissioner Christian, dissenting:

I believe that the majority has missed an important opportunity to simplify our procedures and eliminate unnecessary regulatory delay.

The petitioners' proposal is remarkably simple. They want the Commission to apply the 20 percent rule and the 300 mile exemption to motor carrier acquisitions in lieu of requiring the filing of a directly related application for eliminating a gateway. The rule and the exemption are rational, judicially approved substitutes for adjudicating applications which meet their standards. It seems perfectly logical to me for the Commission to avail itself of the rule and the exemption and eliminate the need to evaluate an application which invariably would be granted.

The idea that case by case determination of public convenience is the only option open to the Commission under 49 U.S.C. § 10922 is preposterous. Certainly, the decision of the court in *Chemical Leaman Tank Lines, Inc.* v. *United States*, 368 F. Supp. 925 (D. Del. 1973) and our own decision in *Used Household Goods-Pack-and-Crate Operation*, 131 M.C.C. 20 (1978) belie that idea. The dictates of 49 U.S.C. § 10922 can and have been satisfied by general findings of public convenience and necessity. The 20 percent rule and the 300 mile exemption certainly qualify as valid general rules. The decision is wrong in asserting that we are relegated to case by case adjudications by statute.

For reasons which escape me, the majority has chosen to hide behind its own gateway elimination rules rather than logically extend them to motor carrier finance transactions. The fact that our rules have been upheld by the courts is a good reason to extend their application to situations where they fit. I see no reason for an agency with limited resources to demand the filing of applications when the proposed rules offer us an opportunity to avoid wasteful and time-consuming work.

[FR Doc. 79-24665 Filed 8-9-79; 8:45 am]
BILLING CODE 7035-01-M

MARINE MAMMAL COMMISSION

[50 CFR 540]

Executive Order 12065; Implementing Regulations

AGENCY: Marine Mammal Commission.

ACTION: Proposed rule.

SUMMARY: Section 5-402 of Executive Order 12065, relating to national security information, requires that regulations establishing agency information security policy and guidelines for systematic declassification review shall be published in the Federal Register. This notice proposes to adopt a new Part 540 of 50 CFR, consisting of the regulations set forth below, to implement the policy, program, and procedures of the Executive Order as they apply to the Commission.

DATES: Written comments may be submitted on or before September 10, 1979.

ADDRESS: All comments should be addressed to: Executive Director, Marine Mammal Commission, Room 307, 1625 I Street, NW., Washington, D.C. 20006.

FOR FURTHER INFORMATION CONTACT: Robert Eisenbud, General Counsel, Marine Mammal Commission, (202) 653-6237.

It is proposed to amend Chapter V, Marine Mammal Commission, of 50 CFR by adding a new Part 540 as follows:

PART 540—INFORMATION SECURITY

Sec.
540.1 Policy.
540.2 Program.
540.3 Procedures.

Authority: Executive Order 12065.

§ 540.1 Policy.

It is the policy of the Marine Mammal Commission to act in accordance with Executive Order 12065 in matters relating to national security information.

§ 540.2 Program.

The Executive Director is designated as the Commission's official responsible for implementation and oversight of information security programs and procedures. He acts as the recipient of questions, suggestions, and complaints regarding all elements of this program, and is solely responsible for changes to it and for insuring that it is at all times consistent with Executive Order 12065. The Executive Director also serves as the Commission's official contact for requests for declassification of materials submitted under the provisions of Executive Order 12065, regardless of the point of origin of such requests. He is responsible for assuring that requests submitted under the Freedom of Information Act are handled in accordance with that Act and that declassification requests submitted under the provisions of Executive Order 12065 are acted upon within 60 days of receipt.

§ 540.3 Procedures

(a) *Mandatory Declassification Review.* (1) All requests for mandatory review shall be handled by the Executive Director or his designee. Under no circumstances shall the Executive Director refuse to confirm the existence or non-existence of a document requested under the Freedom of Information Act or the mandatory review provisions of Executive Order 12065, unless the fact of its existence or non-existence would itself be classified under Executive Order 12065.

(2) Requests for declassification shall be acted upon within 60 days of receipt, providing that the request reasonably describes the information which is the subject of the request for declassification.

(3) In light of the fact that the Commission does not have original classification authority and national security information in its custody has been classified by another federal agency, the Executive Director will refer all requests for national security information in its custody to the federal agency that classified it or, if the agency that classified it has either ceased to exist or transferred the information in conjunction with a transfer of functions, to the appropriate federal agency exercising original classification authority with respect to the same subject, for review and disposition in accordance with Executive Order 12065 and that agency's regulations and guidelines.

(b) *Exceptional cases.* When an employee or contractor of the commission originates information that is believed to require classification, the Executive Director shall insure that it is protected in accordance with Executive Order 12065 and shall promptly transmit it under appropriate safeguards to the

agency with appropriate subject matter jurisdiction and classification authority for review and action in accordance with the Order and that agency's regulations and guidelines. The Executive Director shall transmit the information to the Director of the Information Security Oversight Office for his determination if it is not clear what agency has the appropriate subject matter jurisdiction and classification authority with respect to that information.

(c) *Derivative classification.* Derivative classification markings shall be applied to information that is in substance the same as information that is already classified, in accordance with Executive Order 12065, Section 2-1, unless it is determined through inquiries made to the originators of the classified information or other appropriate persons that the paraphrasing, restating, or summarizing of the classified information obviates the need for its classification, in which case the information shall be issued as unclassified or shall be marked appropriately. After verifying the current level of classification so far as practicable, paper copies of such derivatively classified information shall be marked so as to indicate: (1) The source of the original classification; (2) the identity of the commission employee originating the derivatively classified document; (3) the dates or events for declassification or review for declassification indicated on the classified source material; and (4) any additional authorized markings appearing on the source material.

(d) *Handling.* All classified documents shall be delivered to the Executive Director or his designee immediately upon receipt. All potential recipients of such documents shall be advised of the names of such designees and updated information as necessary. In the event that the Executive Director or his designee is not available to receive such documents, they shall be turned over to the Administrative Officer and secured, unopened, in the combination safe located in the Commission offices until the Executive Director or his designee is available. Under no circumstances shall classified materials that cannot be delivered to the Executive Director or his designee be stored other than in the designated safe.

(e) *Reproduction.* Reproduction of classified material shall take place only in accordance with Executive Order 12065, Section 4-4, and any limitations imposed by the originator. Should copies be made, they are subject to the same controls as the original document. Records showing the number and distribution of copies shall be maintained, where required by the Executive Order, by the Administrative Officer and the log stored with the original documents. These measures shall not restrict reproduction for the purposes of mandatory review.

(f) *Storage.* All classified documents shall be stored in the combination safe located in the Commission's offices. The combination shall be changed as required by ISOO Directive No. 1, Section IV-F-5-a. The combination shall be known only to the Executive Director and his designees with the appropriate security clearance.

(g) *Employee education.* All employees who have been granted a security clearance and who have occasion to handle classified materials shall be advised of handling, reproduction, and storage procedures and shall be required to review Executive Order 12065 and appropriate ISOO directives. This shall be effected by a memorandum to all affected employees at the time these procedures are implemented. New employees will be instructed in procedures as they enter employment with the Commission.

(h) *Agency terminology.* The use of the term "Top Secret", "Secret", and "Confidential" shall be limited to materials classified for national security purposes.

Dated: August 6, 1979.

John R. Twiss, Jr.,

Executive Director.

[FR Doc. 79-24773 Filed 8-9-79; 8:45 am]

BILLING CODE 6820-31-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[50 CFR Parts 611 and 672]

Gulf of Alaska Groundfish; Advance Notice of Proposed Rulemaking and Intention To Prepare a Secretarial Amendment to a Fishery Management Plan

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Advance notice of proposed rulemaking and of intention to prepare a Secretarial amendment to extend the Fishery Management Plan (FMP) for Gulf of Alaska groundfish through October 31, 1980.

SUMMARY: The Assistant Administrator for Fisheries, NOAA (Assistant Administrator) intends to begin immediate preparation of a Secretarial amendment to the FMP for Gulf of Alaska Groundfish, and to propose implementing regulations to conserve and manage the fishery through October 31, 1980. The amendment process will include reassessment and possible amendment of the specifications of optimum yield (OY), domestic annual harvest (DAH), domestic annual processing (DAP), reserves, and total allowable level of foreign fishing (TALFF) for the 1979-80 fishing year.

DATES: Comments which are received before August 20, 1979, will be considered in the preparation of the plan amendment proposal. Comments received after August 20, 1979, but before October 20, 1979, will be treated as comments on the proposed amendment. No comments will be received after October 20, 1979.

ADDRESS: Comments should be submitted to: Roland Finch, Division Chief, Division of Plan Review, National Marine Fisheries Service, Washington, D.C. 20235, Telephone: 202-634-7449.

FOR FURTHER INFORMATION CONTACT: Mr. Roland Finch (202) 634-7449.

SUPPLEMENTARY INFORMATION:

a. Background

On November 14, 1978, NOAA promulgated final regulations to implement the FMP for Gulf of Alaska groundfish (43 FR 52709; see also 43 FR 17244, April 21, 1978). The FMP and implementing regulations are effective for the fishing year ending October 31, 1979. The North Pacific Fishery Management Council (Council) which has responsibility under the Fishery Conservation and Management Act, as amended (the Act) for preparation of management plans for the Alaska region, has not submitted a plan amendment to continue conservation and management of Gulf of Alaska groundfish resources through the 1979-80 fishing year. Failure to regulate the fishery beginning November 1, 1979, would result in the cessation of foreign fishing and termination of permits to foreign processing vessels for receiving U.S. harvested fish at sea.

On July 31, 1979, the Assistant Administrator made a finding under section 304(c)(1)(A) of the Act and authority delegated by the Secretary of Commerce that: (1) the Council has failed to submit, after a reasonable period of time, a necessary amendment to the FMP; and (2) the fishery requires conservation and management. Therefore, the Assistant Administrator is preparing a Secretarial amendment to

avoid the unnecessary social and economic disruption which would result from cessation of foreign fishing and joint venture operations, and to help assure full utilization of available fishery resources.

Because of the time constraints imposed by the November 1, 1979 deadline, the Administrator has authorized (under Executive Order 12044) a 45 day public comment period on the amendment and proposed implementing regulations. However, in order to assure the maximum public participation in preparation of the amendment and proposed regulations, the Assistant Administrator is soliciting comments, particularly on the issues outlined in part b, until October 20, 1979. This will give interested parties the greatest possible amount of time to comment in light of the conservation and management requirements of the resources.

b. Issues To Be Considered

During the course of the 1978–79 fishing year, the Council submitted, and the Assistant Administrator approved, six amendments to the FMP. (Amendment No. 1)—Final regulations, 43 FR 34825, August 7, 1978; Amendment No. 2—Final regulations, 43 FR 46349, October 6, 1978; Amendment No. 3—Final regulations, 43 FR 47222, October 13, 1978; Amendment No. 4—Proposed regulations, 44 FR 40099, July 9, 1979; Amendment No. 5—Proposed regulations, 44 FR 42738, July 20, 1979; Amendment No. 6—Revised specifications of DAH and TALFF, to be published in the FR on August 9, 1979. These amendments revised and refined the FMP to correct oversights, incorporate new information and bring the FMP into conformity with amendments to the Act. While comments on all aspects of the FMP will be considered, the Assistant Administrator believes at this time that the types of management measures used for the fishery in 1978–79 will be suitable for 1979–80, and expects to focus attention primarily on the following issues:

1. *Reassessment of OY's, DAP's, DAH, and Reserves.* (a) Is each 1978–79 specification adequate for the 1979–80 fishing year?

(b) If not, to what extent should the specification be changed, and why?

2. *Joint Ventures.* Should fish harvested by U.S. vessels for sale to foreign buyers be included in the DAH or reserves?

3. *Reserve Releases.* Should the reserve release procedure established by the 1978–79 FMP be modified to allow release of reserves for apportionment to DAH as well as TALFF?

Should the number of reserve releases be raised or lowered, or the timing of releases modified?

4. *Processor Reporting.* What processor reporting requirements are necessary and appropriate for management of the groundfish fishery?

In preparing the amendment, the Assistant Administrator expects to rely on the information contained or documented in the FMP and 1978–79 amendments to the FMP, as well as available new information including (1) recent foreign and U.S. harvest statistics; (2) results of any recent processor surveys; (3) observer and other data submitted to the Secretary; and (4) comments submitted by interested parties in response to this Notice and the September Notice of Proposed Rulemaking.

Certain new processor information and other data relating to specifications of OY, DAH, TALFF and reserves may not become available until the end of August. The next meeting of the Council is scheduled for August 23–24, 1979. At this time, it is anticipated that the Council will receive public testimony on Gulf of Alaska issues and may adopt recommendations or plan amendments incorporating new information. The Assistant Administrator intends to publish the Secretarial amendment and proposed implementing regulations early in September, 1979. Comments received after August 20, 1979, will be considered during the September comment period. The record of the Council meeting on August 23–24, 1979, will also be considered by the Assistant Administrator during the September comment period.

(16 U.S.C. 1801 et seq.)

Signed this 7th day of August, 1979 at Washington, D.C.

Winfred H. Meibohm,

Executive Director, National Marine Fisheries Service.

[FR Doc. 79-24772 Filed 8-9-79; 8:45 am]

BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 44, No. 156
Friday, August 10, 1979

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Food Safety and Quality Service

Solicitation of Information; Mechanically Deboned Poultry; Extension of Comment Period

AGENCY: Food Safety and Quality Service, USDA.

ACTION: Solicitation of information: extension of comment period.

SUMMARY: On June 29, 1979, the Department published in the Federal Register (44 FR 37965) a notice announcing the availability of a study on the health and safety aspects of a mechanically processed product commonly referred to as mechanically deboned poultry (MDP). This notice advises that the Department is extending the comment period for 60 days.

DATE: Comments must be received on or before October 10, 1979.

ADDRESSES: Written comments and data must be sent, in duplicate, to the Executive Secretariat, Attn: Annie Johnson, Food Safety and Quality Service, U.S. Department of Agriculture, Room 3807, South Agriculture Building, Washington, D.C. 20250. Oral comments to Mr. Fried, (202) 447-6042.

FOR FURTHER INFORMATION CONTACT: Mr. Irwin Fried, Acting Director, Meat and Poultry Standards and Labeling Division, Compliance Program, Food Safety and Quality Service, U.S. Department of Agriculture, Washington, D.C. 20250, (202) 447-6042.

SUPPLEMENTARY INFORMATION: On June 29, 1979, the Department announced the completion and availability of a study on the health and safety aspects of the use of a mechanically processed product commonly referred to as mechanically deboned poultry (MDP). Additionally, the Department requested comments on the need for and nature of any possible additional regulatory action that might be required as a result of the study. Interested persons were given until August 13, 1979, to comment.

During that period, the Department was requested to extend the period of time within which data, views, or arguments may be submitted or oral views presented. The request stated that additional time was needed in order to gather the technical expertise and data that would be necessary to comment fully on the proposed rule. In particular, university assistance, not fully available during the summer months, is being sought.

Since the Department is interested in receiving meaningful data, the Department has determined that these circumstances are considered sufficient justification for extending the comment period for 60 days. In all other respects, the procedure specified in the notice published on June 29, 1979, shall continue to apply in this rulemaking proceeding.

Done at Washington, D.C., on: August 7, 1979.

Donald L. Houston,

Administrator, Food Safety and Quality Service.

[FR Doc. 79-24752 Filed 8-9-79; 8:45 am]

BILLING CODE 3410-DM-M

Forest Service

Lewis and Clark National Forest Grazing Advisory Board; Meeting

The Lewis and Clark National Forest Grazing Advisory Board will meet at 9:00 A.M., September 18, 1979, at the District Ranger's Office, Musselshell Ranger District, Harlowton, Montana.

The purpose of the meeting is to review the range improvements constructed in F.Y. 79 with the Advisory Board and look at some of the improvements in the field. The meeting will also explain how the ranger improvements scheduled are coordinated with the allotment management plans.

In the afternoon allotment plans and range improvements scheduled and proposed for F.Y. 80 will be reviewed with the Advisory Board.

An open discussion will then be held on Forest Service topics of interest to the Advisory Board.

The meeting will be open to the public. Persons who wish to attend should notify Darrol L. Harrison, Lewis and Clark National Forest, Box 871, Great Falls, Montana 59403. Telephone (406) 453-7678. Written statements may be filed with the Committee before or after the meeting.

The Committee has established the following rules for public participation: Must be recognized by the Chair.

Kenneth D. Weyers,

Forest Supervisor, Lewis and Clark National Forest.

July 31, 1979.

[FR Doc. 79-24647 filed 8-9-79; 8:45 am]

BILLING CODE 3410-11-M

Rural Electrification Administration

Extension of Time for Submission of Grant Application

AGENCY: Rural Electrification Administration.

ACTION: Notice of time extension for submission of grant application.

SUMMARY: REA hereby extends the deadline date for submission of applications for grant funds to partially finance the development of a direct buried field splice closure system for buried telephone cable (June 15, 1979; 44 FR 34619-23). The deadline date for receipt of applications is extended to 4:45 p.m. EDT, August 20, 1979. Applications not received in REA by that time will not be considered for award. The period for submission of applications has been extended since a number of potential applicants have stated that they did not receive the notice in time to prepare a proposal for submission. All other terms and conditions for the submission of proposals remain unchanged.

EFFECTIVE DATE: July 31, 1979.

FOR FURTHER INFORMATION CONTACT: Curtis L. Bryant, Chief, Management Analysis and Services Branch, Management Services Division, REA-USDA, Washington, D.C. 20250, telephone number (202) 447-6148.

Dated: August 6, 1979.

Susan T. Shepherd,

Acting Administrator.

[FR Doc. 79-24694 Filed 8-9-79; 8:45 am]

BILLING CODE 3410-15-M

CIVIL AERONAUTICS BOARD

[Dockets 31622 and 31625]

Michael David Beeler v. Delta Air Lines, Inc. and Morton Rosenberg v. Delta Air Lines, Inc.; Hearings

Notice is hereby given, pursuant to the provisions of the Federal Aviation Act of 1958, as amended, that hearings in the above-entitled proceedings will be held, in the order in which they are listed above, on September 11, 1979, commecning at 9:30 a.m. (local time) in Hearing Room 1003–C, 1875 Connecticut Avenue, N.W., Washington, D.C., before the undersigned.

Dated at Washington, D.C., August 6, 1979.

Joseph J. Saunders,

Administrative Law Judge.

[FR Doc. 79-24720 Filed 8-9-79; 8:45 am]

BILLING CODE 6320-01-M

[Dockets No. 33361, 32516, and 32517]

Former Large Irregular Air Service Investigation; Application of Arrow Airways, Inc.; Hearing

Notice is hereby given, pursuant to the provisions of the Federal Aviation Act of 1958, as amended, that a hearing in the above entitled proceeding will be held on September 5, 1979, at 9:30 a.m. (local time), in Hearing Room 1003 C, Universal Building North, 1875 Connecticut Avenue, N.W., Washington, D.C., before me.

For information concerning the issues involved and other details in this proceeding, interested persons are referred to the prehearing conference report served November 9, 1978, and other documents which are in the docket of this proceeding on file on the Docket Section of the Civil Aeronautics Board.

Dated at Washington, D.C., August 6, 1979.

Marvin H. Morse,

Administrative Law Judge.

[FR Doc. 79-24722 Filed 8-9-79; 8:45 am]

BILLING CODE 6320-01-M

Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits; Applications

Notice is hereby given that, during the week ended August 3, 1979 CAB has received the applications listed below, which request the issuance, amendment, or renewal of certificates of public convenience and necessity or foreign air carrier permits under Subpart Q of 14 CFR 302.

Answers to foreign permit applications are due 28 days after the application is filed. Answers to certificate applications requesting restriction removal are due within 14 days of the filing of the application. Answers to conforming applications in a restriction removal proceeding are due 28 days after the filing of the original application. Answers to certificate applications (other than restriction removals) are due 28 days after the filing of the application. Answers to conforming applications or those filed in conjunction with a motion to modify scope are due within 42 days after the original application was filed. If you are in doubt as to the type of application which has been filed, contact the applicant, the Bureau of Pricing and Domestic Aviation (in interstate and overseas cases) or the Bureau of International Aviation (in foreign air transportation cases).

Subpart Q Applications

Dated filed	Docket No.	Description
July 31, 1979	36250	Air Florida, Inc., c/o Robert P. Silverberg, Esq., Fisher, Gelband & Sunck, P. C., Suite 440, 2020 K Street, N.W., Washington, D.C. 20006. Application of Air Florida, Inc. pursuant to section 401 of the Act for amendment of its certificate of public convenience and necessity for route 197 authorizing it to engage in air transportation with respect to to passengers, property, and mail so as to grant it authority as follows: Between the terminal point Miami, Florida, and the coterminal points Columbus, Ohio, and Kansas City, Missouri. Answers due August 15, 1979.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 79-24723 Filed 8-9-79; 8:45 am]

BILLING CODE 6320-01-M

[Docket 32566]

Alice D. Wallace v. Capitol International Airways, Inc.; Hearing

Notice is hereby given pursuant to the provisions of the Federal Aviation Act of 1958, as amended, that a hearing in the above-entitled proceeding will be held on September 12, 1979, commencing at 9:30 a.m. (local time) in Hearing Room 1003–C, 1875 Connecticut Avenue, N.W., Washington, D.C., before the undersigned.

Dated at Washington, D.C., August 6, 1979.

Joseph J. Saunders,

Administrative Law Judge.

[FR Doc. 79-24721 Filed 8-9-79; 8:45 am]

BILLING CODE 6320-01-M

[Docket 35351; Order 79-8-14]

Wien Air Alaska, Inc.; Order Fixing Temporary Subsidy Rate

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. on the 2nd day of August, 1979.

On July 3, 1979, the Board adopted Show-Cause Order 79–7–15, proposing a temporary subsidy rate for Wien of $4,173,000 for annual periods effective April 16, 1979. Included in the order was the proposed method of payment based on miles flown and daily subsidy ceilings.

Wien filed a Notice of Objection to Order 79–7–15 on July 13, 1979. Its notice was directed only to a technical adjustment in the payment formula and contained no objection to the overall level. Wien noted that the mileage figures used to derive the subsidy rates per mile were overstated. The mileage, which was derived from Wien's 1978 monthly subsidy billings, included over 400,000 miles in all-cargo service (which we stated in Order 79–7–15 would not be eligible under the temporary rate) and over 400,000 miles in the Anchorage-Nome/Kotzebue markets, which are subsidy-ineligible. We have recomputed the mileage rates to reflect the adjustments noted above.

This action will grant the relief requested by Wien in its Notice. Since no other party filed a notice of objection during the prescribed period, we will finalize Wien's temporary rate without waiting for the 30-day answer period to expire.

Accordingly, pursuant to the Federal Aviation Act of 1958, as amended, particularly sections 102, 204, and 406, and the regulations promulgated in 14 CFR 302,

1. The fair and reasonable temporary rate of compensation to be paid Wien for the transportation of mail or for the provision of facilities and services for the transportation of mail by aircraft between the points between which the carrier has been, is presently, or hereafter may be authorized to transport

mail on a subsidy-eligible basis by its certificate of public convenience and necessity shall be the sum of (1) the service mail pay as heretofore and hereafter established by the Board, and (2) subsidy as follows: For each calendar month on and after April 16, 1979, in which subsidy-eligible miles authorized for the carriage of mail are flown, an amount determined by multiplying the appropriate rate stated below by the scheduled miles flown during the month:

Period of operation	Rate per mile	Daily subsidy rate ceiling
April-September 1979[1]	$.50957	$9,121.31
October 1979-March 1980[1]	$.83885	$13,757.14

[1] And succeeding annual period.

The total cumulative subsidy otherwise due and payable to Wien during any semiannual rate period pursuant to the table above shall be subject to the condition and limitation that it shall not exceed the daily rate as set forth above times the number of days in the semiannual rate period to date.

Provided, that the number of days in the month shall be based on the number of days in the calendar month exclusive of days on which operations are completely suspended due to a strike or other work stoppage; provided, further, that any days of partial reduction of operations due to strikes or other work stoppages, when departures flown by the carrier are less than 90 percent of the departures scheduled to be flown on such days shall be counted as a reduced number of days to be arrived at by multiplying the number of such days by the ratio of (a) the departures flown on such days divided by (b) the product of the departures scheduled to be flown on such days [2] times the system average performance factor of the carrier during the corresponding month of the prior year.

The scheduled revenue aircraft miles flown shall be computed on the direct airport-to-airport mileage between the points actually served on each revenue trip operated over Wien's subsidy-eligible routes pursuant to its flight schedules filed with the Board including all revenue trips operated as extra sections thereto.

The subsidy compensation proposed herein shall be in lieu of, and not in addition to, the subsidy compensation heretofore received by Wien, on and after April 16, 1979.

[2] Based on the carrier's official schedules on file with the Board on or as at the last day prior to the work stoppage.

2. This order shall be effective the date of adoption.

This order will be published in the Federal Register.

By the Civil Aeronautics Board.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 79-24724 Filed 8-9-79; 8:45 am]

BILLING CODE 6320-01-M

DEPARTMENT OF COMMERCE

Industry and Trade Administration

NASA Headquarters; Decision on Application for Duty Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR 301).

A copy of the record pertaining to this decision is available for public review between 8:30 a.m. and 5 p.m. at 666 11th Street, N.W. (Room 735) Washington, D.C.

Docket No. 79-00202. Applicant: NASA Headquarters, Washington, D.C. 20546. Article: Mark-I Microelectrophoresis Apparatus and Accessories. Manufacturer: Rank Brothers, United Kingdom. Intended use of article: The article is intended to be used to determine the precise mobility distribution of biological cells. Mobility distributions as a function of buffer properties (pH, ionic strength, misc. constituents) will be measured. Mobility variations of 0.01 micron cm/volt sec. need to be measured.

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States.

Reasons: The article provides precise measurement of temperature and its accurate control. The most closely comparable domestic instrument is the Zeta-Meter manufactured by Zeta-meter Incorporated (Zeta). The Department of Health, Education, and Welfare (HEW) advises in its memorandum dated June 7, 1979 that (1) the capability of the foreign article described above is pertinent to the applicant's intended purpose and (2) the Zeta-Meter does not provide the pertinent features.

For these reasons, we find that the Zeta-Meter is not of equivalent scientific value to the foreign article to which the foregoing application relates for such purposes as this article is intended to be used.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which is being manufactured in the United States.

[Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.]

Richard M. Seppa.

Director, Statutory Import Programs Staff.

[FR Doc. 79-24628 Filed 8-9-79; 8:45 am]

BILLING CODE 3510-25-M

Uniformed Services University; Decision on Application for Duty Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR 301).

A copy of the record pertaining to this decision is available for public review between 8:30 a.m. and 5:00 p.m. at 666-11th Street, N.W. (Room 735) Washington, D.C.

Docket No.: 79-00205. Applicant: Uniformed Services University of the Health Sciences, 4301 Jones Bridge Road, Bethesda, Md. 20014. Article: Model J-500A Automatic Recording Spectropolarimeter and Accessories. Manufacturer: Japan Spectroscopic Co., Japan. Intended use of article: The article is intended to be used for studies of proteins, nucleic acids, chemical carcinogens, and pharmaceuticals. Experiments will be conducted to obtain circular dichroism spectra of the proteins, carcinogen-bound nucleic acids, carcinogen and drug metabolites. The objectives pursued in these investigations are:

(i) To develop quantitative methods of assessing the structure of proteins in solution.

(ii) To study the absolute configuration of chemical carcinogen and drug metabolites.

(iii) To study the circular dichroic properties of chemical carcinogen-bound nucleic acids and nucleosides.

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent

scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States.

Reasons: The foreign article provides capabilities for circular dichroism (cd) spectra and rapid switching between right and left polarized light (50,000 times/second). The Department of Health, Education, and Welfare advises in its memorandum dated June 7, 1979 that (1) the capability of the foreign article described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign article for the applicant's intended use.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

Richard M. Seppa,

Director, Statutory Import Programs Staff.

[FR Doc. 79-24629 Filed 8-9-79; 8:45 am]

BILLING CODE 3510-25-M

University of California—Livermore Laboratory; Decision on Application for Duty Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR 301).

A copy of the record pertaining to this decision is available for public review between 8:30 A.M. and 5:00 P.M. at 666-11th Street, N.W. (Room 735) Washington, D.C.

Docket No.: 79-00183. Applicant: University of California, Lawrence Livermore Laboratory, P.O. Box 5012, Livermore, CA 94550. Article: (2) Two TSN 660 4 GHz Oscilloscopes. Manufacturer: Thomson-CSF, France. Intended use of article: The articles are intended to be used to diagnose real time x-ray data from imploding microballoons filled with a deuterium-tritium gas mixture. The articles will be used with the "Dante" experiment which consists of several windowless x-ray detectors with appropriate filtering such that different energy levels of x-ray spectrum are observed. This experiment will consist of ten channels of these detectors mounted on an evacuated beam tube and bolted to the Shiva target chamber.

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States.

Reasons: The foreign article provides a risetime (signal bandwidth) of ≤100 picoseconds. The National Bureau of Standards advises in its memorandum dated June 13, 1979 that (1) the capability of the foreign article described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign article for the applicant's intended use.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which is being manufactured in the United States.

[(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)]

Richard M. Seppa,

Director, Statutory Import Programs Staff.

[FR Doc. 79-24630 Filed 8-9-79; 8:45 am]

BILLING CODE 3510-25-M

University of Kentucky, et al.; Consolidated Decision on Applications for Duty Free Entry of Cryo-Microtomes

The following is a consolidated decision on applications for duty-free entry of cryo-microtomes pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR 301). (See especially Section 301.11(e).)

A copy of the record pertaining to each of the applications in this consolidated decision is available for public review between 8:30 a.m. and 5 p.m. at 666 11th Street N.W., (Room 735), Washington, D.C.

Docket No. 79-00150. Applicant: University of Kentucky, Department of Anatomy, MN 220, Medical Science Building, Lexington, KY 40536. Article: LKB 2258 PMV Cryomicrotome type 160 for 110V, 60Hz and accessories. Manufacturer: LKB Produkter AB, Sweden. Intended use of article: The article is intended to be used to section biological materials including long blocks of vertebrae from various species of monkeys, chiefly *Macacca mulatta* and *Cynomologus irus*. Investigations will be carried out on primate vertebral discs subjected to prolonged compression. The morphological correlates of compression will be studied directly from the sections. Other sections will be used for autoradiographs to assess disturbances in disc metabolism, and still others will be used to acquire samples for biochemical analysis of collagen metabolism. In addition, the article will be used to train graduate students in modern scientific research methods in the courses Anatomy 503, 529 (Independent Work). Application received by Commissioner of Customs: February 9, 1979. Advice submitted by the Department of Health, Education, and Welfare on: May 31, 1979. Article ordered: December 19, 1978.

Docket No.: 79-00185. Applicant: 6570 Aerospace Medical Research Laboratory, Biodynamics and Bioengineering Division (BB), Wright-Patterson AFB, OH 45433. Article: Cryo-Microtome, Model 2250-041 PMV, 450 MP with Accessories. Manufacturer: PMV, Palmstiernas Mekanishka Verkstad AB, Sweden. Intended use of article: The article is intended to be used for orthopaedic biomechanical studies of whole animals, human cadavers, anatomical segments and isolated biological tissue. Gross morphology and light microscopy examination of whole organs and cadaveric subjects to measure engineering properties and structural integration will be conducted. These investigations will be conducted to advance the knowledge of human kinesiology with specific emphasis on spinal biomechanics and material responsive properties. Application received by Commissioner of Customs: March 12, 1979. Advice submitted by the Department of Health, Education, and Welfare on: May 31, 1979. Article ordered: December 18, 1978.

Comments: No comments have been received in regard to any of the foregoing applications.

Decision: Applications approved. No instrument or apparatus of equivalent scientific value to the foreign articles, for the purposes for which the articles are intended to be used, was being manufactured in the United States at the time the articles were ordered.

Reasons: each foreign article provides capability for producing frozen sections equal to or greater than 150 x 160 millimeters. The Department of Health, Education, and Welfare (HEW) advises in its respectively cited memoranda that

the capabilities cited above are pertinent to the purposes for which each of the foreign articles in intended to be used. HEW also advises that it knows of no domestic instrument or apparatus of equivalent scientific value to any of the foreign articles to which the foregoing applications relate for such purposes as these articles are intended to be used.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to any of the foreign articles to which the foregoing applications relate, for such purposes as these articles are intended to be used, which was being manufactured in the United States at the time the articles were ordered.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

Richard M. Seppa,

Director, Statutory Import Programs Staff.

[FR Doc. 79-24634 Filed 8-9-79; 8:45 am]

BILLING CODE 3510-25-M

University of Rochester; Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR 301).

A copy of the record pertaining to this decision is available for public review between 8:30 A.M. and 5:00 P.M. at 666-11th Street, N.W. (Room 735) Washington, D.C.

Docket No.: 79-00158. Applicant: University of Rochester, University of Rochester Medical Center, Pediatrics Dept., 601 Elmwood Avenue, Rochester, NY 14642. Article: LACS Cell Separation Apparatus. Manufacturer: DeKoningh BV, Holland. Intended use of Article: The article is intended to be used for the separation of erythrocytes differing in cell volume during investigations designed to increase the knowledge concerning human development, treatment and prevention of disease.

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States.

Reasons: The foreign article provides the capability for separation of fetal from maternal cells by sedimentation in a chamber 30 × 50 × 600 millimeters. The Department of Health, Education, and Welfare advises in its memorandum dated May 31, 1979 that (1) the capability of the foreign article described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign article for the applicant's intended use.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientfic value to the foreign article, for such purposes as this article is intended to be used, which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Richard M. Seppa,

Director, Statutory Import Programs Staff.

[FR Doc. 79-24631 Filed 8-9-79; 8:45 am]

BILLING CODE 3510-25-M

University of Texas, et al.; Consolidated Decision on Applications for Duty-Free Entry of Scientific Articles

The following is a consolidated decision on applications for duty-free entry of scientific articles 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 thereunder as amended (15 CFR Part 301).

A copy of the record pertaining to each of the applications in this consolidated decision is available for public review between 8:30 a.m. and 5:00 p.m. at 666-11th Street NW., Washington, D.C.

Decision: Applications denied. Applicants have failed to establish that instruments or apparatus of equivalent scientific value to the foreign articles for such purposes as the foreign articles are intended to be used, are not being manufactured in the United States.

Reasons: Subsection 301.8 of the Regulations provides in pertinent part:

> The applicant shall *on or before the 20th* day following the date such notice, inform the Deputy Assistant Secretary whether it intends to resubmit another application for the same article for the same intended purposes to which the denied application relates. The applicant shall then resubmit the new application on or before the 90th day following the date of the notice of denial without prejudice to resubmission, unless an extension of time is granted by the Deputy Assistant Secretary in writing prior to the expiration of the 90-day period.
>
> * * * If the applicant fails, within the applicable time periods specified above, to either (a) inform the Deputy Assistant Secretary whether it intends to resubmit another application for the same article to which the denial without prejudice to resubmission relates, or (b) resubmit the new application, the prior denial without prejudice to resubmission shall have the effect of a final decision by the Deputy Assistant Secretary on the application within the context of Subsection 301.11. (Emphasis added.)

The meaning of the subsection is that should an applicant either fail to notify the Deputy Assistant Secretary of its intent to resubmit another application for the same article to which the denial without prejudice relates *within the 20-day* period, or fail to resubmit a new application within the 90-day period, the prior denial without prejudice to resubmission will have the effect of a final denial of the application.

None of the applicants to which this consolidated decision relates has satisfied the requirements set forth above, therefore, the prior denials without prejudice have the effect of a final decision denying their respective applications.

Subsection 301.8 further provides:

> * * * The Deputy Assistant Secretary shall transmit a summary of the prior denial without prejudice to resubmission, of the Federal Register for publication, to the Commissioner of Customs, and to the applicant.

Each of the prior denials without prejudice to resubmission to which this consolidated decision relates was based on the failure of the respective applicants to submit the required documentation, including a completely executed application form, in sufficient detail to allow the issue of "scientific equivalency" to be determined by the Deputy Assistant Secretary.

Docket No. 78-00420. Applicant: University of Texas at Arlington Purchasing Department, Arlington, Texas 76019. Article: Strut and Tie Apparatus. Date of Denial Without Prejudice to Resubmission: January 31, 1979.

Docket No. 78-00428. Applicant: Veterans Administration Hospital, 1400 V.F.W. Parkway, West Roxbury, MA 02132. Article: LKB 2088 Ultrotome V Ultramicrotome and Accessories. Date of Denial Without Prejudice to Resubmission: February 14, 1979.

Docket No. 79-00010. Applicant: University of Nebraska, Department of Agronomy, Lincoln, Nebraska 68583. Article: 2KW X-ray Diffraction System, Model 2028 and Accessories. Date of

Denial Without Prejudice to Resubmission: February 14, 1979.

Docket No. 79-00012. Applicant: Columbia University, Department of Chemistry Box 610, Havemeyer Hall, New York, NY 10027. Article: Excimer Laser, Model EMG 500. Date of Denial Without Prejudice to Resubmission: February 1, 1979.

Docket No. 79-00014. Applicant: University of Texas Medical School at Houston, Department of Pathology, P.O. Box 20708, Houston, Texas 77025. Article: Scanning Electron Microscope, Model JSM-35U and Accessories. Date of Denial Without Prejudice to Resubmission: March 16, 1979.

Docket No. 79-00015. Applicant: University of California, Los Alamos Scientific Laboratory, P.O. Box 990, Los Alamos, New Mexico 87545. Article: CO_2 Double Discharge Amplifier kit. Date of Denial Without Prejudice to Resubmission: February 26, 1979.

Docket No. 79-00053. Applicant: State University of New York at Stony Brook, Department of Physics, Stony Brook, N.Y. 11794. Article: Lead Glass Blocks. Date of Denial Without Prejudice to Resubmission: March 28, 1979.

Docket No. 79-00078. Applicant: Geophysical Institute, C. T. Elvey Bldg., University of Alaska, Fairbanks, AK 99701. Article: TG-4A Water Level Recorder. Date of Denial Without Prejudice to Resubmission: March 28, 1979.

(Catalog of Federal Domestic Assistant Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Richard M. Seppa,

Director, Statutory Import Programs Staff.

[FR Doc. 79-24620 Filed 8-9-79; 8:45 am]

BILLING CODE 3510-25-M

University of Wisconsin; Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR 301).

A copy of the record pertaining to this decision is available for public review between 8:30 A.M. and 5:00 P.M. at 666 11th Street, N.W. (Room 735), Washington, D.C.

Docket No. 79-00073. Applicant: University of Wisconsin School of Pharmacy, 425 N. Charter Street, Madison, Wis. 53706. Article: FX-90Q FT NMR Spectrometer and Accessories. Manufacturer: JEOL Ltd., Japan. Intended Use of Article: The article is intended to be used for the measurement of $T_{1\rho}$ (T_1 in the rotating frame) in a program devoted to the analysis of conformation and conformation dynamics of nucleotides and olignonucleotides via the phosphorus-proton and proton-proton nuclear Overhauser effects and phosphorous and carbon spin-lattice relaxation.

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States at the time the foreign article was ordered (May 3, 1978).

Reasons: The foreign article provides the capability for measuring T_{1rho}, the spin-lattice relaxation time in the rotating frame. The Department of Health, Education, and Welfare advises in its memorandum dated June 20, 1979 that (1) the capability of the foreign article described above is pertinent to the applicant's intended research and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign article for the applicant's intended use which was available at the time the foreign article was ordered.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which is being manufactured in the United States at the time the foreign article was ordered.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

Richard M. Seppa,

Director, Statutory Import Programs Staff.

[FR Doc. 79-24632 Filed 8-9-79; 8:45 am]

BILLING CODE 3510-25-M

University of Wisconsin; Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR 301).

A copy of the record pertaining to this decision is available for public review between 8:30 A.M. and 5:00 P.M. at 666-11th Street, N.W. (Room 735) Washington, D.C.

Docket No. 79-00176. Applicant: University of Wisconsin, Madison, WI 53706. Article: Cathode Ray Display Unit with P4 Phosphor and Trace Rotation Servo-Drive. Manufacturer: Peter Joyce, United Kingdom. Intended Use of Article: The article is intended to be used in determining the stimulus variables that govern human visual perception, and make inferences about the visual system.

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States.

Reasons: The foreign article provides magnetic deflection which permits rotation of the display (±180 degrees from the vertical) and fast "Y" scan of 125 kilohertz. The Department of Health, Education, and Welfare advises in its memorandum dated May 31, 1979 that (1) the capabilities of the foreign article described above are pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign article for the applicant's intended use.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

Richard M. Seppa,

Director, Statutory Import Programs Staff.

[FR Doc. 79-24633 Filed 8-9-79; 8:45 am]

BILLING CODE 3510-25-M

National Oceanic and Atmospheric Administration

Public Meeting on Draft Environmental Impact Statement on the Interim Convention on Conservation of North Pacific Fur Seals

AGENCY: National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce.

ACTION: Public meetings announcement.

SUMMARY: This Notice announces public meetings on the Draft Environmental Impact Statement on the Interim Convention on Conservation of North Pacific Fur Seals.

DATES: Public meetings will be held on: August 27, 1979 at 9:30 a.m., in Anchorage, Alaska; August 29, 1979, at 9:30 a.m., on St. Paul Island, Alaska; and September 6, 1979, at 9:30 a.m., in Washington, D.C.

ADDRESSES: Public meetings will be held at the following locations: 333 West 4th Avenue, Suite 32, Anchorage, Alaska, Town Hall, St. Paul Island, Alaska; and National Marine Fisheries Service Headquarters, Page Building No. 1, Penthouse, 2001 Wisconsin Avenue, NW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Mr. Douglas W. McCaleb, Office of International Fisheries Affaris, National Marine Fisheries Service, Department of Commerce, Washington, D.C. 20235, telephone (202) 634-7257.

SUPPLEMENTARY INFORMATIOIN: On July 27, 1979, the Draft Environmental Impact Statement (DEIS) on the Interim Convention on Conservation of North Pacific Fur Seals became publicly available. The purpose of the meetings hereby announced is to receive oral comments on the DEIS pursuant to preparation of a final environmental impact statement (FEIS). Written comments or questions should be submitted by September 10, 1979, to: Dr. William Aron, Director, Office of Marine Mammals and Endangered Species, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, D.C. 20235. One copy of these comments or questions should be sent to: Dr. Sidney R. Galler, Deputy Assistant Secretary for Environmental Affairs, Room 3425, U.S. Department of Commerce, Washington, D.C. 20230. The present Convention expires in October 1980. The FEIS will be used by the United States Government in determining an appropriate course of action for future conservation of North Pacific fur seals.

Dated: August 6, 1979.

Winfred H. Meibohm,

Executive Director, National Marine Fisheries Service.

[FR Doc. 79-24623 Filed 8-9-79; 8:45 am]

BILLING CODE 3510-22-M

Announcement of Preliminary List of Active Candidates for Marine Sanctuary Designation

AGENCY: Office of Coastal Zone Management (OCZM), National Oceanic and Atmospheric Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: On July 31, 1979, NOAA published regulations revising its procedures for nominating and designating marine sanctuaries (15 CFR Part 922, 44 FR 44831, Tuesday, July 31, 1979). These revised procedures call for NOAA to select, following specified procedures and criteria, Active Candidates for marine sanctuary designation from a List of Recommended Areas which contains those areas with at least some potential for designation. An initial list of Recommended Areas must be published within 3 months of the effective date of the regulation.

Section 922.23(d) of these regulations provides that sites under review prior to the effective date shall be considered Active Candidates if a Public Workshop has been held or scheduled to be held in the area or areas most affected to solicit the views of interested persons on whether the site should be further considered for designation and whether modification may be appropriate.

Accordingly the following sites are hereby named Active Candidates:

1. Flower Garden Banks (off Louisiana and Texas).
2. The Northern Channel Islands and Santa Barbara Island (off California).
3. Monterey Bay (off California).
4. Point Reyes/Farallon Islands (off California).
5. Looe Key (off Florida).
6. Georges Bank (off New England).
7. St. Thomas, Virgin Islands.

FOR FURTHER INFORMATION, CONTACT: For information and copies of the documents available on any site, contact, JoAnn Chandler, Director, Sanctuary Programs Office, Office of Coastal Zone Management, NOAA, Page Building 1, 3300 Whitehaven Street, NW., Washington, D.C. 20235.

Robert L. Carnahan,

Deputy Assistant Administrator for Administration.

August 3, 1979.

[FR Doc. 79-24706 Filed 8-9-79; 8:45 am]

BILLING CODE 3510-08-M

Evaluation of a Possible Marine Sanctuary Site in the Georges Bank Area—Notice of the Availability of an Issue Paper and the Conduct of a Public Workshop

AGENCY: Office of Coastal Zone Management (OCZM), National Oceanic and Atmospheric Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: A nomination of a marine sanctuary encompassing the entire Georges Bank area was submitted to the Secretary of Commerce on May 10, 1979, by the Gloucester Fishermen's Wives Association, Boat Owners United, Seafood Producers Association, New Bedford Fishermen's Union, Chatham Seafood Cooperative, Old Harbor Fish Company, National Coalition for Marine Conservation, and the Conservation Law Foundation of New England, Inc. Additionally, certain discrete areas within the larger area have been recommended for consideration.

Pursuant to Title III of the Marine Protection, Research and Sanctuaries Act of 1972, 16 U.S.C. 1431-1434, OCZM is evaluating the possibility of designating a marine sanctuary in the Georges Bank area and has declared it an Active Candidate. (See elsewhere in this issue.) As part of the evaluation, an Issue Paper has been prepared describing the distinctive resources of the potential site, the present and prospective uses, existing government programs aimed at protecting those resources, and alternative boundaries and regulations that might be utilized for a marine sanctuary.

The Issue Paper is being distributed to inform interested agencies and persons of the evaluation of the site and to gather comment and further information on the area. In order to facilitate such comment and to answer questions concerning the Issue Paper and the Marine Sanctuary Program, OCZM will conduct three public workshops the third week of August as described below.

Written and oral comments and information received in response to the Issue Paper and information gathered at the workshop will provide guidance on OCZM's decision whether to proceed to prepare a Draft Environmental Impact Statement on a specific proposal for a Marine Sanctuary at this site. To be fully considered in this decision, comments should be received by September 1, 1979.

DATES: The following *Public Workshops* have been scheduled:

August 22, 1979, The Ramada Inn, 1230 Congress St., Portland, Maine 04102, 6:00-10:30 p.m.

August 23, 1979, Gloucester City Hall, Dale Avenue, Gloucester, Mass. 01930, 6:00-10:30 p.m.

August 24, 1979, The Holiday Inn, 500 Hathaway Road, New Bedford, Mass. 02740, 6:00-10:30 p.m.

FOR FURTHER INFORMATION, CONTACT: JoAnn Chandler, Director, or Dr. Richard J. Podgorny, Project Manager, Sanctuary Programs Office, Office of Coastal Zone Management, NOAA, 3300 Whitehaven Street, NW., Washington, D.C. 20235, (202) 634-4236.

SUPPLEMENTAL INFORMATION: Copies of the Issue Paper may be obtained in writing to Dr. Richard J. Podgorny, Project Manager, Sanctuary Programs Office, Office of Coastal Zone Management, NOAA, Page Building 1, 3300 Whitehaven Street, NW., Washington, D.C. 20235.

Dated: August 3, 1979.

Robert L. Carnahan,

Deputy Assistant Administrator for Administration.

[FR Doc. 79-24705 Filed 8-9-79; 8:45 am]

BILLING CODE 3510-08-M

Atlantic Fisheries; Proposed Use of Mandatory Log Books

AGENCY: National Oceanic and Atmospheric Administration/Commerce.

ACTION: Notice to Fishermen.

SUMMARY: The New England and Mid-Atlantic Councils have proposed the use of mandatory log books as a method of collecting necessary statistical information in several fishery management plans which have been approved by the Secretary (e.g., Atlantic Herring, Surf Clam and Ocean Quahog, Atlantic Squid). The log book concept has encountered opposition in certain quarters, however, and as a result, additional discussion of this management measure is deemed necessary. NMFS and the two Councils concerned have agreed that the implementation date should be deferred until October 1, 1979.

(16 U.S.C. 1801 *et seq.*)

Signed at Washington, D.C. this 6th day of August, 1979.

Winfred H. Meibohm,

Executive Director, National Marine Fisheries Service.

[FR Doc. 79-24751 Filed 8-9-79; 8:45 am]

BILLING CODE 3510-22-M

Office of Minority Business Enterprise

Financial Assistance Application Announcement

The Office of Minority Business Enterprise (OMBE) announces that it is seeking applications under its consultant services program to operate a project for a 12-month period beginning October 1, 1979 in the States of Ohio, Indiana, Illinois, Michigan, Wisconsin, Minnesota, Iowa, Missouri, Kansas and Nebraska. The cost of the project is estimated to be $373,000. Project No.: 05-10-25772-00.

Funding Instrument: It is anticipated that the funding instrument, as defined by the Federal Grant and Cooperative Agreement Act of 1977, will be a grant.

Program Description: Executive Order 11625 authorizes OMBE to fund projects which will provide technical and management assistance to minority business enterprises. This proposed project is specifically designed to provide feasibility studies in all disciplines on an as needed basis. The recipient will be required to evaluate clients so as to determine the feasibility of further in-depth studies and expenditures for specific projects as the need arises. Recipient must also demonstrate the ability to contract specialized projects with proper consultants for final studies of excellence.

Eligibility Requirements: There are no restrictions. Any for-profit firm or not-for-profit institution is eligible to submit an application.

Application Materials: An application kit for each of the projects may be requested by phone by calling Joyce Russman at (202) 377-1714 or it may be obtained at the following address: U.S. Department of Commerce, Office of Minority Business Enterprise, Program Support Staff, Room 5713, Box FR-4, 14th & Constitution Avenue, NW., Washington, D.C. 20230.

In requesting an application kit, specify the project number, the city or state the project will serve and if the applicant is either a State or Local Government, Federally recognized Indian Tribunal Unit, Educational Institution, Hospital, other type of nonprofit organization, or if the applicant is a for-profit firm. This information is necessary to enable OMBE to include the appropriate cost principles in the application kit.

Award Process: All applications that are submitted in accordance with the instructions in the application kit will be submitted to a panel for review and ranking. The applications will be ranked as to their understanding of minority business problems, approach and program methodology, responsiveness to questions, organizational structure, quality of personnel, experience, capacity, and cost. Specific criteria will be included in the application kit. If an application is approved, an initial award will be made for a period specified for that award. Continuation awards may be made on a noncompetitive basis when determined by the Awards Office to be in the best interest of the Government.

Closing Date: Applicants are encouraged to obtain an application kit as soon as possible in order to allow sufficient time to prepare and submit an application before the closing date of September 7, 1979. Detailed submission procedures are outlined in each application kit.

(11.800 Minority Business Development Catalog of Federal Domestic Assistance)

Dated: August 6, 1979.

Allan A. Stephenson,

Acting Director.

[FR Doc. 79-24624 Filed 8-9-79; 8:45 am]

BILLING CODE 3510-21-M

Financial Assistance Application Announcement

The Office of Minority Business Enterprise (OMBE) announces that it is seeking applications under its consultant services program to operate a project for a 12-month period beginning October 1, 1979 in the States of Alaska, Washington, Oregon, California, Idaho, Nevada, Arizona, Hawaii, and the Pacific Trust Territories. The cost of the project is estimated to be $300,000. Project No: 09-10-50130-00.

Funding Instrument: It is anticipated that the funding instrument, as defined by the Federal Grant and Cooperative Agreement Act of 1977, will be a grant.

Program Description: Executive Order 11625 authorizes OMBE to fund projects which will provide technical and management assistance to minority business enterprises. This proposed project is specifically designed to provide feasibility studies in all disciplines on an as-needed basis. The recipient will be required to evaluate clients so as to determine the feasibility of further in-depth studies and expenditures for specific projects as the need arises. Recipient must also demonstrate the ability to contract specialized projects with proper consultants for final studies of excellence.

Eligibility Requirements: There are no restrictions. Any for-profit firm or not-for-profit institution is eligible to submit an application.

Application Materials: An application kit for each of the projects may be requested by phone by calling Joyce Russman at (202) 377-1714 or it may be obtained at the following address: U.S. Department of Commerce, Office of Minority Business Enterprise, Program Support Staff, Room 5713, Box FR-5, 14th & Constitution Avenue, N.W. Washington, D.C. 2020?.

In requesting an application kit, specify the project number, the city or state the project will serve and if the applicant is either a State or Local

Government, Federally recognized Indian Tribunal Unit, Educational Institution, Hospital, other type of nonprofit organization, or if the applicant is a for-profit firm. This information is necessary to enable OMBE to include the appropriate cost principles in the application kit.

Award Process: All applications that are submitted in accordance with the instructions in the application kit will be submitted to a panel for review and ranking. The applications will be ranked as to their understanding of minority business problems, approach and program methodology, responsiveness to questions, organizational structure, quality of personnel, experience, capacity, and cost. Specific criteria will be included in the application kit. If an application is approved, an initial award will be made for a period specified for that award. Continuation awards may be made on a noncompetitive basis when determined by the Awards Office to be in the best interest of the Government.

Closing Date: Applicants are encouraged to obtain an application kit as soon as possible in order to allow sufficient time to prepare and submit an application before the closing date of September 7, 1979. Detailed submission procedures are outlined in each application kit.

(11.800 Minority Business Development Catalog of Federal Domestic Assistance)

Dated: August 6, 1979.

Allan A. Stephenson,

Acting Director.

[FR Doc. 79-24625 Filed 8-9-79; 8:45 am]

BILLING CODE 3510-21-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1979; Proposed Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed Additions to Procurement List.

SUMMARY: The Committee has received proposals to add to Procurement List 1979 commodities to be produced by workshops for the blind and other severely handicapped.

COMMENTS MUST BE RECEIVED ON OR BEFORE: September 12, 1979.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, 2009 14th Street North, Suite 610, Arlington, Virginia 22201.

FOR FURTHER INFORMATION CONTACT: C. W. Fletcher, (703) 557-1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2), 85 Stat. 77.

If the Committee approves the proposed additions, all entities of the Federal Government will be required to procure the commodities listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following commodities to Procurement List 1979, November 15, 1978 (43 FR 53151):

Class 6530

Pad, Hospital stretcher, 6530-00-269-0004.

Class 6530

Pad, Examining Table, 6530-00-960-6616.

Class 7530

Pad, Writing Paper, Easel, 7530-00-619-8880, (For GSA Regions 1, 5, 6, 7, 8, 9, 10).

Class 7220

Mat, Floor, Plastic, 7220-00-457-6063, 7220-00-457-6057, 7220-00-151-6519, 7220-00-151-6518, 7220-00-151-6517, 7220-00-194-1609, 7220-00-477-3063, 7220-00-457-6054, 7220-00-457-6046.

C. W. Fletcher,

Executive Director.

[FR Doc. 79-24696 Filed 8-9-79; 8:45 am]

BILLING CODE 6820-33-M

Procurement List 1979; Proposed Deletion

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed Deletion from Procurement List.

SUMMARY: The Committee has received a proposal to delete from Procurement List 1979 a service provided by workshops for the blind or other severely handicapped.

COMMENTS MUST BE RECEIVED ON OR BEFORE: September 12, 1979.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, 2009 14th Street North, Suite 610, Arlington, Virginia 22201.

FOR FURTHER INFORMATION CONTACT: C. W. Fletcher, (703) 557-1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2), 85 Stat. 77.

It is proposed to delete the following service from Procurement List 1979, November 15, 1978 (43 FR 53151):

SIC 7641

Furniture Rehabilitation, Long Beach, California plus 100-mile radius, excluding San Diego County and San Clemente.

C. W. Fletcher,

Executive Director.

[FR Doc. 79-24697 Filed 8-9-79; 8:45 am]

BILLING CODE 6820-33-M

DEPARTMENT OF DEFENSE

Department of the Air Force

USAF Scientific Advisory Board; Meeting

August 1, 1979.

The USAF Scientific Advisory Board Space and Missile Systems Organization Advisory Group will met at Headquarters, Space and Missile Systems Organization, Los Angeles, California on August 29 and 30, 1979. The meeting will convene at 8:00 a.m. and adjourn at 4:00 p.m. on August 29, and convene at 8:00 a.m. and adjourn at 2:00 p.m. on August 30.

The Group will discuss the topics of Radiation Hardened Integrated Circuits, Hybrid Circuit Development, Spacecraft Reliability, Software Development, and Power Amplifiers, in Military Communications Satellites. The discussions will be classified and closed to the public in accordance with Section 552b(c) of Title 5, U.S.C., specifically subparagraph (1).

For further information, contact the Scientifc Advisory Board Secretariat (202) 697-4811.

Carol M. Rose,

Air Force Federal Register Liaison Officer.

[FR Doc. 79-24707 Filed 8-9-79; 8:45 am]

BILLING CODE 3910-01-M

Corps of Engineers; Department of the Army

Intent To Prepare a Draft Environmental Impact Statement for a Proposed Harbor on Saipan, Commonwealth of the Northern Mariana Islands

July 31, 1979.

AGENCY: U.S. Army Corps of Engineers, DoD, Honolulu District.

ACTION: Notice of Intent to Prepare a Draft Environmental Impact Statement (DEIS).

SUMMARY:

1. The proposed harbor project will consist of the construction of a breakwater and the dredging of an entrance channel at Garapan Sugar Dock, Saipan Island, Commonwealth of the Northern Mariana Island. The project will create a small scale commercial and subsistance fishing harbor for approximately 150 fishing boats. The local government is responsible for the construction of piers and shoreside facilities, and the development of a fishery complex at the harbor.

2. The proposed alternatives include various harbor designs involving the size and alignment of the breakwater and entrance channel. Alternative harbor sites will be reevaluated during the development of the proposed project.

3. Interest Federal and local agencies, residents of Saipan and other private organizations and parties are invited to express their interest and desire to be included in the development of the DEIS. The U.S. Fish and Wildlife Service, and the Commonwealth of the Northern Marianas Historic Preservation Officer and Department of Health will be asked to provide information and to assist in impact evaluation. The Commonwealth Departments of Public Works, Natural Resources, and Economic Development; Saipan fishing cooperatives and boat owners; the U.S. National Marine Fisheries Service, Environmental Protection Agency and National Park Service will also be contacted during the planning process. Significant issues to be evaluated in depth in the DEIS include the effects on coral and fish, historical and archaeological properties, endangered species, water quality, and water and power supply. A public meeting will held on Saipan in February 1980. No scoping meeting will be held. The DEIS will be available for public and agency review and comment in January 1980.

ADDRESS: Questions about the proposed action and the DEIS can be answered by: Mr James K. Ligh, Project Manager, U.S. Army Engineer District, Honolulu, Building 230, Fort Shafter, Hawaii 96858, Telephone: (808) 438-9526.

Dated: July 31, 1979.

Peter D. Stearns,

Colonel, Corps of Engineers District Engineer.

[FR Doc. 79-24635 Filed 8-9-79; 8:45 am]

BILLING CODE 3710-NN

[Process No. 782025C/78-14-614]

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for a Proposed Coal-Fired Power Plant, Intake Structure and Discharge Diffuser on the St. Clair River Near St. Clair, Mich.

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice of Intent to Prepare a Draft Environmental Impact Statement (DEIS).

SUMMARY:

Proposed Actions

The Detroit Edison Company, 2000 Second Avenue, Detroit, Michigan, has made application to the Detroit District, U.S. Army Corps of Engineers for a Department of the Army permit under authority of Section 10 of the River and Harbor Act of 1899 and Section 404 of the Clean Water Act of 1977, to construct an intake structure and submerged discharge diffuser extending into the St. Clair River in conjunction with the proposed Belle River Power Plant (fossil fuel) in East China Township, St. Clair County, located immediately upstream from Detroit Edison's existing St. Clair Power Plant near St. Clair, Michigan.

The Belle River Power Plant would consist of two western low sulfur coal-fired electric generating units, each having a maximum net capacity of 676 Megawatts (MW) (1352 MW total), together with other facilities and auxiliaries as needed. Land designated for the Belle River Power Plant and associated facilities consists of approximately 942 acres. Total acreage committed the St. Clair-Belle River complex is approximately 2203 acres. The first unit is scheduled for commercial operation in March 1984, with Unit 2 scheduled to become operational in March 1985.

Cooling water and plant process water for the Belle River Power Plant would be drawn from the St. Clair River through an intake structure, located on the west bank of the St. Clair River about 1,000 feet north of the present St. Clair Power Plant. Condenser cooling water would be discharged to the St. Clair River through a multiport discharge diffuser extending into the St. Clair River along the river bottom immediately downstream of the Belle River intake structure. The plant cooling and process water will be conveyed to the Belle River Plant and returned to the St. Clair River through four 9-foot diameter pipes installed below grade.

Alternatives

The complexity of this project and the various plant construction/operational components subject to alternative methods of implementation necessitates limiting the discussion of alternatives. Identified below are the recognized alternatives to the proposed action.

a. *Alternative Sites*—The following locations were selected by the permit applicant as feasible plant sites based on the availability of land, fuel and transportation access.

1. Trenton Channel (Detroit River).
2. River Rouge.
3. Belle River (St. Clair River Site.)
4. North of Harbor Beach, Michigan, along the Lake Huron shoreline.

b. *Alternative Energy Sources*

c. *Purchased Power Alternatives*

d. *Use of Facilities Presently Within the System*

e. *Cooling System Alternatives*—Six cooling water system alternatives exist for Belle River facility. These include:

Alternate 1—A once-through cooling system which utilizes the St. Clair River as water source and discharge medium.

Alternate 2—A closed-cycle cooling system with two natural draft evaporative cooling towers.

Alternate 3—A closed-cycle cooling system with two mechanical draft evaporative cooling towers (10 cells each).

Alternate 4—A closed-cycle cooling system with two mechanical wet/dry cooling towers (14 cells each).

Alternate 5—A closed-cycle cooling system with approximately 144 powered spray modules in a cooling canal.

Alternate 6—A once-through cooling system with the water source being the condenser cooling water discharge from the St. Clair Power Plant and the St. Clair River the discharge medium.

f. *Alternate Intake Construction Methods*—Four methods for construction of the Belle River cooling water intake were investigated and evaluated by the applicant. These included the proposed method (the segmental intake plan), the floatation method and two cofferdam methods. The method of constructing the discharge diffuser is common to all intake construction methods.

Scoping Process

a. Public Involvement—To encourage public input on this project a scoping meeting was held at the U.S. Army Corps of Engineers, Detroit District Headquarters, July 17, 1979. Invitations for attendance were extended to cooperating state and federal agencies and any other public/private interest

groups that commented on Joint Public Notice, dated May 9, 1979, Process No. 782025C/78-14-617.

b. Significant Issues—Comments received in response to the Public Notice and issues raised during the scoping meeting indicate that concerns exist regarding the cumulative impacts associated with the operation of the proposed intake and other intake structures throughout the St. Clair River-Lake St. Clair-Detroit River-Western Lake Erie, particularly as their operation relates to entrainment and impingment of aquatic organisms.

c. Other Environmental Review and Consultation Requirements—The following environmental review and consultation requirements are applicable to this project:

Corps of Engineers, Dept. of the Army, Regulatory Program of the Corps of Engineers, 33 CFR 320-329.

Corps of Engineers, Dept. of the Army, 33 CFR Part 230, Environmental Quality: Policy and Procedure for Implementing NEPA (ER 200-2-2).

Endangered Species Act of 1973, as Amended, 16 U.S.C. 1531 et seq.

Estimated Date of DEIS Release

It is anticipated that the DEIS will be available to the public on October 15, 1979.

Address

Questions about the proposed action and DEIS can be answered by: Robert M. Tucker, Project Manager, Environmental Resources Branch, U.S. Army Corps of Engineers, Box 1027, Detroit, Michigan 48231.

Melvin D. Remus,

Colonel, Corps of Engineers District Engineer.

August 2, 1979.

[FR Doc. 79-24636 Filed 8-9-79; 8:45 am]

BILLING CODE 3710-GA-M

Department of the Navy

Naval Discharge Review Board; Hearing Locations

In November 1975, the Naval Discharge Review Board began to convene and conduct prescheduled discharge review hearings for a number of days each quarter in certain announced locations. The cities in which these hearings are scheduled are detemined in part by the concentration of applicants in a geographical area.

The following Naval Discharge Review board itinerary for August 1979 thru February 1980 has been approved, but remains subject to modification if required:

August 1979.—Chicago, IL; Minneapolis, MN; Boston, MA; Dallas, TX; Kansas City, MO; Albuquerque, NM; San Diego, CA; San Francisco, CA.

September 1979.—New Orleans, LA; Atlanta, GA; Tampa, FL; Columbus, OH; Memphis, TN.

October 1979.—Chicago, IL; Minneapolis, MN.

November 1979.—Portland, OR; San Francisco, CA.

December 1979.—Portland, OR; San Francisco, CA.

January 1980.—Atlanta, GA; New Orleans, LA; Tampa, FL.

February 1980.—San Diego, CA; San Francisco, CA.

Any former member of the Navy or Marine Corps who desires a discharge review, either in Washington, D.C., or in a city nearer to his or her residence, should file an application with the Navy Discharge Review Board using DD Form 293. If a personal appearance is requested, the petitioner should indicate on the application which location is preferred. Application forms (DD 293) may be obtained from, and the completed application should be mailed to, the following address:

Naval Discharge Review Board, Suite 910, 801 North Randolph Street, Arlington, Virginia 22203.

Notice is hereby given that, since the foregoing itinerary is subject to modification and since, following receipt of a new application, the Naval Discharge Review Board must obtain the applicant's military records before a hearing may be scheduled, the submission of an application to the Naval Discharge Review Board is not tantamount to scheduling a hearing. Applicants and/or their representatives will be notified by mail of the date and place of their hearing when a personal appearance is requested.

For further information concerning the Naval Discharge Review Board, contact:

Captain John G. Shaw, U.S. Navy, Executive Secretary, Naval Discharge Review Board, Suite 910, 801 North Randolph Street, Arlington, Virginia 22203, (202) 696-4881.

Dated: August 3, 1979.

P. B. Walker,

Captain, JAGC, U.S. Navy Deputy Assistant Judge Advocate General (Administrative Law).

[FR Doc. 79-24708 Filed 8-9-79; 8:45 am]

BILLING CODE 3810-70-M

Office of the Secretary of Defense

DOD Advisory Group on Electron Devices; Advisory Committee Meeting

Working Group A (Mainly Microwave Devices) of the DoD Advisory Group on Electron Devices (AGED) will meet in closed session on 6-7 September 1979 at Suite 1208, 1701 North Fort Myer Drive, Arlington, VA 22209.

The mission of the Advisory Group is to provide the Under Secretary of Defense for Research and Engineering, the Director, Defense Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The Working Group A meeting will be limited to review of research and development programs which the Military Departments propose to initiate with industry, universities or in their laboratories. This microwave device area includes programs on developments and research related to microwave tubes, solid state microwave, electronic warfare devices, millimeter wave devices, and passive devices. The review will include classified program details throughout.

In accordance with 5 U.S.C. App. 1, § 10(d)(1976), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. § 552b(c)(1)(1976), and that accordingly, this meeting will be closed to the public.

Dated: August 6, 1979.

H. E. Lofdahl,

Director, Correspondence and Directives, Washington Headquarters Services, Department of Defense.

[FR Doc. 79-24668 Filed 8-9-79; 8:45 am]

BILLING CODE 3810-70-M

DOD Advisory Group on Electron Devices; Advisory Committee Meeting

Working Group D (Mainly Laser Devices) of the DOD Advisory Group on Electron Devices (AGED) will meet in closed session 26-27 September 1979 at 201 Varick Street (9th floor), New York, NY 10014.

The mission of the Advisory Group is to provide the Under Secretary of Defense for Research and Engineering, the Director, Defense Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The Working Group D meeting will be limited to review of research and development programs which the Military Departments propose to initiate with industry, universities or in their laboratories. The laser area includes programs on developments and research related to low energy lasers for such applications as battlefield surveillance,

target designation, ranging, communications, weapon guidance and data transmission. The review will include details of classified defense programs throughout.

In accordance with 5 U.S.C. App. 1, § 10(d) (1976), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. § 552b(c)(1) (1976), and that accordingly, this meeting will be closed to the public.

Dated: August 7, 1979.

H. E. Lofdahl,

Director, Correspondence and Directives, Washington Headquarters Services, Department of Defense.

[FR Doc. 79-24667 Filed 8-9-79; 8:45 am]

BILLING CODE 3810-70-M

DEPARTMENT OF ENERGY

National Petroleum Council, Task Groups of the NPC Committee on U.S. Petroleum Inventories and Storage and Transportation Capacities; Meeting

Notice is hereby given that two additional task groups of the National Petroleum Council Committee on U.S. Petroleum Inventories, and Storage and Transportation Capacities will meet in August 1979. The National Petroleum Council was established to provide advice, information and recommendations to the Secretary of Energy on matters relating to oil and natural gas or the oil and natural gas industries. The Committee on U.S. Petroleum Inventories, and Storage and Transportation Capacities will analyze the potential constraints in these areas which may inhibit future production and will report its findings to the National Petroleum Council. Its analysis and findings will be based on information and data to be gathered by the various task groups. The two task groups scheduling meetings are the Inventories and Storage Task Group and the Tank Cars/Trucks Task Group. The time, location and agenda of each task group meeting follows:

The eleventh meeting of the Inventories and Storage Task Group will be on Thursday, August 16, 1979, starting at 10:30 a.m., in the Conference Room, the National Petroleum Council, 1625 K Street, NW., Washington, D.C. The tentative agenda for the meeting follows:

1. Introductory remarks by William P. Madar, Chairman.
2. Remarks by Earl Ellerbrake, Government Cochairman.
3. Review of draft task group report.
4. Discussion of any other matters pertinent to the overall assignment of the task group.

The seventh meeting of the Tank Cars/Trucks Task Group will be held on Monday and Tuesday, August 27 and 28, 1979, starting at 9 a.m., in the Conference Room, National Petroleum Council, 1625 K Street, Washington, D.C. The tentative agenda for the meeting follows:

1. Introductory remarks by Walter B. Smith, Jr., Chairman.
2. Remarks by Barry Yaffe, Government Cochairman.
3. Review of preliminary draft report of the task group.
4. Discuss any other matters pertinent to the overall assignment of the task group.

The meetings are open to the public. The chairman of the task group is empowered to conduct the meetings in a fashion that will, in his judgement, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the task group will be permitted to do so, either before or after the meetings. Members of the public who wish to make oral statements should inform Mario Cardullo, Office of Resource Applications, 202-633-8828, prior to the meeting and reasonable provision will be made for their appearance on the agenda.

Summary minutes of the meeting will be available for public review at the Freedom of Information Public Reading Room, Room GA-152, Department of Energy, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, D.C. on August 3, 1979.

R. Dobie Langenkamp,

Deputy Assistant Secretary, Oil, Natural Gas and Shale Resources, Resource Applications.

August 3, 1979.

[FR Doc. 79-24640 Filed 8-9-79; 8:45 am]

BILLING CODE 6450-01-M

Bonneville Power Administration

Revised Proposed Wholesale Power Rates and Opportunities for Public Review and Comment

Correction

In the issue of July 30, 1979, we published a document containing instructions to correct errors occurring in FR Doc. 79-22239 which appears at page 41743 in the issue of July 17, 1979.

Item No. 3 of the correction document provides an explanation where the table, which appears on page 41747 of the original document, should be located in the context of the original document itself. As this explanation may tend to confuse the reader, a clarification of the location of the table is given here. This table consists of two columns under the heading "Annual Availability A" and one column under the heading "Formula for availability credit factor F". On page 41747 of the original document, it should appear in the second column at the end of the first full paragraph which begins with "Section 5. *Adjustments:* a. *Availability Credit*". The table precedes the 6th full paragraph in the first column of page 41747 which begins with "b. Power Factor". The sequence of the paragraphs on page 41747 is the normal printing layout when there is a table that spans more than one column.

The formula given in item No. 4 of the correction document is incorrect. This formula, appearing in the original document in the first sentence of the paragraph with the designation, 9.1 *Average Power Factor*, in the first column on page 41753, should be corrected to read as follows:

$$\text{Average Power Factor} = \frac{\text{Kilowatthours}}{\sqrt{(\text{Kilowatthours})^2 + (\text{Reactive Kilovoltamperehours})^2}}$$

BILLING CODE 1505-01-M

Economic Regulatory Administration

Hunt Oil Co.; 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 Hunt Oil Company. This Proposed Remedial Order charges Hunt Oil Company with pricing violations in the amount of $126,390.68, connected with the sale of crude oil and condensate at prices in excess of those permitted by 10 CFR Part 212, Subpart D during the time period September 1, 1973 through August 31, 1975, in the State of Texas.

A copy of the Proposed Remedial Order, with confidential information deleted, may be obtained from Wayne I. Tucker, District Manager, Southwest District Enforcement, Department of Energy, Economic Regulatory Administration, P.O. Box 35228, Dallas, Texas 75235, or by calling (214) 767-7751. On or before August 24, 1979, any aggrieved person may file a Notice of Objection with the Office of Hearings and Appeals, 2000 M Street, NW.,

Washington, D.C. 20461, in accordance with 10 CFR 205.193.

Issued In Dallas, Texas, on the 2nd day of August 1979.

Wayne I. Tucker,

District Manager, Southwest District Enforcement.

[FR Doc. 79-24645 Filed 8-9-79; 8:45 am]

BILLING CODE 6450-01-M

Richome Oil & Gas Co.; 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 Richome Oil and Gas Company, 310 Amarillo Building, Amarillo, Texas 79101. This Proposed Remedial Order charges Richome Oil and Gas Company (Richome) with pricing violations in the amount of $137,030.20, relative to Richome's sale of certain crude oil at free market prices which the firm characterized as "stripper well" crude oil during the period November 27, 1973 through December 31, 1974.

A copy of the Proposed Remedial Order, with confidential information deleted, may be obtained from Wayne I. Tucker, District Manager, Southwest District Enforcement, Department of Energy, Economic Regulatory Administration, P.O. Box 35228, Dallas, Texas 75235, or by calling (214) 749-7626. On or before August 24, 1979, any aggrieved person may file a Notice of Objection with the Office of Hearings and Appeals, 2000 M Street, NW., Washington, D.C. 20461, in accordance with 10 CFR 205.193.

Issued in Dallas, Texas, on the 3rd day of August, 1979.

Wayne I. Tucker,

District Manager, Southwest District Enforcement.

[FR Doc. 79-24644 Filed 8-9-79; 8:45 am]

BILLING CODE 6450-01-M

Energy Information Administration

Coal Resources/Reserves Information; Meeting

AGENCY: Energy Information Administration

ACTION: Notice of Meeting.

SUMMARY: Notice is hereby given that the Energy Information Administration (EIA) is sponsoring a symposium on coal resources/reserves information to provide a forum for an interchange of information on the development, use, limitation and methods of upgrading information on coal resources and reserves. The symposium is intended to provide input for use by EIA and others in analyzing issues covering resource development, regulation and market structure.

DATE: September 17-18, 1979, 8 a.m.-5 p.m.

ADDRESS: Departmental Auditorium, Conference Room B, between 12th and 14th on Constitution Avenue, Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Thomas McCarley, Symposium Coordinator, Office of Energy Information Services, Energy Information Administration, 1726 M Street, NW., Washington, D.C. 20461, telephone (202) 634-5685.

SUPPLEMENTARY INFORMATION: The symposium will open with introductory remarks by Dr. Lincoln E. Moses, Administrator of EIA. A highlight of the program will be a panel discussion on "Techniques of Coal Estimation: Quality and Feasibility".

The symposium will include presentation of papers on the uses and needs of coal resources and reserves information for production planning, consumption by direct combustion, synthetic fuels development, modelling and forecasting, the Federal leasing program, and industry competition analysis. A paper will also be presented on the needs for coal reserves data from a legislative perspective. After presentation, each paper will be reviewed by two discussants, with discussion also from the floor.

The symposium will address the following types of questions:

- For what uses do analysts and planners require coal reserves information?
- For each intended use, what information about in-place and recoverable coal is actually needed? How is it usually obtained?
- What information developed outside EIA is used for these purposes, if any? If EIA could provide this information, would it be used instead of the current source?
- What level of detail is required in the data, e.g., what sizes and choices of geographical regions are of interest; what characteristics (sulfur content, Btu content) should be reported separately?

Issued in Washington, D.C., on August 3rd, 1979.

Lincoln E. Moses,

Administrator, Energy Information Administration.

[FR Doc. 79-24647 Filed 8-9-79; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. CP79-406]

Cities Service Gas Co., Notice of Application

August 2, 1979.

Take notice that on July 12, 1979, Cities Service Gas Company (Applicant), P.O. Box 25128, Oklahoma City, Oklahoma 73125, filed in Docket No. CP79-406 an application certificate of public convenience and necessity authorizing the continued operation of pipeline, measuring, regulating and appurtenant facilities and the sale of gas for resale to new owners of distribution systems in certain towns in Oklahoma and Kansas, all as more fully set forth in the application on file with the Commission and open to public inspection.

Applicant proposes to continue the sale of gas to new owners of the distribution systems as follows:

Distribution System—Former Owner—New Owner

Oilton, Oklahoma—Pact Gas Company—Pact Gas Company Clovis Hester, President.[1]
Shidler and Webb City, Oklahoma—Pact Gas Company—Mid-West Gas Company.
Wynona, Oklahoma—Pact Gas Company—City of Wynona.
Avant, Oklahoma—Avant Gas Service Company—Avant Utilities Authority.
Drumright, Oklahoma—Drumright Gas Service Company—Drumright Gas Authority.[2]
Florence, Kansas—Citizens Gas Company—Citizens Gas Service Company.

Applicant states that new contracts were executed with each new owner and that it would continue the sale of gas to the new owners through the use of existing facilities at the same terms and conditions as the sale to the former owners.

Any person desiring to be heard or to make any protest with reference to said application should on or before August 24, 1979, file with the Federal Energy

[1] Applicant states that although the sale for Oilton is still being made to Pact Gas Company, this sale is to a new owner who purchased all the company stock and a new contract was executed with the new owner.

[2] The ownership of this distribution system, Applicant indicates, was changed in 1973 but Applicant failed to make the appropriate changes on its records at that time.

Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and Subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed with the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearings will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 79-24671 Filed 8-9-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ER79-399]

Cleveland Electric Illuminating Co.; Order Accepting for Filing and Suspending Proposed Increased Rates for Firm Power and Transmission Services, Suspending Transmission Tariff Terms and Conditions, Granting Intervention and Establishing Procedures

Issued: July 31, 1979.

On May 31, 1979, the Cleveland Electric Illuminating Company (CEI) tendered for filing Revised Schedule B to its Rate Schedule FERC No. 12, containing increased rates and charges applicable to firm power sales to the City of Cleveland, Ohio (City) and Revised Sheet No. 6 to its FERC Electric Tariff, Original Volume No. 1, containing increased rates and charges for transmission service under its transmission service tariff.[1] CEI states that the proposed rates and charges would increase revenues from firm power sales under the Revised Schedule by $3,194,000 (21.4%), based on calendar year 1979, the projected test period.[2] CEI also states that it is unable to project the amount of increased revenues from the increase in rates and charges for transmission service because no transactions have yet taken place under the transmission service tariff.[3] CEI requests an effective date of August 1, 1979 for its proposed rates for both firm power service and transmission service.

Public notice of the filing was issued on June 11, 1979. Protests and petitions to intervene were due on or before July 2, 1979.

On July 2, 1979, the City filed a protest and petition to intervene in the proceeding and a request for a five-month suspension and hearing. In support of its request for suspension and hearing with regard to firm power service, the City states that CEI has not sustained its burden of proving that the proposed rate increase is just and reasonable. The City states that the rates are based on an excessive overall rate of return, including a return on common equity of 15 percent. In addition, the increased rates are based on a working capital allowance derived from the 45-day formula which the City believes to be improper in this instance, and on projected costs and allocations which have allegedly not been shown to be proper. In arguing for a full five-month suspension, the City states that the proposed increased revenues of approximately $3,200,000 on an annual basis are a *de minimis* percentage of CEI's electric revenues and the increased revenues associated with the five months of suspension represent a miniscule portion of CEI's electric revenues, especially when compared with the City's financial plight.

In support of its request for a full five month suspension and hearing regarding the transmission rate increase, the City states that the increase in rates and charges is more than 76 percent and that the rate of $1.27/kw/month also includes an excessive 15 percent rate of return on common equity. Moreover, the existing tariff is now before the Commission on exceptions from the Initial Decision of the Presiding Judge in Docket No. ER78-194.[4] The City notes that in the Initial Decision, the Presiding Judge ordered that certain terms and conditions of the transmission service tariff be revised by CEI to comply with the standards of the Federal Power Act. The City also notes that the Nuclear Regulatory Commission (NRC) Enforcement Staff has ordered CEI to revise the transmission service tariff along the lines ordered by the Presiding Judge in Docket No. ER78-194.[5]

Our review of CEI's filing with respect to firm power sales to the City indicates that the proposed rates have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or otherwise unlawful. Our review of CEI's filing with respect to the transmission service tariff also indicates that the proposed rates, terms and conditions have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or otherwise unlawful. Therefore, we shall accept CEI's proposed firm power rates and transmission service rates for filing and suspend them for one day, to become effective August 2, 1979, subject to refund, pending the outcome of a hearing and decision thereon. The transmission service tariff terms and conditions are hereby accepted for filing and suspended for one day, to become effective August 2, 1979, and are to be conformed to the terms and conditions found to be just and reasonable in Docket No. ER78-194.

The Commission orders:

(A) The City of Cleveland is hereby permitted to intervene in this proceeding subject to the Rules and Regulations of the Commission; *Provided, however,* that the participation of the intervenor shall be limited to matters set forth in the petition to intervene; and *Provided, further,* that the admission of the intervenor shall not be construed as recognition by the Commission that it might be aggrieved because of any order or orders by the Commission entered in this proceeding.

(B) CEI's proposed rates for firm power sales are hereby accepted for

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[1] Designated as follows:

Cleveland Electric Illuminating Company—Supplement No. 3 to Rate Schedule No. 12 (Supersedes Supplement No. 2 to Rate Schedule No. 12).

Cleveland Electric Illuminating Company—1st Revised Sheets No. 6 & 8 under FERC Electric Tariff Original Volume No. 1 (Supersedes Original Sheets No. 6 & 8).

[2] Under CEI's proposals, the demand charge is to be increased to $6.10/kW from $3.85/kW, and the energy charge is to be increased to 1.977 cents/kWh from 1.415 cents/kWh.

[3] Under CEI's proposals, the rates and charges for transmission service are to be increased to $1.27/kW/month from $0.72/kW/month.

[4] *See, The Cleveland Electric Illuminating Co.*, Docket No. ER78-194, Initial Decision on Proposed Transmission Service Tariff, issued April 27, 1979.

[5] *See, The Cleveland Electric Illuminating Co.*, NRC Docket Nos. 50-440A and 50-441A, order issued June 25, 1979.

filing and suspended for one day, until August 2, 1979, when they shall become effective, subject to refund.

(C) CEI's proposed transmission service tariff is hereby accepted for filing and suspended for one day, until August 2, 1979, when the rates shall become effective subject to refund. The tariff terms and conditions are to be conformed to the terms and conditions found to be just and reasonable in Docket No. ER78-194.

(D) A public evidentiary hearing shall be held concerning the justness and reasonableness of the rate schedules proposed by CEI in this docket.

(E) The Staff shall prepare and serve top sheets on all parties for settlement purposes on or before October 30, 1979.

(F) A Presiding Administrative Law Judge to be designated by the Chief Administrative Law Judge for that purpose shall preside at a prehearing conference in this proceeding to be held within ten (10) days after the serving of top sheets in a hearing room of the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. Said Judge is authorized to establish procedural dates and to rule upon all motions (except motions to consolidate and sever, and motions to dismiss) as provided for in the Commission's Rules of Practice and Procedure.

(G) The Secretary shall cause prompt publication of this order to be made in the Federal Register.

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-24672 Filed 8-9-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. CP79-408]

Columbia Gas Transmission Corp.; Notice of Application

August 2, 1979.

Take notice that on July 16, 1979, Columbia Gas Transmission Corporation (Applicant), P.O. Box 1273, Charleston, West Virginia 25325, filed in Docket No. CP79-408 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain replacement pipeline, all as more fully set forth in the application on file with the Commission and open to public inspection.

Applicant requests authorization to construct and operate approximately 14.5 miles of 10-inch transmission pipeline replacing in several sections 14.4 miles of 16-inch pipeline (Line C-106) in Fairfield, Hocking and Athens Counties, Ohio. Line C-106 was constructed in 1909 primarily of 16-inch coupled pipe with pipe bends made by the fire bending method which produces a wrinkle in the pipe at the sags and overbends. Due to the age and condition of this line, Columbia has determined that replacements must be made immediately in order to provide continous reliable service to its customers in the area and to obviate shutting in production wells to make leak repairs. Applicant estimates that the total cost of construction of the proposed pipeline would be approximately $2,488,900.

Any person desiring to be heard or to make any protest with reference to said application should on or before August 24, 1979, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 79-24673 Filed 8-9-79; 8:45 am]

BILLING CODE 6450-01-M

[Project No. 2232]

Duke Power Co.; Notice of Application for Approval of Change in Land Rights

July 30, 1979

Take notice that an application for approval of a change in land rights was filed on May 22, 1979, by Duke Power Company (Applicant). Correspondence should be addressed to: Mr. John E. Lansche, Assistant General Counsel, Duke Power Company, Box 2178, Charlotte, North Carolina 28242. Applicant proposes to grant an easement to the State of North Carolina for a road improvement proposal. The lands that are the subject of this application are in Burke and McDowell Counties, North Carolina, on the Catawba River (Lake James) and are located within the project boundaries of FERC Project No. 2232 (Catawba-Wateree).

The State of North Carolina's road improvement proposal would involve the relocation of approximately 1.5 miles of North Carolina Route NC 126, and the construction of two new bridges, one bridge within the project and one outside the project boundary. The proposed bridge and approximately .3 mile of new proposed roadway construction would cross project lands and waters at three separate locations. Approximately 4.5 acres of project lands would be conveyed. The proposed bridge would cross the Lake James Canal within the project boundary, would be two lanes wide and approximately 480 feet long, have a clear roadway width of 34 feet, and have a navigation clearance of 23 feet. The existing bridge over the Lake James Canal, which is approximately 90 feet downstream from the proposed new bridge, would be removed upon completion of the new bridge. A second existing bridge over the Lake James Spillway at Catawba Dam and a portion of the present North Carolina Route NC 126 would be abandoned by the State and would revert back to Duke Power Company. The highway right-of-way would also utilize a small corner of the parking lot at the Canal Bridge Access Area.

Anyone desiring to be heard or to make any protest about this application should file a protest or petition to

intervene with the Federal Energy Regulatory Commission, in accordance with the requirements of the Commission's Rules of Practice and Procedure ("Rules"), 18 CFR § 1.10 or § 1.8 (1978). In determining the appropriate action to take, the Commission will consider all protests filed, but a person who merely files a protest does not become a party to the proceeding. To become a party, or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's Rules. Any protest or petition to intervene must be filed on or before September 7, 1979. The Commission's address is: 825 N. Capitol Street NE., Washington, D.C. 20426. The application is on file with the Commission and is available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 79-24674 Filed 8-9-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. CP78-522]

El Paso Natural Gas Co.; Notice of Petition To Amend

August 1, 1979.

Take notice that on July 16, 1979, El Paso Natural Gas Company (El Paso), P.O. Box 1492, El Paso, Texas 79978, filed in Docket No. CP78-522 a petition to amend the order of November 20, 1978, issued in the instant docket pursuant to Section 7(c) of the Natural Gas Act and Section 157.7(c) of the Regulations thereunder (18 CFR 157.7(c)), so as to authorize El Paso to increase its total project cost of facilities constructed under the instant docket from $300,000 to $500,000, all as more fully set forth in the petition on file with the Commission and open to public inspection.

The November 20, 1978, order authorized El Paso to construct during the calendar year 1979, and operate facilities to make miscellaneous rearrangements on its system. The total cost of construction of the facilities was limited to $300,000.

El Paso states that it has pending additional projects which it has been requested to accomplish this year but which would cause El Paso to exceed its current authorized cost limitation. Such projects, El Paso indicates, involve the removal and relocation of a portion of certain pipeline in order to accommodate the Texas State Department of Highway and Transportation's planned widening of U.S. Highway 385 in Crane County, Texas, and the removal and relocation of a portion of pipeline in Maricopa County, Arizona, in order to accommodate Goodyear Aerospace Corporation's planned expansion of facilities. Consequently, El Paso is requesting waiver of Section 157.7(c)(2)(ii) of the Commission's Regulations so as to increase its current total authorized budget-type cost limitation to $500,000.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before August 22, 1979, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 79-24675 Filed 8-9-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. CP70-289]

Inter-City Minnesota Pipelines Ltd., Inc.; Notice of Petition To Amend

(July 31, 1979).

Take notice that on July 23, 1979,[1] Inter-City Minnesota Pipelines Ltd., Inc. (Petitioner), 1700-444 St. Mary Avenue, Winnipeg, Canada R3C 3T7, filed in Docket No. CP70-289 a petition to amend further the order, issued August 10, 1970, as amended, in said docket pursuant to Section 3 of the Natural Gas Act so as to authorize Petitioner to continue to import natural gas from Canada to the United States at the increased border prices established by the National Energy Board of Canada (NEB) for gas exported to Petitioner under NEB Licenses GL28, GL29, GL30, effective August 11, 1979, all as more fully set forth in the petition to amend further which is on file with the Commission and open to public inspection.

It is indicated that the subject gas imported to the United States is purchased from ICG Transmission Limited. Petitioner states that effective August 11, 1979, the NEB increased to $2.50 (U.S.) per million Btu's equivalent the border price to be paid for gas exported under License GL29 and to $2.80 (U.S.) per million Btu's equivalent for gas exported under Licenses GL28 and GL30. Petitioner asserts that the lack of an alternative source of natural gas or other fuels available to its customers should this petition not be granted render this request consistent with the public interest and that failure to grant the requested authorization would impair Petitioner's ability to render natural gas service to its customers. Accordingly, Petitioner requests that the order of August 10, 1970, as amended, be further amended to permit the importation of natural gas at the increased prices established by the NEB for gas exported under Licenses GL28, GL29, and GL30.

Any person desiring to be heard or to make any protest with reference to said petition should on or before August 22, 1979, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Lois D. Cashell,

Secretary.

[FR Doc. 79-24676 Filed 8-9-79; 8:45 am]

BILLING CODE 6450-01-M

[1] The petition was initially tendered for filing on July 23, 1979; however, the fee required by Section 159.1 of the regulations under the Natural Gas Act (18 CFR 159.1) was not paid until July 25, 1979; thus, filing was not completed until the latter date.

[Docket No. OR79-3]

Lakehead Pipe Line Co.; Order on Reconsideration, Modifying, and Clarifying Prior Orders, Denying Stay, and Prescribing Procedures

Issued August 1, 1979.

I. Introduction

Lakehead Pipe Line Company (Lakehead), an oil pipeline company which operates trunk lines in several states, is a wholly owned subsidiary of Interprovincial Pipe Line Limited (Interprovincial). Interprovincial operates an oil transmission system in

Canada. Lakehead's system interconnects with Interprovincial's line at a number of points along the United States-Canadian border. The rates which Lakehead may charge its shippers are subject to the jurisdiction of this Commission under the Interstate Commerce Act.[1]

On January 30, 1979, this Commission issued an order instituting an investigation into the rates contained in Lakehead's FERC Tariff Nos. 23, 44, 45, 46, 47, and 49.[2] The ultimate purpose of the investigation is to determine whether those rates are just and reasonable. The order as originally issued cited section 15(7) of the Interstate Commerce Act as authority for instituting the investigation. Section 15(7) grants the Commission authority to investigate the lawfulness of new rates. The investigation in this docket concerns existing rates rather than new rates. Accordingly, the appropriate statutory authority is section 15(1) of the Act, rather than section 15(7). The Commission recognized its inadvertant error, and issued an amendment to its order of January 30, 1979 reciting section 15(1) as authority for the investigation.[3]

On February 9, 1979, Lakehead filed with this Commission a petition for reconsideration and vacation of the Commission's order instituting this investigation. Among the reasons cited by Lakehead in support of its motion was the allegation that the Commission's investigation was improperly instituted pursuant to section 15(7). Lakehead states that, inasmuch as the investigation purports to address existing, rather than new rates, section 15(7) is inapplicable. Lakehead is, of course, correct. However, as mentioned above, the Commission corrected its order of January 30, 1979, to provide that this investigation would proceed under section 15(1). Accordingly, this portion of Lakehead's petition has been rendered moot.

II. The Investigation and the Pipeline Treaty

Lakehead also alleges that the Commission's order of investigation conflicts with a certain treaty between the United States and Canada, entitled *Agreement Between the Government of the United States and the Government of Canada Concerning Transit Pipelines (TIAS 8720)* signed on January 28, 1977. Lakehead argues that our order is defective because:

> There is nothing in the instant Order to indicate any basis for concluding that whatever is contemplated in the Commission's order relates "* * * equally to all persons and in the same manner, * * *" and "under substantially similar circumstances with respect to all hydrocarbons transmitted in similar pipelines."

Lakehead's argument assumes that the treaty binds this Commission to make an explicit finding that the terms of the treaty are not violated. The treaty does no such thing. It is sufficient if the substance of our order does not conflict with the treaty. Although Lakehead raises no allegation that the order would actually operate in derogation of the treaty, it is appropriate for us to address the substantive issues. The preamble to the treaty in question recites that its purpose is to ensure the uninterrupted transmission of hydrocarbons between the signatory countries. Lakehead makes no showing that the instant investigation would constitute an impediment to international commerce. Indeed, it makes no such argument.

Furthermore, there is reason to believe that the Government of Canada would see no conflict between the treaty and FERC action concerning Lakehead's tariffs. The National Energy Board of Canada issued a decision of January 5, 1978 concerning the form of joint tariffs to be filed by Interprovincial and Lakehead. The joint rates proposed by Interprovincial were applicable to the movement of oil from Canada to Canadian delivery points, through Lakehead's system in the United States. The National Energy Board noted that, as of that time, Lakehead had filed no tariffs with the FERC for the above-described service, and expressed its concern that the interest of Canadian shippers and consumers be protected before the FERC.[4] In particular, the NEB noted its expectation "that the newly-formed Federal Energy Regulatory Commission will be moving towards the effective regulation of oil pipelines."[5] Continuing, the Board observed,

> (S)ince Lakehead has not yet filed tariffs with the Federal Energy Regulatory Commission, it should do so forthwith, thus permitting interested parties in Canada to test whether they can be represented in such proceedings * * *.[6]

Thus, the N.E.B. was apparently not concerned that inquiry into Lakehead's rates would run afoul of the terms of the treaty. Indeed, it would be reasonable to assume that the N.E.B. would welcome an investigation into the lawfulness of Lakehead's rates since those rates affect prices paid in Canada.

We further note that the treaty itself contemplates regulation of pipeline carriers by the FERC. Article IV, Paragraph 1 provides, in pertinent part:

> (A) Transit Pipelines and the transmission of hydrocarbons through a transit Pipeline shall be subject to regulation by the appropriate governmental authorities having jurisdiction . . . in the same manner as for any other pipelines subject to the authority of such governmental authorities with respect to such matter as the following: * * * c. rates, tolls, tariffs and financial regulations relating to pipelines.[7]

And Article IV, Paragraph 2 states that all regulations must be "just and reasonable".[8]

As stated above, Lakehead makes no claim that the Commission's investigation results in discriminatory treatment. Such an argument would be insupportable. We need only refer to the plethora of investigations now pending regarding the justness and reasonableness of rates under the Interstate Commerce Act,[9] to counter any suggestion that our treatment of Lakehead is any different than our posture toward other companies. It is true that the other investigations pertain to new rather than existing rates. For purposes of this treaty, however, this is a distinction without a difference. The aim of investigations under both sections 15(1) and section 15(7) is to ensure that the rates of carriers be just and reasonable. Thus, it is clear that Lakehead is treated no differently than other carriers subject to our jurisdiction. Accordingly, we reject that portion of Lakehead's petition which alleges that the Commission's orders in this case violate the treaty between the United states and Canada.

III. Burden of Proof

The Commission's order, in addition to commencing an investigation into the lawfulness of Lakehead's existing rates, directed the company to file a direct case supporting the justness and reasonableness of its rates. In addition, the Commission ordered Lakehead to file a schedule setting forth net original cost investment in its properties.

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[1] Section 1(5) of the Act requires that rates charged by oil pipeline companies be just and reasonable. Section 402(b) of the Department of Energy Organization Act transferred jurisdiction over the rates of oil pipeline companies from the Interstate Commerce Commission to the F.E.R.C. (42 U.S.C. § 7172(b)).

[2] The tariff sheet numbers were corrected in the subsequent March 8, 1979 order in this docket.

[3] This order amending prior order was issued on March 8, 1979.

[4] *National Energy Board Decision in the Matter of a Public Hearing Respective Tariffs and Tolls Charged by Interprovincial Pipe Line Limited (Joint tariffs)*, issued January 6, 1978.

[5] *Id.*, slip op. at 3.

[6] *Id.*, slip op. at 4.

[7] Treaty, Article IV, Paragraph 1.

[8] Treaty, Article IV, Paragraph 2.

[9] *See, e.g.*, order issued May 31, 1979 in *Four Corners Pipe Line Company*, Docket No. IS79-10; order issued December 18, 1978 in *Gulf Central Pipe Line Company*, Docket No. IS-79-2, *et al.*

Lakehead objects to this portion of the Commission's order on the grounds that it improperly imposes the burden of proof upon the company. Lakehead argues that when existing rates are the subject of an investigation under section 15(1), the burden of proof rests with those who allege the rates are not just and reasonable. Lakehead asks that we explicitly find that the onus of showing that Lakehead's rates are unlawful rests with the Commission Staff.

An examination of the relevant statutory provisions and case law arising thereunder demonstrates that Lakehead is correct as to the burden of proof. Before beginning discussion of the merits of this issue, however, we observe that our prior orders in this docket do not, as Lakehead suggests, purport to impose the burden of proof upon either Lakehead or the Commission Staff. Accordingly, clarification of our order, rather than vacation, is the appropriate remedy. Section 15(7) speaks directly to the question of burden of proof. It provides, in pertinent part:

> At any hearing involving a change in a rate, fare, charge or classification * * * The burden of proof shall be upon the carrier to show that the proposed changed rate * * * is just and reaonable * * *.

As we have seen however, this investigation is governed by section 15(1), not by section 15(7). The former provision contains no reference to burden of proof.

There is, however, case law which examines the question of burden of proof in investigations concerning existing rates. In a case cited by Lakehead in its petition, *Central of Georgia Railroad Company, et al.*, v. *U.S., et al.*, 379 F. Supp. 976 (D.C.D.C. 1974), *aff'd per curiam sub nom. United States Clay Producers Traffic Ass'n, Inc., et al.*, v. *Central of Georgia Railroad Co., et al.*, 421 U.S. 957 (1975), a three judge panel, in reviewing certain orders of the ICC stated:

> The Commission is, of course, free at any time, upon complaint or on its own initiative to investigate, under Section 15(1) * * *. In that proceeding, the burden of proof, under the legislative allocation, will not be on the carriers.[10]

In a subsequent incarnation of the same dispute, the District Court stated that if the ICC had instituted an investigation under section 15(1), it, the Commission, would have had the burden of proof.[11] Thus, the Commission finds it appropriate that the Staff carry the burden of proof in this proceeding. However, Lakehead, Staff and any other participants to this proceeding have the burden of going forward with evidence to establish the positions reflected in their respective cases.

The above statements do not, however, compel us to dissolve that portion of the Commission's order which required Lakehead to file certain data with us. There is a valid distinction, one which is applicable to this situation, between the burden of proof in a proceeding and the burden of going forward. There is precedent for requiring the subject of a section 15(1) investigation to file initial data.[12] In another case, the Court of Appeals for the District of Columbia Circuit states that, "the normal rules place (the burden of coming forward) on the party in control of the relevant information." [13] That observation is particularly appropriate here. The purpose of this investigation is to determine whether Lakehead's existing rates are just and reasonable. In order to make that determination, the Commission must gain access to certain information which is within the company's control.

Presumably, the Commission Staff could acquire this information through the use of discovery procedures. In that event, Lakehead would have no valid objection, since it would not be initiating action in the proceeding. We see little difference between ordering a company to respond to data requests and ordering that same company to present information at the outset of a proceeding. Accordingly, we will not vacate that portion of our prior orders which requires Lakehead to come forward with certain data. We will, however, specify that the Company shall, within thirty days, file the information set forth in Ordering Paragraph A of this order. We leave other procedural matters for the Presiding Administrative Law Judge to resolve. Thus we will delete the requirement that Lakehead file a formal direct case prior to the service of Staff's top sheets. We note, however, that Rule 72 of the ICC's Rules of Practice (49 C.F.R. § 1100.72) provides that parties other than respondents in investigations shall open and close proceedings, provided respondents do not bear the burden of proof. We also note, however, that the same rule permits the presiding officer to vary this order of procedure.

Furthermore, we reject Lakehead's claim that the order of January 30, 1979 is defective in that it represents a prejudgment that the Commission will prescribe a net original cost rate base for Lakehead. This allegation is spurious. Our call for data concerning net original cost investment is consistent with the recent Court of Appeals decision in *Farmers Union Central Exchange* v. *FERC*,[14] in which the Court of Appeals directed this Commission to consider original cost methodology, among other things, in adjudicating the lawfulness of oil pipeline rates.

IV. Due Process

Lakehead also alleges that the order fails to articulate the basis for the instant investigation. This alleged defect, Lakehead argues, constitutes a violation of Lakehead's due process rights. Lakehead states, "Due process does not permit the Commission to impose on Lakehead the burden of establishing * * * that these rates were not unlawful." As we stated above, our order did not impose any such burden upon Lakehead. Accordingly, we need not reach this allegation.

However, Lakehead does raise a separate due process argument. It states that the Commission's order does not identify the basis for the instant investigation.

The cases cited by Lakehead, for the most part, are cases in which an investigation was begun pursuant to a complaint by shippers. Section 15(1) permits this Commission to investigate existing rates and terms and conditions of service upon our own motion. In addition, the Commission, upon a complaint filed pursuant to section 13(1) of the Interstate Commerce Act, is required to initiate an investigation into the allegations raised by the complaint. In this case, unlike those relied upon by Lakehead, the investigation was begun by the Commission on its own motion. There can be no doubt that the Commission may, *sua sponte*, initiate investigations of this type.[15]

In *Storage Practices, supra*, a similar allegation was raised concerning clear definition of issues in an order of investigation into existing rates. The I.C.C. stated:

> In the order instituting the investigation, respondents were advised of the issues, namely, the lawfulness under the Act of all warehousing and storage rates, charges,

[10] 379 F. Supp. 976, 982 (D.C.D.C. 1974).

[11] *See, Central of Georgia Railroad Co., et al.*, v. *U.S., et al.*, 410 F. Supp. 354, 355–356 (D.C.D.C. 1976); aff'd sub nom. *I.C.C.* v. *Central of Georgia Railroad Co., et al.*, 429 U.S. 968 (1976).

[12] *See, Fresh Vegetables from Texas, California, Arizona and New Mexico*, 319 ICC 141 (1963).

[13] *International Harvester Company* v. *Ruckelshaus*, 478 F. 2d 615, 642 (D.C. Cir. 1973), citing IX Wigmore on Evidence § 2486 (3d ed. 1940). *See also, Commonwealth of Puerto Rico* v. *Federal Maritime Commission*, 468 F. 2d 872, 881 (D.C. Cir. 1972).

[14] 584 F.2d 408 (D.C. Cir. 1978).

[15] *See, e.g., U.S., et al.*, v. *Chicago Heights Trucking Co., et al.*, 310 U.S. 344 (1940); *Storage Practices of Railroads at North Atlantic Ports*, 225 I.C.C. 425, 429 (1943).

rules, regulations, and practices of common carriers * * *.[16]

In this case, the Commission similarly advised Lakehead. The issue in this investigation, as we stated in our prior orders in this docket, is the justness and reasonableness of the rates contained in certain tariffs specfically enumerated by the Commission. We stated that, upon our review of these tariffs, we determined that the rates contained therein may be unjust and unreasonable. This, we believe, was an appropriate exercise of our judgment in matters of ratemaking, and was consistent with our obligation to shippers and the public at large that rates be just and reasonable.

If any further justification need be given, we refer to the opinion of the National Energy Board of Canada, *supra*, in which that agency made specific reference to Lakehead's existing rates. For the reasons stated above, we deny this portion of Lakehead's petition for reconsideration.

V. Petition for Stay

In the alternative, Lakehead asks that the Commission stay the effectiveness of its order pending judicial review. We deny this request. Lakehead meets none of the tests laid down in the case of *Virginia Petroleum Jobbers Association* v. *F.P.C.*[17] Lakehead has shown no likelihood of prevailing on the merits of its claim, nor has it demonstrated any irreparable injury. Courts have long held that orders suspending utility or common carriers rates are not reviewable.[18] If our order is not reviewable, then, *a fortiori*, Lakehead has not demonstrated a likelihood of prevailing on the merits. Further, we note that Lakehead has not shown any irreparable harm resulting from the initiation of this investigation. The Commission's order is not final agency action under the Administrative Procedure Act (5 U.S.C. § 704); accordingly judicial review is not available.[19]

VI. Further Proceedings

On February 9, 1979, Lakehead filed a complaint in the United States District Court for the District of Wisconsin seeking to enjoin the Commission from proceeding with this investigation. The complaint is still pending. On April 27, 1979, the Presiding Administrative Law Judge to whom we had referred this investigation for hearing issued an order suspending all procedural dates until the latter of Commission action on Lakehead's petition for reconsideration or the District Court's action on the complaint.

The proceedings in this case should now resume. We have now acted on Lakehead's petition for clarification; we see no reason to delay this case pending action either by the District Court on Lakehead's complaint or pending action in any other proceeding before this Commission. Accordingly, as stated above, Lakehead is ordered to file the data listed in Ordering Paragraph (C) within 45 days of issuance of this order. Within 90 days thereafter, Staff shall file and serve top sheets, and within 15 days after the filing and service of top sheets, the Presiding Judge shall convene a prehearing conference.

The Commission orders:

(A) The Commission's January 30, 1979, order is hereby modified to delete the requirement that Lakehead file a formal direct case prior to the submission of Staff's top sheets. However, Lakehead shall file, within 45 days of the date of issuance of this order, a schedule setting forth net original cost investment, with details. The schedule shall include a cost of service which reflects unadjusted costs for the most recent 12 consecutive months for which actual data are available, including investment, capital structure, return, taxes, depreciation and other operating and maintenance expenses. In addition, Lakehead may submit a cost of service based upon estimated expenditures for a 12 month period following the 12 month period of actual data. Appropriate working capital may be included in rate base. Lakehead may propose an appropriate rate of return for this rate base.

(B) Staff shall file its top sheets within 90 days of the date Lakehead submits the data described in Ordering Paragraph (A) above.

(C) The Presiding Administrative Law Judge shall convene a prehearing conference in this proceeding within 15 days after the filing of Staff's top sheets, in a hearing room of the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, for the purpose of establishing procedures for the investigation and hearing to be held pursuant to this order. The Presiding Judge shall be authorized to modify all procedural dates and to establish further procedures as may in his judgment be required. The Presiding Judge shall also be authorized to rule upon all motions except motions to consolidate, sever, or dismiss, as provided for in the Rules of Practice and Procedure (49 CFR 1100.66).

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-24877 Filed 8-9-79; 8:45 am]

BILLING CODE 6450-01-M

[16] *Id.*, at 429.

[17] *Virginia Petroleum Jobbers Association* v. *F.P.C.*, 259 F. 2d 921 (1958). See also, *Washington Metropolitan Transit Commission* v. *Holiday Tours, Inc.*, 559 F. 2d 841 (D.C. Cir. 1977).

[18] *Arrow Transport Co.* v. *Southern Railway Co.*, 372 U.S. 658 (1963). Compare: *Southern Railway Co.* v. *Seaboard Allied Milling Corp., et al.*, — U.S. —, slip op. issued June 11, 1979; *See also, City of Chicago* v. *U.S.*, 396 U.S. 162 (1969).

[19] See, *Federal Power Commission* v. *Metropolitan Edison Co.*, 304 U.S. 375 (1938).

[Docket No. E-9601]

Lake Oswego Corporation; Order Permitting Submission in Support of Motion for Reconsideration.

Issued August 1, 1979.

On July 2, 1979, the Lake Oswego Corporation filed a petition for rehearing or reconsideration of the Commission's May 3, 1979, order finding that Lake Oswego is a navigable water of the United states within the meaning of Section 3(8) of the Federal Power Act; and that the Oswego Hydroelectric Project must therefore be licensed. The petition also requests the Commission to extend or waive the time for filing for rehearing, and to hold a hearing or allow the submission of evidence and briefs.

Section 313(a) of the Federal Power Act [1] provides that a person aggrieved by a Commission order who wishes to obtain a rehearing on the order and to preserve the right to seek review in a United States court of appeals must file an application for rehearing within 30 days of the date of issuance of that order. The pertinent period following our order of May 3 therefore expired on June 4, 1979.

In its filing, Lake Oswego Corp. sets forth several reasons for failing to file its application for rehearing within the statutory 30 day period, and asks that we waive or extend the time for filing. The reasons given suggest that it neglected to familiarize itself with the provisions of the federal Power Act and the Commission's rules of practice and procedure.[2] In any case, we cannot extend or waive section 313's requirement that applications for rehearing be filed within 30 days of issuance of our order. Failure to file within that time period is a statutory bar

[1] 16 U.S.C. § 825 *1*(a) (1976).

[2] Section 313 itself provides that an application for rehearing be filed "within 30 days after the *issuance*" of the disputed order." Section 1.13(c) of our regulations provides that an order is effective on the date of issuance unless otherwise specially provided in the order. No prior notice to Lake Oswego Corp. that a hearing would not be held was necessary, because, as discussed below, neither the federal Power Act nor our regulations provided a right to a hearing on this matter, and Lake Oswego Corp. never requested us to hold a hearing as a matter of our discretion.

to applications for rehearing.[3] Although we are foreclosed from entertaining an application for rehearing, in the exercise of our discretion we shall treat Lake Oswego Corp.'s July 2 filing as a motion for reconsideration.

In support of its contention that an evidentiary hearing should have been held, Lake Oswego Corp. argues that it did not request a decision without a hearing, that staff counsel did not request that a hearing not be held, and that there was no finding that due and timely execution of the Commission's functions imperatively and unavoidably required a decision without a hearing, citing § 1.30 of our regulations. By its very terms, that section applies only to "proceedings required by statute to be determined on the record after opportunity for hearing." Part I of the Federal Power Act, under which this proceeding arises, provides an opportunity for hearing only in certain limited instances.[4] The Act does not guarantee an opportunity for hearing on proceedings like this one, involving an investigation under § 4(g) of occupancy of a stream for the purpose of developing electric power and a determination that licensing is required under § 23(b). Our regulations provide no independent right to a hearing in such proceedings. In fact, our regulations quite explicitly inform applicants that:

> Hearings are not required to be held in all of the Commission's proceedings. Where no hearing is held, the Commission acts on the basis of the material filed and the staff studies and recommendations thereon. [18 CFR 3.103.]

In this proceeding, we acted in accordance with that provision. We conclude that there was no procedural defect underlying our order of May 3, 1979.

Turning to the allegations of substantive error, Lake Oswego Corp.'s motion for reconsideration does nothing but state in conclusory language that our decision "erroneously finds that Lake Oswego is a navigable water of the United States . . . [because:]"

a. Lake Oswego historically was *not* navigable and is non-navigable.

b. The history recited by the Commission is incomplete and the conclusions drawn therefrom are incorrect.

c. Lake Oswego is non-navigable as a matter of law under applicable statutes, including legislative history, and under controlling case law. [Emphasis in original.]

But Lake Oswego Corp. does not point to any part of our analysis of the historical evidence or the applicable law that is supposedly in error, or how the conclusion drawn might be faulty, or what statutes, legislative history, or case law support its view. The allegations of error in Lake Oswego Corp.'s motion fail to take issue with our order with the degree of specificity that would be necessary to support a petition for rehearing and subsequent judicial review.[5] The Federal Power Act requires "something more concrete and specific than the vague references" in Lake Oswego Corp.'s motion; it demands a degree of specificity sufficient to call the Commission's attention to the particular ways in which it has allegedly erred "to stimulate [the Commission's] consideration of them."[6] Thus, the motion fails to give the Commission "notice of its alleged errors so that it may have an opportunity to correct them."[7]

Because of the lack of specificity in Lake Oswego Corp.'s pleadings, we would be justified in denying its motion. In the exercise of our discretion, however, in this instance we believe that it would neither be unreasonable nor offend the public interest to permit Lake Oswego Corp. to submit a memorandum in support of its motion for reconsideration, explicating in detail the specific errors of law or fact that it alleges with respect to our finding that Lake Oswego is a navigable water of the United States. Upon receipt of that memorandum, we shall proceed to take further action on its motion for reconsideration.

The Commission orders: No later than 45 days from the date of this order, Lake Oswego Corporation may file a memorandum in support of its July 2, 1979, motion for reconsideration of the Commission's May 3, 1979, "Order Finding Licensing Required" in this docket. That memorandum shall explain fully the specific errors of law or fact alleged with respect to the Commission's finding that Lake Oswego is a navigable water of the United States within the meaning of Section 3(8) of the Federal Power Act, including discussion of legislation and case law and a proffer of any evidence on which its contentions rely.

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-24678 Filed 8-9-79; 8:45 am]

BILLING CODE 6450-01-M

[3] *See, e.g.*, Appalachian Power Co., 52 F.P.C. 317, 319–321 (1974); Niagara Mohawk Power Corp., Project No. 2645, Order On Reconsideration (issued Dec. 28, 1978).

[4] See §§ 5, 7(c), 10(e), 14(a), 15(b), 20, and 23(a) [16 U.S.C §§ 798, 800(c), 803(e), 807(a), 808(b), 813, 816 (1976)].

[5] Section 313(a) of the Federal Power Act states: "The application for rehearing shall set forth specifically the ground or grounds upon which such application is based."

[6] North Carolina v. FPC, 533 F.2d 702, 705–06 (D.C. Cir. 1976), *vacated on other grounds*, 429 U.S. 891; *see also* City of Vanceburg v. FERC, 571 F.2d 630, 642 (D.C. Cir. 1977), *cert. denied*, ——— U.S. ———, 99 S. Ct. 79 (1978).

[7] North Carolina v. FPC, 533 F.2d at 705, *citing* FPC v. Colorado Interstate Gas Co., 348 U.S. 492, 500 (1955).

[Docket No. CP79-402]

Lone Star Gas Co., a Division of Enserch Corp.; Notice of Application

July 31, 1979

Take notice that on July 6, 1979, Lone Star Gas Company, a Division of Enserch Corporation (Applicant), 301 South Harwood Street, Dallas, Texas 75201, filed in Docket No. CP79-402 an application pursuant to Section 7(c) of the Natural Gas Act for permission and approval to abandon certain natural gas facilities from use in the interstate market, all as more fully set forth in the application on file with the Commission and open to public inspection.

Applicant proposes to abandon the following pipelines and appurtenances from interstate commerce and to employ these facilities to transport gas which is produced, purchased and consumed wholly within the State of Texas;

(1) A portion of Line F between Stations 1475+00 and 2696+57[5] (end), consisting of approximately 23.477 miles of 12-inch, 16-inch and 18-inch pipeline facilities in Denton and Dallas Counties, Texas;

(2) All of Line F-6 between Stations 0+00 and 3+32 (end), consisting of approximately 0.063 mile of 4-inch pipeline facilities in Denton County;

(3) All of Line F-13 between Stations 0+00 and 0+50 (end), consisting of approximately 0.010 mile of 2-inch pipeline facilities in Denton County;

(4) All of the Line F-14 between Stations 0+00 and 3+06 (end), consisting of approximately 0.058 mile of 2-inch pipeline facilities in Denton County;

(5) All of Line F-15 between Stations 0+00 and 11+14 (end), consisting of approximately 0.211 mile of 2-inch pipeline facilities in Denton County;

(6) All of Line F-16 between Stations 0+00 and 10+51 (end), consisting of approximately 0.178 mile of 2-inch pipeline facilities in Denton County;

(7) All of Line F-17 between Stations 0+00 and 0+17 (end), consisting of approximately 0.003 mile of 2-inch pipeline facilities in Denton County.

The portion of Line F to be abandoned, Applicant indicates, is a transmission line which allows gas to flow to certain distribution systems

served by Applicant in Dallas and Denton Counties, Texas, including the Denton distribution system. Lines F-6, F-13, F-14, F-15, F-16, and F-17 extend from Line F to serve the city gate stations of Lewisville, Lake Dallas, Lake Shore Park addition (an unincorporated area), Shady Shores, Highland Village, and Lewisville, respectively, it is said. Upon receipt of the requested authorization, Applicant would cut Line F immediately south of the tap line (Line FA) for its interstate Lake Dallas Storage Unit, and the system south of this point would be utilized to transport gas on an intrastate basis. Applicant states that construction of an intrastate pipeline and a new South Denton Measuring Station would be required to serve a portion of the City of Denton demand. The proposed realignment, it is asserted, would not result in diminution of service to any of Applicant's existing customers.

Applicant states that the proposed abandonment from interstate operation and realignment of Applicant's existing interstate pipeline system, as authorized in previous dockets, would allow utilization of Applicant's intrastate gas supplies in an existing interstate market. Conservation of interstate gas supplies which are required to serve that part of Applicant's interstate system that remains totally dependent on interstate gas supplies would also be accomplished, it is stated.

Any person desiring to be heard or to make any protest with reference to said application should on or before August 22, 1979, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take futher notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 79-24659 Filed 8-9-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. CP70-22]

Michigan Wisconsin Pipe Line Company; Notice of Petition to Amend

July 31, 1979.

Take notice that on July 20, 1979, Michigan Wisconsin Pipe Line Company (Michigan Wisconsin) filed in Docket No. CP70-22 a petition to amend further the order issued April 30, 1970, in said docket pursuant to Section 3 of the Natural Gas Act by authorizing the importation from Canada of natural gas purchased from TransCanada Pipelines Limited (TransCanada) at an increase in the border price from $2.30 (U.S.) per million Btu's equivalent to $2.80 (U.S.) per million Btu's effective August 11, 1979, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Michigan Wisconsin states that by order of Canada's Privy Council issued July 12, 1979, the border price for gas exported from Canada was increased from $2.30 (U.S.) per million Btu's to $2.80 (U.S.) per million Btu's, effective August 11, 1979. Michigan Wisconsin asserts that gas imported from Canada forms a vital portion of its gas supply and requests authorization to import said gas at the increased price so that it will not be faced with the termination of this important supply source.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before August 22, 1979, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Lois D. Cashell,

Secretary.

[FR Doc. 79-24680 Filed 8-9-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. CP79-410]

Mid Louisiana Gas Co.; Notice of Application

August 1, 1979.

Take notice that on July 16, 1979, Mid Louisiana Gas Company (Mid Louisiana), 2100 Lykes Center, 300 Poydras Street, New Orleans, Louisiana 70130, filed in Docket No. CP79-410 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction, installation and operation of certain facilities for the dehydration of natural gas introduced into its transmission system, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is stated that Mid Louisiana would purchase, install and operate as a part of its main transmission facilities, two glycol dehydrators complete with various appurtenances and capable of dehydrating 20,000 Mcf of gas per day per unit.

Mid Louisiana produces approximately 22,000 Mcf of gas per day from its producing properties in the Monroe Gas Field in northeastern Louisiana. In addition, Mid Louisiana purchases approximately 20,000 Mcf of additional gas from several producers which gas is introduced into Mid Louisiana's main transmission line. Mid Louisiana has experienced some loss of line capacity and the proposed facilities would help to avoid line deterioration caused by free water in the gas stream coming into contact with increasing quantities of acid gases in the system. The proposed facilities would eliminate this problem for a comparatively minor expenditure of $161,000. The facilities would be located adjacent to Mid Louisiana's transmission facilities immediately downstream of its DeSiard Compressor Station in Ouachita Parish, Louisiana.

Any person desiring to be heard or to make any protest with reference to said

application should on or before August 22, 1979, file with Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 79-24681 Filed 8-9-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. RP76-91]

Montana-Dakota Utilities Co.; Notice of Withdrawal From Settlement

July 31, 1979.

Take notice that on June 20, 1979, Montana-Dakota Utilities Co. (MDU) filed in Docket No. RP76-91 a withdrawal from "Stipulation and Agreement in Settlement of Curtailment Proceeding" (Settlement Agreement) which was filed with the Commission on August 31, 1976. The Settlement Agreement, according to MDU, was entered into in an effort to settle most issues arising out of MDU's curtailment plan. With respect to that Settlement Agreement MDU relates as follows:

MDU states that it has also filed certain tariff sheets designed to implement the terms of the Settlement Agreement, that those tariff sheets were accepted by the Commission and that the operation thereof was suspended. Under the terms of those tariff sheets MDU restricted itself to 4,000 new Priority 1 customer-attachments per year.

On January 15, 1979, MDU filed a revised tariff sheet that would raise the permitted level of annual customer-attachments to 7,500. A number of MDU's customers objected to the revised tariff sheet claiming, *inter alia*, that the sheet was subject to rejection, under the so-called Mobile-Sierra doctrine,[1] as an unlawful unilateral tariff amendment. The Commission rejected the customers' claims stating, *inter alia*:

> * * * First, the Settlement is not yet a binding agreement. By its own terms the Settlement does not take effect until the Commission approves it without modification. * * * This the Commission has not done. Moreover, any party to the Settlement, including presumably MDU, may yet withdraw its participation if and when the Commission does approve the Settlement.* * *

Thus, the Commission accepted MDU's revised tariff sheet for filing, although it suspended the tariff sheet's effectiveness for 5 months.

Subsequently, the Commission approved the settlement interim curtailment plan, ordering as follows:

> "(D) *Montana-Dakota.* The initial decision of April 19, 1977, approving the interim settlement proposal filed August 31, 1976, is affirmed as modified. The settlement plan is found just and reasonable subject to such further modifications as may be required in implementation of the NGPA and in considering the plan for adoption as a permanent plan. The initial decision of May 16, 1977, is remanded in accordance with the terms of this order.

MDU states that it is concerned that the Commission's approval of the settlement plan may revive the intervenor's arguments with respect to the Settlement Agreement. According to MDU the intervenors may assert that what was not a contract commitment before Commission approval has become a contract commitment after approval. MDU feels that such an argument might cast a cloud over MDU's January 15, 1979, filing to increase its permitted number of new connections. Accordingly, MDU has chosen to withdrawal from the Settlement Agreement. MDU asserts that its withdrawal is consistent with Article V, "Effectiveness" of the Settlement Agreement which provides in relevant part as follows:

> Neither this Stipulation and Agreement nor any of the provisions hereof shall become effective unless each of the following has occurred:
>
> (1) The Commission shall have entered an order on or before September 30, 1976, (or if subsequent to September 30, 1976, subject to any party's election within ten days of the Commission's order disposing of this Stipulation and Agreement) approving this Stipulation and Agreement without condition or modification * * *.

Any person desiring to be heard or to comment with respect to the notice of withdrawal should file its request or comments in an original and 14 conformed copies on or before August 22, 1979, with the Federal Energy Regulatory Commission, Washington, D.C. 20426, in accordance with the Commission's Rules of Practice and Procedure. Any person which has heretofore filed comments need not do so again.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 79-24682 Filed 8-9-79; 8:45 am]

BILLING CODE 6450-01-M

[1] See *United Gas Pipe Line Company* v. *Mobile Gas Service Corporation*, 350 U.S. 332 (1956) and *Federal Power Commission* v. *Sierra Pacific Power Company*, 350 U.S. 348 (1956).

[Docket No. CP74-145]

Northern Natural Gas Company; Notice of Petition To Amend

August 1, 1979.

Take notice that on July 18, 1979, Northern Natural Gas Company (Northern), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP74-145 a petition to amend the order of May 29, 1975,[1] issued in said docket pursuant to Section 7(c) of the Natural Gas Act so as to authorize the addition of a new delivery point for the delivery of exchange gas to Natural Gas Pipeline Company of America (Natural), all as more fully set forth in the petition which is on file with the Commission and open to public inspection.

Northern states that the Commission authorized it in Docket No. CP74-145 to exchange up to 2,000 Mcf of natural gas per day with Natural pursuant to a gas exchange agreement dated June 29, 1973, as amended.

Under terms of Rate Schedule X-38, Northern currently delivers up to 5,000 Mcf per day of natural gas to Natural at exchange points in Wheeler and Carson Counties, Texas and in Beckham County, Oklahoma and Natural delivers

[1] This proceeding was commenced before the FPC. By joint regulation of October 1, 1977 (10 CFR 1000.1), it was transferred to the Commission.

equivalent volumes of gas to Northern at exchange points in Hansford and Carson County, Texas and in Beaver and Woodward Counties, Oklahoma.

Northern proposes the addition to the exchange agreement of a new delivery point which would be utilized for delivery of balancing exchange gas volumes to Natural. Such delivery point is located at the tailgate of Diamond Shamrock Corporation's McKee Plant located in Moore County, Texas. Northern and Natural would utilize existing facilities.

To compensate Natural for compression fuel, the volumes of gas delivered at the McKee Exchange Point for redelivery to Natural would be adjusted to include a charge equal to one and three tenths percent.

Any person desiring to be heard or to make any protest with reference to said petition should on or before August 22, 1979, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 79-24683 Filed 8-9-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. CP78-532]

Ozark Gas Transmission System; Order Providing for Formal Hearing, Establishing Procedures, and Granting Interventions

Issued: July 31, 1979.

On September 21, 1978,[1] Ozark Gas Transmission System (Ozark) [2] filed in Docket No. CP78-532 an application, pursuant to Section 7(c) of the natural Gas Act, requesting authorization (1) to construct and operate a pipeline and related facilities extending from Pittsburg County, Oklahoma to White County, Arkansas, and (2) to provide natural gas transportation service for Columbia Gas Transmission Corporation (Columbia Gas) and Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee). For the reasons set forth herein, we find that the application and pleadings in this proceeding present material issues of fact concerning the present or future public convenience and necessity of the proposed pipeline project and the application should, therefore, be set for hearing before an administrative law judge.

The Proposal

Columbia Gas and Tennessee have acquired rights to purchase gas from an area of interest in the Arkoma Basin in the states of Arkansas and Oklahoma. Those rights are embodied in three letter agreements between Columbia Gas Development Corporation and Texas Oil & Gas Corporation (TXO) dated July 18 and April 28, 1978,[3] a letter agreement between Tennessee and Tenneco Oil Company (TOC) dated April 6, 1979, and a gas purchase and sales agreement between Columbia Gas, Tennessee, and Service Drilling Company (Service Drilling) dated September 15, 1978. The area of interest allegedly contains proved gas reserves of 42 Bcf, probable gas reserves of 212 Bcf, and potential gas reserves of 323 Bcf.

In order to move the gas to market, Ozark Gas Pipeline Corporation (OGPL), Columbia Gulf Transmission Company (Columbia Gulf), Tennessee Ozark Gas Company (Tennessee Ozark), and Oklahoma Natural Development Corporation (ONDC) have formed a general partnership, Ozark Gas Transmission System (Ozark), to construct and operate a natural gas pipeline which will traverse the area of interest in the Arkoma Basin. The proposed line will enable Ozark to receive, transport, and deliver the volumes of gas obtained by Columbia Gas and Tennessee in the Arkoma Basin to Natural Gas Pipeline Company of America (NGPL) for subsequent transportation and redelivery to Columbia Gas and Tennessee.

The Proposed Facilities

The facilities for which authorization is requested include approximately 265 miles of 20-inch transmission line, approximately 180 miles of 4-inch, 6-inch, 8-inch, and 10-inch lateral lines, compression totaling 3,125 horsepower, and dehydration facilities. Upon completion, the proposed line will extend from Pittsburg County, Oklahoma to a point of interconnection with NGPL in White County, Arkansas.

Although the proposed system will be capable of handling 170,000 Mcf of natural gas per day, Ozark estimates that the initial gas deliverability available for transportation through the proposed line will total 119,000 Mcf per day. The volume actually transported will be reduced further when compressor and dehydration fuel are deducted.

The applicants estimate the total cost of the proposed facilities to be $103,912,890. This cost will be financed with $31,257,000 in equity provided in equal shares by the partners and $72,932,000 in long term debt to be obtained by the partners at the time of permanent financing.

The Proposed Transportation Service

Pursuant to the terms of the Ozark Gas Transmission System General Partnership Agreement, 50 percent of the proposed pipeline capacity will be made available for use by Columbia Gas and 50 percent will be made available for use by Tennessee. The percentage of capacity available for each will be subject to ONDC's option and right to become a shipper and utilize up to 25 percent of the total capacity to the

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[1] Subsequent to the date of filing, Ozark was requested to furnish additional information regarding deficiencies in the application. Supplemental information was submitted on February 12 and 28, April 3, May 9 and 24, 1979 in compliance with such requests. Also, an informal conference was held with Ozark to resolve these deficiencies. The additional information was required to enable the Commission to make a preliminary evaluation of the proposed project.

[2] Ozark is a general partnership formed under the laws of the State of Texas by Ozark Gas Pipeline Corporation (OGPL), Columbia Gulf Transmission Company (Columbia Gulf), Tennessee Ozark Gas Company (Tennessee Ozark), and Oklahoma Natural Development Corporation (OMDC). Although Ozark has no present natural gas transmission operations and is not now subject to the jurisdiction of the Commission, it will be a "natural-gas company" subject to the Commission's jurisdiction under the Natural Gas Act (NGA) upon completion of the proposed pipeline facilities.

OGPL, a Delaware corporation having its principal place of business in Dallas, Texas, is not a "natural-gas company" within the meaning of the NGA. It is, however, a subsidiary of Texas Oil & Gas Corporation (TXO) which is a "natural-gas company" within the meaning of the NGA as heretofore found by the Commission.

Nor is Tennessee Ozark, a Delaware corporation having its principal place of business in Houston, Texas, a "natural-gas company" within the meaning of the NGA. It is, however, a subsidiary of Tenneco Inc. which is a "natural-gas company" within the meaning of the NGA as heretofore found by the Commission.

ONDC, a Delaware corporation having its principal place of business in Tulsa, Oklahoma, is neither a "natural-gas company" within the meaning of the NGA nor a subsidiary of a company which is a "natural-gas company".

Columbia Gulf, a Delaware corporation having its principal place of business in Houston, Texas, is a "natural-gas company" within the meaning of the NGA as heretofore found in the Commission's order issued November 5, 1958, in Docket No. G-15524 (20 FPC 681).

[3] By "Assignment of Preferential Right To Purchase Gas" dated September 19, 1978, Columbia Development assigned its interest in the three letter agreements to Columbia Gas.

extent that capacity is not being utilized by Columbia Gas and Tennessee. ONDC may exercise its option to become a shipper at any time within two years from the date the Ozark system is placed in commercial operation.

The volumes acquired by Columbia Gas and Tennessee will be transported in accordance with the terms of transportation agreements with Ozark dated September 20, 1978. Pursuant to the terms of those agreements, Ozark will receive and transport through the proposed facilities up to 85,000 Mcf of natural gas per day for Columbia Gas and up to 85,000 Mcf per day for Tennessee. For this service, Ozark proposes to charge Columbia Gas and Tennessee a monthly demand charge of $13.306 per Mcf of contract demand, which initially is to be 85,000 Mcf per day for Columbia Gas and 85,000 Mcf per day for Tennessee. The proposed charge includes an 11.8 percent rate or return.

The volumes transported through the proposed Ozark line will be redelivered into the existing facilities of NGPL in White County, Arkansas. Columbia Gas and Tennessee have not yet negotiated the necessary exchange and transportation agreements with NGPL.

Interventions

After due notice of the application by publication in the Federal Register on October 18, 1978 (43 FR 48006), timely petitions to intervene were filed by Northwest Pipeline Corporation, Cities Service Gas Company, Natural Gas Pipeline Company of America, Midwestern Gas Transmission Company, United Gas Pipe Line Company, The Peoples Natural Gas Company and West Ohio Gas Company, Columbia Gulf Transmission Company, Arkansas Louisiana Gas Company, East Tennessee Natural Gas Company, Mobil Oil Corporation, National Fuel Gas Supply Corporation, Mississippi River Transmission Corporation, Columbia Gas of Maryland, Inc., Columbia Gas of West Virginia, Inc., Columbia Gas of Kentucky, Inc., Columbia Gas of Pennsylvania, Inc., Columbia Gas of Ohio, Inc., Columbia Gas of New York, Inc., Oklahoma Natural Development Corporation, Columbia Gas of Virginia, Inc., Pennsylvania Gas and Water Company, Service Drilling Company, *et al.*, and Columbia Gas Transmission Corporation. Untimely petitions or notices of intervention were filed by Southern Union Exploration Company, Wilshire Oil Company of Texas, People's Counsel of Maryland, Public Service Commission of the State of New York, Leben Oil Corporation, The Cincinnati Gas & Electric Company and the Union Light, Heat & Power Company, Tennessee Gas Pipeline Company, Arkansas Public Service Commission, Potts-Stephenson Exploration Company, Penn Fuel Gas, Inc., UGI Corporation, Arkoma Gas Company, Trepco, Inc., Diamond Shamrock Corporation, and Quanah Company.

Petition Opposing the Project

Arkla, in its petition to intervene, states that it is opposed to the proposed Ozark line because it will traverse a mature and declining basin from which Arkla has traditionally drawn a significant portion of its natural gas supplies. According to Arkla, the basin does not contain enough present and potential reserves to satisfy the current and future needs of Arkla's customers and the customers of other pipelines in the area. Arkla further states that there is adequate excess gathering capacity in the area to receive all present and future gas production and that all such supplies will be needed to serve consumers presently dependent upon the basin for their natural gas supplies.

Since the Ozark proposal could allegedly impair Arkla's ability to render adequate service to its customers, Arkla requests a formal hearing to develop a record concerning the public convenience and necessity of the proposed project. In Arkla's opinion, the hearing should examine the issues of supply, the need of the applicant pipelines for the gas, and the economic feasibility of the proposed facilities in view of the limited reserves available in the area.

Ozark filed an "Answer to Arkansas Louisiana Gas Company's Petition to Intervene And Motion That Such Petition Be Refiled Or Supplemented" on November 13, 1978. In that pleading, Ozark alleges that Arkla has not complied with Section 1.8(c) of the Commission's Rules of Practice and Procedure in that Arkla has not "fully and completely advised the parties * * * as to the specific issues of fact or law to be raised or controverted, by admitting, denying or otherwise answering, specifically and in detail, each material allegation." Ozark does not specifically oppose Arkla's petition for intervention, but requests that the petition be granted "if and only after Arkla has honored the Commission's rules."

In its reply to Ozark's motion, filed November 24, 1978, Arkla asserts that "its petition to intervene is sufficient and need not be refiled or supplemented". In Arkla's opinion, both Ozark and the Commission "have been fully informed as to the interest of Arkla and the primary points to which Arkla proposes to direct its opposition to the Ozark proposal".

Upon review of the relevant pleadings, we find Arkla's petition to intervene to be in compliance with the requirements of Section 1.8(c) of the Rules of Practice and Procedure. The petition provides adequate information with respect to Arkla's interest in the proceeding and raises legitimate issues of fact with respect to the public convenience and necessity of the proposed project. Both Ozark and the Commission have sufficient notice of the primary points to which Arkla proposes to direct its opposition. While Arkla need not refile or supplement its petition to intervene as requested by Ozark, it will be responsible for the development of the issues it has raised in its petition on the record in this proceeding.

As a potential competitor of Ozark for natural gas reserves in the Arkoma Basin, Arkla possesses an interest of such nature that its intervention is necessary and appropriate to the administration of the Natural Gas Act.[3] As the United States Court of Appeals for the District of Columbia Circuit stated in *Juarez Gas Company* v. *FPC*, 375 F. 2d 595, 599 (D.C. Cir. 1967):

> Petitioner's operations were subject to competition by Gas Natural if the Commission issued its orders and Mexico issued Gas Natural a franchise. Under the Natural Gas Act, determination whether the orders should issue required inquiry into matters of public interest and public convenience and necessity. Petitioner was entitled to present evidence in that regard. This entitlement does not attach because of the competitive situation, considered alone and in the abstract, but because an affected competitor such as petitioner is deemed to be in position to advance matters which are relevant and material for consideration by the Commission under the standards of the Act.

We, accordingly, find that participation of Arkla in this proceeding may be required in the public interest and its petition to intervene should be granted.

Other Petitions To Intervene

None of the remaining petitioners for intervention have expressed opposition to the proposed Ozark project or requested formal hearing on the application. Each such petitioner has, however, expressed sufficient interest in the proceeding to warrant intervention.

[3] 18 CFR § 1.8(b). *See Virginia Petroleum Jobbers Ass'n* v. *FPC*, 259 F. 2d 921 (D.C. Cir. 1958); *City of Pittsburg* v. *FPC*, 237 F. 2d 741 (D.C. Cir. 1956); *National Coal Association* v. *FPC*, 191 F. 2d 462 (D.C. Cir. 1957).

As for the untimely petitions, we note that no opposition has been raised to any of the petitions, and it does not appear that any undue delay will result from the grant of those petitions. In light of each petitioner's interest in the proceeding, and the fact that the interventions will not delay the proceeding, it appears that good cause exists for permitting the late interventions.

Formal Hearing

Since the pleadings in this proceeding raise substantial issues of fact concerning the public convenience and necessity of the proposed Ozark pipeline project, the application must be set for hearing before an administrative law judge. The formal hearing in this proceeding should examine the adequacy of the supply of gas available for transportation through the proposed line, the present and future need of Columbia Gas and Tennessee for the Arkoma Basin reserves as compared to the present and future need of Arkla for the Arkoma Basin reserves, the appropriateness of Ozark's proposed demand charge and rate of return, the environmental consequences of the proposed construction, and any other issues which are determined to be relevant and material to the required public interest determination.

In order to expedite the hearing of these matters, the proceeding will be separated into two phases. Phase I will examine all issues other than the environmental consequences of the proposed project. Phase II will examine all environmental matters. One set of briefs will be submitted to the presiding judge in accordance with the provisions of Section 1.29 of the Rules of Practice and Procedure upon conclusion of both phases of the proceeding.

The Commission finds: (1) It is necessary and proper in the public interest and in carrying out the provisions of the Natural Gas Act that the application in this proceeding be set for formal hearing in accordance with the procedures established herein.

(2) Participation by the above-named petitioners to intervene may be in the public interest and good cause exists to permit the late interventions.

The Commission orders: (A) 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 and regulations thereunder, a prehearing conference shall be held in this proceeding on August 7, 1979, commencing at 10:00 a.m. in a hearing room of the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, to discuss procedures and the clarification of issues concerning the application in this proceeding.

(B) An Administrative Law Judge, to be designated by the Chief Administrative Law Judge for that purpose (see Delegation of Authority, 18 CFR § 3.5(d)), shall preside at the prehearing conference and subsequent hearing in this proceeding, with authority to establish and change all procedural dates and to rule on all motions (with the exception of motions to consolidate or sever and motions to dismiss), as provided by the Rules of Practice and Procedure.

(C) All of the above-named petitioners are hereby permitted to intervene in this proceeding subject to the rules and regulations of the Commission: *Provided, however,* that the participation of such intervenors shall be limited to matters affecting asserted rights and interests as specifically set forth in the petitions for leave to intervene; and *provided, further,* that the admission of such intervenors shall not be construed as recognition by the Commission that they might be aggrieved because of any order or orders of the Commission entered in this proceeding.

(D) The Secretary shall cause prompt publication of this order in the Federal Register.

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-24684 Filed 8-9-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. CP64-24]

South Penn Gas Co.; Notice of Petition To Amend

July 31, 1979.

Take notice that on July 10, 1979, South Penn Gas Company (South Penn), formerly Emmitsburg Gas Company (Emmitsburg), 55 South Third Street, Oxford, Pennsylvania 19363, filed in Docket No. CP64-24 a petition to amend the order of November 19, 1963, issued in said docket pursuant to Section 7(c) of the Natural Gas Act so as to authorize the operation of the existing pipeline facility from Adams county, Pennsylvania, to Emmitsburg, Maryland, under the new corporate name of South Penn Gas Company, all as more fully described in the petition which is on file with the Commission and open to public inspection.[1]

Penn Fuel Gas Inc. (Penn Fuel), of which Emmitsburg was a wholly-owned subsidiary, merged Emmitsburg with six other wholly-owned subsidiaries of Penn Fuel to form the South Penn Gas Company on April 2, 1979. The corporate office and personnel of South Penn are the same as that of its predecessors, all of which were operated by a unified staff prior to the merger, it is stated. South Penn states that all of the predecessor companies operated entirely within the Commonwealth of Pennsylvania except for Emmitsburg, which operated facilities located in the State of Maryland. the merger has been approved by the Pennsylvania Public Utility Commission and the Maryland Public Service Commission. The reorganization would have no effect upon the actual operation of the facilities, it is said.

Any person desiring to be heard or to make any protest with reference to said petition should on or before August 22, 1979, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Lois D. Cashell,

Secretary.

[FR Doc. 79-24685 Filed 8-9-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. CP79-409]

Texas Eastern Transmission Corp.; Notice of Application

August 1, 1979.

Take notice that on July 16, 1979, Texas Eastern Transmission Corporation (Texas Eastern), P.O. Box 251, Houston, Texas 77001, filed in Docket No. CP79-409 an application pursuant to Section 7 (c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of natural gas for

[1] This proceeding was commenced before the FPC. By joint regulation of October 1, 1977 (10 CFR 1000.1), it was transferred to the Commission.

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.

Pursuant to the terms of a letter of intent dated June 19, 1979, Texas Eastern would transport approximately 15,000 Mcf per day of natural gas purchased by Transco in West Cameron Block 619 (WC619), offshore Louisiana. Such reserves would be delivered through facilities for which Transco is filing a separate application to the production platform in WC Block 620 from which Texas Eastern currently purchases gas for transportation through its own pipeline facility extending from the Block 620 platform to an interconnection with the CGT–NNG 30-inch pipeline, jointly owned by Columbia Gulf Transmission Company (Columbia Gulf) and Northern Natural Gas Company in West Cameron Block 606.

Texas Eastern has agreed to utilize available capacity in its WC620 pipeline to assist Transco in bringing its WC619 gas supplies to market. Pursuant to the letter of intent, Texas Eastern would transport for Transco from the point of receipt at the WC620 platform, a daily quantity of approximately 15,000 Mcf of gas and redeliver such quantity to Columbia Gulf for the account of Transco at the interconnection of the WC620 pipeline and the CGT–NNG line.

In consideration for the transportation, Transco would make a demand charge adjustment on thermally equivalent quantities of gas that Transco transports for Texas Eastern from High Island Blocks 110 and 111, pursuant to Transco's FERC Rate Schedule X–129.

Texas Eastern is advised by Transco that it is entering into an exchange arrangement with Columbia Gulf and Columbia Gas Transmission Corporation involving the exchange and transportation of the WC619 gas once it is delivered by Texas Eastern into the CGT–NNG pipleline.

It is stated that the proposed transportation service would assist Transco in timely securing its WC619 gas reserves for its customers at the minimum cost and would obviate the necesssity for constructing extensive pipeline facilities.

Any person desiring to be heard or to make any protest with reference to said application should on or before August 22, 1979, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 79-24580 Filed 8-9-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. CP78-49]

Transcontinental Gas Pipe Line Corp.; Notice of Motion

August 2, 1979.

Take notice that on July 25, 1979, J. P. Stevens & Company, Inc. (Stevens), 1185 Avenue of the Americas, New York City, New York 10036, filed in Docket No. CP78–49 a motion pursuant to Section 1.12 of the Commission's Rules of Practice and Procedure (18 CFR 1.12) for waiver, or otherwise to delete, certain end-use conditions contained in the Commission's order issued October 4, 1978, in said docket pursuant to Section 7(c) of the Natural Gas Act and Section 2.79 of the Commission's General Policy and Interpretations (18 CFR 2.79), all as more fully set forth in the motion which is on file with the Commission and open to public inspection.

The order of October 4, 1978, authorized Transcontinental Gas Pipe Line Corporation to transport for Stevens for two years up to 5,005,000 Btu equivalent of natural gas to 13 of Stevens plants. Stevens states that ordering paragraphs C (2) and (3) of said order restricted the use of the gas being transported to process and plant protection and required Stevens to reduce the volumes it would receive under local suppliers' curtailment plans to the extent the volumes of gas transported exceeded the volumes of process and plant protection gas being curtailed. Stevens maintains that in light of recent energy policy pronouncements of the Department of Energy and the Commission, it requests that said end-use restrictions be waived or deleted in their entirety.

Stevens asserts that it has been required to use a substantial quantity of fuel oil for its boilers in recent periods and that it consumed approximately 7,600,000 gallons of fuel oil at nine plants which are among those covered by the authorization in the instant docket. Stevens requests that it be permitted to have its present supply of gas transported to these plants and, if necessary, to use such gas for boiler fuel purposes. Stevens states that granting the relief requested is necessary to provide Stevens with the flexibility, depending upon the conditions at hand, to use either local gas supplies or transportation gas to displace the use of fuel oil at the plants in question. Stevens asserts that the instant request is consistent with recently promulgated policies of the Economic Regulatory Administration and the Commission to encourage transportation of natural gas to displace the use of fuel oil in industrial and electric generation facilities.

Any person desiring to be heard or to make any protest with reference to said motion should on or before August 24, 1979, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a

petition to intervene in accordance with the Commission's Rules.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 79-24687 Filed 8-9-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. CP78-541]

Transcontinental Gas Pipe Line Corp.; Notice of Petition To Amend

August 1, 1979.

Take notice that on July 20, 1979, Transcontinental Gas Pipe Line Corporation (Petitioner), P.O. Box 1396, Houston, Texas 77001, filed in Docket No. CP78-541 a petition to amend the order of November 21, 1978, issued in said docket and amended on June 8, 1979, pursuant to Section 7 of the Natural Gas Act and Section 157.7(b) of the Regulations thereunder (18 CFR 157.7(b)) so as to authorize Petitioner to increase the total cost of facilities constructed under its gas purchase budget-type authorization, all as more fully set forth in the petition which is on file with the Commission and open to public inspection.

Petitioner states that pursuant to the Commission's order of November 21, 1978, it was authorized to construct and operate gas purchase facilities under budget-type authorization for a one year period which commenced on said date of November 21, 1978. Petitioner indicates that the total cost of facilities constructed under the budget-type authorization is limited to $18,000,000 with no single onshore project to exceed $2,250,000 and no single offshore project to exceed $3,500,000.

Petitioner states that the total budget authorization herein of $18,000,000 for unidentified projects has already been expended or committed to numerous projects which have been completed or are under construction, and that an increase in such total authorization for unidentified projects to $23,000,000 is necessary to permit continued attachment of new gas supplies during the balance of the budget-year. Petitioner requests that the Commission waive the total cost limitation prescribed in Section 157.7(b)(1)(i) of its Regulations under the Natural Gas Act to enable such increase.

Any person desiring to be heard or to make any protest with reference to said petition should on or before August 22, 1979, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 79-24688 Filed 8-9-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. CP79-389]

Transcontinental Gas Pipe Line Corp.; Notice of Application

July 31, 1979.

Take notice that on June 29, 1979, Transcontinental Gas Pipe Line Corporation (Applicant), P.O. Box 1396, Houston, Texas 77001, filed in docket No. CP79-389 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of gas, on an interruptible basis for Public Service Electric and Gas Company (Public Service), an existing resale customer of Applicant served under Rate Schedule CD-3, pursuant to the terms of a new transportation agreement dated June 22, 1979, between Applicant and Public Service, all as more fully set forth in the application on file with the Commission and open to public inspection.

Pursuant to authorization granted in Docket Nos. CP74-150 and CP77-630, Applicant is presently transporting on an interruptible basis for Public Service gas which Public Service purchases from its production affiliate, Energy Development Corporation (EDC), in the Colorado Delta Field, Brazos Area, offshore Matagorda County, Texas, and the East Deer Island Field, Terrebonne Parish, Louisiana, pursuant to the terms of a gas transportation agreement dated September 14, 1973, between the two companies.

Applicant states that it has now entered into a new transportation agreement dated June 22, 1979, with Public Service, which agreement serves to update the September 14, 1973, agreement between the two companies by adding three additional sources of EDC-produced gas for transportation by Applicant and by establishing a maximum daily aggregate quantity of gas of 50,000 dekatherm (dt) equivelent for all sources where none existed before. The three new points, Applicant indicates, where Applicant proposes to receive EDC-produced gas are the Vermilion Area Blocks 25 and 58, offshore Louisiana, where Applicant has constructed or would construct connecting facilities to receive gas which it will purchase from other producers, and the outlet of Mobil Oil Corporation's Cameron Meadows Processing Plant, Cameron Parish, Louisiana, where gas produced by EDC in the Back Ridge Field, Cameron Parish would be delivered by Michigan Wisconsin Pipe Line Company (Mich Wisc) for the account of Public Service. Applicant states that Public Service would pay it or cause it to be paid 7.904 percent of the actual cost of constructing the Vermilion Block 25 facilities and 6.667 percent of the actual cost of constructing the Vermilion Block 58 facilities as grants in aid, and would pay or cause to be paid monthly its *pro rata* share of the cost of operating and maintaining such facilities.

Because EDC is very active in its exploration and drilling program, it is anticipated that a number of new sources of transportation gas would be contracted by Public Service in the near future. Therefore, Applicant requests that it be allowed to attach new EDC sources of gas to its system when they become available without having to file for additional authorization.

Any person desiring to be heard or to make any protest with reference to said application should on or before August 22, 1979, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is

filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 79-24689 Filed 8-9-79; 8:45 am]

BILLING CODE 6450-01-M.

[Docket No. CP78-340]

Trunkline Gas Co.; Notice of Petition To Amend

August 1, 1979.

Take notice that on July 16, 1979, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77001, filed in Docket No. CP78-340 a petition to amend the order of July 25, 1978 issuing a certificate of public convenience and necessity in the instant docket pursuant to Section 7(c) of the Natural Gas Act by authorizing the transportation of 37,500 Mcf per day of natural gas for the account of Panhandle Eastern Pipe Line Company (Panhandle) in lieu of the previously authorized 42,500 Mcf per day of natural gas produced from Vermilion Block 329, offshore Louisiana, all as more fully set forth in the petition to amend which is on file with the Commission and open for public inspection.

On July 25, 1978, Trunkline was authorized to transport up to 42,500 Mcf of natural gas per day on behalf of Panhandle. Trunkline had entered into a transportation agreement, dated April 28, 1978, with Panhandle which provided that Trunkline would, for a primary term of 10 years, transport on a firm basis up to 42,500 Mcf for Panhandle, which volumes represent Panhandle's interest in gas to be produced by Husky Oil Company (Husky) in Vermilion Block 329, offshore Louisiana.

Trunkline now requests a reduction in the volumes transported to 37,500 Mcf per day. Husky owns 100 percent of the production from Vermilion Block 329 and has dedicated all of such production to Panhandle. CNG Production Company (CNG) owns 100 percent of the production from Vermilion Block 338, and the reserves thereunder are dedicated to Consolidated Gas Supply Corporation. The leases issued to Husky and CNG by the Department of Interior require unitization of Vermilion Blocks 329 and 338, and such blocks have been unitized.

Based on additional data, the petition states, Husky's share of production is now estimated to be 37,500 Mcf per day. Accordingly, Panhandle has requested that Trunkline transport up to 37,500 Mcf per day in lieu of the previously authorized maximum of 42,500 Mcf per day. On May 24, 1979, Panhandle and Trunkline executed an amendment to the Transportation Agreement, which provides, among other things, for the reduction in transportation quantities.

The transportation agreement, dated April 28, 1978, between Panhandle and Trunkline is filed as Rate Schedule T-41 in Trunkline's FERC Gas Tariff Original Volume No. 2.

For the proposed transportation service, Panhandle would pay Trunkline a monthly transportation change consisting of the following:

(a) For utilization of a portion of Trunkline's capacity entitlement in the pipeline systems of others, an amount equal to the product of (i) the transportation quantity under the Transportation Agreement on either a daily or monthly basis as appropriate, and (ii) the currently effective rates being charged to Trunkline by the other pipeline transporters and

(b) For the transportation from the onshore point of receipt by Trunkline to the point of redelivery to Panhandle, a monthly charge of $207,750, based on a reduced daily transportation quantity of 37,500 Mcf.

The amounts charged by Trunkline for utilization by Panhandle of a portion of Trunkline's capacity entitlements in the pipeline system of others shall be subject to the same adjustments as provided for in Trunkline's contracts with those various other transporters, it is said.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before August 22, 1979, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 79-24690 Filed 8-9-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. CP79-400]

United Gas Pipe Line Co.; Notice of Application

July 31, 1979.

Take notice that on July 6, 1979, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77001, filed in Docket No. CP79-400 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the exchange of up to 450,000 Mcf per day of natural gas with Northern Natural Gas Company (Northern Natural), which United would purchase from ANB Gas Company (ANB) at Ventura, Iowa, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

United seeks authorization to exchange gas with Northern Natural at Ventura, Iowa, and at certain existing points of interconnection with various interstate pipelines in the Gulf Coast area, and to record in Account 367 Mains, United's share of the cost of gas utilized as linepack in Northern Border Pipeline Company's (Northern Border) pipeline system.

ANB and United would execute a gas sales agreement whereby ANB would sell and cause to be delivered to United at Ventura, Iowa, by Northern Border, up to an average of 450,000 Mcf per day for the first two contract years, and up to an average of 400,000 Mcf per day thereafter, and any additional volumes of gas up to 50,000 Mcf per day, which may be available from time to time. It is stated that these sales volumes would be reduced by the amount of gas for fuel utilized, lost and unaccounted for incurred by Northern Border in the transporting of such gas from Monchy, Saskatchewan, to a point of interconnection with the pipeline facilities of Northern Natural at Ventura, Iowa.

Northern Natural and United have entered into a letter of intent dated February 14, 1979, pursuant to which the parties would exchange up to 450,000 Mcf per day of gas which United would have available from production located in the Gulf Coast Area.

United states that the gas supply covered by this application would be imported from Canada by Northwest Alaskan Pipeline Company and purchased on the United States side of the international boundary by ANB. The gas would be delivered to Northern Border at this point for transportation and redelivery to ANB at Ventura, Iowa, for resale to United. It is indicated that ANB is filing concurrently for Commission authorization to sell up to 450,000 Mcf per day of gas to United at Ventura, Iowa. This new gas supply would become a part of United's overall system gas supply.

Any person desiring to be heard or to make any protest with reference to said application should on or before August 22, 1979, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 79-24691 Filed 8-9-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ER79-279]

Virginia Electric & Power Co.; Order Accepting for Filing and Making Subject to Another Proceeding Rate Filing, and Ordering Section 206 Investigation

Issued: August 1, 1979.

On March 30, 1979, Virginia Electric and Power Company (VEPCO) submitted for filing an executed agreement between VEPCO and the City of Manassas, Virginia (Manassas), along with a revised tariff sheet for resale service to municipalities and private utilities. Under the agreement VEPCO agrees to install parallel operation service which will enable Manassas to receive firm partial requirements service from VEPCO and to provide self-generation for part of its load.[1]

The rate for this service is the same as the tariff rate for municipalities (including Manassas) originally accepted for filing and made effective subject to refund in Docket No. ER78-522. Therefore, the rate for Manassas will be tied to the outcome of the ER78-522 rate proceeding.[2]

VEPCO requests an effective date as of the date of connection of the parallel operation service.[3] The Company also requests waiver of section 35.13 of the regulations "since there will be no increase in the unit rate per KW, KWH or RKVA to the City or the resale municipal customers.

Notice of this filing was issued on April 3, 1979, with all protests and petitions due on or before April 24, 1979. No protests or petitions were received.

The revised sheet tendered by VEPCO highlights a restriction, included in the prior sheet as well as the revised sheet, in the providing of electric service that may be unjust and unreasonable. The pertinent provision states:

VI. Other Provisions (Continued)

(4) Breakdown, relay or parallel operation service under this scheduled shall be available only to installations which on the effective date of this schedule and therafter are and continue to be served hereunder. Notwithstanding the above limitation other installations may be supplied under this schedule by mutual agreement.

The second above-quoted sentence was added in the revised sheet, presumably to soften the impact of the first sentence. We do not believe that the second sentence is sufficient, on its face, to support a restriction that may be discriminatory or anticompetitive in effect. The provision would unequivocally permit current customers to avail themselves of this service but would exclude new customers from partaking in this service absent "mutual agreement." We shall order a Section 206[4] investigation into the justness and reasonableness of this provision.

The Commission Orders: (A) The Agreement between VEPCO and the City of Manassas is hereby accepted for filing and made effective as of the date of parallel installation service, and rates contained therein shall be subject to refund and to the outcome of the proceeding in Docket No. ER78-522.

(B) An investigation pursuant to Section 206 of the Federal Power Act is hereby ordered to evaluate the justness and reasonableness of the provison contained in the second revised tariff sheet No. 10 accompanying this filing. The tariff sheet is hereby accepted for filing and made effective as of June 7, 1979, as requested by VEPCO.

(C) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Section 402 (a) of the DOE Act and by the Federal Power Act, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 CFR, Chapter I), a public hearing shall be held concerning the justness and reasonableness of the above-mentioned provision.

(D) A presiding Administrative Law Judge to be designated by the Chief Administrative Law Judge for that purpose shall preside at a prehearing conference in this proceeding to be held within sixty (60) days of the issuance of this order in a hearing room of the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. Said Judge is authorized to establish procedural dates and to rule upon all motions (except motions to consolidate and sever, and motions to dismiss) as provided for in the Commission's Rules of Practice and Procedure.

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[1] Manassas was previously a full requirements customer under VEPCO's resale service tariff.

[2] The hearing relating to rates for municipalities under the tariff has concluded and briefs shall soon be submitted to the Presiding Judge. The rate case relating to VEPCO's cooperative customers has been resolved pursuant to a settlement agreement.

[3] VEPCO states that the target date for connection is June 10, 1979, but the Company also states that it will notify the Commission of the actual effective date.

[4] Of the Federal Power Act.

(E) Waiver of the filing requirements of Section 35.13 of the regulations is hereby granted.

(F) The Secretary shall cause prompt publication of this order in the Federal Register.

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-24692 Filed 8-8-79; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL 1294-5]

Availability of Environmental Impact Statements

AGENCY: Office of Environmental Review, Environmental Protection Agency.

PURPOSE: This Notice lists the Environmental Impact Statements which have been officially filed with the EPA and distributed to Federal Agencies and interested groups, organizations and individuals for review pursuant to the Council on Environmental Quality's Regulations (40 CFR Part 1506.9).

PERIOD COVERED: This Notice includes EIS's filed during the week of July 30 to August 3, 1979.

REVIEW PERIODS: The 45-day review period for draft EIS's listed in this Notice is calculated from August 10, and will end on September 24, 1979. The 30-day wait period for final EIS's as calculated from August 10, 1979 will end on September 10, 1979.

EIS AVAILABILITY: To obtain a copy of an EIS listed in this Notice you should contact the Federal agency which prepared the EIS. This Notice will give a contact person for each Federal agency which has filed an EIS during the period covered by the Notice. If a Federal agency does not have the EIS available upon request you may contact the Office of Environmental Review, EPA for further information.

BACK COPIES OF EIS'S: Copies of EIS previously filed with EPA or CEQ which are no longer available from the originating agency are available from the Environmental Law Institute, 1346 Connecticut Avenue, Washington, D.C. 20036.

FOR FURTHER INFORMATION CONTACT: Kathi Weaver Wilson, Office of Environmental Review (A-104), Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460, (202) 245-3006.

SUMMARY OF NOTICE: On July 30, 1979, the CEQ Regulations became effective. Pursuant to Section 1506.10(a), the 30 day wait period for final EIS's received during a given week will now be calculated from Friday of the following week. Therefore, for all final EIS's received during the week of July 30 through August 3, 1979, the 30 day wait period will be calculated from August 10, 1979. The wait period will end on September 10, 1979.

Appendix I sets forth a list of EIS's filed with EPA during the week of July 30 to August 3, 1979 the Federal agency filling the EIS, the name, address, and telephone number of the Federal agency contact for copies of the EIS, the filing status of the EIS, the actual date the EIS was filed with EPA, the title of the EIS, the State(s) and County(ies) of the proposed action and a brief summary of the proposed Federal action and the Federal agency EIS number if available. Commenting entities on draft EIS's are listed for final EIS's.

Appendix II sets forth the EIS's which agencies have granted an extended review period or a waiver from the prescribed review period. The Appendix II includes the Federal agency responsible for the EIS, the name, address, and telephone number of the Federal agency contact, the title, State(s) and County(ies) of the EIS, the date EPA announced availability of the EIS in the Federal Register and the extended date for comments.

Appendix III sets forth a list of EIS's which have been withdrawn by a Federal agency.

Appendix IV sets forth a list of EIS retractions concerning previous Notices of Availability which have been made because of procedural noncompliance with NEPA or the CEQ regulations by the originating Federal agencies.

Appendix V sets forth a list of reports or additional supplemental information on previously filed EIS's which have been made available to EPA by Federal agencies.

Appendix VI sets forth official corrections which have been called to EPA's attention.

Dated: August 7, 1979.

William N. Hedeman, Jr.,

Director, Office of Environmental Review.

Appendix I—EIS's Filed With EPA During the Week of July 30-August 3, 1979

DEPARTMENT OF AGRICULTURE

Contact: Mr. Barry Flamm, Coordinator, Environmental Quality Activities, Office of the Secretary, U.S. Department of Agriculture, room 412A, Washington, D.C. 20250 (202) 447-3965.

Soil Conservation Service

Draft

South Fork Licking River watershed plan, Licking, Fairfield, and Perry Counties, Ohio, July 31: proposed is a watershed and flood protection plan for the South Fork Licking River watershed in Licking, Fairfield and Perry Counties, Ohio. The plan involves the construction of six flood retarding reservoirs, one multipurpose flood retarding-recreational reservoir, two recreational developments, a flood prevention dike and stream channel improvements. The stream channel improvements consist of 3.3 miles of new flood bypass channel, 0.7 miles of channel enlargement, obstruction removal from 18.2 miles of channel and streambank stabilization along segments of 5.9 miles of channel. (EIS Order No. 90825.)

Final

Blind Brook watershed, flood control, Westchester County, New York and Fairfield County, Connecticut, July 30: proposed is a flood control project for the Blind Brook watershed located in Westchester County, New York and Fairfield County, Connecticut, which has a drainage area of 6,980 acres. The plan provides for the installation of land treatment measures. Two floodwater retarding structures, and four dikes, about 117 acres of land will be committed to the installation of structural measures and will become permanent grassland, concrete dikes, water, wetland, or will retain existing cover. Comments made by: HEW EPA DOI USA state and local agencies. (EIS Order No. 90819.0

DEPARTMENT OF DEFENSE

Contact: Col. Charles E. Sell, Chief of the Environmental Office, Headquarters DAEN-ZCE, Office of the Assistant Chief of Engineers, Department of the Army, Room 1E676, Pentagon, Washington, D.C. 20310 (202) 694-4269.

Army

Draft

Fort McClellan ongoing mission, Calhoun County, Alabama, August 3: proposed is the continuation of the ongoing mission of Fort McClellan in Calhoun County, Alabama. Fort McClellan houses the U.S. Army military police school/training center. The facilities house and support the training of enlisted personnel in basic training, as military police and correctional specialists: officers in the basic and advanced military police officer courses; officers and noncommissioned officers in other professional criminology courses; troop units and selected personnel from other military services and NATO and other Allied Forces; and the Noble Army Hospital and Dental activities. (EIS Order No. 90842.)

Basin F containment operations, Rocky Mount, Arsenal, Adams County, Colorado, July 31: proposed is the construction and monitoring of a containment system for Basin F at Rocky Mountain Arsenal (RMA) located in Adams County, Colorado. This system would consist of an impermeable containment barrier component completely

surrounding the basin, a dewatering well component, and a monitoring well component. Basin F is a lined reservoir used for the discharge of waters from past chemical manufacturing and disposal operations at the arsenal. (EIS Order No. 90824.)

Draft

Fort Leonard Wood ongoing mission, Pulaski, Laclede, and Texas Counties, August 3: proposed is the continuation of the ongoing mission of Fort Leonard Wood in Pulaski, Laclede, and Texas Counties, Missouri. Fort Leonard Wood's primary mission is to train enlisted personnel of the U.S. Army as well as members of other U.S. Armed Forces and Allied Nation Armed Forces in basic combat and engineering skills. Also located at Fort Leonard Wood are numerous tenant organizations that support the mission activities and stand ready to assure the effectiveness of the U.S. Armed Forces during times of international conflict. (EIS Order No. 90840.)

Carlisle Barracks ongoing mission, Carlisle, Cumberland County, Pennsylvania, August 3: proposed is the ongoing operation of Carlisle Barracks, Carlisle Borough, Cumberland County, Pennsylvania, Carlisle Barracks houses the U.S. Army War College (USAWC) and supporting activities. The USAWC prepares approximately 225 carefully selected students for subsequent high level staff and command positions within the Army and throughout the defense establishment, because the focus is on a national effort and strategy, certain Navy, Marine Corps, and Air Force officers, as well as Department of State and other high-ranking civilians are selected to attend the school. (EIS Order No. 90839.)

Fort AP Hill ongoing mission, Carolina County, Virginia, August 3: proposed is the continuation of the ongoing mission of Fort AP Hill in Carolina County, Virginia. Fort AP Hill is a semiactive subinstallation of Fort Lee, Virginia. The primary mission of the fort is to provide administrative/logistical support and maneuver/ training areas for the Reserve components and units of the Active Army, other military services, and governmental agencies; to perform natural resource management, which includes woodland, wildlife, watershed, and grounds management of the installation; and to operate the recreational facility used at Fort AP Hill. (EIS Order No. 90841.)

U.S. Army Corps of Engineers

Contact: Mr. Richard Makinen, Office of Environmental Policy, Attn: DAEN-CWR-P, Office of the Chief of Engineers, U.S. Army Corps of Engineers, 20 Massachusetts Avenue, Washington, D.C. 20314 (202) 272-0121.

Draft

Cordova small boat harbor expansion, Alaska, August 2: proposed is the expansion of an existing 23-acre small boat harbor at Cordova, Alaska. A westward expansion in rectangular configuration would effectively add 20 acres of protected moorage area for the design fleet of 540 commercial and recreational vessels. The expansion would require the removal of an existing westerly breakwater 1,400 feet in length, the extension of an existing 1,000-foot long southerly silt barrier by 650 feet and the construction of two new westerly rubblemound breakwaters. Dredge spoil would be deposited in an intertidal fill site and a 10 acre parking/ staging area, (Alaska District). (EIS Order No. 90830.)

Homer small boat harbor, navigation improvements, Alaska, August 2: proposed are expansion and navigational improvements for the Homer small boat harbor, Alaska. The plan would create an expanded harbor with inner dimensions of 2,830 feet by 750 feet which will yield a 48.7 acre mooring basin and provide breakwaters with a 150-foot crest width and a 16 acre triangular shaped storage area. These structures would be constructed from dredged materials removed during the berthing basin construction. The alternatives considered are: (1) no improvements, (2) new land inclosed basin, (3) expansion at the current site, and (4) other plans (Alaska District). (EIS Order No. 90831.)

Draft

Hilo lava flow control, Hawaii, August 3: proposed is a lava flood control plan for the protection of Hilo on the island of Hawaii. Five structural alternatives are considered. Three of the alternatives involve diversion barrier construction prior to actual emergency, one of which incorporates additional freshwater cooling along a barrier alignment. The fourth alternative involves seawater cooling only. The fifth alternative is an adminstrative plan involving construction of barrier segments only in the event of an actual eruption causing flows that threaten Hilo (Honolulu District). (EIS Order No. 90838.)

Lake of the Ozarks 161 KV transmission, permit, Camden County, Missouri, July 30: proposed is the issuance of a permit for the construction and installation of a 16 KV, three phase, five-wire overhead electric transmission line across the Osage River and the Niangue River on the Lake of the Ozarks in Camden County, Missouri. The purpose of the line is threefold: (1) to provide a source of energy for present and future demands, (2) to provide loop integrity for both the Sunrise Beach and Lakeview substations to insure continued operation in the case of a failure, and (3) to meet long-range loop requirements of connecting the southern and northern Missouri networks (Kansas City District). (EIS Order No. 90814.)

DEPARTMENT OF COMMERCE

Contact: Dr. Sidney R. Galler, Deputy Assistant Secretary, Environmental Affairs, Department of Commerce, Washington, D.C. 20230 (202) 377-4335.

National Oceanic and Atmospheric Administration

Draft supplement

Atlantic Herring FMP, Amendment (DS-1), Atlantic ocean regulatory, August 1: This statement supplements final EIS No. 81013, filed 9-19-78 on the Atlantic herring FMP. Proposed is an amendment to: (1) redefine the management unit to include all herring fisheries, (2) establish new optimum yields for the gulf of Maine and Georges Bank, and south areas including an allocation of 2,000 MT to Canada from Georges Bank, (3) make sub-allocations of the Gulf of Maine optimum yield to reflect seasonal activity of historic fisheries, (4) establish new area/period allocations of harvests of all herring 3 years and older and (5) provide a definition for industry guidance of herring age 3 years and older. (EIS Order No. 90829.)

DEPARTMENT OF ENERGY

Contact: Dr. Robert Stern, Acting Director, NEPA Affairs Division, Department of Energy, Mail Station E-201 GTN, Washington, D.C. 20545 (202) 376-5996.

Final

Miles City-New Underwood 230-KV transmission line, several counties, Montana, North Dakota, and South Dakota, July 30: Proposed is the construction of a 328-mile, 230-KV transmission line between Miles City, Montana and New Underwood, South Dakota in the counties of Custer and Fallon, Montana; Adams, Bowman, and Slope, North Dakota; and Meade, Pennington, and Perkins, South Dakota. Wood-Pole, H-frame structures with three conductors and two overhead static wires are planned. Four alternatives are considered which include: non-construction, buried cable, and alternate terminal point at the South Dakota end of line, and alternate routes. REA has participated in the preparation of this EIS to fulfill the NEPA requirements for issuance of REA loan funds. (USDA/REA/EIS(ADM)79-4-F, DOE-EIS-0025-P.)Comments made by: AHP, USDA, HUD, DOI, DOT, FERC, MRBC, State and local agencies, Individuals. (EIS Order No. 90818.)

DEPARTMENT OF HUD

Contact: Mr. Richard H. Broun, Director, Office of Environmental Quality, room 7274, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410, (202) 755-6308.

Draft

Mays Chapel Village, Mortgage Insurance, Baltimore County, July 31: Proposed is the issuance of HUD home mortgage insurance for the Mays Chapel Village located in Baltimore County, Maryland. The development would be located on a 327-acre tract of land and would include the construction of single family homes, low-rise apartments, townhouses, patio homes, estate homes and quadruplexes. The total number of housing units to be constucted is 1,645. The development will also include a recreational center. (EIS Order No. 90823.)

DEPARTMENT OF INTERIOR

Contact: Mr. Bruce Blanchard, Director, Environmental Project Review, Room 4256 Interior Bldg., Department of the Interior, Washington, D.C. 20240, (202) 343-3891.

Bureau of Land Management

Final

Carbon Basin Area, Coal Leasing Application, Carbon County, Wyo., July 31:

Proposed is the leasing of Federal coal, the granting of associated rights-of-way and special land-use permits, for an area of approximately 15,494 acres in the Carbon Basin area, Carbon County, Wyoming. The lease will be obtained through competitive bidding. The special land-use permits involve: (1) One railroad spur, (2) one telephone line, (3) one access road, and (4) the relocation of a county road. (FES-79-28.) Comments made by: DLAB, USDA, DOI, EPA, AHP, FERC, State and local agencies, groups and businesses. (EIS Order No. 90821.)

Bureau of Reclamation

Draft

Sioux Falls Unit, Reservoir Construction, Minnehaha County, S. Dak., July 30: Proposed is the construction of a reservoir on Slip Up Creek with associated pipelines and pumping plants in the city of Sioux Falls, Minnehaha County, South Dakota. Water would be diverted from the Big Sioux River for storage in the reservoir to provide a supplemental municipal water supply for the city of Sioux Falls, and to provide a water-oriented recreation area. Recreational facilities and a 650-acre wildlife management area are included. The alternatives considered include: Nondevelopment, use of flows directly from the Big Sioux River, development of aquifer resources, other reservoirs, transbasin diversions, and some combinations of these alternatives. (DES-79-49.) (EIS Order No. 90811.)

Draft Supplement

San Luis Unit, Central Valley Project (DS-1), several Counties in California, July 30: This statement supplements a final EIS, No. 26404, filed on 10-6-72. Proposed is the reauthorization of the San Luis Unit of the Central Valley Project located in several counties in California. This action would allow for the following: (1) Amendment of the existing water service contract with the Westlands Water District (WWD) to increase the long-term commitment of the unit water to WWD by 250,000 acre-feet per year, and (2) enlargement of the Kesterson Reservoir and the completion of the San Luis drain from Kesterson to the drain's drainage location in the western Sacramento-San Joaquin delta near Chipps Island. (DES-79-50.) (EIS Order No. 90817.)

Final Supplement

1979 OCS Sale No. 42, North Atlantic (FS-1), Atlantic Ocean, August 3: This statement supplements a final EIS, No. 71056, filed 8-29-77, concerning the leasing of OCS tracts offshore of the North Atlanta States. This statement addresses basically the same action but reflects recent amendments to the OCS Lands Act. Proposed is the leasing of 128 tracts encompassing 728,728 acres of OCS lands offshore of southeastern New England with shore distance ranging from 63 to 157 miles. The tracts are situated in water depths that range from approximately 117 to 1190 feet. Oil would be tankered to existing refineries in New Jersey or to Delaware River Basin areas. Pipelines would be used if natural gas is discovered and produced. (FES-79-31.) Comments made by: USDA, DOC, DOI, DOT, ICC, EPA, MMC, DOE, COE, USN, State and local agencies, groups and businesses. (EIS Order No. 90835.)

Geological Survey

Final

Colstrip Project, Right-of-way, Transmission, Rosebud County, Montana, July 31: Proposed is the granting of right-of-way easements across Federal lands for the transmission system and loan guarantees for two REA cooperatives contemplating participation in the Colstrip project located in Rosebud County, Montana. The project, proposed by four companies consists of two 700-MW coal-fired electric generating units; continued development of coal resources; a water supply system; and two single-circuit 500-KV transmission lines. (FES-79-29.) Comments made by: DOT, DOI, BPA, HEW, USDA, COE, DOE, State and local agencies, groups, individuals and businesses. (EIS Order No. 90822.)

National Park Service

Final

Colorado River Management, Grand Canyon National Park, Mohave and Coconino Counties, Ariz., August 2: Proposed is a river management plan for the Colorado River between Lee's Ferry and Pierce Ferry (277 miles) within Grand Canyon National Park, Mohave and Coconino Counties, Arizona. The plan proposes to eliminate motorized craft, to increase total use of the river, increase noncommercial allocation, increase use of the river in the winter season, establish measures for resource protection. Comments made by: AHP, CEQ, USDA, DOI, DOT, EPA, State and local agencies, groups, individuals and businesses. (EIS Order No. 90833.)

ENVIRONMENTAL PROTECTION AGENCY

Draft

Contact: Environmental Protection Agency Library (MD-35), Research Triangle Park, North Carolina 27711, (919) 541-2777.

Glass Manufacturing Plants, Performance Standards, Regulatory, August 2: Proposed are performance standards for glass manufacturing plants for particulate emissions from glass melting furnaces. The proposed standards would restrict particulate emissions from natural gas-fired glass melting furnaces as follows: (1) 0.1 G/KG of glass used for container glass production, (2) 0.1 G/KG of glass used for soda-lime formulation, (3) 0.25 G/KG of glass used for glass production other than soda-lime formulation, (4) 0.2 G/KG of glass used for wool fiberglass production and (5) 0.15 G/KG of glass used for flat glass production. (EIS Order No. 90832.)

Final

Contact: Mr. Sheppard Moore, Region IV, Enfironmental Protection Agency, 345 Courtland Street, N.E., Atlanta, Georgia 30308, (404) 881-7458.

Cahaba River Wastewater Facilities, Grant, Jefferson, Shelby, and St. Clair Counties, Ala., August 2: The proposed action discussed is the upgrading and expansion of a WWT facility serving Jefferson, Shelby, and St. Clair Counties, Alabama. Structural action involves modification of four plants which includes the conversion of three plants to provide an increased MGD capacity in each. Discharge from two plants will be directly into the Cahaba River. Also considered is the extension of interceptor and collector sewer systems. Nine structural alternatives were considered. Comments made by: DOI, EPA, DOT, USDA, HEW, HUD, USAF, COE, State and local agencies, groups, individuals and businesses. (EIS Order No. 90834.)

NUCLEAR REGULATORY COMMISSION

Contact: Mr. Jack B. Martin, Director, Division of Waste Management, Mail 905-SS, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, (301) 427-4069.

Final

Shootering Canyon Uranium Project, License, Garfield County, Utah, August 1: Proposed is the construction and operation of the Shootering Canyon Uranium Processing Mill located in Garfield County, Utah. The mill will have a nominal processing capacity of 680 MT of dry ore per day. Waste materials from the mill will be produced at a rate of about 680 MT of solids per day and stored in a tailing impoundment. The storage capacity is designed for a 20 year period in case additional ore is located. (NUREG-0583.) Comments made by: DOI, EPA, HEW, USDA, FERC, COE, State and local agencies, groups, individuals and businesses. (EIS Order No. 90827.)

DEPARTMENT OF TRANSPORTATION

Contact: Mr. Martin Convisser, Director, Office of Environmental Affairs, U.S. Department of Transportation, 400 7th Street, S.W., Washington, D.C. 20590, (202) 426-4357.

Federal Aviation Administration

Draft

Los Angeles International Airport improvement, Los Angeles County, Calif., July 30: Proposed is a major improvement program for the Los Angeles International Airport (LAX) located in the city and county of Los Angeles, California. Features of the program include: (1) Rehabilitation of the south airfield complex, (2) construction of taxiways and miscellaneous improvements, (3) construction of a new terminal I and west terminal, (4) additions and modifications to existing terminal 2, (5) construction of structures and support facilities, (6) construction of aircraft parking aprons, (7) addition of an upper level to world way, (8) construction of new parking structures, (9) modifications to all ticketing buildings, (10) access improvements and (11) expansion of parking lots. (EIS Order No. 90812.)

Final

Albany County Airport, land acquisition, Albany County, N.Y., August 3: Proposed are improvements for the Albany County Airport located in Albany County, New York. The project will involve: (1) Extension of runway 1-19, (2) relocation and modification of approach lighting system, (3) extension and

modification of parallel runway, (4) modification of drainage facilities, (5) relocation of the instrument landing system glide slope mast and other navigational aids, and (6) acquisition of 11 acres of land, and (7) acquisition of land which would be impacted by noise. Six alternatives were considered. Comments made by: EPA, DOT, USAF, 2DOI, 2HUD, 2 State agencies, Individuals. (EIS Order No. 90836.)

Federal Highway Administration

Draft

Osage Expressway, city of Tulsa, Tulsa and Osage Counties, Okla., July 30: Proposed is the construction of the Osage Expressway in the city of Tulsa and in the Counties of Osage and Tulsa, Oklahoma. The study corridor extends from the city of Tulsa on the southern boundary to OK-20 near the city of Skiatook on the northern boundary. The alternatives considered are: (1) Two expressway routes, (2) upgrading the existing facilities to carry projected traffic volumes, (3) a mass transit alternative, and (4) no build (FHWA-OK-EIS-79-01-D). (EIS Order No. 90816.)

LA-14, Abbeville to U.S. 90, upgrade, Vermillion and Iberia Parishes, La., July 30: Proposed is the upgrading of LA-14 between Abbeville in Vermillion Parish and U.S. 90 in Iberia Parish, Louisiana. The facility would be upgraded from a two-lane to a four-lane roadway. Existing and new right-of-way would be used for the construction of this facility which would extend for approximately 15.8 miles. The project also proposes to replace the existing bridge over Bayou Carlin with a new lift bridge. Several alternatives for the portion of LA-14 through the town of Earth were considered including three partial bypasses on a new alignment, a complete bypass, and upgrading of the existing roadway (FHWA-LA-EIS-79-01-D). (EIS Order No. 90815.)

Final

State Street connector, 23rd St. to Broadway Ave., Ada County, Idaho, July 31: The proposed project consists of a corridor improvement between Broadway Ave. and 23rd St. located in Boise City, Ada County, Idaho. The improvements would include: An East-West State St.-Jefferson St. couplet, and construction of wider pavements in existing rights-of-way to accommodate traffic lanes, signalization of additional intersections, and upgrading of pavements. The couplet will involve: Widening Ave. B between Broadway and Fort Sts., widening Fort St., making 1st St. one-way northbound, Hannock St. one-way westbound between 1st and 16th Sts., creation of a thru block connection between Jefferson & 21st Sts., widening of State St. and closing Pleasanton St. at 21st St. (FHWA-IDA-76-03-F). Comments made by: USDA, DOI, HUD, EPA, State and local agencies, businesses. (EIS Order No. 90820.)

Draft Supplement

Northfield-Williamstown Hwy., VT-12 to I-89 (DS-1), Washington and Orange Counties, Vt., August 1: This statement supplements a final EIS No. 90234, filed 3-2-79. Proposed is the construction of approximately 2.6 miles of the Northfield-Williamstown State Highway between VT-12 in the south Northfield Hamlet, Washington County to I-89 in the town of Williamstown, Orange County, Vermont. The proposed facility would be two lanes with eight foot shoulders. Also proposed is the realigning and widening of a short segment of VT-12 at its intersection with the proposed highway. This supplement addresses a change in the selected alternative due to public concern (FHWA-VT-EIS-78-02-FS). (EIS Order No. 90828.)

Draft Supplement

Clackamas Highway, OR-244 and Forest Highway 55 (DS-1), Clackamas County, Oreg., July 31: This statement supplements a draft EIS No. 30965, filed 6-8-73. Proposed is the construction of a portion of Clackamas Highway (Forest Highway 55/OR-244) from Faraday to the confluence of the North Fork of the Clackamus River and the North Fork Reservoir in Clackamas County, Oregon. Two corridors are considered. Corridor I would be constructed as a 30 mph facility following the existing alignment of FH-55/OR-244. Corridor III would be constructed as a 50 mph facility on a new alignment, incorporating county roads and opening some unroaded timber lands to public entry. Each corridor would provide a two-lane, paved road adequate for the diversified uses of the area (FHWA-ORFP-72-02-DS). (EIS Order No. 90826.)

Final Supplement

U.S. 169 relocation, Earlton to Humboldt (FS-2), Neosha and Allen Counties, Kans., July 30: This statement supplements a final EIS, No. 30257, filed 2-13-73. Proposed is the relocation and improvement of approximately 16 miles of U.S. 169 beginning at a point west of Earlton through Chanute and terminating at a point approximately two and one-half miles south of the relocated U.S. 169 intersection with FAS 2, east of Humboldt in Neosha and Allen Counties, Kansas. The facility will be constructed initially as a two-lane roadway, except that portion along the west side of Chanute, which is to be constructed initially as a four-lane freeway. Partial control of access is proposed from Earlton to near Chanute and full control of access for the remainder (FHWA-KS-EIS-72-11-FS-2). Comments made by: USDA, HEW, EPA, HUD, DOC, DOI, DOT, COE, State and local agencies. (EIS Order No. 90813.)

TENNESSEE VALLEY AUTHORITY

Contact: Mr. Harry G. Moore, Jr., Acting Director, Division of Environmental Planning, Tennessee Valley Authority, 268 401 Building, Chattanooga, Tennessee 37401, (615) 755-3161.

Final

500 kV substation and transmission, Montgomery and Wilson Counties, Tenn., August 3: The proposed action is the construction and operation of a 500 kV substation in Montgomery County, Tennessee. The action includes 52 miles of 500 kV transmission line from the proposed substation to the existing Wilson 500 kV substation in Wilson County and approximately 43 miles of 161 kV transmission lines from the proposed substation to existing 161 kV facilities. The primary power requirements for the area are supplied by the Paradise Steam Plant. A number of alternative transmission line routes and substation sites were considered along with a no action alternative, alternative system additions and underground construction of transmision lines. Comments made by: AHP, USDA, FERC, DOI, EPA, HUD, State and local agencies. (EIS Order No. 90837.)

EIS's Filed During the Week of July 30 to August 3, 1979

[Statement Title Index—By State and County]

State	County	Status	Statement Title	Accession No.	Date Filed	Orig. agency No.
Alabama	Calhoun	Draft	Fort McClellan Ongoing Mission	90842	08-03-79	USA
	Jefferson	Final	Cahaba River Wastewater Facilities, Grant	90834	08-02-79	EPA
	Shelby	Final	Cahaba River Wastewater Facilities, Grant	90834	08-02-79	EPA
	St. Clair	Final	Cahaba River Wastewater Facilities, Grant	90834	08-02-79	EPA
Alaska		Draft	Cordova Small Boat Harbor Expansion	90830	08-02-79	COE
		Draft	Homer Small Boat Harbor, Navigation Improvements.	90831	08-02-79	COE
Arizona	Coconino	Final	Colorado River Management, Grand Canyon NP	90833	08-02-79	DOI
	Mohave	Final	Colorado River Management, Grand Canyon NP	90833	08-02-79	DOI
Atlantic Ocean		Supple	Atlantic Herring FNP, Amendment (DS-1)	90829	08-01-79	DOC
		Supple	1979 OCS Sale No. 42, North Atlantic (FS-1)	90832	08-03-79	DOI
California	Several	Supple	San Luis Unit, Central Valy Project (DS-1)	90817	07-30-79	DOI
	Los Angeles	Draft	Los Angeles International Airport Improvement	90812	07-30-79	DOT
Colorado	Adams	Draft	Basin F Containment Operations, Rocky Mt. Arsenal.	90824	07-31-79	USA
Connecticut	Fairfield	Final	Blind Brook Watershed, Flood Control	90819	07-30-79	USDA
Hawaii		Draft	Hilo Lava Flow Control	90838	08-03-79	COE
Idaho	Ada	Final	State Street Connector, 23rd St to Broadway Ave.	90820	07-31-79	DOT

EIS's Filed During the Week of July 30 to August 3, 1979 (Continued)

[Statement Title Index—by State and County]

State	County	Status	Statement Title	Accession No.	Date Filed	Orig. agency No.
Kansas	Neosho	Supple	US 169 Relocation, Earlton to Humbolt (FS-2)	90813	07-30-79	DOT
	Allen					
Lousiana	Iberia	Draft	LA-14, Abbeville to US 90, Upgrade	90815	07-30-79	DOT
	Vermillion	Draft	LA-14, Abbeville to US 90, Upgrade	90815	07-30-79	DOT
Maryland	Baltimore	Draft	Mays Chapel Village, Mortgage Insurance	90823	07-31-79	HUD
Missouri	Camden	Draft	Lake of the Ozarks 161 KV Transmission, Permit	90814	07-30-79	COE
	Laclede	Draft	Fort Leonard Wood Ongoing Mission	90840	08-03-79	USA
	Pulaski	Draft	Fort Leonard Wood Ongoing Mission	90840	08-03-79	USA
	Texas	Draft	Fort Leonard Wood Ongoing Mission	90840	08-03-79	USA
Montana	Several	Final	Miles City-New Underwood 230KV Transmission Line.	90818	07-30-79	DOE
	Rosebud	Final	Colstrip Project, Right-of-Way, Transmission	90822	07-31-79	DOI
New York	Westchester	Final	Blind Brook Watershed, Flood Control	90819	07-30-79	USDA
	Albany	Final	Albany County Airport, Land Acquisition	90836	08-03-79	DOT
North Dakota	Several	Final	Miles City-New Underwood 230KV Transmission Line.	90818	07-30-79	DOE
Ohio	Fairfield	Draft	South Fork Licking River Watershed Plan	90825	07-31-79	USDA
	Licking	Draft	South Fork Licking River Watershed Plan	90825	07-31-79	USDA
	Perry	Draft	South Fork Licking River Watershed Plan	90825	07-31-79	USDA
Oklahoma	Osage	Draft	Osage Expressway, City of Tulsa	90816	07-30-79	DOT
	Tulsa	Draft	Osage Expressway, City of Tulsa	90816	07-30-79	DOT
Oregon	Clackamas	Supple	Clakcamas Highway, OR-244 and Forest Hwy 55 (DS-1).	90826	07-31-79	DOT
Pennsylvania	Cumberland	Draft	Carlisle Barracks Ongoing Mission, Carlisle	90839	08-03-79	USA
Regulatory		Draft	Glass Manufacturing Plants, Performance Standards.	90832	08-02-79	
		Supple	Atlantic Herring FMP, Amendment (DS-1)	90829	08-01-79	DOC
South Dakota	Several	Final	Miles City-New Underwood 230KV Transmission Line.	90818	07-30-79	DOE
	Minnehaha	Draft	Sioux Falls Unit, Reservoir Construction	90811	07-30-79	DOI
Tennessee	Montgomery	Final	500 KV Substation and Transmission, Montgomery.	90837	08-03-79	TVA
Utah	Garfield	Final	Shootering Canyon Uranium Project, License	90827	08-01-79	NRC
Vermont	Orange	Supple	Northfield-Williamston Hwy., VT-12 to I-89 (DS-1)	90828	08-01-79	DOT
	Washington	Supple	Northfield-Williamston Hwy., VT-12 to I-89 (DS-1)	90828	08-01-79	DOT
Virginia	Carolina	Draft	Fort AP Hill Ongoing Mission	90841	08-03-79	USA
Wyoming	Carbon	Final	Carbon Basin Area, Coal Leasing Application	90821	07-31-79	DOI

Appendix II.—*Extension/Waiver of Review Periods on EIS's Filed With EPA*

Federal agency contact	Title of EIS	Filing status/accession No.	Date notice of availability published in "Federal Register"	Waiver/extension	Date review terminates
DEPARTMENT OF COMMERCE					
Dr. Sidney R. Galler, Deputy Assistant Secretary, Environmental Affairs, Department of Commerce, Washington, D.C. 20230, (202) 377-4335.	Atlantic Herring FMP of the Northwest Atlantic.	Draft Supplement, 90829	8/10/79 see app. I.	Waiver	9/10/79
NUCLEAR REGULATORY COMMISSION					
Mr. Voss A. Moore, Assistant Director for Environmental Projects, Nuclear Regulatory Commission, P-518, Washington, D.C. 20555, (301) 492-8446.	New England Power Units 1 and 2, Construction Permit, Charleston, Rhode Island.	Draft, 90547	6/8/79	Suspension—the NRC has suspended the review of this EIS until further notice.	

Appendix III.—*EIS's Filed With EPA Which Have Been Officially Withdrawn by the Originating Agency*

Federal agency contact	Title of EIS Filing status/accession No	Date notice of availability published in "Federal Register"	Date of withdrawal
None.			

Appendix IV.—*Notice of Official Retraction*

Federal agency contact	Title of EIS	Status/number	Date notice published in "Federal Register"	Reason for retraction
None.				

Appendix V.—*Availability of Reports/Additional Information Relating to EIS's Previously Filed with EPA*

Federal agency contact	Title of report	Date made available to EPA	Accession No.
None.			

Appendix VI.—*Official Correction*

Federal agency contact	Title of EIS	Filing status/accession No.	Date notice of availability published in "Federal Register"	Correction
DEPARTMENT OF AGRICULTURE				
Mr. Barry Flamm, Coordinator, Environmental Quality Activities, Office of the Secretary, U.S. Department of Agriculture, Room 412A, Washington, D.C. 20250, (202) 447-3965.	East Side Green River Watershed Protection, Flood Protection, Washington.	Draft, 90697	7/20/79	This EIS was incorrectly listed as a final EIS. The correct status is draft. Comments will be due on Sept. 4, 1979.

[FR Doc. 79-24769 Filed 8-9-79; 8:45 am]
BILLING CODE 6560-01-M

[OPP-50417A; FRL1294-4]

Issuance of Experimental Use Permit; Correction

On Friday, April 13, 1979 (44 FR 22174), information appeared pertaining to the issuance of an experimental use permit, No. 359-EUP-58, to Rhone-Paulenc, Inc. In the 19th line, "February 23, 1979 to January 1, 1981" should have read "January 1, 1980 to January 1, 1981." In addition, temporary tolerances for residues of the active ingredient have not been established. (PH-21, Henry Jacoby, Room: E-305, Telephone: 202/755-2562)

Dated: August 3, 1979.

Douglas D. Campt,

Director, Registration Division.

[FR Doc. 79-24757 Filed 8-9-79; 8:45 am]
BILLING CODE 6560-01-M

FEDERAL COMMUNICATIONS COMMISSION

National Industry Advisory Committee, Broadcast Service Subcommittee; Meeting

Pursuant to the provisions of the Pub. L. 92-463, announcement is made of a public meeting of the Broadcast Services Subcommittee of the National Industry Advisory Committee to be held Thursday, September 6, 1979. The Subcommittee will meet at the National Association of Broadcasters in the Board Room, located at 1771 N Street N.W., Washington, D.C. at 10 A.M.

Purpose: To consider proposals related to the Emergency Broadcast System (EBS).

Agenda items: I. Modification of the Weekly EBS Test Announcement; an example follows:

"This is a test of the Emergency Broadcast System. The broadcasters of the (OPERATIONAL AREA NAME) area in voluntary cooperation with the FCC and other authorities have developed this system to keep you informed in the event of an emergency. If this had been an actual emergency the attention signal you just heard would have been followed by official information, news, or instructions. This station serves the (OPERATIONAL AREA NAME) Area. This concludes this test of the Emergency Broadcast System."

II. Amendment of EBS Rules so that activation of the EBS at the State or Local Level (including transmission of the EBS Attention Signal) by a broadcast station is an acceptable substitute for conducting the Weekly Off-The-Air Monitoring Test for that week.

III. Connecticut request for a waiver of Section 73.961(c) which requires that Off-The-Air Monitoring Tests shall be conducted by all AM, FM and TV broadcast stations a minimum of once a week. The Connecticut State Level EBS Plan incorporates monthly EBS tests with simulcasting by all participating stations. Note: The Connecticut Plan may be modified by the meeting date.

IV. Discussion concerning the use of EBS Receivers in homes and offices—Altran System, TFT, Readi Alert, etc.

V. Report by Mr. Morris Blum, Chairman, Maryland State Emergency Communications Committee, concerning the meeting of all State Emergency Communications Committee Chairmen held at the NAB Convention, March, 1979, in Dallas, Texas.

VI. Discussion of the Interim Report on EBS State and Local planning.

VII. Origination of Closed Circuit Tests from sites other than the White House Communications Agency or the Federal Emergency Management Agency. Examples include: Network Control points, government locations outside Washington, D.C., and selected sites.

VIII. Discussion items concerning recent Closed Circuit Tests as received by Working Group V of the Broadcast Services Subcommittee from broadcast stations.

1. Unscheduled CCT or the use of a number of coordinated time windows for a test with no advance notice of which time window will be actually used. Prior announcement of the test does not result in a true test of the system.

2. Schedule CCT at other times, same station personnel are always involved.

3. Broadcast of the CCT by stations including the EBS two-tone Attention Signal (can serve as a substitute for the Weekly EBS Test).

4. Broadcast stations should run their own weekly test immediately after the CCT.

5. Longer talkup on Audio Networks.

6. In the event of the real thing, wire services should ring their alarm bells continuously as the message is fed to their terminals.

7. EBS Two-Tone Attention Signal should be sent on the audio feeds by the networks for alerting purposes. Most EBS monitor receivers have the capability for an external feed.

IX. Federal Emergency Management Agency (FEMA) programs relative to the Emergency Broadcast System.

1. FEMA's role regarding EBS oversight.

2. Electromagnetic Protection policy regarding government equipment on loan to broadcast stations participating in the Broadcast Station Protection Program.

3. Development of a capability to operate selected broadcast stations from a State or Local Emergency Operating Center (EOC).

4. FEMA observers to be located at strategic telephone and network control points throughout the country during Closed Circuit Tests (CCT's).

X. New business, closing comments and adjournment.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 79-24725 Filed 8-9-79; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL TRADE COMMISSION

Health Services Policy Review Session; Availability of Staff Briefing Book

AGENCY: Federal Trade Commission.

ACTION: Availability of edited version of briefing book.

SUMMARY: The Federal Trade Commission has authorized release of an edited version of a staff briefing book prepared as a guide for discussion at a health services review session held June 28, 1979.

ADDRESS: If you wish to receive a copy of the briefing book, please write: Public Records Section, SRPP-H-130, Federal Trade Commission, Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: Michael Pollard, O-H-470, Federal Trade Commission, 6th Street and Pennsylvania Avenue, N.W., Washington, D.C. 20580. (202) 523-1294.

SUPPLEMENTARY INFORMATION: On June 28, 1979, the Federal Trade Commission held a policy review session on the health services industry. These reviews are conducted monthly on different topics to give the Commission an overview of current agency initiatives. Commission staff prepared a briefing book as a guide for discussion at the health services review session. Chapter V of the staff document outlines general policy issues, such as: (1) measures to control inflation in prices and expenditures; (2) supply and distribution of health manpower; (3) factors influencing the development of hospitals and other health care facilities; (4) consumer access to information on insurance costs, professional fees, and medical risks; and (5) national health insurance. In Chapter VI, staff outlined possible future initiatives for Commission consideration. By direction of the Commission.

James A. Tobin,

Acting Secretary.

[FR Doc. 79-24723 Filed 8-9-79; 8:45 am]

BILLING CODE 6750-01-M

GENERAL ACCOUNTING OFFICE

Regulatory Reports Review; Receipt of Report Proposal

The following request for clearance of a report intended for use in collecting information from the public was received by the Regulatory Reports Review Staff, GAO, on August 6, 1979. See 44 U.S.C. 3512 (c) and (d). The purpose of publishing this notice in the Federal Register is to inform the public of such receipt.

The notice includes the title of the request received; the name of the agency sponsoring the proposed collection of information; the agency form number, if applicable; and the freqency with which the information is proposed to be collected.

Written comments on the proposed NRC request are invited from all interested persons, organizations, public interest groups, and affected businesses. Because of the limited amount of time GAO has to review the proposed request, comments (in triplicate) must be received on or before August 28, 1979, and should be addressed to Mr. John M. Lovelady, Assistant Director, Regulatory Reports Review, United States General Accounting Office, Room 5106, 441 G Street, NW., Washington, DC 20548.

Further information may be obtained from Patsy J. Stuart of the Regulatory Reports Review Staff, 202-275-3532.

Nuclear Regulatory Commission

The NRC requests an extension without change clearance of Form 244, Registration Certificate—Use of Depleted Uranium Under General License. Within 30 days after the first receipt of depleted uranium under the general license of 10 CFR 40.25(a) the general licensee is required to file Form NRC-244 with the Commission pursuant to 10 CFR 40.25(c)(1). Respondents are persons who receive, possess, and use depleted uranium pursuant to the general license in 10 CFR 40.25(a). The NRC estimates that respondent burden will average 10 minutes per form and the number of registrants will total 3 annually.

John M. Lovelady,

Assistant Director, Regulatory Reports Review Officer.

[FR Doc. 79-24621 Filed 8-9-79; 8:45 am]

BILLING CODE 1610-01-M

GENERAL SERVICES ADMINISTRATION

[F-79-2]

Delegation to the Secretary of Defense

1. *Purpose.* This delegation authorizes the Secretary of Defense to represent, in conjunction with the Administrator of General Services, the consumer interests of the executive agencies of the Federal Government in proceedings before the Alabama Public Service Commission involving rates for intrastate telecommunication services.

2. *Effective date.* This delegation is effective immediately.

3. *Delegation*

a. Pursuant to the authority vested in me by the Federal Property and Administrative Services act of 1949, 63 Stat. 377, as amended, particularly sections 201(a)(4) and 205(d) (40 U.S.C. 481(a)(4) and 486(d)), authority is delegated to the Secretary of Defense to represent the consumer interests of the Federal executive agencies before the Alabama Public Service Commission involving the application of the South Central Bell Telephone Company for increases in intrastate telecommunication services. The authority delegated to the Secretary of Defense shall be exercised concurrently with the Administrator of General Services.

b. The Secretary of Defense may redelegate this authority to any officer, official, or employee of the Department of Defense.

c. This authority shall be exercised in accordance witha the policies, procedures, and controls prescribed by the General Services Administration, and shall be exercised in cooperation with the responsible officers, officials, and employees thereof.

Dated: July 24, 1979.

R. G. Freeman III,

Administrator of General Services.

[FR Doc. 79-24637 Filed 8-9-79; 8:45 am]

BILLING CODE 6820-25-M

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

Consumer Participation; Open Meeting

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) announces a forthcoming consumer exchange meeting to be chaired by John M. Taylor, District Director of the Boston District Office.

DATE: The meeting will be held from 2 to 4 p.m., Thursday, August 16, 1979.

ADDRESS: The meeting will be held at 50 Founders Plaza, fourth floor conference room in Hartford, CT.

FOR FURTHER INFORMATION CONTACT: Yolan L. Harsanyi, Consumer Affairs Officer, Food and Drug Administration, 585 Commercial St., Boston, MA 02109, 617-223-5857.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to encourage dialogue between consumers and FDA officials to identify and set priorities for current and future health concerns, to enhance relationships between local consumers and FDA's Boston District Office, and to contribute to the agency's policymaking decisions on vital issues.

Dated: August 2, 1979.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 79-24363 Filed 8-9-79; 8:45 am]

BILLING CODE 4110-03-M

[Docket No. 79D-0183]

Limits on Leachable Lead and Cadmium From Ceramic Ware for Food Use; Availability of Administrative Guidelines

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The agency announces the availability of the administrative guidelines prescribing limits for the amounts of lead and cadmium that may leach from ceramic food ware.

DATE: Effective date of guidelines: December 31, 1979.

ADDRESS: Requests for single copies of these administrative guidelines, which set forth the limits of leachable lead and/or cadmium from ceramic food ware, may be made in writing to the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-65, 5600 Fishers Lane, Rockville MD 20857. Written comments are also to be submitted to the Hearing Clerk's office.

FOR FURTHER INFORMATION CONTACT: Howard N. Pippin, Bureau of Foods (HFF-312), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-245-3092.

SUPPLEMENTARY INFORMATION: The Food and Drug Administration (FDA) has revised the administrative guidelines that set forth the limits for the amount of lead and/or cadmium leached from ceramic food ware. This notice informs interested persons of the availability of the revised guidelines and the information the agency relied on in setting the limits.

FDA's administrative guidelines are based on the recommendations of the World Health Organization (WHO) and the International Standards Organization (ISO). FDA has participated in WHO and ISO deliberations concerning the contamination of food with lead and/or cadmium leached from ceramic food ware. WHO prepared a report that has been used by ISO in preparing draft ISO standards. The draft ISO standards, which are identical to these revised administrative guidelines, are currently being formally balloted by member nations for acceptance as international standards. Copies of the WHO report and the ISO draft proposal are available for public examination in the office of the Hearing Clerk (HFA-305), Food and Drug Administration.

The revised FDA administrative guidelines establish limits for leachable lead and/or cadmium in three categories of ceramic ware. The categories (flatware, small hollowware and large hollowware) are based on liquid-holding capacities. Leachable lead and/or cadmium limits are based on the risk of contamination associated with the capacity and use of the vessel examined. The limits for large and small hollowware have been lowered from those prescribed in the previous administrative guidelines because of the common use of those vessels to retain liquids for long periods of time. The revised limits also reflect the improved capabilities of manufacturers, both foreign and domestic. The limits for flatware are unchanged.

The methods of extracting lead and cadmium required by the revised administrative guidelines are found in Methods of Analysis of the Association of Official Analytical Chemists (AOAC), 1975, 12th ed., 25.031-25.034, with the exception that the tests for cadmium are conducted in darkness.

The effective date of December 31, 1979, for compliance with these new guidelines will provide affected industry time to take all necessary actions to assure compliance with the new requirements. The existing action levels will remain in effect through December 30, 1979.

Interested persons may submit written comments regarding these guidelines to the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-65, 5600 Fishers Lane, Rockville, MD 20857. Four copies of all comments shall be submitted, except that individuals may submit single copies of comments, and copies shall be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above-named office, between 9 a.m. and 4 p.m., Monday through Friday.

Dated: July 31, 1979.

Joseph P. Hile,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 79-24348 Filed 8-3-79; 11:02 am]

BILLING CODE 4110-03-M

[Docket No. 79N-0015; DESI 11316]

Trimeprazine and Methdilazine Preparations for Oral Use; Drugs for Human Use; Drug Efficacy Study Implementation; Followup Notice

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This notice states the conditions for marketing trimeprazine and methdilazine for the indication for which they are regarded as effective, allowing for the submission of abbreviated new drug applications (ANDA's). The drugs are used in the treatement of pruritic symptoms in urticaria.

ADDRESSES: Communications in response to this notice should be identified with the reference number DESI 11316, directed to the attention of the appropriate office named below, and addressed to the Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

Original abbreviated new drug applications or supplements thereto (identify as such): Division of Generic Drug Monographs (HFD-530), Bureau of Drugs.

Requests for the report of the National Acacemy of Sciences-National Research Council: Public Records and Document Center (HFI-35), Rm. 4-62.

Requests for opinion of the applicability of this notice to a specific product: Division of Drug Labeling Compliance (HFD-310), Bureau of Drugs.

Other communications regarding this notice: Drug Efficacy Study Implementation Project Manager (HFD-501), Bureau of Drugs.

FOR FURTHER INFORMATION CONTACT: Ronald L. Wilson, Bureau of Drugs (HFD-32), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3650.

SUPPLEMENTARY INFORMATION: In a notice (DESI 11316) published in the Federal Register of October 21, 1970 (35 FR 16431), the Food and Drug Administration announced its conclusion that trimeprazine and methdilazine are effective for symptomatic relief of pruritic symptoms in urticaria. It also classified the drug products, which are described below, as less than effective (possibly effective and probably effective) for certain other indications.

NDA 11-950; Tacaryl Tablets and Syrup containing methdilazine hydrochloride; Westwood Pharmaceuticals, 468 Dewitt St., Buffalo, NY 14213 (NDA was formerly owned by Mead Johnson Laboratories).

NDA 11-950; Tacaryl Chewable Tablets containing methdilazine (base); Westwood Pharmaceuticals (NDA was formerly owned by Mead Johnson Laboratories).

NDA 11-316; Temaril Syrup, Tablets, and Spansules containing trimeprazine tartrate; Smith Kline & French Laboratories, 1500 Spring Garden St., P.O. Box 7929, Philadelphia, PA 19101.

The October 21, 1970 notice stated that an approved new drug application is required for marketing the drug products. At that time the new drug application had to contain full information as required by the new drug application form FD-356H (21 CFR 314.1(c)). Because at least one drug firm is interested in marketing these drugs, and others may be, the Director of the Bureau of Drugs has reconsidered the requirement for a full new drug application. For consistency in applying the agency's policy for drug products that were the subject of the Drug Efficacy Study, he has determined that abbreviated new drug applications (21 CFR 314.1(f)) are appropriate for these products at the present time.

Accordingly, the October 21, 1970 notice is amended to announce a finding of ANDA suitability as follows:

The Food and Drug Adminsitration is prepared to approve abbreviated new drug applications for products containing methdilazine (base or hydrocholride) in tablet, syrup, or chewable tablet dosage form and products containing trimeprazine tartrate in tablet, syrup, or controlled-release capsule dosage form. The indication of use in the labeling of these products is: For symptomatic relief of pruritic symptoms in urticaria.

The bioavailability regulations (21 CFR 320.21) require any person submitting an abbreviated new drug application after July 7, 1977, to include either evidence demonstrating the *in vivo* bioavailability of the drug or information to permit waiver of the requirement. No waiver will be granted for methdilazine tablets, and trimeprazine tablets (or its controlled-release capsule dosage form). Trimeprazine is included in the list of effective drugs having a known or potential bioequivalence problem (21 CFR 320.22). Methdilazine, a member of the phenothiazine drug class, and this drug group have a known or potential bioequivalence problem.

Full manufacturing information will be required for abbreviated applications proposing a controlled-release capsule form of trimeprazine tartrate.

Approval of an abbreviated new drug application (21 CFR 314.1(f)) must be obtained before marketing these products. Marketing before approval of a new drug application will subject such products, and those persons who cause the products to be marketed, to regulatory action.

The indications evaluated as less than effective in the October 21, 1970 notice will be the subject of a future Federal Register notice. The Food and Drug Administration is currently reviewing certain data submitted in support of these indications, together with the recommendations of its Pulmonary-Allergy Drugs Advisory Committee. Until it publishes a notice on the less-than-effective indications, there is no change in the marketing status of the products identified above that are the subject of approved or effective new drug applications, except that future supplements for all products other than the controlled-release product may now be abbreviated supplements to the extent permitted for abbreviated new drug applications (21 CFR 314.1(f)).

(Secs. 502, 505, 52 Stat. 1050-1053, as amended (21 U.S.C. 352, 355) and under the authority delegated to the Director of the Bureau of Drugs (21 CFR 5.70).)

Dated: August 1, 1979.

J. Richard Crout,

Director, Bureau of Drugs.

[FR Doc. 79-24511 Filed 8-9-79; 8:45 am]

BILLING CODE 4110-03-M

[Docket No. 79M-0202]

Custom Contact Lens Lab, Inc.; Premarket Approval of Customflex (Deltafilcon A) Hydrophilic Contact Lens

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) announces approval of the application for premarket approval under the Medical Device Amendments of 1976 of the Customflex (deltafilcon A) Hydrophilic Contact Lens sponsored by Custom Contact Lens Lab, Inc., Boston, MA. After reviewing the Ophthalmology Device Classification Panel's recommendation, FDA notified the sponsor that the applicant was approved because the device has been shown to be safe and effective for use as recommended in the submitted labeling.

DATE: Petitions for administrative review by September 10, 1979.

ADDRESS: Requests for copies of the summary of safety and effectiveness data and petitions for administrative review may be sent to the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-65, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Leith Lusted, Bureau of Medical Devices (HFK-402), Food and Drug Administration, Department of Health, Education, and Welfare, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7550.

SUPPLEMENTARY INFORMATION: The sponsor, Custom Contact Lens Lab, Inc., Boston, MA 02131, submitted an application for premarket approval of the Customflex (deltafilcon A) Hydrophilic Contact Lens to FDA on August 28, 1978. The application was reviewed by the Ophthalmology Device Classification Panel, an FDA advisory committee, which recommended approval of the application. On March 14, 1979, FDA approved the application by a letter to the sponsor from the Director of the Bureau of Medical Devices.

Before enactment of the Medical Devices Amendments of 1976 (Pub. L. 94-295, 90 Stat. 539-583) (the amendments), soft contact lenses and solutions 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 (21 U.S.C. 321(h)) (the act), soft contact lenses and solutions 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 provided transitional provisions to ensure continuation of premarket approval requirements for class III devices formerly considered new drugs. Furthermore, FDA requires, as a condition to approval, that sponsors of applications for premarket approval of soft contact lenses or solutions comply with the records and reports provisions of Part 310 (21 CFR Part 310), Subpart D, until these provisions are replaced by similar requirements under the amendments.

A summary of the information upon which the agency's approval is based is available upon request from the Hearing Clerk (address above). Requests should be identified with the name of the device and the Hearing Clerk docket number found in brackets in the heading of this document.

The labeling of the Customflex (deltafilcon A) lens, like that of other approved soft contact lenses, states that the lens is only to be used with certain solutions for disinfection and other purposes. The restrictive labeling helps to inform new lens users that they must avoid purchasing inappropriate products, e.g., solutions for use with hard contact lenses. However, the restrictive labeling needs to be updated periodically to refer to new solutions that FDA approves for use with an approved lens. A sponsor who does not update the restrictive labeling may violate the misbranding provisions of section 502 of the act (21 U.S.C. 352) as well as the Federal Trade Commission 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 solutions 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)). Accordingly, whenever FDA publishes a notice in the Federal Register of the agency's approval of a new solution for use with an approved lens, the sponsor of the lens shall correct its labeling to refer to the new solution at the next printing or at any other time as FDA prescribes by letter to the sponsor.

Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of FDA's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of the FDA 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 action under § 10.33(b) (21 CFR 20.33(b)). A petition must designate the form of review that the petitioner requests (hearing or independent advisory committee) and must be accompanied by supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing any petition, FDA will decide whether to grant or deny the petition and 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 September 10, 1979, file with the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–65, 5600 Fishers Lane, Rockville, MD 20857, four copies of each petition and supporting data and information, identified with the name of the device and the Hearing Clerk docket number found in brackets in the heading of this document. Received petitions may be seen in the above office from 9 a.m. to 4 p.m., Monday through Friday.

Dated: August 3, 1979.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 79-24622 Filed 8-9-79; 8:45 am]

BILLING CODE 4110-03-M

Office of Education

Basic Educational Opportunity Grant Program; Award of Multiple Data Entry Contracts; Closing Date

The Commissioner of Education gives notice that she will contract with State agencies and need analysis services to permit them to collect financial data from students for the Basic Grant Program on their own forms for the 1980–81 academic year if they qualify under the criteria set forth below. These organizations will transmit the data needed to calculate a student's expected family contribution under the Basic Grant Program to the Office of Education. This procedure eliminates the necessity for those students to file a Federal Basic Grant form.

The Office of Education has contracts for the 1979–80 academic year with three organizations that are currently providing these services. These organizations, as well as any new ones, must meet the criteria listed below before contracts will be awarded.

Closing Date

The Commissioner will exercise the second option year for current contractors who meet the criteria. Other organizations that wish to participate in the multiple data entry process must submit a letter indicating their interest by September 30, 1979, and in addition submit with that letter documentation to support their claim that they meet the criteria. The Commissioner will provide a Request for Proposal to any organization that meets the criteria. The letter and documentation must be submitted to:

Peter K.U. Voigt, Acting Director, Division of Policy and Program Development, Room 4100, ROB–3, 400 Maryland Avenue, SW., Washington, D.C. 20202.

Criteria

It is estimated that in the 1979–80 academic year approximately 4 million students will use non-Federal forms when applying to have their expected family contribution determined for the Basic Grant Program. Criteria have been established to assure that this arrangement continues to work to the advantage of the student, and the applications are processed correctly and in a timely manner. The criteria which were used for the first two years of the multiple data entry contracts have been expanded for the 1980–81 academic year. Now, the form and instructions used by the participants to collect the data must be approved by the Office of Education.

The criteria are:

1. Whether the organization uses a financial aid form which collects the standard data elements and is comparable to the 1980–81 form developed by the Office of Education. If possible, the form and instructions used to collect the standard data elements should be identical to the Office of Education's form. Use of any form is subject to approval by the

Commissioner. Standard data elements are those necessary to calculate an expected family contribution under the Basic Grant Program and an expected family contribution under the uniform methodology.

2. Whether the organization performs its own processing of its financial aid form. An organization will be considered to perform its own processing if, in a central location, it receives and edits the data from the forms and maintains the forms in a secure facility.

3. Whether the volume of forms processed at a central location for students applying for financial assistance for the 1978–79 academic year was at least 100,000.

(Catalog of Federal Domestic Assistance No. 13.539 Basic Educational Opportunity Grant Program.)

(20 U.S.C. 1070a)

Dated: August 2, 1979.

Mary F. Berry,

Acting U.S. Commissioner of Education.

[FR Doc. 79-24712 Filed 8-9-79; 8:45 am]

BILLING CODE 4110-02-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Receipt of Petition for Federal Acknowledgement of Existence as an Indian Tribe

August 2, 1979.

This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

Pursuant to 25 CFR 54.8(a) notice is hereby given that the United Houma Nation, Inc., Box 100–A, Coast Guard Avenue, Dulac, Louisiana 70353, has filed a petition for acknowledgement by the Secretary of the Interior that the group exists as an Indian tribe. The petition was received by the Bureau of Indian Affairs on July 10, 1979. The petition was forwarded and signed by Mr. Kirby Verret.

This is a notice of receipt of petition and does not constitute notice that the petition is under active consideration. Notice of active consideration will be by mail to the petitioner and other interested parties at the appropriate time.

Under § 54.8(d) of the Federal regulations, interested parties may submit factual or legal arguments in support of or in opposition to the group's petition. Any information submitted will be made available on the same basis as other information in the Bureau of Indian Affairs files.

The petition may be examined by appointment in the Division of Tribal Government Services, Bureau of Indian Affairs, Department of the Interior, 18th and C Streets, N.W., Washington, D.C. 20242.

Rick Lavis,

Deputy Assistant Secretary—Indian Affairs.

[FR Doc. 79-24715 Filed 8-9-79; 8:45 am]

BILLING CODE 4310-02-M

Bureau of Land Management

Initial Wilderness Inventory—Idaho; Final Decision

The Federal Land Policy and Management Act of 1976 (FLPMA) requires the Secretary of the Interior to inventory roadless areas and roadless islands of the public lands to identify those areas possessing wilderness characteristics as described in the Wilderness Act of 1964.

The BLM inventory process is divided into two basic steps: initial inventory and intensive inventory. This notice announces the completion of the initial inventory on public lands in Idaho.

The final decision on the statewide initial inventory makes one of two findings regarding all BLM lands in Idaho:

1. That they clearly and obviously do not meet the criteria for identification as Wilderness Study Areas; or

2. That they may possibly meet the criteria and should receive more intensive inventory.

The criteria for identifying units as Wilderness Study Areas is contained in wording in Section 2(c) of the Wilderness Act.

Those units of BLM land that clearly and obviously do not meet the above criteria do not qualify as Wilderness Study Areas and thus are dropped from the inventory process.

Those units of BLM land that may possibly meet the above criteria are to receive more intensive inventory (the second major step in the inventory process) before a determination is made regarding Wilderness Study Area status.

BLM district offices in Idaho are now conducting the intensive field inventory on lands so identified. Public participation in this inventory is encouraged and may be arranged by contacting the district offices in Idaho.

The public review period on several advanced intensive inventories will begin in September 1979 in the Oil and Gas Overthrust Area (Idaho Falls District) and the Challis Planning Area (Salmon District). For the remainder of the State, the public review period on intensive inventory will begin in April 1980.

After the intensive inventory, the BLM's wilderness review process moves into the study phase, which involves the process of determining if Wilderness Study Areas will be recommended as suitable or non-suitable for wilderness designation. This determination, made through the BLM's land-use planning system, considers all values, resources, and uses of the public lands.

Following the study, the reporting phase consists of actually forwarding or reporting suitable or non-suitable recommendations through the Secretary of the Interior and the President to Congress. Mineral surveys required by the law, environmental statements, and other data are submitted with these recommendations.

Congress makes the final determination on whether Wilderness Study Areas are designated wilderness. Once designated, areas are added to the National Wilderness Preservation System to be managed by BLM according to provisions of the 1964 Wilderness Act and the 1976 Federal Land Policy and Management Act.

The proposed decision on the initial inventory was announced in the March 27, 1979, Federal Register. A 90-day comment period was conducted, including numerous public meetings/open houses.

After analysis of public comment, re-evaluation was made of many of the inventory units, resulting in the following final decision:

Units requiring intensive inventory:	Acres
11-17 Out Crop	6,420
14-19 Long Tom Creek	13,226
14-21 Bennett Creek	11,162
16-16 Windy Point	11,289
16-25 Mud Spring	6,996
16-26 Hinkle Gulch	9,072
16-28 Gertie Butte	18,762
16-31 Brown's Creek	8,464
16-34 Boulder Creek	20,253
16-36 White Horse	36,867
16-38 Little Brown's Creek	7,735
16-40 N. F. Owyhee River	58,851
16-41 Horsehead Spring	6,211
16-42 Squaw Creek Canyon	18,297
16-43 Smith Creek	8,442
16-44 Deep Nickel Creek	40,486
16-45 M. F. Owyhee River	15,663
16-46 Field Creek	7,910
16-47 W. F. Red Creek Canyon	15,970
16-49a Deep-Battle Creek	137,320
16-49b Lambert Table	17,827
16-49c Squaw Meadows	10,316
16-49d Yatahoney Creek	10,148
16-51a Coyotte Rim	6,658
16-51b Pack Saddle	12,825
16-52 Upper Owyhee River	16,301
16-61 Sinker Creek	12,110
16-64 Buckaroo Creek	8,775
17-1a Lookout Butte	20,077
17-1b E. F. Bruneau River	10,178
17-6 Dry Lakes	26,208
17-7 Clover Crossing	6,314
17-10 Lower Salmon Falls Creek	22,287
17-11 Jarbidge River	111,010

Units requiring intensive inventory:	Acres
17-12 Poison Creek	13,532
18-1 Wild Horse	7,472
110-91a Box Creek	[1]428
111-5 Poison Gulch	30,742
111-6 Little Jack's Creek	88,054
111-7a Big Hill	12,924
111-7b Duncan Creek	10,005
111-7c Big Jack's Creek	65,134
111-12 Sheep Trail	19,702
111-17 Bruneau River	134,062
111-18 Pole Creek	31,756
111-19a Camas Creek	19,347
111-19b Bull Gulch	33,150
111-20a Big Springs	5,342
111-20b Upper Battle Creek	17,787
111-21 Bull Basin	17,625
111-26 Blue Creek	5,453
111-36a Sheep Creek—West	15,376
111-36b Sheep Creek—East	12,412
26-1 Hanzel Mountain	20,615
26-3 South Samaria	6,615
27-1 South Deep Creek	9,609
27-2 Deep Creek Peak	6,646
28-1 Petticoat Peak	13,046
31-10 Illinois	11,150
31-11 Deadman Canyon	23,000
31-13 Timbered Dome	10,240
31-14 Appendicitis Hill	25,500
31-15 Dry Hollow	17,800
31-17 White Knob Mountain	9,900
32-2b Sands Canyon	8,010
32-3 Hawley Mountain	16,150
32-4 Taylor Mountain	11,610
32-9c Black Canyon	5,220
32-16 Pass Creek	11,330
33-4 Cedar Butte	38,820
33-5 Skull	8,650
33-6 Rye Grass	9,150
33-7 Cottontail	8,300
33-12 Split Top	18,080
33-13 Bear Point	20,650
33-14 Mosby Butte	35,720
33-15 Hell's Half Acre	66,200
33-16 Morgan	9,420
33-22 Cox's Place	12,790
33-23 Bear Trap	13,860
33-24 Islands	86
33-25 Islands	807
34-1 Islands	200
34-1A Islands	60
34-2 Islands	351
34-3 Islands	210
34-4 Islands	88
34-8 Game Creek	4,792
35-77 Henry's Lake	[1]350
36-15 Big Spring	5,810
36-18 Rattlesnake Point	8,365
37-77 Worm Creek	[1]40
37-88 Mt. Naomi	[1]240
41-3 Geertson Creek	10,720
42-6 Baldy Basin	10,720
43-3 18 Mile	19,280
44-2 King Mountain	12,602
44-3 Hat Creek	10,227
44-4 Ellis Creek	28,790
44-9 Cronks Canyon	7,470
45-5 Mill Creek	[1]1,330
45-12 Burnt Creek	20,000
46-2 Garden Creek	14,415
46-3 Centennial	8,014
46-7 Lone Pine Peaks	26,840
46-10 Hole-in-the-Rock	7,950
46-11 Corral-Horse Basin	49,480
46-13 Boulder Creek	[1]2,573
46-14 Jerry Peak	62,245
46-14a Jerry Peak West	12,800
47-4 Borah Peak	[1]4,594
54-3 Preacher Creek	7,641
54-4 Rattlesnake Canyon	11,085
54-5 Little City of Rocks	5,665
54-6 Black Canyon	20,480
54-7 Fourmile Bench	7,542
54-8 Gooding City of Rocks	22,685
54-9 Clover Creek	8,455
54-10 Deer Creek	8,881
54-11 Indian	16,968
54-12 Dempsey Creek	22,996
54-13 Forgotten Hills	9,415
56-2 Kinzie East	9,400
56-3 Big Wood	5,275
57-2 Shale Butte	21,661
57-3 Antelope	12,271
57-4 Black Ridge Crater	8,138
57-5 Lone Rock	10,934
57-6 Wildhorse	21,544
57-7 Pagari	39,169
57-8 Sand Butte	37,519
57-9 Broken Top Butte	15,387
57-10 Ravens Eye	51,609
57-11 Little Deer	43,156
57-12 Laidlaw Butte	9,868
57-13 Potter Butte	13,432
57-14 Bear Den Butte	9,704
57-15 Point	7,398
57-16 MacRae Lake	6,386
59-7 Lava	9,928
61-1b, c, d Selkirk Crest	[1]1,160
61-6c Hideaway Island	170
61-9 Rochet Creek	6,960
61-10 Crystal Lake	8,955
61-15a Grandmother Mountain	10,360
61-15b Grandmother Mountain	6,830
62-1 Snowhole Rapids	5,306
62-2 Confluence	5,110
62-4 Big Canyon	[1]1,260
62-10 Gospel Hump	7,490

[1] Units less than 5,000 acres dependent upon contiguous RARE II areas to meet the size criteria.

Units originally proposed for intensive inventory—now clearly and obviously lacking characteristics:	Acres
18-2 Sumac Creek	
18-5 Sugar Loaf	
18-9 Indian Creek	
18-11 Hog Creek	
18-12 Coonrod Gulch	
111-10 Upper Josphine Creek	
23-1 Jim Sage	
31-88 King Mountain	([1])
32-2a, c Sands Canyon	([1])
32-5 Hot Springs	([1])
32-6 Deer Flats	([1])
32-7 Sunny Bar	([1])
32-8 Warm Springs	([1])
32-9a, b Black Canyon	([1])
32-10 Mahogany Butte	([1])
32-11 Bald Mountain	([1])
32-12 Sawmill Canyon	([1])
34-2(15) Island	
34-2(33) Island	
35-3 Sand Mountain	
35-4 Black Knoll	
35-5 Big Sandy	
35-6 Islands	
36-14 Cole Canyon	
42-7 McDevitt-Grouse Creeks	([1])
43-11 Mammoth Canyon	([1])
44-12 McKim Creek	([1])
44-14 Tater Creek	([1])
45-7 Rock Spring Canyon	([1])
61-1a Selkirk Crest	([1])

[1] Units less than 5,000 acres; dropped due to the President's RARE II decisions.

Units extending into Oregon, Nevada, or Utah—decision deferred until adjacent State's decision is prepared:	Acres
16-48 Little Owyhee River	103,680
16-53 S. F. Owyhee River	47,516
16-56 Upper Little Owyhee River	5,632
16-59 Juniper Basin	15,248
17-19 Upper Bruneau River	22,797
17-21 Jarbidge Addition	4,936
17-26 Salmon Falls Creek	5,977
21-2 Shoshone Creek	4,746
22-1 Little Goose Creek	2,083

Units Where Advanced Intensive Inventory Has Been Conducted (Ag ES Project)

Units identified as wilderness study areas:	Acres
16-2 Jump Creek	8,301
16-9 Reynolds Creek Canyon	14,650
19-1 Cold Springs Creek	21,380
19-2 King Hill Creek	23,815

Units identified as lacking wilderness characteristics:	Acres
16-8 Hardtrigger Creek	
16-22 Wild Horse Butte	
111-1 Birch Creek	
111-40 Halfway Gulch	

Advanced intensive inventories have previously resulted in the identification of the following wilderness study areas:	Acres
33-1 Great Rift	374,400
45-1 Goldburg	[1]3,290
53-4 Little Wood River	[1]4,385
53-5 Friedman Creek	[1]9,773
54-2 Black Butte	4,002

[1] Unit less than 5,000 acres dependent upon a contiguous RARE II area to meet the size criteria.

* * * * *

In summary, of the approximately 12 million acres of BLM land in Idaho, 463,996 acres in nine units have been identified as Wilderness Study Areas; 2,597,454 acres in 150 units have been identified for intensive inventory; the decision has been deferred on 212,615 acres in nine units; with the remainder, 8,698,037 acres or 73 percent of the total, identified as clearly and obviously lacking wilderness characteristics.

This decision becomes final on September 10, 1979 unless formally and publicly amended and published by the State Director based on new information received as a result of final publication.

For further information on any of the inventory units, contact the Idaho State Office or one of the BLM District Offices.

Dated: July 27, 1979.

William L. Mathews,

Idaho State Director, Bureau of Land Management.

[FR Doc. 79-24452 Filed 8-9-79; 8:45 am]

BILLING CODE 4310-84-M

Nearshore Beaufort Sea; Availability of Final Environmental Statement Regarding Proposed Federal-State Oil and Gas Lease Sale

Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969, the Department of the Interior has prepared a final environmental statement (FES) relating to a proposed joint Federal-State of Alaska oil and gas lease sale of 105 tracts (208,091 hectares; 514,192 acres) in the nearshore Beaufort Sea. The tracts extend from the Canning River on the east to the Kuparuk River on the west and lie generally seaward from the coast to the 20 meter (66 foot) isobath. Of the tracts proposed for leasing, almost two-thirds are State-owned. Of the remaining one-third of the tracts, approximately half are under Federal jurisdiction and half are in dispute between the Federal and State governments.

Single copies of the final statement can be obtained from the Office of the Manager, Alaska Outer Continental Shelf Office, Bureau of Land Management, P.O. Box 1159, Anchorage, Alaska 99510, or from the Office of Public Affairs, Bureau of Land Management (130), Washington, D.C. 20240.

Copies of the FES will also be made available for inspection at the following locations in Alaska; Juneau Memorial Library, 114 West 4th Street, Juneau; Kodiak Public Library, Kodiak;

Community Library, Cook and Main Streets, Kenai; University of Alaska-Arctic Environmental Information 3211 Providence Avenue, Anchorage; Loussac Public Library, 427 F Street, Anchorage; Fairbanks North Star Borough Library, 901 First Avenue, Fairbanks; North Slope Borough Office, Barrow; Village Council Office, Nuiqsut; and Village Council Office, Kaktovik.

Arnold E. Petty,

Acting Associate Director, Bureau of Land Management.

Larry E. Meierotto,

Assistant Secretary of the Interior.

[FR Doc. 79-24616 Filed 8-9-79; 8:45 am]

BILLING CODE 4310-84-M

[Colorado 23734 x, y; Colorado 24128 w, x; Colorado 24402v; and Colorado 25122 r, s, t]

Northwest Pipeline Corp.; R/W Applications for Pipeline

August 2, 1979

Notice is hereby given that, pursuant to Section 28 of the Mineral Leasing Act of 1920 (41 Stat. 449), as amended (30 U.S.C. 185), Northwest Pipeline Corporation, P.O. Box 1526, Salt Lake City, Utah 84110, has applied for rights-of-way for the East Douglas, Philadelphia, West Douglas and Foundation Creek Gathering Systems, approximately 14.704 miles across the following Public Lands:

Sixth Principal Meridian, Rio Blanco County, Colorado

T. 1 S., R. 101 W.
- Section 32: SE¼SE¼
- Section 33: SW¼SW¼

T. 2 S., R. 101 W.
- Section 1: Lot 7, S½NW¼
- Section 2: S½SE¼NE¼, N½S½
- Section 5: Lots 5, 6
- Section 10: SW¼SE¼
- Section 35: SW¼SW¼

T. 3 S., R. 101 W.
- Section 2: Lot 8
- Section 3: Lot 5
- Section 7: SE¼SE¼
- Section 17: W½SW¼, SE¼SE¼
- Section 18: NE¼, NE¼SE¼
- Section 19: NW¼NE¼
- Section 20: N½NW¼, SE¼NW¼, S½NE¼, NE¼NE¼, N½SE¼, SE¼SE¼
- Section 29: NE¼NE¼, S½NW¼, NW¼SW¼
- Section 30: Lots 5, 7 & 8, NE¼SW¼, SE¼

T. 1 S., R. 102 W.
- Section 11: SE¼SW¼, W½SE¼
- Section 14: W½SW¼, S½NW¼, NE¼NW¼
- Section 15: S½SE¼
- Section 22: NW¼NE¼

T. 3 S., R. 102 W.
- Section 25: E½
- Section 36: W½NE¼, NW¼SE¼, E½SW¼

T. 4 S., R. 102 W.
- Section 1: Lot 7

The above-named gathering systems will enable the applicant to collect natural gas in the area through which the pipelines will pass and to convey it to the applicants' customers.

The purposes for this notice are: (1) To inform the public that the Bureau of Land Management is proceeding with the preparation of environmental and other analytic reports, necessary for determining whether or not the application should be approved and if approved, under what terms and conditions, (2) to give all interested parties the opportunity to comment on the application, (3) to allow any party asserting a claim to the lands involved or having bona fide objections to the proposed natural gas gathering system to file its claim or objections in the Colorado State Office. Any party so filing must include evidence that a copy thereof has been served on *Northwest Pipeline Corporation.*

Any comment, claim or objections must be filed with the Chief, Branch of Adjudication, Bureau of Land Management, Colorado State Office, Room 700, Colorado State Bank Building, 1600 Broadway, Denver, Colorado 80202, as promptly as possible after publication of this notice.

Andrew W. Heard, Jr.,

Leader, Craig Team, Branch of Adjudication.

[FR Doc. 79-24638 Filed 8-9-79; 8:45 am]

BILLING CODE 4310-84-M

Montana; Square Butte Natural Area Off-Road; Vehicle Closure

August 2, 1979.

Notice is hereby given that use of motorized vehicles on the following lands; in Chouteau County, Montana, is prohibited in accordance with the provisions of 43 CFR Part 8340. These lands are located approximately 25 miles north of Stanford, Montana. The area contains 1946.53 acres.

Principal Montana Meridian

T. 20 N., R. 12 E.
- Sec. 19, SE¼NE¼, SE¼SW¼, E½SE¼;
- Sec. 20, W½NE¼, S½SW¼, and S½;
- Sec. 21, SW¼;
- Sec. 28, Lots 3 and 4, SW¼NW¼ and NW¼SW¼;
- Sec. 29, Lots 1 and 2, N½ and N½S½;
- Sec. 30, Lots 1, 3, 4, 5, 6, and 7, S½NE¼, SE¼NW¼, NE¼SW¼, and N½SE¼.

This closure does not apply to emergency, law enforcement, and federal or other government vehicles, while being used for official or emergency purposes, or vehicles authorized by permit or contact.

Square Butte is a designated Natural Area, protected for its outstanding scenery, historic and cultural value, summit vegetative relic community and pristine, natural condition. The area was officially designated a Natural Area on August 17, 1972 under 43 CFR Part 2071, but no provision for ORV closure was included in this protection. A protective ORV closure during the fall hunting season of state and private lands surrounding Square Butte was enacted by the Montana State Fish and Game Commission on August 4, 1972.

This closure is necessary to protect the area from envrionmental degradation resulting from the indiscriminate use of ORVs. Violation of this closure will result in a fine of not more than $1,000 or imprisonment for not more than 12 months or both. A map of the enclosed area is available for inspection in the Lewistown District Office, Bureau of Land Management, Box 1160, Lewistown, MT 59457.

Edwin Zaidlicz,

State Director.

[FR Doc. 79-24639 Filed 8-9-79; 8:45 am]

BILLING CODE 4310-84-M

[U-43220]

Utah; Application

Notice is hereby given that pursuant to Section 28 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 185), CC Company has applied for a natural gas pipeline right-of-way across the following lands:

Salt Lake Meridian, Utah

T. 21 S., R. 23 E.,
- Sec. 24.

The needed right-of-way is a portion of applicant's gas gathering system located in Grand County, Utah.

The purpose of this notice is to inform the public that the Bureau will be proceeding with the preparation of environmental and other analyses necessary for determining whether the application should be approved, and if so, under what terms and conditions.

Interested persons should express their interest and views to the Moab District Manager, Bureau of Land Management, P.O. Box 970, Moab, Utah 84532.

Henry C. Wilson,

Acting, Chief, Branch of Lands and Minerals Operations.

[FR Doc. 79-24640 Filed 8-9-79; 8:45 am]

BILLING CODE 4310-84-M

[W-60216 Amendment]

Wyoming; Application

August 1, 1979.

Notice is hereby given that pursuant to Sec. 28 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 185), the Colorado Interstate Gas Company of Colorado Springs, Colorado filed an amendment application to install Cathodic Protection facilities for the purpose of insuring the safe and proper maintenance of their natural gas pipeline across the following described public lands:

Sixth Principal Meridian, Wyoming

T. 20 N., R. 95 W.,
Sec. 12, NE¼SE¼.

The proposed Cathodic Protection equipment and facilities will be located in the NE¼SE¼ of section 12, T. 20 N., R. 95 W., Sweetwater County, Wyoming.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the application should be approved, and if so, under what terms and conditions.

Interested persons desiring to express their views should do so promptly. Persons submitting comments should include their name and address and send them to the District Manager, Bureau of Land Management, 1300 Third Street, P.O. Box 670, Rawlins, Wyoming 82301.

Harold G. Stinchcomb,
Chief, Branch of Lands and Minerals Operations.

[FR Doc. 79-24641 Filed 8-9-79; 8:45 am]
BILLING CODE 4310-84-M

[NM 37671]

New Mexico; Application

July 30, 1979.

Notice is hereby given that, pursuant to Section 28 of the Mineral Leasing Act of 1920 (30 U.S.C. 185), as amended by the Act of November 16, 1973 (87 Stat. 576), Natural Gas Pipeline Company of America has applied for one 4-inch natural gas pipeline right-of-way across the following land:

New Mexico Principal Meridian, New Mexico

T. 21 S., R. 27 E.,
Sec. 15, SW¼NW¼;
Sec. 16, SE¼NE¼ and NE¼SE¼.

This pipeline will convey natural gas across 0.356 of a mile of public land in Eddy County, New Mexico.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the application should be approved, and if so, under what terms and conditions.

Interested persons desiring to express their views should promptly send their name and address to the District Manager, Bureau of Land Management, P.O. Box 1397, Roswell, New Mexico 88201.

Fred E. Padilla,
Chief, Branch of Lands and Minerals Operations.

[FR Doc. 79-24716 Filed 8-9-79; 8:45 am]
BILLING CODE 4310-84-M

[NM 37871, 37873, and 37956]

New Mexico; Notice of Applications

August 2, 1979.

Notice is hereby given that, pursuant to Section 28 of the Mineral Leasing Act of 1920 (30 U.S.C. 185), as amended by the Act of November 16, 1973 (87 Stat. 576), El Paso Natural Gas Company has applied for three 4½-inch natural gas pipeline rights-of-way across the following lands:

New Mexico Principal Meridian, New Mexico

T. 29 N., R. 8 W.,
Sec. 14, NE¼SE¼;
Sec. 34, N½NW¼ and SE¼NW¼.
T. 32 N., R. 9 W.,
Sec. 29, lot 16.

These pipelines will convey natural gas across 0.505 of a mile of public lands in San Juan County, New Mexico.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the applications should be approved, and if so, under what terms and conditions.

Interested persons desiring to express their views should promptly send their name and address to the District Manager, Bureau of Land Management, P.O. Box 6770, Albuquerque, New Mexico 87107.

Fred E. Padilla,
Chief, Branch of Lands and Minerals Operations.

[FR Doc. 79-24717 Filed 8-9-79; 8:45 am]
BILLING CODE 4310-84-M

[NM 37872]

New Mexico; Application

July 30, 1979.

Notice is hereby given that, pursuant to Section 28 of the Mineral Leasing Act of 1920 (30 U.S.C. 185), as amended by the Act of November 16, 1973 (87 Stat. 576), El Paso Natural Gas Company has applied for one 4½-inch natural gas pipeline rights-of-way across the following lands:

New Mexico Principal Meridian, New Mexico

T. 30 N., R. 9 W.,
Sec. 9, SE¼SE¼;
Sec. 10, SW¼SW¼.

This pipeline will convey natural gas across 0.405 of a mile of public land in San Juan County, New Mexico.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the application should be approved, and if so, under what terms and conditions.

Interested persons desiring to express their views should promptly send their name and address to the District Manager, Bureau of Land Management, P.O. Box 6770, Albuquerque, New Mexico 87107.

Fred E. Padilla,
Chief, Branch of Lands and Minerals Operations.

[FR Doc. 79-24718 Filed 8-9-79; 8:45 am]
BILLING CODE 4310-84-M

Socorro District Grazing Advisory Board; Meeting

Notice is hereby given in accordance with Public Law 94-579, that a meeting of the Socorro District Grazing Advisory Board will be held on Monday, September 24, 1979.

The meeting will begin at 9:00 a.m. in the Hospitality Room of the First State Bank at 103 Manzanares Avenue NE, Socorro, New Mexico.

The agenda for the meeting will include:

(1) Public comment period.
(2) Discussion of range improvements in the East Socorro Grazing Environmental Statement Area.
(3) The effects of the wilderness program on range improvement work.
(4) Report on ES comments.
(5) Update on West Socorro area inventory.
(6) Update on existing ESs.
(7) Report on Stewardship Program.
(8) Arrangements for the next meeting.

The meeting is open to the public. Interested persons may make oral statements to the board between 9:00 and 9:30 a.m. or file written statements for the board's consideration. Anyone wishing to make an oral statement must notify the District Manager, Bureau of Land Management, 198 Neel Avenue NW, P.O. Box 1217, Socorro, New Mexico 87801, by September 20, 1979. Depending on the number of persons wishing to make oral statements, a per person time limit may be established by the District Manager.

Summary minutes of the board meeting will be maintained in the District Office and will be available for public inspection and reproduction (during regular business hours) within 30 days following the meeting.

Lee C. Chamberlin,

Acting District Manager.

August 2, 1979.

[FR Doc. 79-24719 Filed 8-9-79; 8:45 am]

BILLING CODE 4310-84-M

Bureau of Reclamation

Brantley Project, N.Mex.; Intent To Prepare a Draft Supplement to the Final Environmental Statement

Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969, the Department of the Interior proposes to prepare a draft supplement to the final environmental statement (FES 72-30) for the Brantley Project, New Mexico.

The Project was authorized under Title II of Public Law 92-514, approved October 20, 1972, and is located on the Pecos River in Eddy County near Carlsbad, New Mexico. The plan of development consists of constructing Brantley dam and reservoir to replace unsafe McMillan Dam, and to provide flood protection for the existing unsafe Avalon Dam located downstream. Additional benefits will be derived through replacement irrigation storage, flood control, recreation and fish and wildlife enhancement.

The final design of the dam structure identified a need to relocate the dam axis about 2,000 feet downstream from the initial alinement. Relocating the structure downstream was necessary because of unfavorable foundation conditions at the upstream site.

This change to the original plan of development as well as other minor changes, and related impacts, will be addressed in a draft supplement to the final environmental statement. The draft is expected to be completed and available for review and comment by October 1979.

Since investigations have been underway for some time and input has been received from interested agencies and individuals over the years, it has been determined that a scoping meeting will not be held at this late date of the study.

Persons interested in the project and draft supplement should contact Mr. Daniel Rubenthaler, Bureau of Reclamation, Herring Plaza, Box H-4377, Amarillo, Texas 79101, telephone (806) 376-2218.

Dated: August 6, 1979.

R. Keith Higginson,

Commissioner.

[FR Doc. 79-24703 Filed 8-9-79; 8:45 am]

BILLING CODE 4310-09-M

Proposed Upalco Unit, Central Utah Project; Public Hearing on Draft Environmental Statement

Pursuant to section 102(2)(C) of the National Environmental Policy Act, the Department of the Interior has prepared a draft environmental statement for the proposed Upalco Unit. This statement (INT DES 79-46), was made available to the public on July 25, 1979.

The draft environmental statement deals with the proposed construction of a water resource project that would develop water from the Lake Fork and Yellowstone Rivers in the Uintah Basin in northeastern Utah for irrigation and municipal and industrial uses.

To receive comments from interested organizations or individuals on the environmental statement, the Bureau of Reclamation will hold a public hearing on September 13, 1979, at Union High School, Roosevelt, Utah. The hearing will begin at 5:00 p.m., and continue until all comments are received.

Oral statements at the hearing will be limited to a period of 10 minutes. Speakers will not trade their time to obtain a longer oral presentation; however, the person authorized to conduct the hearing may allow any speaker additional opportunity to comment after all other persons wishing to comment have been heard. Requests for scheduled presentation will be accepted up to September 8, 1979. Any subsequent requests will be handled at the hearing on a first-come-first-served basis following scheduled presentation. Whenever possible, speakers will be scheduled according to the time preference mentioned in their letter or telephone request. Any scheduled speaker not present when called will lose his or her privilege in the scheduled order, but will be given an oppourtunity to speak at the end of the scheduled presentation.

Organizations or individuals desiring to present statements at the hearing should contact Mr. N. W. Plummer, Regional Director, Bureau of Reclamation, Room 7201, 125 South State Street, Salt Lake City, Utah 84147, telephone (801) 524-5520, and announce their intention to participate. Oral and written statements presented at the hearing will be summarized and responded to in the final environmental statement. Any person wishing his or her comments printed in full in the final environmental statement should respond by addressing the draft environmental statement in a separate written document. These written comments should be addressed to the Regional Director, and postmarked no later than September 22, 1979.

Dated: Aug 6, 1979.

R. Keith Higginson,

Commissioner.

[FR Doc. 79-24704 Filed 8-9-79; 8:45 am]

BILLING CODE 4310-09-M

Geological Survey

Model Unit Agreement

AGENCY: U.S. Department of the Interior, Geological Survey.

ACTION: Development of model unit agreement for unitization of operations under OCS oil and gas leases.

SUMMARY: The Department of the Interior has developed a model agreement for use in the unitization of Outer Continental Shelf oil and gas lease operations. The Department of the Interior recently completed a review of past and current criteria and procedures for the unitization of operations under OCS oil and gas leases. The proposed model agreement incorporates the provisions which the Department of the Interior believes are necessary to assure prompt and efficient exploration and development of the unitized leases. This model unit agreement will be used in conjunction with unitization regulations which are being prepared in a separate notice in today's Federal Register.

DATES: Interested persons are invited to submit written comments and recommendations with respect to the proposed model unit agreement. Responses should identify the subject matter and be directed to the Chief, Conservation Division, U.S. Geological Survey, National Center, Mail Stop 620, Reston, Virginia 22092. Written comments and recommendations should

be submitted on or before October 9, 1979.

FOR FURTHER INFORMATION CONTACT: Gerald D. Rhodes, Conservation Division, U.S. Geological Survey, National Center, Mail Stop 620, Reston, Virginia 22092 (703/860-7531).

PRINCIPAL AUTHOR: W. P. Elliott, Office of the Solicitor, U.S. Department of the Interior, Washington, D.C. 20240 (202/343-4506).

Dated: August 3, 1979.

Joan M. Davenport,

Assistant Secretary.

Proposed Model OCS Unit Agreement for Exploration, Development, and Production Operations on the ——— Unit, ——— Area Outer Continental Shelf

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Witnesseth

Whereas, Section 5(a)(4) of the Act authorizes the Secretary of the Interior to provide for unitization, pooling, and drilling agreements;

Whereas, it is deemed to be in the national interest to unitize the oil and gas interests in the Unitized Area; and

Whereas, it is deemed to be in the national interest to conduct exploration, development, and production operations on the Unitized Area in a timely and safe manner;

Now, therefore, in consideration of the premises and promises contained herein, it is agreed that:

Article I—Definitions

The following definitions of terms shall apply to this Agreement.

(a) *Act* means the Outer Continental Shelf Lands Act of 1953, as amended, 43 U.S.C. 1331 *et seq.*

(b) *Regulations* means all regulations prescribed pursuant to the Act or sections 302 and 303 of the Department of Energy Organization Act, 42 U.S.C. 7152 and 7153. They include all regulations prescribed to carry out the provisions of the Act and as may as prescribed or amended at any time in order to provide for the prevention of waste and conservation of the natural resources of the Outer Continental Shelf and the protection or correlative rights therein.

(c) *Director* means the Director of the U.S. Geological Survey, Department of the Interior, or his designee.

(d) *Unitized Area* means the portion of the Outer Continental Shelf committed to this Agreement and described in Article III.

(e) *Reservoir* means an oil or gas accumulation which is separated from and not in communication with any other oil or gas.

(f) *Working Interest* means an interest in the Unitized Area held by virtue of a lease, operating agreement, or other contractual arrangement under which, except as otherwise provided in this Agreement, confers the right or authority to explore for, develop, and produce oil and gas. The right delegated to the Unit Operator by this Agreement is not a Working Interest.

(g) *Lease* means an oil and gas lease issued or maintained pursuant to the Act.

(h) *Block* means an area designated as a block on a United States Official Leasing Map or Protraction Diagram for an area of the Outer Continental Shelf.

(i) *Unit Operator* means the person, association, partnership, corporation, or other business entity designated by the Working Interest owners and approved by the Director to conduct operations on the Unitized Area in accordance with exploration plans and development and production plans approved pursuant to the Act and applicable regulations.

(j) *Agreement* means this unit agreement, approved by the Director for conducting exploration, development, and production operations on the Unitized Area.

(k) *Unit Operating Agreement* means an agreement made between the Working Interest owners and the Unit Operator providing for the apportionment of costs and liabilities incurred in conducting operations pursuant to this Agreement and the establishment of such other rights and obligations as they deem appropriate.

Article II—Incorporation by Reference

This Agreement is subject to all provisions of the Act, sections 302 and 303 of the Department of Energy Organization Act, the regulations, other applicable laws, and leases covering all parts of the Unitized Area.

Article III—Unitized Area and Exhibits

3.1 The following described portion of the Outer Continental Shelf is subject to valid leases and, as shown on the United States Official Leasing Map or Protraction Diagram, ———, constitutes the Unitized Area.

3.2 Exhibit "A," which is attached to this document and made a part hereof, is a plat identifying the Unitized Area and component blocks.

3.3 Exhibit "B," which is attached to this document and made a part hereof, is a schedule showing the leases, and percentage of ownership of each, which cover all portions of the Unitized Area.

3.4 Exhibits "A" and "B" shall be revised by the Unit Operator whenever changes in the Unitized Area or changes in the ownership of leases render revision necessary, and four copies shall be filed with the Director.

Article IV—Designation of Unit Operator

——— is designated as the Unit Operator and agrees to accept the rights and obligations of the Unit Operator to explore for, develop, and produce oil and gas as provided in this Agreement.

Article V—Resignation or Removal of Unit Operator

5.1 The Unit Operator shall have the right to resign at any time. Such resignation shall not become effective until 6 months after written notice of an intention to resign has been delivered by the Unit Operator to the Working Interest owners and the Director and until all artificial islands, installations, and other devices, including wells, used for conducting operations in the Unitized Area are placed in a condition satisfactory to the Director for suspension or abandonment of operations. However, if a successor Unit Operator is designated and approved as provided in Article VI, the resignation shall be effective upon the designation and approval of the successor Unit Operator.

5.2 The Unit Operator may, upon failure to meet his obligations, be subject to removal by the same percentage vote of the owners of Working Interests as provided in Article VI for the designation of a successor Unit Operator. This removal shall not be effective until the Working Interest owners notify the Director and the Unit Operator and until the Director approves the designation of a successor Unit Operator.

5.3 The resignation or removal of the Unit Operator shall not release the Unit Operator from liability for any failure to meet his obligations before the effective date of his resignation or removal.

5.4 The resignation or removal of the Unit Operator shall not terminate his right, title, or interest as the owner of a Working Interest or other interest in the Unitized Area. However, when the resignation or removal of the Unit Operator becomes effective, the Unit Operator shall relinquish to the successor Unit Operator all artificial islands, installations, devices, records, and any other assets used for conducting operations on the Unitized Area, whether or not located on the Unitized Area.

Article VI—Successor Unit Operator

6.1 Whenever the Unit Operator tenders his resignation as Unit Operator or is removed as provided in Article V, a successor Unit Operator may be designated by (a) affirmative vote of the owners of a majority of the Working Interests, based on their respective shares (determined by acreage) in the leases subject to this Agreement, and (b) the successor Unit Operator's acceptance in writing of the rights and obligations of a Unit Operator. The successor Unit Operator shall file with the Director four executed copies of the designation of successor. However, the designation shall not become effective until approved by the Director.

6.2 If no successor Unit Operator is designated and approved as herein provided within 60 days following notice to the Director of the resignation or removal of a Unit Operator, the Director, at his election, may declare this Agreement terminated.

Article VII—Rights and Obligations of Unit Operator

Except as otherwise provided in this Agreement and subject to the terms and conditions of approved exploration and development and production plans, the exclusive right and obligation of the owners of Working Interests to conduct operations to explore for, develop, and produce oil and gas in the Unitized Area are delegated to and shall be exercised by the Unit Operator. This delegation neither relieves a lessee of the obligation to comply with all lease terms not transfers title to any lease or operating agreement.

Article VIII—Unit Operating Agreement

8.1 The owners of Working Interests and the Unit Operator shall enter into a Unit Operating Agreement which shall describe how all costs and liabilities incurred in maintaining or conducting operations pursuant to this Agreement shall be apportioned and assumed. The Unit Operating Agreement shall also describe how the benefits which may accrue from operations conducted on the Unitized Area shall be apportioned.

8.2 The owners of Working Interests and the Unit Operator may establish by means of one or more Unit Operating Agreements such other rights and obligations as they deem necessary or appropriate. However, no Unit Operating Agreement shall be deemed to modify the terms and conditions of this Agreement or to relieve the Working Interest owners or the Unit Operator of any obligation set forth in this Agreement. In case of any inconsistency or conflict between this Agreement and a Unit Operating Agreement, the terms of this Agreement shall prevail.

8.3 Three copies of the Unit Operating Agreement executed in conjunction with the first paragraph of this Article shall be attached to this Agreement when it is filed with the Director for his approval. Three copies of all other Unit Operating Agreements and any amendments to Unit Operating Agreements shall be filed with the Director at least 30 days prior to their proposed effective dates.

Article IX—Appearances and Notices

9.1 The Unit Operator shall have the right to appear on behalf of all Working Interest owners before the Department of the Interior or any other body legally empowered to issue decisions concerning orders or regulations of the Department and to appeal from these decisions. The expense of these appearances shall be paid and apportioned as provided in a Unit Operating Agreement. However, any affected Working Interest owner shall have the right at his own expense to be heard in any proceeding.

9.2 Any order or notice relating to this Agreement which is given to the Unit Operator by the Director shall be deemed given to all Working Interest owners of the Unitized Area. All notices required by this Agreement to be given to the Unit Operator or the owners of Working Interests shall be deemed properly given if they are in writing and delivered personally or sent by prepaid registered or certified mail to the addresses set forth below or to such other addresses as may have been furnished in writing to the party sending the notice.

Article X—Plans

10.1 The Unit Operator shall submit exploration plans and development and production plans pursuant to the Act and the Regulations. All operations on the Unitized Area shall be conducted in accordance with approved plans.

10.2 When no oil or gas is being produced in paying quantities from a Unitized Area and when all or part of the Area is subject to leases beyond the primary term, a continuous drilling or well reworking program shall be maintained with lapses of no more than 90 days between such operations unless a suspension of operations has been ordered or approved by the Director. Plans may provide for a cessation of drilling between discovery and delineation and the initiation of production for a reasonable period necessary for the design, fabrication, and installation of artifical islands, installations, and other devices needed for development and production operations; however, when these plans involve leases beyond their primary term, they shall be accompanied by a request for a suspension of operations.

10.3 The first exploration plan or development and production plan shall be submitted at the time this Agreement is filed for the Director's approval. Each plan shall expire on the date specified in the plan but not later than 30 days following completion of the last drilling or other operation described in the plan. At least 60 days before the scheduled expiration of any plan, unless the Director grants an extension, the Unit Operator shall file a subsequent plan for approval in accordance with this Article.

Article XI—Revision of Unitized Areas

11.1 Prior to the commencement of production of oil or gas from a reservoir which is subject to this Agreement, the Unit Operator shall submit and obtain the Director's approval of a revised Unitized Area, within the original Unitized Area, regarded as capable of production in paying quantities from the reservoir. The Unit Operator shall, at the same time, submit a schedule setting forth the percentage of oil and gas to be allocated to each lease or part of a lease in the proposed revised Unitized Area. The revised Unitized Area shall be effective when approved by the Director and shall, thereafter, comprise the area subject to this agreement. The provisions of Article XV shall apply to those leases or portions of leases which are eliminated from the unit agreement as a result of this revision.

11.2 Subject to the approval of the Director, a Unitized Area may be further revised by additions necessary for Unit Operations or for the inclusion of an area capable of production in paying quantities from the reservoir for which the Unitized Area is established, or by reduction to exclude an area not capable of production in paying quantities from the reservoir for which the Unitized Area is established.

11.3 A Unitized Area shall not be reduced on account of depletion of oil and gas from the reservoir for which it was established, but any Unitized Area established under the provisions of this Article shall terminate automatically whenever operations are permanently abandoned in the reservoir.

11.4 At any time a Unitized Area may be contracted by the Director to insure that the unitized area includes only that area underlain by one or more oil and gas reservoirs or one or more potential hydrocarbon accumulations to be served by an optimal number of artificial islands, installations, or other devices necessary for the efficient exploration for or development and production of oil and gas. The Director may condition approval of a unit development and production plan on acceptance of this contraction. If a contraction excludes one or more reservoirs from the unit, lessees may apply within 90 days of the contraction to create a new unit or units to include these reservoirs.

Article XII—Allocation of Production

12.1 The Unit Operator shall pay all production royalties and make deliveries of oil and gas which are payments of royalties taken in kind or which, pursuant to the Act, are purchased by the United States. For the purpose of allocating production for the determination of royalty or net profit shares accruing under this Agreement, each lease or part of a lease shall have allocated to it such percentage of the oil and gas saved, removed, or sold from the Unitized Area as the number of acres of the lease or part of a lease included in the Unitized Area bears to the total number of acres in the Unitized Area. The oil and gas saved, removed, or sold from a Unitized Area shall be allocated in this manner, regardless of where any well is drilled in the Unitized Area.

12.2 The allocation of oil and gas saved, removed, or sold for purposes other than for settlement of the royalty obligations of the Working Interest owners or the settlement of a net profit share shall be on the basis prescribed in a Unit Operating Agreement, whether in conformity with the basis of allocation set forth above or otherwise.

12.3 For the purpose of determining royalty obligations, gas and liquid hydrocarbon substances used for repressuring, stimulation of production, or increasing ultimate recovery from a Unitized Area, in conformity with an approved development and production plan, may be deemed to be a portion of the gas and liquid hydrocarbon substances subsequently saved, removed, or sold from the Unitized Area. In such instances, a like amount of gas and liquid hydrocarbon substances similar to that previously used less appropriate deduction for loss or depletion from any cause, may be saved, removed, or sold from the Unitized Area without paying a royalty thereon. However, as to gas, only dry gas and not products extracted therefrom may be saved, removed, or sold royalty-free. The royalty-free withdrawal shall be conducted in accordance with an approved development and production plan, and the shares of gas and liquid hydrocarbon substances withdrawn that are to be recognized as free of royalty charges shall be computed in accordance with a formula approved or prescribed by the Director. Any withdrawal of royalty-free gas or liquid hydrocarbon substances shall terminate upon the termination of this Agreement. For the purposes of this paragraph, liquid hydrocarbon substances include natural gasoline and liquid petroleum gas fractions.

Article XIII—Rentals and Minimum Royalties

13.1 Rentals are payable in advance on or before the anniversary date of each lease included in the Unitized Area. Rentals shall be paid by the lessees of record.

13.2 For each lease year commencing on or after the effective date of this Agreement and after the Director has determined that a well on the Unitized Area is capable of being produced in paying quantities, a minimum royalty of $3 an acre shall be paid for each acre or fraction thereof under lease within the Unitized Area. However, if there is production from the Unitized Area during the lease year, the amount of royalty paid for production allocated to the lease during the lease year shall be credited against the minimum royalty. Minimum royalties are payable within 30 days after the last day of each lease year and shall be paid by the Unit Operator.

Article XIV—Effective Date and Termination

14.1 This Agreement shall be effective on the date specified below by the Director and shall terminate when oil and gas is no longer being produced in paying quantities from the Unitized Area or drilling or well reworking operations are no longer being conducted on the Unitized Area in accordance with an approved exploration plan or development and production plan for the Unitized Area.

If the Director has ordered or approved a suspension of operations or production on all or part of the Unitized Area pursuant to 30 CFR 250.12, the term of this Agreement shall be extended for a period of time equal to the period of suspension.

14.2 This Agreement may be terminated, with the approval of the Director, at any time by an affirmative vote of the owners of a majority of the Working Interests either based on their respective shares of the acreage subject to this Agreement or as otherwise specified in a Unit Operating Agreement.

Article XV—Effect of Contraction and Termination

15.1 Any lease or portion of a lease, insofar as it covers any portion of the outer continental shelf excluded or eliminated from the Unitized Area pursuant to this Agreement, may be maintained only in accordance with the terms and conditions contained in the Act, the regulations, and the lease. Operations conducted in the Unitized Area and suspensions approved or ordered for the Unitized Area shall not serve to maintain an excluded or eliminated lease or an excluded or eliminated portion of a lease.

15.2 Upon terminated of this Agreement, the leases committed hereto may be continued in force and effect in accordance with the terms and conditions contained in the Act, the regulations, and the leases.

Article XVI—Counterparts

This agreement may be executed in any number of counterparts, no one of which needs to be executed by all parties and, after the effective date, shall be binding upon all parties who have previously executed a counterpart with the same force and effect as if all parties had signed the same document.

Article XVII—Subsequent Joinder

The Director may order or, upon request, approve a subsequent joinder to the Unitized Area pursuant to the provisions of Article XI. A request for a

subsequent joinder shall be accompanied by a signed counterpart to this agreement and shall be submitted by the Unit Operator at the time he submits a request for approval of a revision of the Unitized Area pursuant to Article XI. A subsequent joinder shall be subject to requirements which may be contained in any Unit Operating Agreement except that the Director may require modifications of any provision in a Unit Operating Agreement which he finds would prevent or frustrate a subsequent joinder.

Article XVIII—Remedies

18.1 The failure of the Unit Operator to conduct operations in accordance with an approved exploration or development and production plan, to submit a plan for approval by the Director, to comply with other requirements of this Agreement, or to do these in a timely manner shall, after notice of default or notice of prospective default to the Unit Operator by the Director and after failure of the Unit Operator to remedy any default within a reasonable time as determined by the Director, result in automatic termination of this Agreement effective as of the first day of the default.

18.2 This remedy is in addition to any remedy which is prescribed in the Act, the regulations, or a lease committed to this Agreement or any action which may be brought by the United States to compel compliance with the provisions thereof.

IN WITNESS WHEREOF, the Working Interest owners and the Unit Operator have caused this Agreement to be executed, and the Director has approved this Agreement as follows:

Approval By Director

Pursuant to the authority vested in the Secretary of the Interior under the Act and delegated to the Director, U.S. Geological Survey, I approve this Agreement for exploration, development, and production on the _____ Unit, _____ Area, Outer Continental Shelf.
Effective date of agreement _____

Dated: _____

Director, U.S. Geological Survey

Acceptance of Rights and Obligations by Unit Operator

I hereby accept and assume all rights and obligations of the Unit Operator as set forth above.

Dated: _____
Authorized Signature: _____
Name: _____
Title: _____
Corporation: _____
Address: _____

Subscribed and sworn to me this ___ day of _____ 19___.
Notary Public: _____
My Commission Expires: _____

Approval by Working Interest Owner

As an owner of a Working Interest in the Unitized Area, I hereby agree to the terms and conditions as set forth in this Agreement.

Dated: _____
Authorized Signature: _____
Name: _____
Title: _____
Corporation: _____
Address: _____

Subscribed and sworn to me this ___ day of _____ 19___.
Notary Public: _____
My Commission Expires: _____

[FR Doc. 79-24440 Filed 8-9-79; 8:45 am]

BILLING CODE 4310-31-M

Heritage Conservation and Recreation Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the Heritage Conservation and Recreation Service before August 6, 1979. Pursuant to section 60.13 of 36 CFR Part 60, written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, Heritage Conservation and Recreation Service, U.S. Department of the Interior, Washington, DC 20243. Written comments or a request for additional time to prepare comments should be submitted by August 20, 1979.

Charles A. Herrington,
Acting Keeper of the National Register.

[FR Doc. 79-24585 Filed 8-9-79; 8:45 am]

BILLING CODE 4310-03-M

Office of Surface Mining Reclamation and Enforcement

Receipt of Permanent Program Submission From the State of Mississippi

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

ACTION: Notice of receipt of program submission from the State of Mississippi and procedures for public participation in review for determination of completeness of submission.

SUMMARY: On August 2, 1979, the State of Mississippi submitted to OSM its proposed permanent regulatory program under the Surface Mining Control and Reclamation Act of 1977 ("SMCRA"). OSM is seeking public comments on the completeness of the State program.

DATES: Public review meetings to discuss completeness of the submission will be held on September 18, 1979, and will start at 7:30 p.m. Written comments must be received before the close of the meeting on September 18, 1979.

ADDRESSES: The meeting will be held at: South Side Room, Holiday Inn, Interstate 55 at Highways 7 and 8, Grenada, Mississippi.

Copies of the full text of the proposed Mississippi Program are available for review during regular business hours at:

Office of Surface Mining Reclamation and Enforcement, Region II, 530 Gay Street, SW., Suite 500, Knoxville, TN 37902.
Division of Mining and Reclamation, Mississippi Geologic Economic and Topographic Survey, 2525 N. West St., Jackson, Mississippi 39216.

Written comments should be sent to:

Mr. David C. Short, Regional Director, Office of Surface Mining, 530 Gay Street, SW., Suite 500, Knoxville, TN 37902.

Written comments will be available for public review at the OSM Region II Office above, on Monday through Friday, 8:00 a.m.–4:00 p.m., excluding holidays.

FOR FURTHER INFORMATION CONTACT: Mr. John T. Davis, Acting Assistant Regional Director, Office of Surface Mining, 530 Gay Street, SW., Suite 500, Knoxville, TN 37902. Telephone: (615) 637-8060.

SUPPLEMENTARY INFORMATION: The purpose of this State submission is to demonstrate both the State's intent and its capability to assume responsibility for administering and enforcing the provisions of SMCRA and OSM's permanent regulatory program (30 CFR Chapter 7), as published in the Federal Register on March 13, 1979, (44 FR 15311–15463).

This notice describes the nature of Mississippi's proposed program and sets forth information concerning public participation in the Regional Director's determination of whether or not the submission is complete. The public participation requirements for the consideration of a permanent State program are found in 30 CFR 732.11 and 732.12 (44 FR 15326–15327). Additional information may be found under corresponding sections of the preamble to OSM's permanent program regulations (44 FR 14959–14960).

If the submission, as hereafter modified, is approved by the Secretary

of the Interior, the State of Mississippi will have primary jurisdiction for the regulation of coal mining and reclamation and coal exploration on non-Federal lands in Mississippi. If the program is disapproved, a Federal program will be implemented and OSM will have primary jurisdiction for the regulation of those activities.

Before OSM and the Secretary formally begin consideration of the adequacy of the program, the Regional Director must determine that the submission is complete. If the Regional Director determines the submission to be complete, consideration of the adequacy of the program will begin, and the public will be informed on the decision and granted the opportunity to submit comments of the adequacy of the submission. If the submission is determined to be incomplete, the State will be given the opportunity to submit additional material. If the State fails to provide the missing elements, or the submission is otherwise determined to be inadequate, the program will be disapproved. After initial disapproval, the State may revise the program. If the resubmitted program is also found to be inadequate after opportunity for supplementing it has passed, the State program will be given a final disapproval, and a Federal program will be implemented.

At this time, OSM is primarily concerned with whether the proposed program constitutes a complete submission. The decision on completeness will be made by David C. Short, Regional Director, Region II. To assist in obtaining information on the completeness of the Mississippi submission, the Regional Director is requesting written comments from the public and will hold a public review meeting on the issue of completeness.

The public review meeting on completeness will be conducted by the Regional Director and will be informal. Minutes will be taken to assist the Regional Director in reviewing the public input.

Persons wishing to make a lengthy or technical presentation should submit the related material and text in writing and only summarize this material orally at the meeting. Specific format procedures will be at the discretion of the Regional Director and will consider the number of people in attendance.

Written comments may supplement or be submitted in lieu of oral presentation at the public review meeting. All written comments must be mailed or handcarried to the Regional Director's Office above or may be handcarried to the public review meeting at the address above and submitted as exhibits to the proceeding. The comment period will close at the conclusion of the public review meeting. Comments received after that time will not be considered in the Regional Director's completeness determination.

No Environmental Impact Statement is being prepared in connection with the process leading to the approval or disapproval of the proposed Mississippi program. Under Section 702(d) of SMCRA (30 USC Section 1292(d), approval of State programs does not constitute a major action within the meaning of Section 102(2)(c) of the National Environmental Policy Act of 1969 (42 USC 4332).

The following constitutes a summary of the contents of the Mississippi submission:

The Mississippi Geological, Economic and Topographical Survey, has been designated by the Governor of Mississippi to implement and enforce the Mississippi Surface Mining and Reclamation Act in accordance with the Surface Mining and Reclamation Act of 1977 (Pub. L. 95–87). The Survey has proposed State regulations to carry out the State mandate.

Contents of the State Program Submission include:

(a) The Mississippi Surface Coal Mining and Reclamation Act and the Proposed Regulations Promulgated Thereunder.
(b) Other State Laws Directly Affecting the Regulations of Surface Coal Mining Operations.
(c) Legal Opinion from Mississippi Attorney General, Comparison of Federal and Mississippi Laws, and Comparison of Federal and Mississippi Regulations.
(d) Regulatory Authority Designation.
(e) Organization of the State Regulatory Authority.
(f) Agreements Between Agencies with Duties in the State Program.
(g)(1) Exploration and Mining Permits;
(2) Permit Application Fees;
(3) Performance Bonds and Liability Insurance;
(4) Inspections and Monitoring;
(5) Enforcing the Administrative, Civil and Criminal Sanctions of State Laws and Regulations;
(6) Administering and Enforcing the Permanent Program Performance Standards;
(7) Assessing and Collecting Civil Penalties;
(8) Public Notices and Hearings;
(9) Coordinating Issuance of Permits with Other Agencies;
(10) Consultation with Other Agencies Regarding Environmental, Historic, Cultural and Archeological Resources;
(11) Lands Unsuitable for Surface Mining;
(12) Restrictions on Financial Interests;
(13) Training, Examining and Certifying Blasters;
(14) Public Participation;
(15) Administrative and Judicial Review;
(16) The Small Operator Assistance Program.
(h) Coal Mines and Production in Mississippi.
(i) Summary of Staff with Titles, Job Functions, and Job Requirements.
(j) Description of Staffing Adequacy.
(k) Use of Other Professional and Technical Personnel.
(l) Budget Information.
(m) Available Physical Resources.
(n) Special Environmental Protection Performance Standards for Anthracite Surface Coal Mining.
(o) Other Programs of the Regulatory Authority.
(p) Additional Information Requested by the Director of the Office of Surface Mining Relating to Descriptions of Alternative Regulations Under Section 731.13 of the Federal Regulations.

Dated: August 3, 1979.

David C. Short,
Regional Director.

[FR Doc. 79-24728 Filed 8-9-79; 8:45 am]
BILLING CODE 4310-05-M

DEPARTMENT OF LABOR

Employment and Training Administration

U.S. Employment Service Temporary Alien Labor Certification Program; 1979 Adverse Effect Wage Rate for the State of Colorado

AGENCY: U.S. Employment Service, Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The Administrator, U.S. Employment Service, announces, pursuant to 20 CFR 655.207(b), the 1979 adverse effect wage rate for the State of Colorado, that is, the minimum wage rate which the Department of Labor has determined must be offered and paid by employers of temporary alien agricultural workers in the State of Colorado. Adverse effect wage rates are established and set to prevent the employment of these aliens from having an adverse effect on the wages of U.S. workers who are similarly employed.

EFFECTIVE DATE: August 10, 1979.

FOR FURTHER INFORMATION CONTACT: Mr. Aaron Bodin, Chief, Division of Labor Certification, Office of Technical Services, U.S. Employment Service, Employment and Training Administration, U.S. Department of Labor, Suite 8410, 601 D Street, N.W., Washington, D.C., 20213, Telephone 202-376-6295.

SUPPLEMENTARY INFORMATION:

Requirement of Notice

1. The Department of Labor's regulations for the certification of nonimmigrant aliens for temporary employment in the United States in agriculture and logging require the Administrator, U.S. Employment Service, to cause to be published annually a notice in the Federal Register announcing adverse effect wage rates for agricultural workers in Colorado, Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont, New York, Maryland, Texas, Virginia, and West Virginia, and for sugar cane workers in Florida. Colorado was added to the list of states for which an adverse effect rate must be published by an amendment to 20 CFR 655.207(b)(2) published in the Federal Register on August 10, 1979.

Methodology

2. The adverse effect wage rate for the State of Colorado for 1979 is $3.59 per hour. The methodology for computing this wage is the same as that used for determining past year's adverse effect rates for the States listed in 20 CFR 655.207(b)(2). DOL has computed for a number of years a statewide adverse effect wage rate for Colorado agricultural workers based upon this methodology. The methodology for computing the adverse effect rate has been published numerous times in the Federal Register. See e.g., 41 FR 25018 (June 22, 1976); and 43 FR 10310 (March 10, 1978). DOL has determined that this methodology can be used to construct adverse effect rates in a way that is reasonable, cost effective, and geared as much as possible to the reality of agricultural crops, areas, and existing wage factors.

Applicability of Federal, State, and Local Minimum Wage Laws

3. Pursuant to paragraph (e) of 20 CFR 655.207, the adverse effect wage rate for any State may be no lower than the wage rate for that year in 29 U.S.C. 206(a)(1). In any case, employers of temporary alien agricultural workers must submit to the Department of Labor signed assurances that they will comply with applicable Federal, State, and local employment related laws, including the applicable minimum wage laws. 20 CFR 655.202(b).

1979 Adverse Effect Wage Rate

4. The adverse effect wage rates for agricultural employment in Colorado computed for the current year and for the preceding five years are shown in the table below.

Annual Adverse Effect Wage Rates: Colorado

Year	Rate	Percentage increase
1979	$3.59	+6.6
1978	3.36	+3.0
1977	3.26	+20.7
1976	2.70	+3.0
1975	2.62	+11.9
1975	2.34	

Signed at Washington, D.C. this 6th day of August, 1979.

William B. Lewis,

Administrator, United States Employment Service.

[FR Doc. 79-24737 Filed 8-9-79; 8:45 am]

BILLING CODE 4510-30-M

Mine Safety and Health Administration

[Docket No. M-79-111-C]

Consolidation Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Consolidation Coal Company, Consol Plaza, Pittsburgh, Pennsylvania 15241, has filed a petition to modify the application of 30 CFR 75.305 (weekly examinations) to its Amonate No. 31 Mine located in McDowell County, West Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977, Pub. L. 95-164.

The substance of the petition follows:

1. Specified entries of the petitioner's mine have deteriorated due to adverse conditions such as moisture and roof pressure, leaving much of the roof unsupported. Numerous roof falls have left these return airways virtually impassable and extremely hazardous to travel and examine.

2. The existing falls, however, have had no effect on the velocity or quantity of air passing through the entries.

3. The entries are not designated as return escapeways.

4. Rehabilitation of the entries is neither practical nor feasible.

5. As an alternative, the petitioner proposes to establish six air monitoring stations (designated on a map supplied with the petition), where air quality, quantity and direction measurements will be made and recorded according to procedures outlined in the petition.

6. The petitioner states that this alternative method will achieve no less protection for its miners than that provided by the standard.

Request for Comments

Persons interested in this petition may furnish written comments on or before September 10, 1979. Comments must be filed with the Office of Standards, Regulations, and Variances, Mine Safety and Health Administration, 4015 Wilson Boulevard, Arlington, Virginia 22203. Copies of the petition are available for inspection at that address.

Dated: August 2, 1979.

Robert B. Lagather,

Assistant Secretary for Mine Safety and Health.

[FR Doc. 79-24734 Filed 8-9-79; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-79-104-C]

Glacial Minerals, Inc.; Petition for Modification of Application of Mandatory Safety Standard

Glacial Minerals, Inc., 8 South Eighth Avenue, Clarion, Pennsylvania 16214, has filed a petition to modify the application of 30 CFR 77.1109(e) (fire fighting equipment) to its Glacial Strip Mines located in Clarion County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977, Pub. L. 95-164.

The substance of the petition follows:

1. The standard requires two portable fire extinguishers to be provided near above-ground fuel storage tanks.

2. The petitioner believes that the application of the standard to its surface open pit mines would result in a diminution of safety for the following reasons:

(a) There is minimal exposure of its employees to the fuel tanks; no one works around them except to refuel mobile equipment.

(b) If a fire were to occur at a fuel storage tank supplied with fire extinguishers, employees might spend too much time attempting to control the fire, seriously compromising their own safety.

(c) The petitioner is more concerned about the safety of its employees than about the loss of a fuel tank.

3. As an alternative, the petitioner proposes that fire extinguishers attached to its mobile equipment to be used if a fire breaks out. If an employee fails to extinguish a fire rapidly, the employee should move to safety, allowing trained personnel to combat the fire.

4. For these reasons, the petitioner requests relief from the application of the standard to its mines.

Request for Comments

Persons interested in this petition may furnish written comments on or before September 10, 1979. Comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, 4015 Wilson

Boulevard, Arlington, Virginia 22203. Copies of the petition are available for inspection at that address.

Dated: August 1, 1979.

Robert B. Lagather,

Assistant Secretary for Mine Safety and Health.

[FR Doc. 79-24735 Filed 8-9-79; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-79-22-M]

Riverside Cement Co.; Petition for Modification of Application of Mandatory Safety Standard

Riverside Cement Company, P.O. Box 832, Riverside, California 92502, has filed a petition to modify the application of 30 CFR 57.4-58 [prohibition of underground fires] to its Crestmore Mine located in Riverside County, California. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977, Pub. L. 95-164. The substance of the petition follows:

1. The petitioner operates a non-gassy limestone mine. Roadways and other openings to the mine are neither supported nor lined with combustible material.

2. Occasional spills from hydraulic fluid lines on the petitioner's equipment interfere with the integrity of electrical wiring and safety of personnel using the equipment.

3. The petitioner requests permission to use a portable steam cleaner with a fire-powered boiler to clean the equipment and working surfaces of hydraulic fluid spills.

4. The petitioner believes such steam cleaning to be the most effective method of protecting its miners from the hazards of such spills.

Request for Comments

Persons interested in this petition may furnish written comments on or before September 10, 1979. Comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, 4015 Wilson Boulevard, Arlington, Virginia 22203. Copies of the petition are available for inspection at that address.

Dated: August 1, 1979.

Robert B. Lagather,

Assistant Secretary for Mine Safety and Health.

[FR Doc. 79-24736 Filed 8-9-79; 8:45 am]

BILLING CODE 4510-43-M

Occupational Safety and Health Administration

Training, Education, and Related Assistance Capabilities; Grants for Development

The Occupational Safety and Health Administration is entering the second year of its national grant program for the development of institutional competence in nonprofit organizations for providing training, education, and related assistance to employees and employers. Institutional competence is defined as an organization's internal capability of offering a complete range of training, education, and related services necessary to address the occupational safety and health problems of the organization's target audience. It is intended that within a five-year period most recipient organizations will become centers of expertise, information, and general competence in providing an integrated and full range of workplace safety and health activities and services. These activities are designed to create an increased awareness of hazards in the workplace, and to promote the organizational and operational changes in the workplace necessary to achieve improved occupational safety and health conditions.

This announcement describes the scope and objectives of the grant program, and provides information on how to obtain a grant application. Applications should not be submitted without first obtaining the detailed grant application mentioned later in this announcement.

Authority for providing for job safety and health training programs and related assistance for employers and employees may be found in sections 21(b) and 21(c) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 670) and in Executive Order 11807 "Occupational Safety and Health Programs for Federal Employees."

Background and Objectives

From 1971 to 1978 OSHA conducted numerous projects to improve the ability of employers and employees to recognize, avoid, and control safety and health hazards. Special training programs were conducted for small- and medium-sized businesses, high-hazard industries, leaders of orgnaized labor, supervisors, apprentices, and others. OSHA's experience with these programs indicates that one of the most practical means of assuring that employers and workers acquire the ability to recognize, avoid, and control hazards is to build the competence of key organizations to provide occupational safety and health services to employees and employers.

To this end, in 1978 OSHA announced a program to increase the number of labor, business, educational, and other nonprofit organizations having the internal capability of providing, on a continuing and self-sufficient basis, comprehensive and effective occupational safety and health training, resources, and services for employers and employees. 86 grants have been awarded to such organizations for planning and developing their occupational safety programs. Grant recipients use these funds largely to identify serious occupational safety and health problems and design strategies to resolve them, to develop educational materials, to conduct training sessions, to provide technical assistance for specific occupational safety and health problems, and to augment the organization's staff in order to carry out these objectives.

Early this summer organizations that were awarded grants in 1978 received instructions for completing applications for second-year program funding. Refunding determinations for current grantees will be made by late September of this year.

Activities To Be Supported

A broad range of activities related to occupational safety and health will be supported under this grant program, depending on the needs of those served by the funded organizations. Activities typically may include, but need not be limited to, the following: training in hazard identification and control; development of publications and other informational materials; and the creation of cooperative arrangements between the recipient organization and OSHA, NIOSH, State agencies, and other organizations providing job safety and health services or resources. Technical services also may be supported in such areas as assisting employers and employees in hazard recognition and control in specific workplaces, instituting programs for effective hazard abatement and control, assisting employers and employees in carrying out their rights and responsibilities under the Occupational Safety and Health Act, and resolving difficult job safety and health problems.

Nonsupportable Activities

While all efforts to eliminate deaths, injuries, and illnesses in the workplace are encouraged, statutory and other limitations prevent reimbursement for

certain activities under this program. These limitations include:

1. Development on academic curricula for the education of occupational safety and health professionals.

2. Support of degree programs, safety and health certificate programs, or extended academic programs designed to provide professional level credentials.

3. Research in the physical, engineering, or health sciences, except for short-term, small-scale studies supportive of or ancillary to other program activities.

4. Training that does not address the recognition, avoidance, and prevention of unsafe or unhealthful working conditions. First aid training is one example of such training that cannot be supported under this grant program.

5. Activities for the benefit of State and local government employees unless these persons have occupational safety and health responsibilities. Examples of such responsibilities include: occupational safety and health training; safety and health program management; membership on an employer, union, or joint safety and health committee; and responsibilities for abatement of unsafe and unhealthful working conditions.

6. Consultation programs that duplicate services provided by State-designated agencies or contractors under sections 7(c)(1) or 23(g) of the Act.

7. Program activities involving workplaces that are largely precluded from enforcement action by the Occupational Safety and Health Administration under section 4(b)(1) of the Act.

8. Lobbying activities or devices intended or designed to influence in any manner a Member of Congress regarding any congressional legislation or appropriation. These activities and devices include, but are not limited to, personal services, telegrams, letters, or other printed or written matter.

9. Costs incurred before or after the grant period.

10. The purchase of land, or any interest therein; or the acquisition or construction of buildings.

11. Any activities for the purpose of generating membership in grantee organizations.

12. Any other activities inconsistent with the goals and objectives of the Occupational Safety and Health Act of 1970.

Grant Categories

Under this program, four categories of awards have been established for nonprofit organizations working in the field of occupational safety and health:

Category I. Labor organizations listed in accordance with the requirements of the Labor-Management Disclosure Act of 1959, as amended, or Chapter 71 of the United States Code, as amended by the Civil Service Reform Act of 1978. Field components of these organizations are eligible with the concurrence of the national organization. Although all components of labor organizations are eligible to apply, limited resources available for the program make it unlikely that a grant will be awarded to a field component of a labor organization if the national component of that same labor organization has been awarded a grant. (Labor-management consortia should apply in Category IV.)

Category II. Employer associations. Priority will be given to those associations serving small businesses. (All safety councils and labor-management consortia should apply in Category IV below.)

Cateogy III. Educational institutions (for associations of such institutions). Programs or departments within educational institutions are eligible for funding if the institution of which they are a part qualifies as an "institution of higher education" under 41 CFR 29–70.102 (44 FR 42927–28, July 20, 1979). As other groups in other categories focus on target audiences for their programs, educational institutions also may propose to focus their programs on only certain sectors of employee and/or employer populations.

Category IV. Nonprofit organizations not in the above three categories, that demonstrate the potential for providing training and related services for employers or employees with unique needs. Safety councils and joint labor-management consortia also should apply in Category IV. A nonprofit organization is defined for this announcement as any corporation, trust, foundation, agency, or other organization which (1) is entitled to exemption under section 501(c)(3) of the Internal Revenue Code, or (2) is not organized for profit and no part of the net earnings of which inure, or will inure upon dissolution, to the benefit of any private shareholder or individual; and Indian and Native American organizations other than federally recognized Indian tribal governments. State and local government organizations are not eligible to apply for grants described in this announcement. Associations of State and local government organizations, however, may apply under Category II.

Consortia. Organizations may apply jointly and share grant resources in the interest of serving broader populations or broader occupational safety and health problems than each organization could serve alone. The formation of a consortium must be designed to contribute to the development of a center of competence in the field of occupational safety and health. Consortia formed primarily for coordination or communication purposes, rather than to build a center of competence, are discouraged.

One institution should assume responsibility for submitting the overall proposal and administering the grant. The director of the proposed consortium project should be on the staff of the administering institution. Agreements to participate in the consortium by organizations other than the administering institution shall be documented in the application. In addition to explaining the advantages of the proposed consortium, the proposal should describe explicitly the role of each participating organization, its portion of the proposed program, and demonstrate how each organization's participation will improve the probability of success of the total program.

Labor-management consortia are encouraged, and should apply in Category IV. For consortia other than safety councils or joint labor-management programs, which apply in Category IV, if a consortium includes organizations from more than one category, applications will be processed in the category of the organization assuming the lead administrative role.

Types of Awards

Two types of grant awards may be made under the institutional competency building program: (1) planning grants and (2) developmental grants.

Planning grants. Planning grants are intended to assist organizations that are able to demonstrate potential for meeting the objectives of this program, but that need to assess capabilities, needs, and priorities, and formulate objectives before moving ahead with full-scale program development and implementation. Planning grant recipients will be funded for not more than one year. Upon successful completion of its one-year planning activities, an organization may apply for a developmental grant. Although most recipients of planning grants will be expected to initiate limited program operations during the planning period, these operations should be small-scale or pilot projects, used to complement the organization's planning activities.

Developmental grants. Where an organization through its past activities has established a capability to provide occupational health or safety training, education, or related assistance, but where continuing developmental activities are appropriate, the organization may propose a developmental program. Although grant recipients generally will be capable of immediate implementation of some educational activities, the grants are not intended to merely fund existing program operations, but rather to assist the organizations in developing centers of occupational safety and health expertise. Each organization awarded a grant must develop a comprehensive plan for becoming an increasingly self-sufficient center of competence. The project period for developmental grants may be up to five years. Continuation of funding, and level of funding within a project period, are subject, however, to annual appropriation of funds and determination that the project is achieving the approved objectives.

Evaluation Process and Criteria

Proposals for grants solicited in this announcement will be evaluated on a competitive basis. The review may include a site visit. Proposals will be evaluated by the Assistant Secretary with assistance and advice from experts and consultants.

The following factors, not ranked in order of importance, will be considered in evaluating proposals:

1. *Program impact.* Potential contribution of the project toward the resolution of significant occupational safety and health problems, as indicated by:

a. Numbers of employers and employees to be served in target high-risk populations identified by OSHA including:

Industries and workplaces in which employees are exposed to one or more substances constituting serious health hazards, including cancer;

Industries with injury and illness incidence and severity rates above the national average;

Small businesses employing 100 or fewer employees;

Unorganized workers;

New employees; and

Federal employees in high-hazard workplaces or employment.

Applicants may propose alternative populations, and include valid statistical justification or other documentation supporting their selection of such populations.

b. The need for services in the area proposed, as indicated by an identification and analysis of the needs and problems of the organization's target population, the availability of comparable services from other sources, and the relevance of proposed services to identified needs.

c. Potential for serving employers and employees who then will have the capability to serve other employers and employees.

d. Potential for assisting other organizations in developing occupational safety and health training and related services through such means as providing training materials, technical assistance, demonstration educational programs, and instructor training. Examples include: educational institutions assisting other universities, colleges, and technical schools; national labor unions assisting district and local unions; and, employer associations assisting individual employers.

2. *Responsiveness to Target Populations.*

a. Evidence of support for the project from proposed target populations. This evidence may be in the form of letters or in other forms. Evidence of support also could include reference to the target populations' need for the program.

b. Involvement of representatives of target populations in planning, implementation, and evaluation of the program, such as participation on applicant's governing boards or advisory councils.

3. *Administrative Capability.*

a. The amount of the organization's contribution relative to the total budget and the degree to which an institution will assume an increasing share of funding for the propose program. Although programs may be funded up to 100 percent of cost during the first year of a grant, it is expected that programs will become increasingly independent of Federal funding during the developmental period.

b. Managerial expertise of an organization's present or proposed staff (as demonstrated by resumes or position descriptions) in administering delivery of occupational safety and health training and related services to target populations or similar programs.

c. Resasonableness of the budget in relation to the proposed program activities and the ability to operate within that budget.

d. Feasibility and soundness of the proposed work plan in achieving the program's objectives effectively.

e. Strength of the organization's evaluation plan and methodology for measuring achievement of program objectives.

4. *Program Experience.*

a. Evidence of the organization's performance and effectiveness in planning, implementing, and operating training and assistance in the proposed or related areas. Experience in conducting worker or employer occupational safety and health education, programs in providing technical assistance, or involvement in related occupational safety and health activities will be considered relevant. In the absence of such experience, information will be considered about the other activities designed specifically for workers or employers that may indicate potential effectiveness in providing the services proposed.

b. The technical and professional experience and training of present or proposed project staff in relation to services to be provided. Include information on other resources of the organization (such as staff from other departments) that may be expected to assist in implementing the plan.

5. *Program Design* (developmental grants only).

a. The extent to which services will be provided directly by the project through its own staff and resources. Contractual or other arrangements planned for the provision of services must be described.

b. Range of educational programs and technical services and resources available, e.g., industrial hygiene, safety, legal, medical, labor relations, policy research, and special research in such areas as medical surveillance and counseling, collective bargaining, etc.

c. The extent to which educational training design and content will include written objectives for the skill and knowledge to be gained by those trained, written programs of instruction, and an appropriate proportion of lecture, demonstration, laboratory, and field experience.

d. Facilities or access to facilities, including appropriate occupational settings, in which to conduct training, whether at the grantee's location or elsewhere.

In addition to the preceding factors, the Assistant Secretary will consider other factors such as the overall geographical distribution and coverage of populations at risk that will be achieved by the proposals approved for funding.

Notification of Selection

The Assistant Secretary will notify in writing those organizations selected as potential grantees. An applicant whose proposal is not selected also will be notified in writing to that effect. Notice of selection as a potential grantee will not constitute approval of the total funding request or of the funding level sought. Prior to the actual award of a grant, representatives of the potential grantee and of the Assistant Secretary will enter into negotiations. Items subject to negotiations will include: program components; funding levels; program performance levels and standards; and administrative systems. If the negotiations do not result in an acceptable negotiated grant, the Assistant Secretary reserves the right to terminate the negotiation and decline to fund the proposal.

Availability of Funds

This announcement does not constitute an obligation to support this program in any fiscal year. Subject to congressional appropriation, $11 million will be available in fiscal year 1980 for this institutional competency building program. $8.7 million will be required for funding the second year of grants awarded in 1978. $2.3 million is available, therefore, for the award of new grants described in this announcement.

In most instances, $50,000 will be the maximum funding level for a one-year planning grant, and $250,000 annually the maximum for a developmental grant. It is anticipated that, unless an unusually strong justification is demonstrated, a single organization is eligible for only one grant under the program.

Application and Award

Those organizations or institutions that meet the eligibility requirements described above and that are interested in conducting project activities as described, may request a grant application package and directions for application from: Office of Training and Education, Occupational Safety and Health Administration, U.S. Department of Labor, Room N3700, 200 Constitution Avenue, NW., Washington, D.C. 20210, Telephone: (202) 523-7266.

This grant program will be administered in compliance with 41 CFR 29-70 and with Office of Management and Budget Circulars A-21 and A-95, as they relate to functions such as the use of funds, the operation of programs, the maintenance of records, books, accounts, and other documents.

All applications must be received no later than 6 p.m., October 29, 1979.

Signed at Washington, D.C., this 7th day of August 1979.

Eula Bingham,

Assistant Secretary of Labor.

[FR Doc. 79-24733 Filed 8-9-79; 8:45 am]

BILLING CODE 4510-26-M

Office of the Secretary

[TA-W-5732]

Algoma Preparation Plant, United Pocahontas Coal Co., Algoma, W. Va.; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on July 10, 1979 in response to a worker petition received on June 15, 1979 which was filed by the United Mine Workers of America on behalf of workers and former workers cleaning metallurgical coal at the Algoma Preparation Plant of United Pocahontas Coal Company, Algoma, West Virginia.

The attorney for the petitioners requested in a letter that the petition be withdrawn. On the basis of this request, continuing the investigation would serve no purpose. Consequently the investigation has been terminated.

Signed at Washington, D.C. this 31st day of July 1979.

Harold A. Bratt,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 79-24733 Filed 8-9-79; 8:45 am]

BILLING CODE 4510-28-M

American Enka Corp., et. al.; Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted investigations pursuant to section 221(a) of the Act and 29 CFR 90.12.

The purpose of each of the investigations is to determine whether absolute or relative increases of imports of articles like or directly competitive with articles produced by the worker's firm or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number or proportion of the workers of such firm or subdivision.

Petitioners meeting these eligibility requirements will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

Pursuant to 29 CFR 90.13, the petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than August 20, 1979.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than August 20, 1979.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 3rd day of August 1979.

Harold A. Bratt,

Acting Director, Office of Trade Adjustment Assistance.

Appendix

Petitioner: Union/workers or former workers of—	Location	Date received	Date of petition	Petition No.	Articles produced
American Enka Corp. (United Textile Workers Union).	Enka, N.C.	7/30/79	7/24/79	TA-W-5, 808	Carpet and textile yarn.
AM/FM/CB Splitter (company)	Caguas, P.R.	8/1/79	7/24/79	TA-W-5, 809	Signal for the antenna.
Cables (company)	Caguas, P.R.	8/1/79	7/24/79	TA-W-5, 810	Cables for antennas.
Caguas Electro Plating (company)	Caguas, P.R.	8/1/79	7/24/79	TA-W-5, 811	Nickel-plated rods for CB antennas.
C.B. Electric Antenna (company)	Caguas, P.R.	8/1/79	7/24/79	TA-W-5, 812	CB antennas.
Crompton & Knowles Corp. (USWA)	Worchester, Mass	7/30/79	7/24/79	TA-W-5, 813	Automotive parts.
Electro (company)	Caguas, P.R.	8/1/79	7/24/79	TA-W-5, 814	Motors for antennas.
Howard Stores Corp. (ACTWU)	Brooklyn, N.Y.	7/20/79	7/18/79	TA-W-5, 815	Men's tailored clothing.
Star (company)	Caguas, P.R.	8/1/79	7/24/79	TA-W-5, 816	Antenna pylons.
Tami Sportswear, Inc. (ILGWU)	San Francisco, Calif.	8/1/79	7/17/79	TA-W-5, 817	Ladies' jackets, skirts, pants, blouses, shirts, and sweaters.
Tennamatic (company)	Caguas, P.R.	8/1/79	7/24/79	TA-W-5, 818	AM/FM motorized antennas.

[FR Doc. 79-24739 Filed 8-9-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5514 and TA-W-550]

Big Fork Coal Co., Inc., No. 9 Mine, Summersville, W. Va., and Alabama Fuel Co., No. 1 Mine, Summersville, W. Va.; Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of Section 222 of the Act must be met.

The investigations were initiated on June 7, 1979 and June 12, 1979 in response to worker petitions received on May 25, 1979 and June 6, 1979 which were filed by the Southern Labor Union on behalf of workers and former workers producing metallurgical coal at Big Fork Coal Company, Inc., #9 Mine, Summersville, West Virginia and Alabama Fuel Company, #1 Mine, Summersville, West Virginia. It is concluded that all of the rquirements have been met.

U.S. imports of metallurgical coal are negligible. However, in accordance with Section 222 of the Trade Act of 1974 and 29 CFR 90.2, a domestic article may be "directly competitive" with an imported article at a later stage of processing. Coke is metallurgical coal at a later stage of processing. Therefore, imports of coke as well as imports of metallurgical coal should be considered in determining import injury to workers producing metallurgical coal.

U.S. imports of coke increased absolutely and relative to domestic production from 1976 to 1977 and from 1977 to 1978 and increased in the first quarter of 1979 compared to the first quarter of 1978.

A survey was conducted of the final customers of the coal mined by Big Fork Coal Co., Inc., #9 Mine and Alabama Fuel Company, #1 Mine. The survey showed that many of these customers decreased purchases of metallurgical coal mined by the subject firms and increased purchases of imported metallurgical coal and/or coke.

Conclusion

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with metallurgical coal produced at Big Fork Coal Company, Inc., #9 Mine, Summersville, West Virgina, and Alabama Fuel Company, #1 Mine, Summersville, West Virginia, contributed importantly to the decline in sales or production and to the total or partial separation or workers of those firms. In accordance with the provisions of the Act, I make the following certification:

"All workers of Big Fork Coal Company, Inc., #9 Mine, Summersville, West Virginia and Alabama Fuel Company, #1 Mine, Summersville, West Virginia who became totally or partially separated from employment on or after January 1, 1979 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade act of 1974."

Signed at Washington, D.C. this 31st day of July 1979.

James F. Taylor,

Director, Office of Management, Administration and Planning.

[FR Doc. 79-24740 Filed 8-9-79; 8.45 am]

BILLING CODE 4510-28-M

[TA-W-5620]

Grand Fashions, Inc., Hoboken, N.J.; Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Act must be met.

The investigation was initiated on June 19, 1979 in response to a worker petition received on June 12, 1979 which was filed on behalf of workers and former workers producing women's coats at Grand Fashions, Incorporated, Hoboken, New Jersey. It is concluded that all of the requirements have been met.

U.S. imports of women's, misses' and children's coats and jackets increased absolutely and relative to domestic production from 1977 to 1978.

A survey of the manufacturer which contracts a substantial amount of orders with Grand Fashions, Incorporated revealed that the manufacturer has decreased orders with domestic contractors, including Grand Fashions, Incorporated, and has steadily increased its purchases of imported women's coats.

Conclusion

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with women's coats produced at Grand Fashions, Incorporated, Hoboken, New Jersey contributed importantly to the decline in sales or production and to the total or partial separation of workers of that firm. In accordance with the provisions of the Act, I make the following certification:

"All workers of Grand Fashions, Incorporated, Hoboken, New Jersey who became totally or partially separated from employment on or after November 18, 1978 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974."

Signed at Washington, D.C. this 31st day of July 1979.

James F. Taylor,

Director, Office of Management, Administration and Planning.

[FR Doc. 79-24741 Filed 8-9-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5557]

J. Schoeneman Inc., Son-Lite Division, Souderton, Pa.; Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of Section 222 of the Act must be met.

The investigation was initiated on June 12, 1979 in response to a worker petition received on June 5, 1979 which was filed by the Amalgamated Clothing and Textile Workers' Union on behalf of workers and former workers producing men's suit coats and sport coats at the Souderton plant, Son-Lite Division, J. Schoeneman Incorporated, Souderton, Pennsylvania. It is concluded that all of the requirements have been met.

U.S. imports of men's and boy's tailord dress and sport coats decreased absolutely in 1977 compared to 1976 and increased absolutely in 1978 compared to 1977.

The Department conducted a survey of customer of J. Schoeneman Company. The survey revealed that customers increased import purchases of men's suits and sport coats while decreasing purchases of these products from the subject firm in 1978 compared to 1977.

Conclusion

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with men's suit coats and sport coats produced at J. Schoeneman Incorporated, Son-Lite Division, Souderton, Pennsylvania contributed importantly to the decline in sales or production and to the total or partial separation of workers of that firm. In accordance with the provisions of the Act, I make the following certification:

"All workers of the Souderton plant, Incorporated, Son-Lite Division of J. Schoeneman, Souderton, Pennsylvania who became totally or partially separated from employment on or after May 31, 1978 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974."

Signed at Washington, D.C. this 31st day of July 1979.

James F. Taylor,

Director, Office of Management, Administration and Planning.

[FR Doc. 79-24742 Filed 8-9-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5606]

Lucy Rose Anna Coat Co., Inc., Hoboken, N.J.; Notice of Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Act must be met.

The investigation was initiated on June 18, 1979 in response to a worker petition received on June 12, 1979 which was filed by the International Ladies' Garment Workers' Union on behalf of workers and former workers producing ladies' coats at Lucy Rose Anna Coat Company, Hoboken, New Jersey. The investigation revealed that the correct corporate title is Lucy Rose Anna Coat Company, Incorporated. In the following determination, without regard to whether any of the criteria have been met, the following criterion has not been met:

That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

The ladies' and children's coat industry is typically a seasonal operation. Production for the winter season normally begins in the second quarter of each year. Winter coats represent the larger volume of production. Production for the spring season normally begins in the first quarter of each year. The length of the spring production season and the subsequent startup of winter production are influenced by when the Easter holiday occurs each year.

Sales of women's coats by Lucy Rose Anna Coat Company increased in 1978 compared with 1977 and during the first half of 1979 compared with the same period in 1978. All monthly and quarterly declines were the result of seasonal fluctuations.

Conclusion

After careful review, I determine that all workers of Lucy Rose Anna Coat Company, Incorporated, Hoboken, New Jersey are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 31st day of July 1979.

James F. Taylor,

Director, Office of Management, Administration and Planning.

[FR Doc. 79-24743 Filed 8-9-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5568]

Lynn Dale Coal Co., Inc., Rainelle, W. Va.; Notice of Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Act must be met.

The investigation was initiated on June 14, 1979 in response to a worker petition received on June 7, 1979 which was filed on behalf of workers and former workers mining coal at Lynn Dale Coal Company, Inc., Rainelle, West Virginia. The investigation revealed that the plant primarily produces metallurgical coal. In the following determination, without regard to whether any of the other criteria have been met, at least one of the criteria has not been met:

That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to absolute decline in sales or production.

Evidence developed during the course of the investigation revealed that Lynn Dale Coal Company, Inc. sold all of it coal to domestic coal brokers. The Department conducted a survey of these coal brokers which indicated that the majority of coal sold by these brokers

was sold overseas. None of the customers surveyed reported purchases of imported coal.

Conclusion

After careful review, I determine that all workers at Lynn Dale Coal Company, Inc, Rainelle, West Virginia are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 31st day of July 1979.

James F. Taylor,

Director, Office of Management, Administration and Planning.

[FR Doc. 79-24744 Filed 8-9-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5614]

Randy Coat, Hoboken, N.J.; Notice of Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of section 222 of the Act must be met.

The investigation was initiated on June 18, 1979 in response to a worker petition received on June 12, 1979 which was filed by the International Ladies' Garment Workers' Union on behalf of workers and former workers producing ladies' coats at Randy Coat, Hoboken, New Jersey. The investigation revealed that Randy Coat also produces ladies' suits. In the following determination, without regard to whether any of the other criteria have been met, the following criterion has not been met:

That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

The ladies' and children's coat industry is typically a seasonal operation. Production for the winter season normally begins in the second quarter of each year. Winter coats represent the larger volume of production. Production for the spring season normally begins in the first quarter of each year. The length of the spring production season and the subsequent startup of winter production are influenced by when the Easter holiday occurs each year. In most years, contractors suffer a period of negligible orders, before winter coats production begins.

Sales at Randy Coat increased from 1977 to 1978 and from the first half of 1978 to the first half of 1979. All quarter to quarter declines in sales and employment were the result of normal seasonal fluctuations.

Conclusion

After careful review, I determine that all workers of Randy Coat, Hoboken, New Jersey are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 31st day of July 1979.

James F. Taylor,

Director, Office of Management, Administration and Planning.

[FR Doc. 79-24745 Filed 8-9-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5546]

Salem Sportswear Co., Salem, Mo.; Notice of Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Act must be met.

The investigation was initiated on June 8, 1979 in response to a worker petition received on June 4, 1979 which was filed by Local 649 of the Amalgamated Clothing and Textile Worker's Union on behalf of workers and former workers producing men's and boys' jackets at the Salem Sportswear Company, Salem, Missouri. In the following determination, without regard to whether any of the other criteria have been met, the following criterion has not been met:

That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

The Salem Sportswear Company recorded increased production and employment in 1978 compared to 1977. Production and employment declined in the first half of 1979 compared to the same period in 1978.

U.S. imports of men's and boys' non-tailored outer jackets declined in the first 5 months of 1979 compared to the same period in 1978. Also, the apparel manufacturer which purchases all the production of Salem Sportswear reduced its purchases of imports of men's and boys' jackets in the first half of 1979 compared to the same period in 1978.

Conclusion

After careful review, I determine that all workers of the Salem Sportswear Company, Salem, Missouri are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 31st day of July 1979.

James F. Taylor,

Director, Office of Management, Administration and Planning.

[FR Doc. 79-24746 Filed 8-9-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5673]

Servomation Corp., New Haven District, North Haven, Conn.; Notice of Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Act must be met.

The investigation was initiated on June 28, 1979 in response to a worker petition received on June 26, 1979 which was filed on behalf of workers and former workers of Servomation, Stamford, Connecticut providing cafetria food service for FAG Bearings Corporation. The investigation revealed that the name of the firm is Servomation Corporation, New Haven District, North Haven, Connecticut.

Servomation Corporation, New Haven District is engaged in providing vending and cateteria food service.

Thus, workers of Servomation Corporation, New Haven District do not produce an article within the meaning of Section 222(3) of the Act. Therefore, they may be certified only if their separation

was caused importantly by a reduced demand for their services from a parent firm, a firm otherwise related to Servomation Corporation by ownership, or a firm related by control. In any case, the reduction in demand for services must originate at a production facility whose workers independently meet the statutory criteria for certification and that reducation must directly relate to the product impacted by imports.

Servomation Corporation, New Haven District and its customers have no controlling interest in one another. The subject firm is not corporately affiliated with any other company.

All workers engaged in providing cafeteria service at FAG Bearings Corporation are employed by Servomation Corporation. All personnel actions and payrolls transactions are controlled by Servomation Corporation. All employee benefits are provided and maintained by Servomation Corporation. Workers are not, at any time, under employment or supervision by customers of Servomation Corporation, and not any of its customers, must be considered to be the "workers' firm".

Conclusion

After careful review, I determine that all workers of Servomation Corporation, New Haven District, North Haven, Connecticut are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 31st day of July 1979.

James F. Taylor,

Director, Office of Management, Administration and Planning.

[FR Doc. 79-24747 Filed 8-9-79; 8:45 am]

BILLING CODE 4510-28-M

Advisory Committee on Construction Safety and Health, Subgroup on Health Standards; Meeting

Notice is hereby given that the Subgroup on Health Standards of the Advisory Committee on Construction Safety and Health will meet on August 29 and 30, 1979 in the Yosemite Room, Hyatt Regency Hotel, 400 New Jersey Avenue, Washington, D.C. The meeting is open to the public and will begin at 9:00 a.m.

The Subgroup will thoroughly review OSHA Health standards as they relate to the construction industry and will subsequently submit a report to the Advisory Committee on Construction Safety and Health containing their findings and including their recommendations.

The meeting agenda includes a discussion of major issues for the Subgroup report and a review of the types of health hazards in construction. The Subgroup will continue their discussion and development of recommendations on the major issues of health standards in the construction industry on the following dates:

September 25–26, 1979; 9:00 a.m.
October 23–24, 1979; 9:00 a.m.
November 26, 1979; 10:00 a.m.
January 9–10, 1980; 9:00 a.m.
February 6–7, 1980; 9:00 a.m.

For information on future meeting locations and agenda, phone Ken Hunt 202–523–8024.

The Advisory Committee on Construction Safety and Health, was established under section 107(e)(1) of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333) and section 7(b) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 656).

Written data, views or arguments may be submitted, preferably with 20 copies, to the Division of Consumer Affairs. Any such submissions received prior to the meeting will be provided to the members of the Committee and will be included in the record of the meeting.

Anyone wishing to make an oral presentation should notify the Division of Consumer Affairs before the meeting. The request should state the amount of time desired, the capacity in which the person will appear, and a brief outline of the content of the presentation.

Oral presentations will be scheduled at the discretion of the chairman, depending on the extent to which time permits. Communications may be mailed to:

Ken Hunt, Committee Management Officer, Office of Information and Consumer Affairs—OSHA, Third Street and Constitution Avenue, N.W., Room N-3635, Washington, D.C. 20210, 202-523-8024.

Materials provided to members of the Committee are available for inspection and copying at the above address.

Signed at Washington, D.C. this 8th day of August 1979.

Eula Bingham,

Assistant Secretary of Labor.

[FR Doc. 79-24750 Filed 8-9-79; 8:45 am]

BILLING CODE 4510-22-M

Pension and Welfare Benefit Programs

[Application No. D-1337]

Employee's Retirement Plan of Consolidated Electrical Distributors Inc.; Proposed Exemption for Certain Transactions

AGENCY: Department of Labor.

ACTION: Notice of Proposed Exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed exemption from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and from certain taxes imposed by the Internal Revenue Code of 1954 (the Code). The proposed exemption would exempt the proposed sale for cash of shares of Hughes Supply Inc. common stock (the Stock) by the Employee's Retirement Plan of Consolidated Electrical Distributors Inc. (the Plan) to Consolidated Electrical Distributors Inc. (the Employer). The proposed exemption, if granted, would affect participants and beneficiaries of the Plan and other persons participating in the transaction.

DATES: Written comments and requests for a pulic hearing must be received by the Department of Labor on or before September 10, 1979.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20216, Attention: Application No. D-1337. The application for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N-4677, 200 Constitution Avenue, NW., Washington, D.C. 20216.

FOR FURTHER INFORMATION CONTACT: Richard Small, of the Department of Labor, telephone (202) 523-7222. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATIOIN: Notice is hereby given of the pendency before the Department of an application for exemption from the restrictions of sections 406(a) and 406 (b)(1) and (b)(2) of the Act and from the taxes imposed by section 4975 (a) and (b) of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code. The proposed exemption was requested in an application filed by the Employer,

pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, this notice of pendency is issued solely by the Department.

Summary of Facts and Representations

The application contains representations with regard to the proposed exemption which are summarized below. Interested persons are referred to the application on file with the Department for the complete representations of the applicant.

1. The Plan is a noncontributory defined benefit pension plan which was established January 1, 1969. As of December 31, 1977 there were 823 active employees and 81 former employees or beneficiaries receiving benefits or entitled to receive benefits in the future. As of December 31, 1977 the Plan had net assets of $7,128,461. The individuals who comprise the Plan's investment committee and make the investment decisions for the Plan and their relationship to the Employer are as follows: Mr. Keith W. Colburn, Chairman of the Board of Directors; Mr. Bernard E. Lyons, Vice President and General Counsel; and Mr. Stanley S. Graham, Vice President of Finance and Administration.

2. The Plan currently owns 249,000 shares of the Stock. The Stock is traded publicly on the over-the-counter market. The Stock was acquired by the Plan through numerous purchases, during the period September 24, 1975 through March 28, 1978 at an average cost per share of $6.38. As of March 29, 1979, the date the application was filed with the Department, the price of the Stock was $14¾ per share.

3. The Plan investment committee has determined that because of the increase in the price of the Stock and its current low yield (1.33 percent per annum) it is no longer in the interests of the Plan to continue to hold the Stock.

4. The Employer has agreed to purchase all of the Stock held by the Plan at the higher price of either (1) $14¾ per share (the price on March 29, 1979, the date the application was filed with the Department) or (2) the highest over-the-counter market price between May 29, 1979 and the date the exemption is granted for the proposed transaction. The sale of the Stock at the guaranteed price of $14¾ per share would result in a gain to the Plan of $2,083,521 on an investment of $1,589,229.

5. The applicant represents that the Plan will realize a greater amount of proceeds from a direct sale of this Stock to the Employer than it would realize by selling the shares on the open market for the following reasons:

(a) The Plan will incur no commission expense as a result of a direct sale of the Stock to the Employer.

(b) The proposed sale will not cause any decrease in the selling price that might normally occur when such a large volume of shares is offered for sale. The Plan's 249,000 shares represent approximately 12.4 percent of the outstanding shares of the Stock. It is likely that the sale of such a large percentage of the outstanding shares of the Stock on the open market would result in a significant decrease in the price of the Stock.

6. In summary, the applicant represents that the proposed sale will satisfy the criteria of section 408(a) of the Act because (a) it would be a one time transaction for cash; (b) it will allow the Plan to liquidate a low yield investment; (c) the Plan will sell the Stock on a commission free basis; and (d) the Plan will be protected against any decrease in the price of the Stock because it will receive the higher of either (1) $14¾ per share or (2) the highest over-the-counter market price between March 29, 1979 and the date the exemption request is granted.

Notice to Interested Persons

Notice of this request for an exemption shall be given to all active employees and to all former employees or beneficiaries presently receiving benefits or entitled to receive benefits in the future by placing in the United States mail, within 10 days of its publication the Notice of Pendency published in the Federal Register. In addition a copy of the Notice of Pendency will be posted in each of the Employer's business locations on the employees' bulletin board or other suitable location.

General Information

The attention of interested persons is directed to the following: (1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) The proposed exemption, if granted, will not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code;

(3) Before an exemption may be granted under section 408(a) of the Act and section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(4) The proposed exemption, if granted, will be supplement to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemption to the address above, within the time period set forth above. All comments will be made a part of the record. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption. Comments received will be available for public inspection with the application for exemption at the address set forth above.

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting the requested exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of sections 406(a) and 406 (b)(1) and (b)(2)

of the Act and the taxes imposed by section 4975 (a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the sale for cash of 249,000 shares of the common stock of Hughes Supply Inc. by the Plan to the Employer for the higher price of either (1) $14¾ per share or (2) the highest over-the-counter market price between March 29, 1979 and the date the exemption request is granted for the proposed transaction.

The proposed exemption, if granted, will be subject to the express conditions that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transaction to be consummated pursuant to the exemption.

Signed at Washington, D.C., this 1st day of August, 1979.

Ian D. Lanoff,

Administrator for Pension and Welfare Benefit Programs, Labor-Management Services Administration, Department of Labor.

[FR Doc. 79-24582 Filed 8-9-79; 8:45 am]

BILLING CODE 4510-29-M

[Exemption Application No. D-1374]

Great Lakes Mortgage Corporation Employees' Profit Sharing Plan and Trust; Proposed Exemption for Certain Transactions

AGENCY: Department of Labor

ACTION: Notice of Hearing.

SUMMARY: This document contains a notice of public hearing with respect to an application filed on behalf of the Great Lakes Mortgage Corporation Employees' Profit Sharing Plan and Trust (the Trust). The application is for an exemption from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and from certain taxes imposed by the Internal Revenue Code of 1954 (the Code). The public hearing will allow persons who would be affected by the proposed exemption to present oral comments to the Department of Labor.

DATES: Persons who wish to present oral comments at the hearing shall submit a statement to that effect, which must be received by the Department of Labor on or before Wednesday, September 5, 1979.

ADDRESS: Statements and any written comments on the proposed exemption should be sent to: Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, 200 Constitution Avenue, NW., Washington, D.C. 20216, Attention: Hearing for Application No. D-1374. The application for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N-4677, 200 Constitution Avenue, NW., Washington, D.C. 20216.

FOR FURTHER INFORMATION CONTACT: Robert Sandler of the Department of Labor, (202) 523-8883. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Notice is hereby given of a public hearing to be held before the Department of Labor (the Department) with respect to a proposed exemption from the restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and from the taxes imposed by section 4975 (a) and (b) of the Code, by reason of sections 4975(c)(1) (A) through (E) of the Code. The proposed exemption was requested in an application on behalf of the Great Lakes Moretgage Corporation Employees' Profit Sharing Plan and Trust (the Trust), pursuant to section 408(a) of the Act, and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975).

The proposed application, if granted, would permit the negotiation and execution of an agreement (the Agreement) by the Trustees of the Trust with the Lomas & Nettleton Company (L & N), whereby the Trust will sell all of the Great Lakes Mortgage Corporation and its subsidiaries (GLMC) stock held by the Trust to L & N. The Agreement will contain provisions which will allow the Trust, under certain conditions, to release and indemnify GLMC.

A Notice of Pendency of the proposed exemption was published in the Federal Register on Tuesday, July 3, 1979 (44 FR 39051). By means of the Notice of Pendency, interested persons were invited to submit written comments and requests for a public hearing with respect to the proposed exemption. One comment and one request for a public hearing have been received by the Department.

Based on the request, the Department has determined that a public hearing regarding the proposed exemption will be held on Monday, September 10, 1979, beginning at 10:00 a.m. in Room S-4215C of the Department of Labor Building, 200 Constitution Avenue, NW., Washington, D.C. 20216.

Any person who desires to present oral comments at the hearing, and who wishes to be assured of being heard, shall submit a statement to that effect, indicating the amount of time he wishes to devote to his oral comments. Such statement and any written comments that such person wishes to be considered in conjunction with his presentation should be submitted to the address specified in "Address" above, within the time period set forth in "Dates" above.

An agenda will be prepared by the Department, containing the order of presentation of oral comments. Copies of the agenda will be available at the hearing. Information concerning contents of the agenda may be obtained on or after Thursday, September 6, 1979 by telephoning the person whose name and number are shown above.

Ordinarily, ten minutes will be allowed each person for making an oral presentation. In addition, persons presenting such oral comments should be prepared to answer questions relating to the proposed exemption. At the conclusion of presentation of comments by persons listed on the agenda, other comments will be received to the extent time permits. The public hearing will be transcribed.

Signed at Washington, D.C. this 3rd day of August, 1979.

Ian D. Lanoff,

Administration, Pension and Welfare Benefit Programs, Labor-Management Services Administration, Department of Labor.

[FR Doc. 79-24580 Filed 8-9-79; 8:45 am]

BILLING CODE 4510-29-M

[Prohibited Transaction Exemption 79-42; Application Nos. D-1233 and D-1288]

Pension Plan and Trust and Profit Sharing Plan and Trust of Anderson Radiological Associates, P.A.; Exemption from the Prohibitions for Certain Transactions

AGENCY: Department of Labor.

ACTION: Grant of individual exemption.

SUMMARY: This exemption permits the sale of two parcels of real property by the Pension Plan and Trust of Anderson Radiological Associates, P.A. (the Pension Plan) and the Profit Sharing Plan and Trust of Anderson Radiological Associates, P.A. (the Profit Sharing Plan) (collectively, the Plans), to Ella Enterprises, a partnership whose three partners own all of the issued and outstanding stock of Anderson Radiological Associates, PA. (the Employer), the sponsoring Employer of the Plans.

FOR FURTHER INFORMATION CONTACT: Mr. Robert N. Sandler of the Office of Fiduciary Standards, Pension and

Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue,. NW., Washington, D.C. 20216, (202) 523-8883. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On June 29, 1979 notice was published in the Federal Register (44 FR 38006) of the pendency before the Department of Labor (the Department) of a proposal to grant an exemption from the restrictions of section 408(a) of the Employee Retirement Income Security Act of 1974 (the Act) and from the taxes imposed by section 4975 (a) and (b) of the Internal Revenue Code of 1954 (the Code) by reason of sections 4975(c)(1) (A) through (D) of the Code, for transactions described in an application filed on behalf of the Plans. The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, D.C. The notice also invited interested persons to submit comments on the requested exemption to the Department. No comments were received by the Department.

This application was filed with both the Department and the Internal Revenue Service. However, the notice of pendency was issued and the exemption is being granted, solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type herein granted to the Secretary of Labor.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person with respect to a plan to which the exemption is applicable from certain other provisions of the act and the Code. These provisions include any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his or her duties respecting the plan solely in the interests of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does the fact the transaction is the subject of an exemption affect the requirement of section 401(a) of the Code that a plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries.

(2) This exemption does not extend to transactions prohibited under section 406(b) of the Act and sections 4975(c)(1) (E) and (F) of the Code.

(3) This exemption is supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption or transitional rule is not dispositive of whether the transaction is, in fact, a prohibited transaction.

Exemption

In accordance with section 408(a) of the Act and section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following determinations: (a) The exemption is administratively feasible; (b) It is in the interests of the Plans and of their participants and beneficiaries; and (c) It is protective of the rights of the participants and beneficiaries of the Plans.

Accordingly, the restrictions of section 406(a) of the Act and the taxes imposed by section 4975 (a) and (b) of the Code, by reason of sections 4975(c)(1) (A) through (D) of the Code, shall not apply to the sale of the Plans' undivided one-half interests in two parcels of real property located at 1011 Ella Street, Anderson, South Carolina, and legally described as Lots Number Eight (8) and Nine (9), Block "A" on a plat recorded in Deed Book W-3 at page 54 of the records of the office of the clerk of court for Anderson County, South Carolina, by the Plans to Ella Enterprises, for a cash consideration to each Plan of $25,000, provided that the total consideration of $50,000 is not less than the fair market value of the properties.

The availability of this exemption is subject to the express conditions that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transaction to be consummated pursuant to this exemption.

Signed at Washington, D.C., this 3rd day of August, 1979.

Ian D. Lanoff,

Administrator, Pension and Welfare Benefit Programs, Labor-Management Services Administration, Department of Labor.

[FR Doc. 79-24581 Filed 8-9-79; 8:45 am]

BILLING CODE 4510-29-M

[Application No. L-1434]

Prudential Insurance Company of America; Proposed Exemption for Certain Transactions

AGENCY: Department of Labor.

ACTION: Notice of Proposed Exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed exemption from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act). The proposed exemption would exempt the acts of the Prudential Insurance Company of America (the Fiduciary) in effectuating inter-account transfers of publicly-traded common stock between various accounts managed by the Fiduciary on a day selected in advance by the Fiduciary within a ninety (90) day period following the date the Fiduciary receives its last applicable regulatory approval or exemption from various federal and state government agencies. The proposed exemption, if granted, would affect the Fiduciary, the involved plans, and the respective participants and beneficiaries of the plans.

DATES: Written comments and requests for a public hearing must be received by the Department on or before September 20, 1979.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20216. Attention: Application No. L-1434. The application for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N-4677, 200 Constitution Avenue, NW., Washington, D.C. 20216.

FOR FURTHER INFORMATION CONTACT: C. E. Beaver, of the Department, telephone (202) 523-8882. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the

Department of an application for exemption from the restrictions of section 406(b)(2) of the Act. The proposed exemption was requested in an application filed by the Fiduciary, pursuant to section 408(a) of the Act, and in accordance with procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975).

Summary of Facts and Representations

The application contains representations with regard to the proposed exemption which are summarized below. Interested persons are referred to the application on file with the Department for the complete representations of the applicants.

(1) The Fiduciary is a mutual life insurance company organized under the laws of the State of New Jersey. It is the largest life insurance company in the United States, and provides funding, asset management, and other services for thousands of pension and profit-sharing plans which are subject to the provisions of Title I of the Act. The Fiduciary has over 50 billion dollars in total assets of which approximately 17 billion dollars represent assets held under contracts for funding retirement plans. A significant portion of the assets of the Fiduciary is invested in common stocks.

(2) The following accounts of the Fiduciary will be involved in the transfers for which the exemption is requested: three pooled separate accounts having total assets of 2.2 billion dollars: [1] five single customer separate accounts with total assets of approximately 1 billion dollars: [2] a fourth pooled separate account which is designed for tax deferred annuity plans described in section 403(b) of the Internal Revenue Code of 1954; and a mutual fund, designated the Prudential's Gibraltar Fund.[3] Both the tax deferred annuity account and Prudential's Gibraltar Fund are registered under the Investment Company Act of 1940 as open-end management investment companies. Neither the general account of the Fiduciary nor any subsidiaries of the Fiduciary are involved in the proposed inter-account transfers. However, plans sponsored by the Fiduciary participate in the three pooled separate accounts, which will be involved in the inter-account transfer. These three pooled separate accounts will participate on the same basis and under the same procedures as all other accounts participating in the proposed transfer.

(3) The Fiduciary first established common stock separate accounts in the early part of the 1960s in response to the interest of retirement plan customers in participating directly in the investment experience of diversified portfolios of publicly-traded common stocks. These accounts have grown in size and variety over the years with new accounts established from time-to-time to meet the needs of particular types of employee benefit plans, for individual pension plan customers, or to satisfy different investment objectives.

(4) After a recent comprehensive review of the composition of each of the stock portfolios it manages, the Fiduciary has determined that extensive changes in these portfolios are desirable. Many of such portfolio changes already have been executed on the open stock market. These changes are being proposed primarily for two reasons: *First*, because the Fiduciary established each of its common stock accounts at a different time and each account has had a different pattern of cash inflow, by receiving varying amounts at different times from different contractholders, the specific stock issues and the percentage of account assets invested in each issue have differed among accounts, even among accounts with similar investment objectives. As a result, the common stock accounts with similar investment objectives of the Fiduciary have developed to some extent dissimilar portfolio compositions. Although the Fiduciary believes that the current portfolio of each account is consistent with its investment objectives, the Fiduciary believes it is desirable that the stock portfolios of accounts with similar objectives have a greater degree of similarity. *Second*, the Fiduciary desires to implement certain stock market strategies that include increasing the portfolio percentages represented by some industries while reducing the percentages represented by others.

(5) The requested exemption, if granted, would permit the Fiduciary to act on behalf of plans which participate in the aforementioned accounts in connection with transfers of common stocks between such accounts. The investment decision on behalf of any account to acquire or dispose of any security, whether in an inter-account transfer or in the open-market, is made solely in the interest of such account. The Fiduciary has identified more than 50 different common stock issues for which inter-account transfers would currently be appropriate. These transfers would involve approximately 380 million dollars in securities: about 190 million dollars of sales and an equal amount of purchases. None of these are restricted securities.

(6) The accounts affected by the proposed transactions hold assets of more than 500 plans subject to the Act covering hundreds of thousands of participants. By employing the proposed inter-account transfers instead of open market transactions, the Fiduciary estimates a savings to the accounts of approximately 6 million dollars in transaction costs, which includes brokerage commissions and the avoidance of losses which often result from large block transactions on the open market.

(7) The price at which securities would be transferred from one account to another either would be (a) the closing market price of each security on a day selected in advance, for securities listed on a national securities exchange, or (b) the average of the highest current independent bid and the lowest current independent offer for each security on such day, for securities traded in the over-the-counter market. If at any time prior to the close of trading on the selected transaction day, the Fiduciary finds that it is not in the interest of a particular account for it to participate in a transfer, that transfer will not be made. The Fiduciary represents that the pricing procedure will assure that each account will receive fair market value in the transfers and no account will obtain an advantage by virtue of a transfer. The transfers will not, in and of themselves, have any impact on the respective values of the accounts involved as of the time of transfer.

(8) The Fiduciary will not receive any commissions, special fees or increases in its regular investment management fees for effecting these transfers. The transfers are being made for the sole purpose of benefiting the interests of plans and other contract holders who participate in common stock accounts of the Fiduciary.

(9) The Fiduciary does not expect to engage in additional inter-account transfers effected for the purpose of accomplishing a general realignment of the portfolios of the common stock accounts of the Fiduciary after the proposed transfers currently

[1] Variable Contract Account-Investment Fund (conservative investment objectives), Variable Contract Account-5 (aggressive investment objective for pension plans), and Variable Contract Account-6 (aggressive objective for profit-sharing and thrift plans).

[2] Four of these single customer accounts are maintained for plans covered by the Act and the fifth account is maintained for a government plan which is exempt from the Act by section 4(b) of the Act.

[3] Prudential's Gilbraltar Fund does not offer its shares to the public, but only to three separate accounts of the Fiduciary which are used to fund contracts that are sold to small retirement plans and individuals.

contemplated are accomplished. The Fiduciary intends to make portfolio adjustments on a continuing basis in the future through normal open market acquisitions and sales. The Fiduciary believes its proposed program to change the composition of its respective common stock portfolios is a prudent measure that is in the best interests of its retirement plans and other customers.

(10) This special program to make substantial changes in the common stock portfolios managed by the Fiduciary will be performed on a selected day within a 90 day period following the date the Fiduciary receives its last applicable regulatory approval or exemption from the Department, the Securities and Exchange Commission (SEC), and from the various state insurance departments.[4]

(11) The need for an exemption arises because the inter-account transfers described above might constitute violation of section 406(b)(2) of the Act, which generally prohibits a plan fiduciary from acting on behalf of, or representing, an adverse party in a transaction with a plan. No request for an exemption from any other restrictive provision of the Act has been made by the Fiduciary.

Notice to Interested Persons

Notice of the pendency exemption as published in the Federal Register will be given by the Fiduciary to sponsors of the involved plans, or to another appropriate plan fiduciary. The notice will be provided by first class mail addressed to the business addresses of the respective plans. This notice will be postmarked no later than ten (10) days following the publication of the notice of pendency in the Federal Register.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act does not relieve a fiduciary or other party in interest from certain other provisions of the Act, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act;

(2) The proposed exemption, if granted, will not extend to transactions prohibited under sections 406(a), 406 (b)(1) and (b)(3), and 407(a) of the Act;

(3) Before an exemption may be granted under section 408(a) of the Act, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(4) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemption to the address above, within the time period set forth above.

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting the requested exemption under the authority of section 408(a) of the Act and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of section 406(b)(2) of the Act shall not apply to the acts of the Fiduciary in effectuating inter-account transfers of common stocks previously described herein on a day selected in advance by the Fiduciary, within a ninety (90) day period following the date the Fiduciary receives its last applicable regulatory approval or exemption from various federal and state government agencies. The proposed exemption, if granted, will be subject to the express conditions that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transaction to be consummated pursuant to the exemption.

Signed at Washington, D.C., this 3rd day of August, 1979.

Ian D. Lanoff,

Administrator for Pension and Welfare Benefit Programs, Labor-Management Services Administration, Department of Labor.

[FR Doc. 79-24379 Filed 8-9-79; 8:45 am]

BILLING CODE 4510-29-M

[4] An SEC exemption is needed because the proposed transfers will be effected between accounts registered under the Investment Company Act of 1940 and accounts not so registered; also, insurance laws of certain states having jurisdiction over the investment operations of the Fiduciary prohibit the transfer of investment between accounts of the Fiduciary unless approval is obtained from the insurance commissioner. The Fiduciary is currently seeking such approval.

[Application No. D-792]

Wells Fargo Bank Index Fund for Employee Benefit Trusts; Proposed Exemption for Certain Transactions

AGENCY: Department of Labor.

ACTION: Notice of Proposed Exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed exemption from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and from certain taxes imposed by the Internal Revenue Code of 1954 (the Code). The proposed exemption would enable the purchase or sale of securities between the Wells Fargo Bank Index Fund for Employee Benefit Trusts (Index Fund) and certain employee benefit plans (Plans) with respect to which the Wells Fargo Bank (the Bank) is a fiduciary. The proposed exemption, if granted, would affect participants and benficiaries of such Plans, the Bank, the Index Fund, and other persons participating in the proposed transaction.

DATES: Written comments and requests for a public hearing must be received by the Department of labor on or before October 10, 1979.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to: Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20216, Attention: Application No. D-792. The application for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N-4677, 200 Constitution Avenue, NW., Washington, D.C. 20216.

FOR FURTHER INFORMATION CONTACT: Richard Small of the Department of Labor, (202) 523-7222. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of a proposed exemption

from the restrictions of section 406(a)(1)(A) and (D) and 406(b)(2) of the Act and from the taxes imposed by section 4975 (a) and (b) of the Code by reason of section 4975(c)(1) (A) and (D) of the code. The proposed exemption was requested in an application filed by the Wells Fargo Bank, pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975) and Rev. Proc. 75-26, 1975-1 C.B. 722. Section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978), effective December 31, 1978, transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, although the application was filed with both the Department and the Internal Revenue Service, this notice is issued solely by the Department.

Summary of facts and Representations.

The application contains facts and representations with regard to the proposed exemption which are summarized below. Interested persons are referred to the application on file with the Department for the complete representations of the applicant.

(1) The Index Fund is a collective investment fund maintained by the Bank acting as trustee for trusts constituting parts of pension and profit sharing plans qualified under section 401(a) of the Code. The Index Fund is designed to replicate as closely as possible the rate of return (income and capital appreciation) reflected by the Standard & Poor's 500 Composite Stock Index (Index).

(2) The Index Fund is currently comprised of 496 stocks of the Index which are purchased in various determinate relative proportions solely for their contribution to the replication of the S & P Index, and not on the basis of their individual or relative investment merit. Certain stocks of the Index considered by the Bank to be "imprudent" investments under a screening procedure for potential bankruptcies, are not purchased by the Index Fund.

(3) The Bank has no beneficial interest in the assets of the Index Fund, and is prohibited from acquiring any direct interest by the regulations of the Comptroller of the Currency. The Bank's compensation is derived solely from fees it charges the Plans for the provision of trustee and management services for portions of the Plans' funds. It does not charge any additional fees for investment of those funds in the Index Fund or receive any additional fee for Management of the Index Fund.

(4) The S & P Index is a readily available and broad measure of the stock market. It is composed of 500 common stocks listed on the New York Stock Exchange and includes 425 industrial stocks, 15 rail stocks, and 60 utility stocks. These stocks are estimated to account for about three-quarters of the value of all listed common stocks and about two-thirds of the value of all publicly traded common stocks in the United States.

(5) The Index is weighted by market capitalization and measures the aggregate market value of the 500 stocks in comparison with the average aggregate market value of the stocks comprising the Index during the 1941-43 base period. The weight of each stock in the Index is determined by multiplying the number of shares outstanding by the current market price and dividing the result by the sum of the total number of shares of the 500 stocks outstanding times their respective current prices. This weighting by market capitalization means that over 50 percent of the Index is accounted for by the stocks of the 30 largest companies such as International Business Machines Corporation, American Telephone and Telegraph Company, Exxon Corporation, Eastman Kodak Company and General Motors Corporation. The Index is adjusted from time to time to reflect consolidations, acquisitions and mergers, delistings from the New York Stock Exchange, increases in stock outstanding, and other changes.

(6) The Bank represents that the aggregate amount invested in the Index Fund is increasing primarily due to demand for a highly diversified investment vehicle which reflects the performance of the equity market as measured by the Index. The reinvestment of cash dividends also contributes to the growth of the Index Fund.

(7) In order to maintain the proper relationship to the Index while growing, the Index Fund must purchase additional shares of the 496 stocks which make up the Index Fund in determinate relative amounts. Shares of the stock available to be purchased may be held by a Plan in a separate investment portfolio which is managed and controlled by a trustee or investment manager unrelated to the Bank. (The Bank is a trustee or investment manager of a separate portion of the assets of the same Plan.) Plan representitives have asked the Bank whether the Index Fund may purchase such stock directly from the Plan if the decision to sell such stock is made by the unrelated trustee or investment manager for reasons entirely independent of the Index Fund's need to purchase the stock. Such a direct sale would eliminate brokerage commissions otherwise payable by the Plan on the sale. The Index Fund would also benefit from the direct purchase of the needed stock from the Plan by avoiding the brokerage commissions it would have incurred on the purchase. Similarly, if the Index Fund experiences a withdrawal of funds by participating trusts and a subsequent contraction in size at a future date, the Index Fund may wish to sell stocks directly to various Plans desiring to buy the stocks in order to eliminate brokerage commissions.

(8) The Bank wishes to enable the Index Fund to enter into the above described purchase and/or sale transactions with Plans. The Bank represents that neither it nor an affiliate (as defined in Department of Labor regulation § 2510.3-21(e)) will exercise discretionary authority or control over the management of that portion of a pension or profit sharing plan's assets (other than those assets which are invested in the Index Fund) which are involved in the purchase and/or sale transactions with the Index Fund. In addition, should a stock held by the Index Fund become an investment that may not be held by the Index Fund under its screening procedure, it would be sold either in conventional market transactions or in negotiated transactions with institutional investors having no relationship with the Index Fund or the Bank.

(9) The prices paid to or by the Plans under this proposal for all securities that are traded on the New York Stock Exchange would be set by the closing price on the Exchange on the day of the offer. In the case of the fifteen stocks in the Index Fund which are traded in the Over-The-Counter Market, the price would be the average of the highest bid and lowest asked price on the NASDAQ quotation system at the end of trading on the day of the offer.

Notice to Interested Persons

The trustees of all Plans currently investing in the Index Fund will be notified of the proposed exemption by mail on or before September 10, 1979. The notification will include a copy of the notice of proposed exemption as published in the Federal Register and will advise these persons of their right to comment and/or to request a hearing within the period of time specified in this notice of proposed exemption.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act which requires, among other things, that a fiduciary discharge his duties respecting the plan solely in the interests of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) The proposed exemption, if granted, will not extend to transactions prohibited under section 406(a)(1) (B), (C), and (E) and 406(b)(1) and (3) of the Act, and section 4975(c)(1) (B), (C), (E) and (F) of the Code;

(3) Beforfe an exemption may be granted under section 408(a) of the Act and section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(4) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Code and Act, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Written Comments and Hearing Request

All interested persons are invited to submit written comments or requests for a hearing on the pending exemption to the address above, within the time period set forth. All comments will be made a part of the record. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption. Comments received will be available for public inspection with the application for exemption at the address set forth above.

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting the requested exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1. If the exemption is granted, the restrictions of section 406(a)(1) (A) and (D) and 406(b)(2) of the Act and the taxes imposed by section 4975 (a) and (b) of the Code, by reason of section 4975(c)(1) (A) and (D) of the Code, shall not apply to a purchase or sale by the Index Fund of securities from and/or to various plans as described above.

The proposed exemption, if granted, will be subject to the express conditions that the material facts and representations are true and complete, and that the application accurately describes all material terms of the transactions to be consummated pursuant to the exemption.

Signed at Washington, D.C., this 1st day of August, 1979.

Ian D. Lanoff,

Administrator, Pension and Welfare Benefit Programs, Labor-Management Services Administration, Department of Labor.

[FR Doc. 79-24583 Filed 8-9-79; 8:45 am]

BILLING CODE 4510-29-M

LEGAL SERVICES CORPORATION

Grants and Contracts

August 8, 1979.

The Legal Services Corporation was established pursuant to the Legal Services Corporation Act of 1974, Pub. L. 93-355 88 Stat. 378, 42 U.S.C. 2996-29961, as amended, Pub. L. 95-222 (December 28, 1977). Section 1007(f) provides: "At least 30 days prior to the approval of any grant application or prior to entering into a contract or prior to the initiation of any other project, the Corporation shall announce publicly * * * such grant, contract or project."

The Legal Services Corporation hereby announces publicly that it is considering the grant application submitted by:

Southwest Louisiana Legal Services Society in Lake Charles, Louisiana to serve Jefferson Davis Parish.

Interested persons are hereby invited to submit written comments or recommendations concerning the above application to the Regional Office of the Legal Services Corporation at: Legal Services Corporation, Atlanta Regional Office, 615 Peachtree Street, N.E., 9th Floor, Atlanta, Georgia 30308.

Dan J. Bradley,

President.

[FR Doc. 79-24776 Filed 8-9-79; 8:45 am]

BILLING CODE 6820-35-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Humanities Panel Advisory Committee; Meeting

August 7, 1979.

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at 806 15th Street, N.W., Washington, D.C. 20506:

Date: August 28, 1979.
Time: 9 a.m. to 5:30 p.m.
Room: 314.
Purpose: To review Fellowships in Category A applications in English Literature submitted to the National Endowment for the Humanities for projects beginning after January 1, 1980.

Date: August 30, 1979.
Time: 9 a.m. to 5:30 p.m.
Room: 807.
Purpose: To review Practitioners Seminar applications submitted to the National Endowment for the Humanities for projects beginning after October 1, 1979.

Date: August 31, 1979.
Time: 9 a.m. to 5:30 p.m.
Room: 807.
Purpose: To review Practitioners Seminar applications submitted to the National Endowment for the Humanities for projects beginning after October 1, 1979.

Date: September 4, 1979.
Time: 9 a.m. to 5:30 p.m.
Room: 807.
Purpose: To review Practitioners Seminar applications submitted to the National Endowment for the Humanities for projects beginning after October 1, 1979.

Date: September 6, 1979.
Time: 9 a.m. to 5:30 p.m.
Room: 807.
Purpose: To review Practitioners Seminar applications submitted to the National Endowment for the Humanities for projects beginning after October 1, 1979.

Date: September 17-18, 1979.
Time: 9 a.m. to 5:30 p.m.
Room: 1023-25.
Purpose: To review applications for institutional curriculum development submitted to the National Endowment for the Humanities for projects beginning after January 1, 1980.

Because the proposed meetings will consider financial information and disclose information of a personal nature the disclosure of which would constitute a clearly unwarranted

invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings, dated January 15, 1978, I have determined that the meetings would fall within exemptions (4) and (6) of 5 U.S.C. 552b(c) and that it is essential to close these meetings to protect the free exchange of internal views and to avoid interference with operation of the Committee.

It is suggested that those desiring more specific information contact the Advisory Committee Management Officer, Mr. Stephen J. McCleary, 806 15th Street, NW, Washington, DC 20506, or all 202-724-0367.

Victor Loughnan,

Acting Advisory Committee Management Officer.

[FR Doc. 79-24777 Filed 8-9-79; 8:45 am]

BILLING CODE 7536-01-M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards, Subcommittee on Emergency Core Cooling Systems (ECCS); Meeting

The ACRS Subcommittee on Emergency Core Cooling Systems will hold an open meeting on August 27-28, 1979 at the Westbank Motel Coffee Shop, 475 River Parkway, Idaho Falls, ID 83401 to review NRC Research Programs on LOFT, Semiscale, BEACON, and RELAP. Notice of this meeting was announced July 26, 1979 (44 FR 43822).

In accordance with the procedures outlined in the Federal Register on October 4, 1978, (43 FR 45926), oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the Designated Federal Employees as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements.

The agenda for subject meeting shall be as follows:

Monday and Tuesday, August 27-28, 1979 8:30 a.m. until the conclusion of business each day. The Subcommittee may meet in Executive Session, with any of its consultants who may be present, to explore and exchange their preliminary opinions regarding matters which should be considered during the meeting and to formulate a report and recommendations to the full Committee.

At the conclusion of the Executive Session, the Subcommittee will hear presentations by and hold discussions with representatives of the NRC Staff, and their consultants, pertinent to the above topics. The Subcommittee may then caucus to determine whether the matters identified in the initial session have been adequately covered and whether the project is ready for review by the full Committee.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefore can be obtained by a prepaid telephone call to the Designated Federal Employee for this meeting, Dr. Andrew L. Bates (telephone 202/634-3267) between 8:15 a.m. and 5:00 p.m., EDT.

Dated: August 6, 1979.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 79-24653 Filed 8-9-79; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-409]

Dairyland Power Cooperative; Issuance of Amendment To Provisional Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 17 to Provisional Operating License No. DPR-45, issued to Dairyland Power Cooperative (the licensee) for operation of the La Crosse Boiling Water Reactor (the facility) located in Vernon County, Wisconsin. The amendment becomes effective 20 days after its date of issuance, unless a hearing has been requested.

The amendment incorporates a condition in the license relating to the completion of facility modifications to improve the fire protection program. Administrative control provisions and additional operating and surveillance requirements for the modifications being performed will be added to the Technical Specifications after the modifications are complete.

The Commission has made appropriate findings as required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR § 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of this amendment.

For further details with respect to this action, see (1) the licensee's submittals dated February 14, 1977, October 18, 1978, and December 19, 1978, (2) Amendment No. 17 to License No. DPR-45, including the Commission's letter of transmittal, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. and at the La Crosse Public Library, 800 Main Street, La Crosse, Wisconsin 54601. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Operating Reactors.

Dated at Bethesda, Maryland, this 27th day of July, 1979.

For the Nuclear Regulatory Commission.

Richard D. Silver,

Acting Chief, Operating Reactors Branch #2, Division of Operating Reactors.

[FR Doc. 79-24655 Filed 8-9-79; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 40-8675]

Energy Fuels Nuclear, Inc.; Negative Declaration Regarding Issuance of a Source Material License for Operation of the Hanksville Ore Buying Station, Wayne County, Utah

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuing a source material license for a uranium ore buying station by Energy Fuels Nuclear, Inc., at a site near Hanksville, Utah.

The Commission's Division of Waste Management has prepared an environmental impact appraisal for the proposed operation. On the basis of this appraisal, the Commission has concluded that an environmental impact statement for this particular action is not warranted for there will be no significant environmental impact attributable to the action. The environmental impact appraisal is available for public inspection and copying at the Commission's Public Document Room at 1717 H Street, NW., Washington, DC.

Dated at Silver Spring, Maryland, this 31st day of July, 1979.

For the Nuclear Regulatory Commission.

Ross A. Scarano,

Chief, Uranium Recovery Licensing Branch, Division of Waste Management.

[FR Doc. 79-24656 Filed 8-9-79; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 40-8674]

Plateau Resources, Ltd.; Negative Declaration Regarding Issuance of a Source Material License for Operation of the Blanding Ore Buying Station, San Juan County, Utah

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuing a source material license for a uranium ore buying station by Plateau Resources, Limited, at their site near Blanding, Utah.

The Commission's Division of Waste Management has prepared an environmental impact appraisal for the proposed operation. On the basis of this appraisal, the Commission has concluded that an environmental impact statement for this particular action is not warranted for there will be no significant environmental impact attributable to the action. The environmental impact appraisal is available for public inspection and copying at the Commission's Public Document Room at 1717 H Street, NW., Washington, DC.

Dated at Silver Spring, Maryland, this 31st day of July, 1979.

For the Nuclear Regulatory Commission.

Ross A. Scarano,

Chief, Uranium Recovery Licensing Branch, Division of Waste Management.

[FR Doc. 79-24657 Filed 8-9-79; 8:45 am]

BILLING CODE 7590-01-M

Implementation of Uranium Mill Tailings; Radiation Control Act of 1978

The purpose of this notice is to explain in specific terms what the requirements of the "Uranium Mill Tailings Radiation Control Act of 1978" mean to persons affected by and interested in uranium mill regulation.

The Mill Tailings Act amends the Atomic Energy Act and creates a new category of licensable material by expanding the definition of byproduct materials to include mill tailings. The term byproduct material is now defined as: "(1) any radioactive material (except special nuclear material) yielded in or made radioactive by exposure to the radiation incident to the process of producing or utilizing special nuclear material, and (2) the tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content." This includes tailings from conventional milling operations as well as discrete above ground wastes from in-situ or solution extraction processes. However, underground ore bodies depleted by the extraction process are not covered.

The Mill Tailings Act gives NRC direct licensing authority over uranium mill tailings where before, control of tailings was exercised indirectly through its authority to license uranium milling operations. The Act also establishes new requirements under which tailings will be licensed by NRC Agreement States. Agreement States are those States which have, under agreements with the Commission pursuant to Section 274 of the Atomic Energy Act, assumed responsibility for licensing certain materials, which may include the source materials produced in milling operations. Under the Mill Tailings Act, the Commission's expanded licensing responsibilities are effective immediately. However, the Commission has just determined, after extensive legal analysis, that the new requirements of the Mill Tailings Act that apply to Agreement State licensing do not take effect for three years. Furthermore, the Commission has determined that the Mill Tailings Act requires NRC licensing of uranium mill tailings in Agreement States during the three-year period before these new requirements take effect. This establishes a situation in which dual or concurrent jurisdiction exists for a period of three years.

The Commission recognizes that the language in the Mill Tailings Act, which establishes the dual licensing arrangement, does not necessarily conform to the intent of the principal authors of the legislation as expressed in a letter received by the Commission following passage of the legislation. Therefore, the Commission is seeking clarifying legislation that will state expressly that the new requirements that apply to Agreement State regulation of tailings and milling operations will not take effect until three years after the date of enactment of the Mill Tailings Act; that the NRC will have no duplicative authority over tailings in Agreement States during the three-year period; and that NRC has immediate authority under the Mill Tailings Act to regulate tailings in non-Agreement States.

However, the Commission has made a determination that, until the legislation is amended, it must proceed to license tailings in all states. The Commission intends to issue a general license to all existing licensees which authorizes them to own, use and possess tailings material. Such a general license, which is issued as immediately effective subject to any necessary NRC remedial action orders, will prevent existing licensees in both Agreement and non-Agreement States from being in technical violation of the law. Persons planning to conduct new milling operations after May 17, 1979, must apply to the NRC for a license to own, use, and possess byproduct material as tailings. In addition, applicants must obtain a uranium recovery license from the appropriate state or federal authority to conduct milling operations.

All NRC uranium milling licenses that have been granted or renewed under the NEPA process, which involves preparation of an environmental impact statement addressing alternative tailings management and disposal programs, were issued with the express condition that mill tailings management practices were subject to revision in accordance with regulation changes incorporating conclusions of the GEIS and implementing provisions of the Mill Tailings Act. In the process of reevaluation of approved mill operator plans for conformance with the regulations, the NRC staff plans to incorporate into applicable specific licenses the authority to own, use, and possess byproduct material covered by the general license. This process will involve the issuance of a combined license covering both source material operations as well as the authority to possess byproduct materials.

In Agreement States, the authority to possess tailings under the general license will expire when the Agreement State license for milling operations expires or comes up for renewal. At this time, operators must submit an application to NRC to convert from a general license to a specific byproduct material license. The issuance of such a license or license renewal, in cases where no independent environmental impact statement has been previously written for the licensed operator being reviewed, constitutes a major federal action and thus is subject to a full NEPA environmental review including the evaluation of alternatives to the proposed action in accordance with 10 CFR Part 51. This would include the evaluation of alternative sites and tailings disposal programs.

With respect to licensing of the discrete wastes generated in in-situ mining operations, the Commission does not expect as a general rule to be preparing a full environmental impact statement but expects instead to prepare a brief written environmental appraisal. The above-ground wastes from in-situ operations are relatively small in volume and NRC staff policy has been to require that they be removed from the extraction site to a conventional licensed tailings disposal site. Therefore, the environmental impacts resulting from the generation of these wastes will be minor.

The Commission is the process of modifying 10 CFR Part 40 to include the expanded definition of byproduct material; thus, requirements contained in 10 CFR Part 40 pertaining to license applications, license conditions, etc., will apply to applicants for byproduct material as well as source material licenses. Furthermore, a new section has been added that requires that all licensee's authorized to own, use, or possess tailings shall be subject to NRC reporting requirements. In addition, applicants for new licenses or renewals will be subject to the appropriate license application and inspection fees which will be established in the proposed regulation changes as an amendment to 10 CFR Part 170, the License Fee Schedule. All applications, whether for new byproduct material licenses or renewals of existing licenses, are subject to review in accordance with NRC staff regulatory guidance.

In accordance with an April 20, 1978, policy statement on technical assistance for Agreement States (43 FR 17879), the NRC has been acting as a consultant to the States in reviewing many of their recent mill license applications. It is expected that this involvement with recent applications will enable the staff to act promptly in conducting its licensing reviews. Furthermore, the NRC staff will coordinate with the States in order to avoid any undue delays associated with NRC licensing of pending applications in Agreements States.

Persons seeking additional information pertaining to NRC's implementation of the Mill Tailings Act should contact: Ross A. Scarano, Chief, Uranium Recovery Licensing Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

Dated at Silver Spring, Maryland, this 3rd day of August, 1979.

For the Nuclear Regulatory Commission.

Ross A. Scarano,

Branch Chief, Uranium Recovery Licensing Branch, Division of Waste Management.

[FR Doc. 79-24652 Filed 8-9-79; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-338]

Virginia Electric & Power Co.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 13 to Facility Operating License No. NPF-4, issued to Virginia Electric and Power Company, which extends, on a one time basis, the surveillance frequency response time testing of systems, safety injection and containment depressurization actuation testing as specified in the Technical Specification to Appendix A of the North Anna Power Station, Unit No. 1 (the facility). The amendment also deletes two conditions (2.D.(3)d and 2.D(3)e) contained in Facility Operating License NPF-4. The Office of Inspection and Enforcement verified that these conditions had been implemented. The amendment is effective as of the date of issuance.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulation. The Commission has made appropriate findings as required by the Act and the Commission's regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the amendment does not authorize a change in effluent types or total amounts nor an increase in power level and will not result in any significant environmental impact. Having made this determination, it has further been concluded that the amendment involves an action which is insignificant from the standpoint of environmental impact and, pursuant to 10 CFR Section 51.5(d)(4), that an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with the issuance of this amendment.

For further details with respect to this action, see (1) Virginia Electric and Power Company letters, dated March 13, 1979, July 23, 1979, and July 31, 1979, (2) Amendment No. 13 to License No. NPF-4, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. 20555 and at the Board of Supervisor's Office, Louisa County Courthouse, Louisa, Virginia 23093 and at the Alderman Library, Manuscripts Department, University of Virginia, Charlottesville, Virginia 22901. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Divison of Project Management.

Dated at Bethesda, Maryland this 3rd day of August, 1979.

For the Nuclear Regulatory Commission.

Olan D. Parr,

Chief, Light Water Reactors Branch No. 3, Division of Project Management.

[FR Doc. 79-24654 Filed 8-9-79; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-346A, 50-440A, and 50-441A]

Toledo Edison Co. and the Cleveland Electric Illuminating Co., et al.; Order

The Acting Director, Office of Nuclear Reactor Regulation has issued an order dated August 6, 1979. The order reads as follows:

On June 25, 1979 this office issued an 'Order Modifying Antitrust License Condition No. 3 of Davis-Besse Unit 1, License No. NPF-3 and Perry Units 1 and 2, CPPR-148, CPPR-149' in the captioned matter. That Order amended, effective immediately, Antitrust License Condition No. 3 contained in the above listed license and construction permits. The amendment required the Cleveland Electric Illuminating Company (CEI) to file a specific transmission tariff with the Federal Energy Regulatory Commission (FERC). On July 16, 1979 the times afforded CEI to request a hearing and to file the transmission tariff were extended for a period of fifteen days.

By letter dated August 2, 1979, CEI requested a modification of the Order insofar as it is intended to become effective immediately. In support of its modification request, CEI, in its letter, states:

"The transmission service tariff in question is currently the subject of an administrative appeal before FERC in Docket No. ER 78-194. If CEI is required to file prematurely with FERC an amended tariff pursuant to the Order here, a number of contested issues being considered in the FERC appeal will be mooted by that filing. As a consequence, CEI will be unfairly deprived of a meaningful opporunity to exercise both its appeal rights at FERC and its hearing rights before the Nuclear Regulatory Commission prior to the filing of a transmission service tariff which it legitimately believes to be objectionable in several important respects.

"In order to avoid such a result—which would not, in our view, comport with the directive contained in Antitrust License Condition No. 10[1]—CEI hereby requests a modification to the 'immediate effectiveness' aspect of the June 25 Order. We ask that the effective date of that Order, as extended, be further amended to follow by twenty-five (25) days the effective date of the final opinion and order by the Federal Energy Regulatory Commission in FERC Docket No. ER 78-194.

"The granting of this request will permit the orderly completion of CEI's appeal currently pending at FERC without causing any prejudice to other interested parties."

In view of the statements made by CEI in its modification request, the Director of Nuclear Reactor Regulation has determined to suspend until further notice the immediately effectiveness aspect of this amendment pending the receipt and review of comments by the City of Cleveland, Ohio, the Department of Justice and any person whose interest may be affected by the the modification.

Accordingly, pursuant to the Atomic Energy Act of 1954, as amended, and 10 CFR § 2.204 of the Commissions Rules of Practice, IT IS HEREBY ORDERED THAT: The immediately effectiveness aspect of the Order of June 25, 1979 is suspended until further notice so that the City of Cleveland, the Department of Justice and any person whose interest may be affected by the modification may respond to the statements made by CEI. The parties have thirty (30) days from the receipt of this Order to so respond.

Dated at Bethesda, Maryland this 6th day of August, 1979.

For the Nuclear Regulatory Commission.

Argil L. Toalston,

Acting Chief, Antitrust and Indemnity Group, Office of Nuclear Reactor Regulation.

[FR Doc. 79-24658 Filed 8-9-79; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-16083; File No. SR-BSE-79-1]

Boston Stock Exchange, Inc.; Self-Regulatory Organization

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), as amended by Pub. L. No. 94-29, 16 (June 4, 1975), notice is hereby given that on April 30, 1979, the above-mentioned self-regulatory organization filed with the Securities and Exchange Commission a proposed change as follows:

Exchange's Statement of the Terms of Substance of the Proposed Change

The Exchange's Board of Governors has adopted a value charge system of assessment, based on the contract value of all non-specialist transactions executed on the Exchange and have terminated the assessment system based on net commission earned on exchange executions to become effective May 1, 1979. The new system will enable the Exchange to compute and bill monthly the value charge to each non-specialist member organization, and will relieve members of the former burden of collecting and calculating the assessment based on commissions earned. The system is based on the contract value of Exchange transactions and is as follows:

Contract value per month	
0 to $2,000,000	$.20 per thousand in value.
$2,000,000 to $5,000,000	$.10 per thousand in value.
$5,000,000 to $10,000,000	$.05 per thousand in value.
Over $10,000,000	$.025 per thousand in value.
Market Maker Transactions	$.025 per thousand in value.

There is a maximum value charge on any transaction of $20. per side, regardless of the contract value.

Statement of Basis and Purpose

Purpose of the Proposed Change

To adopt a value charge system of assessment on Exchange transactions in lieu of an assessment system based on net commissions earned on Exchange executions.

Basis of the Proposed Change

The basis under the Act for the proposed change is Section 6(b)(4) and provides for the equitable allocation of reasonable assessments among the members of the Exchange.

Comments Received From Members, Participants or Others on Proposed Change

No comments were solicited or received.

Burden on Competition

No burden on competition is perceived by adoption of the proposed increase in membership dues.

The foregoing change has become effective pursuant to Section 19(b)(3) of the Exchange Act of 1934. At any time within 60 days of filing of such proposed change, the Commission may summarily abrogate such 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 purpose of the Securities Exchange Act of 1934.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons desiring to make written submissions should file 6 copies thereof with the Secretary of the Commission, Washington, D.C. 20549. Copies of the filing with respect to the foregoing and of all written submissions will be available for inspection and copying in the Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number referenced in the caption above and should be submitted on or before September 4, 1979.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: August 3, 1979.

George A. Fitzsimmons,

Secretary.

[FR Doc. 79-24640 Filed 8-9-79; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[Proposed License No. 04/04-5166]

F. T. Capital Corp.; Application for License To Operate as a Small Business Investment Company

An application for a license to operate as a small business investment company under the provisions of Section 301(d) of the Small Business Investment Act of 1958, as amended (15 U.S.C. 661 *et seq.*), has been filed by F. T. Capital Corp. (applicant), with the Small Business Administration (SBA), pursuant to 13 CFR 107.102 (1979).

The officers, directors and stockholders of the applicant are as follows:

Francisco R. Ferran, 1521 Agua Avenue, Coral Gables, Florida, Chairman of the Board, President, 30 percent Stockholder.

Antonio Toledo, 6 Forest Laneway, Willowdale, Ontario, Canada, Secretary-Treasurer, Director.

Kathleen A. Toledo, 6 Forest Laneway, Willowdale, Ontario, Canada, Vice President, Director.

Car-Tol International Corp. 2138 Biscayne Boulevard, Miami, Florida, 70 percent Stockholder.

Beneficial Owners of Car-Tol International Corp.:

Intercorporate Management, Inc., 150 Oakdale Road, Downsview, Ontario, Canada, 60 percent.

Ziebart Corporation, 150 Oakdale Road, Downsview, Ontario, Canada, 40 percent.

Beneficial Owner of Intercorporate Management, Inc., and Ziebart Corporation: Mr. Antonio Toledo through his 100 percent ownership of Antol Limited, which owns 90 percent of Intercorporate Management, Inc.,

[1] Antitrust License Condition No. 10 provides in relevant part as follows:

The above [license] conditions are to be implemented in a manner consistent with the provisions of the Federal Power Act and all rates, charges or practices in connection therewith are to be subject to the approval of regulatory agencies having jurisdiction over them. (footnote in letter)

which in turn, owns 60 percent of Ziebart Corporation.

The applicant, a Florida Corporation, with its principal place of business at 2138 Biscayne Boulevard, Miami, Florida 33137, will begin operations with $500,000 of paid-in capital and paid-in surplus derived from the sale fo 1,000 shares of common stock.

The applicant will conduct its activities principally in the State of Florida, with emphasis on the Counties of Dade, Broward, Monroe and Palm Beach.

Applicant intends to provide assistance to all qualified socially or economically disadvantaged small business concerns as the opportunity to profitably assist such concerns is presented.

As a small business investment company under Section 301(d) of the Act, the applicant has been organized and chartered solely for the purpose of performing the functions and conducting the activities contemplated under the Small Business Investment Act of 1958, as amended, from time to time, and will provide assistance solely to small business concerns which will contribute to a well-balanced national economy by facilitating ownership in such concerns by persons whose participation in the free enterprise system is hampered because of social or economic disadvantages.

Matters involved in SBA's consideration of the applicant include the general business reputation and character of the proposed management, and the probability of successful operation of the applicant under their management, including adequate profitability and financial soundness, in accordance with the Small Business Investment Act and the SBA Rules and Regulations.

Notice is hereby given that any person may, not later than August 27, 1979 submit to SBA written comments on the proposed applicant. Any such communication should be addressed to the Acting Associate Administrator for Finance and Investment, Small Business Administration, 1441 L Street, N.W., Washington, D.C. 20416.

A copy of this notice shall be published in a newspaper of general circulation in Miami, Florida and Downsview, Ontario, Canada.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: August 2, 1979

Peter F. McNeish,

Acting Associate Administrator for Finance and Investment.

[FR Doc. 79-24560 Filed 8-9-79; 8:45 am]

BILLING DODE 8025-01-M

Region IV Advisory Council Meeting; Public Meeting

The Small Business Administration Region IV Advisory Council, located in the geographical area of Nashville, Tennessee, will hold a public meeting at 9:00 a.m. to 12:00 Noon (Central Standard Time) on Wednesday, September 26, 1979, in the Boone Parlor of Quality Inn/East, 5877 Poplar Avenue, Memphis, Tennessee, to discuss such business as may be presented by members, the staff of the U.S. Small Business Administration, and others attending.

For further information, write or call W. J. Shaver, District Director, U.S. Small Business Administration, Parkway Towers—Room 1012, 404 James Robertson Parkway, Nashville, Tennessee 37219—(615) 852-5850.

Dated: August 3, 1979.

K. Drew,

Deputy Advocate for Advisory Councils.

[FR Doc. 79-24560 Filed 8-9-79; 8:45 am]

BILLING CODE 8025-01-M

Region VI Advisory Council Meeting; Public Meeting

The Small Business Administration Region VI Advisory Council, located in the geographical area of Oklahoma City, Oklahoma, will hold a public meeting at 9:15 a.m. on Friday, September 21, 1979, at the Skirvin Plaza Hotel, One Park Avenue, Oklahoma City, Oklahoma, to discuss such business as may be presented by members, the staff of the U.S. Small Business Administration, and others attending.

For further information, write or call Donald D. Grose, District Director, U.S. Small Business Administration, Federal Building—Suite 670, 200 NW. 5th Street, Oklahoma City, Oklahoma 73102—(405) 736-5237.

Dated: August 3, 1979.

K. Drew,

Deputy Advocate for Advisory Councils.

[FR Doc. 79-24570 Filed 8-9-79; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF STATE

Agency for International Development

[Redelegation of Authority No. 99.1.1]

Chief, General Services Division, and Chief, Purchasing Branch, Office of Management Operations; Redelegation of Authority Regarding the Contracting Function

Pursuant to the authority delegated to me by Redelegation of Authority No. 99.1.1 dated May 2, 1973 (38 FR 12836), as amended, I hereby redelegate to the Chief, General Services Division; and Chief, Purchasing Branch, Office of Management Operations authority to sign:

1. Contracts and purchase orders for small purchases, as defined in Section 1-3.600 of the Federal Procurement Regulations for services (except international training and data management related activities) and commodities;

2. Contracts and leases for motor vehicles, regardless of amount;

3. Delivery orders for commodities against indefinite delivery contracts executed by the Office of Contract Management or the Department of State, and delivery orders for services against indefinite delivery contracts executed by the Office of Contract Management, when the Office of Management Operations is designated as an authorized ordering activity, regardless of amount;

4. Delivery orders for items available through Federal Supply Schedule contracts or GSA store stock, regardless of amount; and

5. Contracts for telephone equipment for AID missions overseas, regardless of amount.

The authority herein redelegated to the officers named above may not be further redelegated by such officers, but may be exercised by duly authorized persons who are performing the function of the Chief, General Services Division in an "Acting" capacity.

The authorities redelegated herein are to be exercised in accordance with regulations, procedures, and policies now or hereafter established or modified and promulgated within the Agency for International Development.

Actions within the scope of this redelegation heretofore taken by the officials designated herein are hereby ratified and confirmed.

This redelegation of authority shall be effective immediately.

Dated: July 30, 1979.

James Thompson,

Director, Office of Management Operations.

[FR Doc. 79-24642 Filed 8-9-79; 8:45 am]

BILLING CODE 4710-02-M

DEPARTMENT OF THE TREASURY

Office of the Secretary

Advisory Committee on the International Monetary System; Meeting

Notice is hereby given that the Advisory Committee on the International Monetary System will meet at the Treasury Department on September 10, 1979.

The meeting is called in order to obtain the opinions of the participants in the Advisory Committee regarding international monetary questions to be discussed at the annual meeting of the Board of Governors of the International Monetary Fund on October 2-5 and the related meeting of the Interim Committee of the Board of Governors.

A determination as required by Section 10(d) of the Federal Advisory Committee Act (Public Law 92-463) has been made that this meeting is for the purpose of considering matters falling within the exemption to public disclosure set forth in 5 U.S.C. 552b(c)(1) and that the public interest requires such meeting be closed to public participation. The matters to be discussed concern the foreign relations of the United States, some of which are the subject of negotiations with other governments. Public disclosure of the matters discussed could be expected to cause identifiable harm to the national security of the United States.

Any comment or inquiry with respect to this notice can be addressed to Thomas Leddy, Director, Office of International Monetary Affairs, U.S. Department of the Treasury, Washington, D.C. 20220, (202) 566-5365.

Dated: August 3, 1979.

Anthony M. Solomon,

Under Secretary for Monetary Affairs.

[FR Doc. 79-24651 Filed 8-9-79; 8:45 am]

BILLING CODE 4810-25-M

Titanium Dioxide From the United Kingdom Antidumping; Witholding of Appraisement Notice and Determination of Sales at Less Than Fair Value

AGENCY: United States Treasury Department.

ACTION: Withholding of Appraisement and Determination of Sales at Less Than Fair Value.

SUMMARY: This notice is to advise the public that an antidumpting investigation has resulted in a determination that titanium dioxide from the United Kingdom is being sold at less than fair value under the Antidumping Act, 1921. Appraisements of entries of this merchandise will be suspended for 3 months. This case is being referred to the United States International Trade Commission for a determination concerning possible injury to an industry in the United States.

EFFECTIVE DATE: August 10, 1979.

FOR FURTHER INFORMATION CONTACT: Edward Haley, Duty assessment Division, U.S. Customs Service, 1301 Constitiution Avenue, NW., Washington, D.C. 20229 (202-566-5492).

SUPPLEMENTARY INFORMATION: On September 18, 1978, information was received in proper form pursuant to §§ 153.26 and 153.27, Customs Regulations (19 CFR 153.26, 153.27), from counsel on behalf of S.C.M. Corporation, New York, N.Y., alleging that titanium dioxide from Belgium, France, the Federal Republic of Germany and the United Kingdom is being sold at less than fair value, thereby causing injury to, or the likelihood of injury to, an industry in the United States, within the meaning of the Antidumping Act, 1921, as amended (19 U.S.C. 160 *et seq.*) ("the Act"). On the basis of this information, and "Antidumping Proceeding Notice" was published in the Federal Register on October 31, 1978 (43 FR 50781).

The "Antidumping Proceeding Notice" indicated that there was evidence on record concerning injury to or likelihood of injury to, an industry in the United States. Moreover, the notice also indicated that there was substantial doubt that imports of such merchandise from these countries were causing, or were likely to cause, injury. Accordingly, the United States International Trade Commission was advised of such doubt persuant to section 201(c)(2) of the Act (19 U.S.C. 1609(c)(2)).

On November 29, 1978, the United States International Trade Commission determined that it could not find "no reasonable indication that an industry in the United States is being, or is likely to be injured," by reason of the importation of titanium dioxide from Belgium, France, the Federal Republic of Germany and the United Kingdom. Therefore, the investigation proceeded.

A notice of "Extension of Antidumping Investigatory Period" was published in the Federal Register of May 3, 1979 (44 FR 25967). The notice of extension stated that it was the intention of the Treasury to limit any withholding of appraisement which might be necessary to 3 months. This determination is being made consistent with that stated intention.

Titanium dioxide is the primary white pigment used in the paint and coatings, paper and paperboard, ceramic, and plastics industries. It is classified under item 473.70 of the Tariff Schedules of the United States Annotated (TSUSA).

Determination of Sales at Less Than Fair Value

I hereby determine that, for the reasons stated below, titanium dioxide from the United Kingdom, is being, or is likely to be, sold at less than fair value within the meaning of section 201(a) of the Act (19 U.S.C. 160(a)).

Statement of Reasons on Which This Determination Is Based

The reasons and bases for the above determination are as follows:

a. *Scope of the Investigation.* Virtually all of the imports of the subject merchandise from the United Kingdom are manufactured by BTP Tioxide (Tioxide) and La Porte Industries (La Porte). Therefore, the investigation was limited to these manufacturers.

La Porte claims that ceramic grades of titanium dioxide should be excluded from the scope of the investigation since ceramic grades are functionally different from non-ceramic grades. The petitioner has stated that the ceramic grades were included within the scope of the petition and should, therefore, be included in the investigation. La Porte furnished information concerning sales of ceramic grades late in the investigation. No margins were found on this merchandise. Since La Porte is the only firm which has exported ceramic grades to the U.S. during the period under consideration and has demonstrated that such grades differ significantly from non-ceramic grades with respect to their uses and characteristics, it has been determined that ceramic grades of titanium dioxide produced by La Porte are not being sold at less than fair value and are excluded from the affirmative final determination and withholding of appraisement.

b. *Basis of Comparison.* For purposes of this determination, the proper basis of comparison is between the purchase price and the home market price of such or similar merchandise. Purchase price, as defined in section 203 of the Act (19

U.S.C. 162), was used for export sales to unrelated United States purchasers since those sales were made prior to the time of exportation of the merchandise. Home market price, as defined in § 153.2, Customs Regulations (19 CFR 153.2) was used since such or similar merchandise was sold in the home market in sufficient quantities to provide a basis for fair value comparisons.

In accordance with § 153.31(b), Customs Regulations (19 CFR 153.31(b)), pricing information was obtained concerning imports and home market sales during the period May 1, 1978, through October 31, 1978.

c. *Purchase Price.* For purposes of this determination, since the merchandise was purchased or agreed to be purchased, prior to the time of exportation, by the person by whom or for whose account it was imported, within the meaning of section 203 of the Act, the purchase price has been calculated on the basis of the CIF or CIF duty-paid price to those purchasers, as appropriate. Adjustments were made for inland freight, ocean freight, insurance, duty, brokerage, a discount, and a royalty payment.

The adjustments for inland freight, ocean freight, insurance, duty, and brokerage were made pursuant to section 203 of the Act in that this represents charges incurred in transferring the merchandise from the point of shipment in the United Kingdom to the point of delivery in the United States.

d. *Home Market Price.* For purposes of this determination, the home market price had been calculated on the basis of the delivered price with adjustments for inland freight, insurance, a special credit and discount, and differences in packing, where appropriate.

The adjustments for inland freight and insurance were made as costs incurred in transferring the merchandise from the point of shipment to the point of delivery.

In addition to those adjustments described above, a number of other adjustments were requested by each manufacturer and rejected in this investigation. They are discussed below.

Both La Porte and Tioxide have requested adjustments under § 153.10, Customs Regulations (19 CFR 153.10) for certain technical services which both companies claimed to provide to home market customers. In La Porte's case, these included the cost of personnel employed in solving problems raised by customers regarding the use of titanium dioxide, laboratory facilities and personnel dealing with general research work as well as customers' use problems, and special teams set up to undertake projects too large for the normal laboratory staff. The petitioner has supplied evidence which it alleges shows that La Porte offers certain of its technical services to customers in the United States as well. While certain of the technical service expenses claimed by La Porte might warrant an adjustment under § 153.10, no adjustment can be made until such time as the full extent of any such services offered to U.S. customers has been provided so that the adjustment would appropriately reflect only the differences in such services actually offered in the two markets.

With respect to BTP Tioxide, the requested adjustment involves laboratory facilities which perform technical services and general research and development for home market sales. However, it has been determined that these facilities provide similar services on Tioxide's U.S. sales. The cost incurred in providing these services on U.S. sales have not been quantified, and therefore no adjustment for allegedly different circumstances in the two markets has been made.

Both La Porte and BTP Tioxide have requested adjustments for certain warehousing costs incurred on home market sales. The Treasury Department has in the past allowed adjustments for differences in warehousing costs under § 153.10, when such costs are incurred by the producer on behalf of, and at the direction or, the producer's customer. Insufficient evidence has been submitted by both firms to establish that the costs in question were incurred as a condition of sale on behalf of the customers. To the extent that sufficient evidence can subsequently be supplied and verified, an adjustment may be made if appropriate, in the event of a "Finding of Dumping" in the assessment of dumping duties.

BTP Tioxide and La Porte have also requested adjustments under § 153.10 for certain advertising expenses. In neither case has information been supplied which would show that these are advertising costs borne by the manufacturer to benefit the customer in the later sale of the merchandise. The customers are end users and not resellers of the products. Therefore, no adjustment has been allowed.

BTP Tioxide has also requested an adjustment under § 153.10 for certain selling and administrative expenses which are incurred primarily on its home market sales. Neither of these expenses have been shown to be directly related to the sales under consideration and no adjustment has been granted.

La Porte has requested an adjustment under § 153.15, Customs Regulations (19 CFR 153.15), for differences in levels of trade between its U.S. and home market sales. La Porte has belatedly submitted information which allegedly establishes the differences in prices charged by La Porte to distributors and end users purchasing in similar quantities in the home market. However, this information was not received in time to be analyzed and verified prior to this determination. To the extent that such an adjustment is subsequently determined to be appropriate, and its size is adequately established and verified, an adjustment will be considered in the event of a "Finding of Dumping" in the assessment of dumping duties.

BTP Tioxide has made a claim that costs incurred by Tioxide for effluent treatment should be attributable to home market sales and that therefore an adjustment to foreign market value should be made for those costs. Tioxide has been unable to show that there is in fact any difference between effluent treatment required for titanium dioxide produced for sale in the United Kingdom as opposed to that produced for sale to the U.S. Therefore, no adjustment was granted.

BTP Tioxide has also requested that fair value comparisons be made using the average exchange rate in London at mid-month during the month of any sale. For purposes of making fair value comparisons under the Act, § 153.52(a), Customs Regulations (19 CFR 153.52(a)), provide the basis for establishing exchange rates to be used for currency conversions in antidumping investigations. Comparisons were made using data converted in accordance with that section.

BTP Tioxide has made a claim for an adjustment based on the product mix of titanium dioxide sold in the two markets. The claim centers on the average price of titanium dioxide in the home market that would have been received if the product mix had been identical to that in the United States. Fair value comparisons have been made on the basis of individual products, not on the overall home market sales. On this basis, no adjustment is necessary.

BTP Tioxide has requested an adjustment under § 153.9, Customs Regulations (19 CFR 153.9) for differences in price due to difference in

per sale delivery sizes between the U.S. and the United Kingdom. It has been determined, based upon the data provided by BTP Tioxide, including a regression analysis, that an insufficient relationship between home market prices and per sale delivery sizes exists to conclude that a *bona fide* quantity discount schedule exists within the meaning of § 153.9. Therefore, no adjustment has been granted.

e. *Results of Fair Value Comparisons.* Using the above criteria, comparisons were made on approximately 95 percent of the sales of titanium dioxide to the United States during the period under consideration. For BTP Tioxide, those comparisons indicate that the purchase price was less than the home market value of such or similar merchandise on 100 percent of the sales compared. Margins ranged from approximately 14.2 percent to 90.7 percent. The weighted-average margin was approximately 45.9 percent. For La Porte, those comparisons indicate that the purchase price was less than the home market price of non-ceramic grades of titanium dioxide on approximately 94 percent of those sales compared. Margins ranged from 17.0 to 76.4 percent. The weighted-average margin on all sales was approximately 48.0 percent.

The Secretary has provided an opportunity to known interested parties to present written and oral views pursuant to § 153.40, Customs Regulations (19 CFR 153.40). Such views have been presented and considered.

Based on the reasons noted above, Customs officers are being directed to withhold appraisement of titantium dioxide from the United Kingdom, other than ceramic grades produced by La Porte, in accordance with § 153.48, Customs Regulations (19 CFR 153.48).

This withholding of appraisement notice, which was published pursuant to § 153.35(a), Customs Regulations (19 CFR 153.35(a)), shall become effective August 10, 1979. It shall cease to be effective at the expiration of 3 months from the date of this publication unless previously revoked.

The United States International Trade Commission is being advised of this determination.

This determination is published pursuant to section 201(b) of the Act (19 U.S.C. 160(d)).

Robert H. Mundheim,

General Counsel of the Treasury.

August 6, 1979.

[FR Doc. 79-24699 Filed 8-9-79; 8:45 am]

BILLING CODE 4810-22-M

Titanium Dioxide From Belgium; Antidumping; Withholding of Appraisement Notice and Determination of Sales at Less Than Fair Value

AGENCY: United States Treasury Department.

ACTION: Withholding of Appraisement and Determination of Sales at Less than Fair Value.

SUMMARY: This Notice is to advise the public that an antidumping investigation has resulted in a determination that titanium dioxide from Belgium is being sold at less than fair value under the Antidumping Act, 1921. Appraisements of entries of this merchandise will be suspended for 3 months. This case is being referred to the United States International Trade Commission for a determination concerning possible injury to an industry in the United States.

EFFECTIVE DATE: August 10, 1979.

FOR FURTHER INFORMATION CONTACT: Mary S. Clapp, Duty Assessment Division, U.S. Customs Service, 1301 Constitution Avenue NW, Washington, D.C. 20229, (202) 566-5492.

SUPPLEMENTARY INFORMATION: On September 18, 1978, information was received in proper form pursuant to §§ 153.26 amd 153.27, Customs Regulations (19 CFR 153.26, 153.27), from counsel on behalf of S.C.M. Corporation, New York, N.Y., alleging that titanium dioxide from Belgium, France, the Federal Republic of Germany, and the United Kingdom is being sold at less than fair value, thereby causing injury to, or the likelihood of injury to, an industry in the United States, within the meaning of the Antidumping Act, 1921, as amended (19 U.S.C. 160 *et seq.*) ("the Act"). On the basis of this information, an "Antidumping Proceeding Notice" was published in the Federal Register on October 31, 1978 (43 FR 50781).

The "Antidumping Proceeding Notice" indicated that there was evidence on record concerning injury to or likelihood of injury to an industry in the United States. Moreover, the notice also indicated that there was substantial doubt that imports of such merchandise from these countries were causing, or were likely to cause, injury. Accordingly, the United States International Trade Commission was advised of such doubt pursuant to section 201(c)(2) of the Act (19 U.S.C. 160(c)(2)).

On November 29, 1978, the United States International Trade Commission determined that it could not find "no reasonable indication that an industry in the United States is being, or is likely to be injured," by reason of the importation of titanium dioxide from Belgium, France, the Federal Republic of Germany and the United Kingdom. Therefore, the investigation proceeded.

A notice of "Extension of Antidumping Investigatory Period" was published in the Federal Register of May 3, 1979 (44 FR 25967). The notice of extension stated that it was the intention of the Treasury to limit any withholding of appraisement which might be necessary to 3 months.

This determination is consistent with that stated intention.

Titanium dioxide is the primary white pigment used in the paint and coatings, paper and paperboard, ceramic and plastics industries. It is classified under item number 473.70 of the Tariff Schedules of the United States Annotated.

Determination of Sales at Less than Fair Value.—I hereby determine that, for the reasons stated below, titanium dioxide, from Belgium is being, or is likely to be, sold at less than fair value within the meaning of 201(a) of the Act (19 U.S.C. 160(a)).

Statement of Reasons on Which this Determination is Based.—The reasons and bases for the above determination are as follows:

a. *Scope of Investigation.* Virtually all of the imports of the subject merchandise from Belgium are manufactured by Bayer Antwerpen, N.V. (Bayer) or Kronos S.A./N.V. (Kronos). Therefore, the investigation was limited to these manufacturers.

b. *Basis of Comparison.* For the purposes of this determination, the proper basis of comparison is between the purchase price or the exporter's sales price, as appropriate, and the home market price of such or similar merchandise. Purchase price, as defined in section 203 of the Act (19 U.S.C. 162), was used for export sales to unrelated U.S. purchasers since those sales to the United States were made prior to the exportation of the merchandise. Exporter's sales price, as defined in section 204 of the Act (19 U.S.C. 163), was used for sales to related U.S. purchasers since the resales to nonrelated customers were made after the exportation of the merchandise. Home market price, as defined in § 153.2, Customs Regulations (19 CFR 153.2) was used since such or similar merchandise was sold in the home market in sufficient quantities to provide a basis for fair value.

In accordance with § 153.31(b), Customs Regulations (19 CFR 153.31(b)), pricing information was obtained

concerning imports and home market sales during the period May 1, 1978 through October 31, 1978. Where exporter's sales price was used as the basis for the price to the United States, additional home market data was provided for the period corresponding to the dates of export of the titanium dioxide resold by related importers in the United States during the period referred to above.

c. *Purchase Price.* For purposes of this determination, as to that merchandise which was purchased or agreed to be purchased, prior to the time of exportation, by the person by whom or for whose account it was imported, within the meaning of section 203 of the Act, the purchase price has been calculated on the basis of the CIF, duty paid price to these purchasers. Deductions were made for inland and ocean freight, insurance, duty, brokerage, and a commission. These sales were made by Bayer.

d. *Exporter's Sales Price.* For purposes of this determination, as to that merchandise manufactured by Bayer and Kronos which was not purchased or agreed to be purchased by an unrelated U.S. purchaser prior to the time or exportation, the exporter's sales price has been calculated on the basis of the resale price to unrelated U.S. purchasers. Adjustments were made for inland freight, commission, discounts, overhead and selling expenses, duty, brokerage, demurrage, ocean freight, insurance, and cost of further manufacture, as appropriate.

The adjustments for inland and ocean freight, insurance, duty, brokerage, and demurrage were made since these costs and charges are incident to transferring the merchandise from the point of shipment in Belgium to the point of delivery in the United States. The adjustments for commissions were made pursuant to section 204(2) of the Act; the adjustments for selling expenses and overhead expenses were made pursuant to section 204(3) of the Act because they represent the cost of selling the merchandise in the United States. A small portion of the merchandise sold by Bayer to its subsidiary in the United States, Mobay Chemical, was further manufactured before sale to an unrelated United States purchaser. A deduction was made for the additional expenses incurred in the further manufacture, including materials, labor, overhead, and a proportional share of the profit attributable to other components of the remanufactured end-product. The latter adjustment was made in accordance with § 153.18, Customs Regulations (19 CFR 153.18).

e. *Home Market Price.* For purposes of this determination, the home market price has been calculated on the basis of the delivered price with adjustments for inland freight, insurance, and differences in merchandise. Additionally, an offset of selling expenses for expenses incurred in the United States or for commissions on sales to unrelated purchasers in the United States was made in accordance with § 153.10, Customs Regulations (19 CFR 153.10).

Claims were made for adjustments for circumstances of sale based on expenses incurred for differences in credit terms, technical assistance and service, direct selling expenses, advertising expenses, research expenses, and sales of less than truckload quantities. However, these claims were not shown to be directly related to the sales under consideration, as required by § 153.10, Customs Regulations (19 CFR 153.10). Further, insufficient documentation was provided concerning these claims. Therefore, as discussed specifically below, these adjustments were disallowed.

Bayer claimed that there was a slightly longer period between shipment and payment in the home market than in the United States. The claimed adjustment for differences in credit terms, was based on average interest costs during the period under consideration. However, the periods of time between shipment and payment on the resale by the U.S. subsidiary varied considerably, and no uniform pattern of accelerated receipts was shown with respect to U.S. sales. Therefore, as the information needed to quantify the claim has not been presented, no adjustment on this basis can be made at this time.

Bayer has claimed an adjustment for certain costs for technical assistance and service to its customers. These costs include visits by Bayer's chemists to home market customers to discuss production methods and recommendations for improvement in the use of Bayer's titanium dioxide. In addition, Bayer claims that its chemists assist home market customers in laboratory and production tests and discuss technical difficulties that have occurred in the application of Bayer's products. Also claimed are costs incurred in conducting tests made by Bayer for home market customers and technical support for the commercial sales efforts of Bayer's staff. While it appears that the costs of some such projects might be allowable as adjustments affecting different circumstances of sale, since such aid is ostensibly unavailable to U.S. customers, a sufficient breakdown of costs by project and type of cost within a project has not been furnished. Any services that would be directed at helping commercial sales efforts generally would be disallowed in any instance. In addition, the petitioner has presented evidence of technical brochures obtained in the United States that were published by Bayer and appear to offer technical services to customers in Europe or in the United States. A question has thus been raised whether Bayer and/or its subsidiary offer technical services to its United States customers. If all customers may receive similar services, no adjustment for differing circumstances is possible at this time. It has been determined that the technical assistance and service given by Bayer in the home market has neither been tied directly to the home market sales under consideration, nor shown to be available only to home market customers.

Bayer has claimed a circumstance of sale adjustment for selling expenses incurred by Bayer Belgium N.V., a sister company of Bayer Antwerpen. The sales office acts as a liaison between Bayer Antwerpen production facilities and customers for titanium dioxide. The staff is assigned tasks including soliciting customers, regularly visiting customers, obtaining and processing orders and gathering market intelligence. All these expenses are considered to be of general overhead nature and as such have been determined to be not directly related to the sales under consideration. As such, the claims have been rejected.

Both Bayer and Kronos originally claimed advertising costs as a circumstance of sale. Kronos has since withdrawn its claim by stating that the costs have not assisted in a later sale of the merchandise. Home market purchasers are end-users, and Bayer has not presented any evidence that indicates any advertising assists these purchasers in any later sale of the merchandise. In addition, Bayer's brochures which might be of an advertising nature have been supplied by the petitioner and have been obtained in the U.S. market. Based on the foregoing, the claim has been disallowed.

Bayer has claimed that certain research expenses were incurred during the investigatory period, relative to the development, production, and application of certain grades of titanium dioxide which were sold in the home market, but which were not exported to the United States. Since comparisons

have been made on the basis of such or similar merchandise, and it has been stated that the research expenses apply only to other grades of titanium dioxide, they have been deemed to bear no direct relationship to the sales under consideration. In addition, these research expenses appear to be of a general nature and, as such, would not be allowable. Therefore, it has been determined that this claim should be disallowed.

A claim has been made for an adjustment for an extra charge incurred with regard to sales which were made at less than truckload quantities. It is noted that the grade for which this adjustment has been claimed was subject to further manufacture in the United States before resale. The end product sold in the United States was sold in even smaller quantities. As such, no adjustment has been justified.

f. *Results of Fair Value Comparisons.* Using the above criteria, comparisons were made on virtually all of the sales of titanium dioxide to the United States during the period under consideration. For Bayer, those comparisons indicate that the purchase price or exporter's sales price as appropriate, was less than the home market price of such or similar merchandise on approximately 89 percent of the sales compared. Margins ranged from approximately 0.3 to 21.5 percent. The weighted-average margin on all sales was approximately 9.8 percent. For Kronos, the exporter's sales price was found to be less than the home market price of such or similar merchandise on approximately 52.2 percent of the sales. Margins ranged from 1.4 to 16.4 percent and the weighted-average margin was approximately 11.2 percent.

The Secretary has provided an opportunity to known interested parties to present written and oral views pursuant to § 153.40, Customs Regulations (19 CFR 153.40). Such views have been presented and considered.

Based on the reasons noted above, Customs officers are being directed to withhold appaisement of titanium dioxide from Belgium in accordance with § 153.48, Customs Regulations (19 CFR 153.48).

This withholding of appraisement notice, which was published pursuant to § 153.35(a), Customs Regulations (19 CFR 153.35(a)), shall become effective August 10, 1979. It shall cease to be effective at the expiration of 3 months from the date of this publication unless previously revoked.

The United States International Trade Commission is being advised of this determination.

The determination is published pursuant to section 201(b) of the Act (19 U.S.C. 160(d)).

Robert H. Mundheim,

General Counsel of the Treasury.

August 6, 1979.

[FR Doc. 79-24700 Filed 8-9-79; 8:45 am]

BILLING CODE 4810-22-M

Titanium Dioxide From the Federal Republic of Germany; Antidumping; Withholding of Appraisement Notice and Determination of Sales at Less Than Fair Value and Discontinuance of Investigation

AGENCY: United States Treasury Department.

ACTION: Withholding of Appraisement and Determination of Sales at Less Than Fair Value and Discontinuance of Investigation.

SUMMARY: This notice is to advise the public that an antidumping investigation has resulted in a determination that titanium dioxide from the Federal Republic of Germany is being sold at less than fair value under the Antidumping Act, 1921. Appraisements of entries of this merchandise will be suspended for 3 months. This case is being referred to the United States International Trade Commission for a determination concerning possible injury to an industry in the United States. The investigation has been discontinued with regard to Bayer A.G.

EFFECTIVE DATE: August 10, 1979.

FOR FURTHER INFORMATION CONTACT: Mary S. Clapp, Duty Assessment Division, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229, (202) 566-5492.

SUPPLEMENTARY INFORMATION: On September 18, 1978, information was received in proper form pursuant to §§ 153.26 and 153.27, Customs Regulations (19 CFR 153.26, 153.27), from counsel on behalf of S.C.M. Corporation, New York, N.Y., alleging that titanium dioxide from Belgium, France, the Federal Republic of Germany (FRG), and the United Kingdom is being sold at less than fair value, thereby causing injury to, or the likelihood of injury to, an industry in the United States, within the meaning of the Antidumping Act, 1921, as amended (19 U.S.C. 160 *et seq.*) ("the Act"). On the basis of this information, an "Antidumping Proceeding Notice" was published in the Federal Register on October 31, 1978 (43 FR 50781). The "Antidumping Proceeding Notice" indicated that there was evidence on record concerning injury to or likelehood of injury to an industry in the United States. However, the notice also indicated that there was substantial doubt that imports of such merchandise from these countries were causing, or were likely to cause, injury. Accordingly, the United States International Trade Commission was advised of such doubt pursuant to section 201(c)(2) of the Act (19 U.S.C. 160(c)(2)).

On November 29, 1978, the United States International Trade Commission determined that it could not find "no reasonable indication that an industry in the United States is being, or is likely to be injured," by reason of the importation of titanium dioxide from Belgium, France, the FRG and the United Kingdom. Therefore, the investigation proceeded.

A notice of "Extension of Antidumping Investigatory Period" was published in the Federal Register of May 3, 1979 (44 FR 25967). The notice of extension stated that it was the intention of the Treasury to limit any withholding of appraisement which might be necessary to 3 months.

This determination is consistent with that stated intention.

Titanium dioxide is the primary white pigment used in the paint and coatings, paper and paperboard, ceramic and plastics industries. It is classified under item number 473.70 of the Tariff Schedules of the United States Annotated.

Determination of Sales at Less Than Fair Value

I hereby determine that, for the reasons stated below, titanium dioxide, from the FRG, by companies other than Bayer A.G., is being, or is likely to be, sold at less than fair value within the meaning of 201(a) of the Act (19 U.S.C. 160(a)).

Statement of Reasons on Which This Determination Is Based

The reasons and bases for the above determination are as follows:

a. *Scope of the Investigation.* Virtually all of the imports of the subject merchandise from the FRG are manufactured by Bayer A.G., Kronos-Titan GmbH (Kronos), and Pigment Chemie GmbH (Pigment Chemie). Therefore, the investigation was limited to these manufacturers.

b. *Basis of Comparison.* For purposes of this determination, the proper basis of comparison is between purchase price or exporter's sales price, as appropriate, and the home market price of such or similar merchandise. Purchase price, as defined in section 203 of the Act (19 U.S.C. 162), was used for sales to

unrelated United States purchasers from Pigment Chemie since those export sales to the United States were made prior to the exportation of the merchandise. Exporter's sales price, as defined in section 204 of the Act (19 U.S.C. 163), was used for those sales by the three shippers to related parties in the United States, in which resales to an unrelated party took place after the exportation of the merchandise. Home market price, as defined in § 153.2 Customs Regulations (19 CFR 153.2) was used since such or similar merchandise was sold in the home market in sufficient quantities to provide a basis for fair value.

In accordance with § 153.31(b), Customs Regulations (19 CFR 153.31 (b)), pricing information was obtained concerning imports and home market sales during the period of May 1, 1978 through October 31, 1978. Additional home market information was provided to correspond with the dates of export for the titanium dioxide sold in the United States by related parties during the period under consideration.

c. *Purchase Price.* For purposes of this determination, as to that merchandise which was purchased or agreed to be purchased, prior to the time of exportation, by the person by whom or for whose account it was imported, within the meaning of section 203 of the Act, purchase price has been calculated on the basis of the ex-factory price to the unrelated United States purchaser. No adjustments have been made to this price.

d. *Exporter's Sales Price.* For purposes of this determination, as to that merchandise which was not purchased or agreed to be purchased, prior to the time of exportation, by the person by whom or for whose account it was imported, within the meaning of section 203 of the Act, the exporter's sales price has been calculated on the basis of the selling price to the first unrelated United States purchaser. Adjustments were allowed for inland freight, insurance, duty, brokerage, ocean freight, selling and administrative expenses, a discount, and, in the case of that merchandise which was further manufactured before sale, the added value.

The adjustments for inland freight, insurance, duty, brokerage and ocean freight, represent the cost of transferring the merchandise from the point of shipment in the FRG to the point of delivery in the United States and thus were made pursuant to section 204(1) of the Act. The adjustment for selling and administrative expenses was made pursuant to section 204(3) of the Act because it represents the cost of selling the merchandise in the United States. The adjustment for the added value was made in accordance with § 153.18, Customs Regulations (19 U.S.C. 153.18), and is based on the material, labor, general expenses, and proportional share of the profit attributable to other components of the remanufactured end product.

e. *Home Market Price.* For purposes of this determination, the home market price has been calculated on the basis of the delivered price with adjustments for inland freight, a discount, insurance, differences in merchandise, and an offset of selling expenses equal to the expenses incurred on the United States sales, in accordance with § 153.10, Customs Regulations (19 CFR 153.10). The adjustments for freight and insurance represent the cost of transferring the merchandise from the point of shipment to the point of delivery. The adjustments for differences in merchandise are based on the differences in cost of labor, materials, and directly related general expenses between the home market product and the United States product where comparisons were made between similar items.

Claims were made for ajdustments for circumstances of sale based on expenses incurred for differences in credit terms, technical assistance and service, direct selling expenses, advertising expenses and research expenses. However, these claims were not shown to be directly related to the sales under consideration, as required by § 153.10, Customs Regulations (19 CFR 153.10). Further, insufficent documentation was provided concerning these claims. Therefore, as discussed specifically below, these adjustments were disallowed.

Bayer A.G. claimed that there was a slightly longer period between shipment and payment in the home market than in the United States. The claimed adjustment, based on the alleged difference in credit terms, was based on average interest costs in the home market during the period under consideration. However, the periods of time between shipment and payment on resales by the U.S. subsidiary varied considerably, and no uniform pattern of accelerated receipts was shown with respect to U.S. sales. Therefore, as the information needed to quantify the claim has not been presented, no adjustment on this basis can be made at this time.

Bayer A.G. has claimed an adjustment for certain costs for technical assistance and service to its customers. These costs include visits by Bayer's chemists to home market customers to discuss production methods and recommendations for improvement in the use of Bayer's titanium dioxide. In addition, Bayer claims that its chemists assist home market customers in laboratory and production tests and discuss technical difficulties that have occurred in the application of Bayer's products. Also claimed are costs incurred in conducting tests made by Bayer for home market customers and technical support for the commercial sales efforts of Bayer's staff. While it appears that the costs of some such projects might be allowable adjustments reflecting different circumstances of sale since such aid is ostensibly unavailable to U.S. customers, a sufficient breakdown of costs by project and type of cost within a project has not been furnished. Any services that would be directed at helping commercial sales efforts generally would be disallowed in any instance. In addition, the petitioner has presented evidence of technical brochures obtained in the United States that were published by Bayer and appear to offer technical services to customers in Europe or in the United States. A question has, thus, been raised whether Bayer and/or its subsidiary offer technical services to United States customers. If all customers may receive similar services, no adjustment for differing circumstances is possible at this time. It has been determined that the technical assistance and service given by Bayer in the home market has neither been tied directly to the home market sales under consideration, nor shown to be available only to home market customers.

Bayer A.G. has claimed an adjustment for selling expenses incurred by the sales office which acts as a liaison with customers purchasing titanium dioxide. The staff is assigned the tasks of soliciting customers, visiting customers, obtaining and processing orders, and gathering market intelligence. In addition, a claim was made for the cost of employees reviewing and executing specific orders in the home market. These costs appear to be of a general overhead nature and would be incurred whether or not specific sales were made. On this basis, the claim has been rejected.

A claim has been made for advertising describing titanium dioxide and its uses, printed in the German language. In addition, a claim has been made for advertisements in various trade journals and other publications. Some of the literature was produced in conjunction with displays at shows or conventions. Home market purchasers are end-users,

and no evidence has been presented that indicates that the advertising materials assist these purchasers in a later sale of the merchandise. In addition, similar brochures in the English language, brought to the attention of the Treasury Department by the petitioner, have been found to be available in the United States. Based on the foregoing, it has been determined that no adjustment is appropriate for advertising

An additional claim has been made for certain research expenses incurred relative to the development, production, and application of certain grades of titanium dioxide which were sold in the home market, but which were not exported to the United States. All comparisons for Bayer A.G. were made on the basis of identical merchandise. Even if the research costs were considered directly related to any particular sales, these would not be the sales under consideration. In addition, these research expenses appear to be of a general nature and, as such, would not be allowable. Therefore, it has been determined that the claim should be disallowed.

f. *Results of Fair Value Comparison.* Using the above criteria, comparisons were made on approximately 65 percent of the titanium dioxide sales to the United States during the period under consideration. Those comparisons indicate that the purchase price or the exporter's sales price as appropriate, was less than the home market price of such or similar merchandise. Margins for Pigment Chemie were found on approximately 59.4 percent of the sales compared and ranged from approximately 4.8 to 27.5 percent. Margins were found for Kronos on approximately 29 percent of the sales compared and ranged from approximately 2.7 to 33.2 percent. The weighted-average margin on all sales compared is approximately 14.3 percent. Margins were found on approximately 9.9 percent of Bayer's sales and ranged from 0.5 to 28.8 percent. The weighted-average margin is 0.1 percent.

Bayer A.G. has a wholly-owned subsidiary, Bayer Antwerpen NV, which is a subject of the concurrent investigation on titanium dioxide from Belgium. Bayer Antwerpen NV has sold the subject merchandise to the United States at prices which are at less than fair value (the determination of sales at less than fair value is being published simultaneously with this determination). Due to the common corporate ownership and control, it has been determined that, despite the fact that Bayer A.G. has been found to have *de minimis* margins, a discontinuance, rather than a negative determination relative to Bayer A.G., is appropriate. The purpose of the discontinuance is to permit monitoring of shipments of titanium dioxide from the FRG and Belgium so as to ensure that, if a finding of dumping ultimately is issued, merchandise properly subject to that finding remains subject thereto. Based on this discontinuance, periodic reports will be required from Bayer A.G. concerning sales of titanium dioxide to the United States.

This discontinuance is based on the facts that sales by Bayer are admittedly *de minimis*, but that significant sales at less than fair value have been found from a subsidiary in Belgium. No commitment has been made by Bayer A.G.; price assurances have not been requested or received. Due to the nature of this discontinuance, should the International Trade Commission determine that an industry in the United States is not being, nor is likely to be injured, due to the less than fair value sales from Belgium, the discontinuance as to Bayer A.G. will be terminated.

The Secretary has provided an opportunity to known interested parties to present written and oral views pursuant to § 153.40, Customs Regulations (19 CFR 153.40). Such views have been presented and considered.

Based on the reasons noted above, Customs officers are being directed to withhold appraisement of titanium dioxide from West Germany, by companies other than Bayer A.G., in accordance with § 153.48, Customs Regulations (19 CFR 153.48).

This withholding of appraisement notice, which was published pursuant to § 153.35(a), Customs Regulations (19 CFR 153.35(a)), shall become effective August 10, 1979. It shall cease to be effective at the expiration of 3 months from the date of this publication unless previously revoked.

The United States International Trade Commission is being advised of this determination.

This determination is published pursuant to section 201(b) of the Act (19 U.S.C. 160(d)).

Robert H. Mundheim,

General Counsel of the Treasury.

August 6, 1979.

[FR Doc. 79-24701 Filed 8-9-79; 8:45 am]

BILLING CODE 4810-22-M

Titanium Dioxide From France; Antidumping; Withholding of Appraisement Notice and Determination of Sales at Less Than Fair Value

AGENCY: United States Treasury Department.

ACTION: Withholding of Appraisement and Determination of Sales at Less Than Fair Value.

SUMMARY: This notice is to advise the public that an antidumping investigation has resulted in a determination that titanium dioxide from France is being sold at less than fair value under the Antidumping Act, 1921. Appraisements of entries of this merchandise will be suspended for 3 months. This case is being referred to the United States International Trade Commission for a determination concerning possible injury to an industry in the United States.

EFFECTIVE DATE: August 10, 1979.

FOR FURTHER INFORMATION CONTACT: Edward Haley, Duty Assessment Division, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202-566-5492).

SUPPLEMENTARY INFORMATION: On September 18, 1978, information was received in proper form pursuant to §§ 153.26 and 153.27, Customs Regulations (19 CFR 153.26, 153.27), from counsel on behalf of S.C.M. Corporation, New York, N.Y., alleging that titanium dioxide from Belgium, France, the Federal Republic of Germany, and the United Kingdom is being sold at less than fair value, thereby causing injury to, or the likelihood of injury to, an industry in the United States, within the meaning of the Antidumping Act, 1921, as amended (19 U.S.C. 160 *et seq.*) ("the Act"). On basis of this information, an "Antidumping Proceeding Notice" was published in the Federal Register on October 31, 1978 (43 FR 50781).

The "Antidumping Proceeding Notice" indicated that there was evidence on record concerning injury to or likelihood of injury to, an industry in the United States. Moreover, the notice also indicated that there was substantial doubt that imports of such merchandise from these countries were causing, or were likely to cause, injury. Accordingly, the United States International Trade Commission was advised of such doubt pursuant to section 201(c) (2) of the Act (19 U.S.C. 160(c)(2)).

On November 29, 1978, the United States International Trade Commission determined that it could not find "no reasonable indication that an industry in

the United States is being, or is likely to be injured," by reason of the importation of titanium dioxide from Belgium, France, the Federal Republic of Germany and the United Kingdom. Therefore, the investigation proceeded.

A notice of "Extension of Antidumping Investigatory Period" was published in the Federal Register of May 3, 1979 (44 FR 25967). The notice of extension stated that it was the intention of the Treasury to limit any withholding of appraisement which might be necessary to 3 months.

This determination is being made consistent with that stated intention.

Titanium dioxide is the primary white pigment used in the paint and coatings, paper and paperboard, ceramic, and plastics industries. It is classified under item 473.70 of the Tariff Schedules of the United States Annotated (TSUSA).

Determination of Sales at Less Than Fair Value

I hereby determine that, for the reasons stated below, titanium dioxide from France is being, or is likely to be, sold at less than fair value within the meaning of section 201(a) of the Act (19 U.S.C. 160(a)).

Statement of Reasons on Which This Determination Is Based

The reasons and bases for the above determination are as follows:

a. *Scope of Investigation.* Virtually all of the imports of the subject merchandise from France are manufactured by Thann Et Mulhouse, S.A., or Tioxide, S.A. Therefore, the investigation was limited to these manufacturers.

b. *Basis of Comparison.* For purposes of this determination, the proper basis of comparison is between the purchase price or the exporter's sales price, as appropriate, and the home market price of such or similar merchandise. Purchase price, as defined in section 203 of the Act (19 U.S.C. 162), was used for those export sales to the United States which were made to unrelated purchasers prior to the date of exportation. The exporter's sales price, as defined in section 204 of the Act (19 U.S.C. 163), was used for those export sales to related parties which were resold to unrelated customers in the United States after the exportation of the merchandise. Home market prices, as defined in § 153.2, Customs Regulations (19 CFR 153.2), were used since such or similar merchandise was sold in the home market in sufficient quantities to provide a basis for fair value.

Tioxide S.A. has requested that constructed value be used as the basis for its fair value pursuant to § 153.6, Customs Regulations (19 CFR 153.6). It has been determined that Tioxide's home market sales of such or similar merchandise during the period of investigation constitutes at least 30 percent of all third country sales and are, thus, adequate to form an adequate basis for fair value. Therefore, Tioxide's claim has been rejected.

In accordance with § 153.31(b), Customs Regulations (19 CFR 153.31(b)), pricing information was obtained concerning imports and home market sales during the period May 1, 1978, through October 31, 1978. When exporter's sales price was used as the basis for calculating the price to the United States, additional home market sales information was obtained for the period corresponding to the dates of export of that merchandise resold by related importers in the United States during the period of investigation.

All sales to the United States by Tioxide S.A. during the investigatory period were made to unrelated purchasers while all sales by Thann Et Mulhouse to the United States were made to a related U.S. importer, Rhone-Poulenc, Incorporated.

c. *Purchase Price.* For purposes of this determination, as to that merchandise which was purchased or agreed to be purchased, prior to the time of exportation, by the person by whom or for whose account it was imported, within the meaning of section 203 of the Act, the purchase price has been calculated on the basis of the CIF, duty paid price to the United States.

Adjustments were make for ocean freight, insurance, brokerage, inland freight, and Customs duty, which represent the cost of transferring the merchandise from the point of shipment in France to the point of delivery in the United States. A deduction was also made for a discount granted on U.S. sales.

d. *Exporter's Sales Price.* For purposes of this determination, as to that merchandise which was not purchased or agreed to be purchased, prior to the time of exportation, by the person by whom or for whose account it was imported within the meaning of section 203 of the Act, the exporter's sales price has been calculated on the basis of the resale of Thann Et Mulhouse's U.S. subsidiary, Rhone-Poulenc, Inc., to unrelated U.S. purchasers. Adjustments have been made pursuant to section 204(1) of the Act for Customs brokerage, inland freight, pier loading charges, ocean freight, insurance, duty, and, pursuant to section 204(3) of the Act, for selling and administrative expenses incurred in the United States.

e. *Home Market Price.* For purposes of this determination, the home market price has been calculated on the basis of the delivered price with adjustments for freight, insurance, loading charges, commissions, and rebates, as appropriate. In those instances where exporter's sales price was used, an offset was granted for selling and administrative expenses incurred in the home market equal either to the selling and administrative expenses incurred on U.S. sales or the actual home market expenses, whichever was lower, in accordance with § 153.10, Customs Regulations (19 CFR 153.10).

The adjustments for freight, insurance, and loading charges represent the cost of transferring the merchandise from the point of shipment to the point of delivery. For Tioxide, the adjustment for the commission was made under § 153.10 Customs Regulations (19 CFR 153.10), as an adjustment for differences in commissions. For Thann Et Mulhouse, the commission and other selling expenses in the home market were deducted as an offset to the selling expenses in the United States in an amount not exceeding those United States selling expenses, in accordance with § 153.10. For Thann Et Mulhouse, the cost of materials and labor for export packing exceeded that of domestic packing. Therefore, an addition was make to the home market price for differences in packing costs.

In addition to those adjustments described above, a number of other adjustments were requested by each manufacturer and rejected in this investigation. They are discussed below.

Thann Et Mulhouse requested an adjustment for warehousing costs incurred in the home market which are allegedly not incurred on U.S. sales. Thann Et Mulhouse provided no evidence that the warehousing costs were other than general overhead. As it did not show that they were directly related to the sales under consideration as required by § 153.10, Customs Regulations (19 CFR 153.10), no adjustment was granted except for those allowed as an offset to deductions made on U.S. sales in the exporter's sales price calculation.

Both Thann Et Mulhouse and Tioxide have requested adjustments to home market prices under § 153.10 for differences in technical services provided on U.S. sales and in the home market. Both requests have been rejected. Adjustments for differences in

circumstances of sales are, in accordance with § 153.10, limited to "those instances where it is clearly established that the differences in circumstances of sale bear a direct relationship to the sales which are under consideration." At this stage, neither Tioxide or Thann Et Mulhouse have been able to establish that the technical services for which adjustments have been requested bear the requisite direct relationship. Therefore, for the purposes of this determination, no adjustment has been granted. To the extent that a relationship can be established between the service provided and a particular sale, and appropriate costs identified and verified, and adjustment may be made in the event a "Finding of Dumping" is issued and dumping duties assessed.

Thann Et Mulhouse requested an adjustment to home market price based on the differences in credit terms on sales in the two markets. The actual differences in credit extended by Thann Et Mulhouse in the two markets has not been established and, therefore, no adjustment has been made.

Tioxide has requested that fair value comparisons be made using the average exchange rate in Paris at mid-month during the month of any sale. For purposes of making fair value comparisons under the Act, § 153.52(a), Customs Regulations (19 CFR 153.52(a)), provides the basis for establishing exchange rates to be used for currency conversions in antidumping cases. Comparisons were made using data converted in accordance with that section.

Tioxide has also requested an adjustment under section 153.10 for certain advertising, exhibition, selling and administrative expenses which it claims are not incurred on its U.S. sales but which are incurred in the home market. In order for such an adjustment to be granted, § 153.10 stipulates that the expenses must bear a "direct relationship to the sales under consideration," in this case, sales of titanium dioxide in France. By Tioxide's own admission the expenses incurred are equally attributable to third country sales as well as to sales in France. As such, these expenses are considered general overhead and therefore no adjustment has been allowed.

Tioxide has requested an adjustment under §153.9, Customs Regulations (19 CFR 153.9) for differences in price due to differences in per sale delivery sizes between the U.S. and France. It has been determined based upon the data provided by Tioxide, including a regression analysis, that an insufficient relationship between home market prices and per sale delivery size exists to conclude that a *bona fide* quantity discount schedule exists within the meaning of § 153.9 and, therefore, no adjustment has been granted.

Tioxide has claimed that additional costs are incurred in cleaning production machinery between the processing of individual lots. No information has been presented to indicate that such charges are directly related to sales in any particular market. As such, they cannot be considered a difference for circumstance of sale, and the claim has been rejected.

Tioxide has made a claim that costs incurred by Tioxide for effluent treatment should be totally attributable to home market sales, and that therefore and adjustment to foreign market value should be made for those costs. Tioxide has been unable to show that there is in fact any difference between effluent treatment required for titanium dioxide produced for sales in France as opposed to that for sale to the U.S. Therefore, no adjustment has been granted.

f. *Results of Fair Value Comparisons.* Using the above criteria, comparisons have been made on virtually all of the sales of titanium dioxide to the United States during the period under consideration. These comparisions indicate that the purchase price or exporter's sales price, as appropriate, was lower than the home market price of such of similar merchandise.

Margins were found on all of Thann Et Mulhouse's sales compared and ranged from 21 to 27.2 percent. The weighted-average margins computed over all sales was 22.6 percent. Margins were found on all of Tioxide's sales to the United States and ranged from approximately 16.7 to 36.3 percent. The weighted-average margin on all sales was approximately 24.8 percent.

The Secretary has provided an opportunity to known interested parties to present written and oral views pursuant to § 153.40, Customs Regulations (19 CFR 153.40). Such views have been presented and considered.

Based on the reasons noted above, Customs officers are being directed to withhold appraisement of titanium dioxide from France in accordance with § 153.48, Customs Regulations (19 CFR 153.48).

This withholding of appraisement notice, which was published pursuant to § 153.35(a), Customs Regulations (19 CFR 153.35(a)), shall become effective August 10, 1979. It shall cease to be effective at the expiration of 3 months from the date of this publication unless previously revoked.

The United States International Trade Commission is being advised of this determination.

This determination is published pursuant to section 201(b) of the Act (19 U.S.C. 160(d)).

Robert H. Mundhiem,

General Counsel of the Treasury.

August 6, 1979.

[FR Doc. 79-24702 Filed 8-9-79; 8:45 am]

BILLING CODE 4810-22-M

Report on the McFadden Act; Request for Comments

The President has designated the Treasury Department to lead a study of the McFadden Act pursuant to Section 14 of the International Banking Act of 1978.

Section 14 of that Act directs the President, in consultation with the Attorney General, the Secretary of the Treasury, the Federal Reserve Board, the Comptroller of the Currency, and the Federal Deposit Insurance Corporation, to submit a report to the Congress containing his recommendations concerning the applicability of the McFadden Act to the present financial, banking, and economic environment, including an analysis of the effects of any proposed amendment to such Act on the structure of the banking industry and on the financial and economic environment in general. This report must be submitted by September 17, 1979.

The Treasury Department requests public comments on any aspect of this report. Any member of the public may comment by filing a written statement with the Treasury Department not later than August 31, 1979. Persons who wish to submit written statements or desire further information should write to Mr. John J. Mingo, Deputy Assistant Secretary of the Treasury for Capital Markets, Room 3025, Department of the Treasury, 15th Street and Pennsylvania Avenue, N.W., Washington, D.C. 20220. Telephone (202) 566-4211.

Dated: August 6, 1979.

Robert Carswell,

Deputy Secretary, Department of the Treasury.

[FR Doc. 79-24750 Filed 8-9-79; 8:45 am]

BILLING CODE 4810-25-M

VETERANS ADMINISTRATION

Station Committee on Educational Allowances; Meeting

Notice is hereby given pursuant to Section V, Review Procedure and Hearing Rules, Station Committee on Educational Allowances that on

September 7, 1979, at 1:00 p.m., the Des Moines Regional Office Station Committee on Educational Allowances shall at Room 1025, Federal Building, 210 Walnut Street, Des Moines, Iowa 50309, conduct a hearing to determine whether Veterans Administration benefits to all eligible persons enrolled in Hemmen Company, Inc., Clarinda, Iowa, should be discontinued, as provided in 38 CFR 21.4134, because a requirement of law is not being met or a provision of the law has been violated. All interested persons shall be permitted to attend, appear before, or file statements with the committee at that time and place.

Dated: August 2, 1979.

Robert L. Winters,

Director, VA Regional Office, 210 Walnut Street, Des Moines, Iowa 50309.

[FR Doc. 79-24643 Filed 8-9-79; 8:45 am]

BILLING CODE 8320-01-M

INTERSTATE COMMERCE COMMISSION

[MC 145219 (Sub-1) F]

Builders Transport, Inc., Extension — Citrus Products, Savannah, Ga.; Decision

Decided: July 23, 1979.

Applicant seeks a certificate of public convenience and necessity authorizing the operations as described in the appendix. The evidence has been considered under the modified procedure. The amended application is opposed by Erickson Transport Corp., Roy Stone Transfer Corporation, and Watkins Motor Lines, Inc. Applicant filed rebuttal materials.

Preliminary Matters

Applicant seeks to amend the application by (a) deleting the "materials, equipment, and supplies" authority sought in part (2) of the application, and (b) substituting the phrase "in containers" in lieu of "in cans" after the commodity description "citrus products" in part (1). Applicant's request to delete part (2) of the application is restrictive in nature and, therefore, acceptable. Because its request to substitute "in containers" for "in cans" represents a broadening of the service sought, we believe that we should republish this authority which we will grant in the Federal Register to take care that interested parties have not been misled or prejudiced. Part (2) of the application will be deleted as requested.

Protestant Watkins filed a motion to strike a portion of applicant's verified statement on the grounds that applicant's witness is not qualified to testify as to the supporting shipper's volume or problems with existing carriers. Applicant replied to the motion. It is apparent that the contested material is mere argument and not intended to be substantive evidence. The motion will be overruled.

Pertinent Facts

Tropicana Products, Inc., produces citrus and fruit juice and concentrates at its Bradenton and Fort Pierce, FL, plants. During the year ended August 31, 1978, it shipped 312 million pounds of its products to the requested 10-State destination area. Representative destinations, including split delivery points, are indicated in each State. Based on its sales trend, shipper expects to continue its compounded annual growth rate of 17 percent for sales and 36 percent for net earnings.

Tropicana requires motor carrier trailers equipped with mechanical refrigeration and moveable bulkheads to maintain various lading temperatures. Expeditious split deliveries in multiple States are required because of the increasing competition from local distributors of citrus juices. Over 95 percent of its volume moves by motor carrier and shipper has been able to reduce its private fleet to 10 units. It complains that protestant Stone and Erickson do not have appropriate authority or equipment to meet its needs and that protestant Watkins offers only limited equipment and limited service to the involved area. Shipper lists a number of instances when Watkins could not provide needed equipment. In view of it growth and service problems, shipper expects to tender applicant all the traffic it is able to handle.

Protestant Erickson is authorized to transport fungible and flowable commodities, in tank and hopper containers, between points in the United States. It has a pending application to transport fruit juice, fruit juice concentrates, and other products from points in Florida to points in seven involved States. It also has a decision awarding authority to move fruit juice and fruit juice concentrates from the origins to points in two involved States but had not been issued a certificate at the time of its verified statement. Erickson argues that shipper's support of "in container" traffic is an improper broadening of the application and that any authority granted should exclude commodities in bulk. Erickson asks that part of shipper's statement be struck, but this is not a formal motion separately filed and addressed to the Commission as such.

Protestant Stone is lessor of authority to transport juices and beverages, except in bulk, from points in Florida to points in North Carolina, South Carolina, and Georgia. Under this authority, Stone handled 254 shipments from Tropicana's Bradenton plant to pertinent destinations for revenue of $118,685 during the period September 1, 1978 to February 28, 1979. It asserts that loss of shipper's traffic would force it to close its Lakeland, FL, terminal and jeopardize its service for other shippers.

Protestant Watkins can transport foodstuffs, except in bulk, from points in Florida to points in the United States. During the 12 months ended Janaury 31, 1979, Watkins handled 19 shipments from Tropicana's Bradenton plant to involved points for revenue of $10,758. It argues that shipper's list of alleged service failures represents unreasonable short-notice requests for service.

Discussion and Conclusions

During the year ended August 31, 1978, Tropicana shipped over 300 million pounds of its products to points in the 10-State area sought and it fully expects to continue its annual growth rate of 17 percent in sales. Shipper's reduction in private carriage will increase for-hire carrier's traffic. Fast split deliveries in multiple States are required to meet competitive pressures from local distributors. The evidence indicates that there is more than enough traffic to support an additional carrier and that diversions of revenue from protestants should not occur as long as they continue to provide competitive services. Erickson has not served shipper and Watkins' past service from Bradenton has been sporadic and inadequate. Protestant Stone's service is concentrated in a three-State area and there is no reason to believe it should lose this traffic. Further, shipper shows actual multiple-deliveries in States Stone can serve and States it cannot serve. Stone's authority is too limited to the three States it can serve. And Stone does not show that it has sufficient equipment with mechanical refrigeration to meet shipper's needs. On the whole, we believe that the benefits to shipper

from obtaining the needed services of another carrier outweigh the possibility that protestant might lose some revenue or otherwise be adversely affected.

As indicated above, the authority we grant includes the description "in containers" in lieu of "in cans" after the commodity description "citrus products". Because certain parties may have relied on the publication in the Federal Register, we shall republish the authority actually granted and allow 30 days for any interested party to petition for intervention showing how it has been prejudiced.

We find That, the present and future public convenience and necessity require operation by applicant, performing the service described in the appendix. Applicant is fit, willing, and able properly to perform the granted service and to conform to the requirements of Title 49, Subtitle IV, U.S. Code and the Commission's regulations. This decision does not significantly affect the quality of the human environment. An appropriate certificate should be granted.

It is ordered, That, Applicant's request to delete part (2) of the application is granted. Protestant Watkins' motion to strike is denied.

The application is granted to the extent set forth in the appendix. Operations may begin only following the service of a *certificate* which will be issued if applicant complies with the following requirements set forth in the Code of Federal Regulations: insurance (49 CFR 1043), designation of process agent (49 CFR 1044), and tariffs (49 CFR 1310).

Compliance with these requirements must be made within 90 days after the date of service of this decision or the grant of authority shall void.

By the Commission, Review Board Number 3, Members Parker, Fortier, and Hill. (Board Member Fortier not participating.)

Agatha L. Mergenovich,

Secretary.

Appendix

Authority to conduct the following operations will be issued in an appropriate document. This decision does not constitute authority to operate.

To operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *citrus products,* in containers, and *citrus byproducts, beverages, and beverage preparations,* from the facilities of Tropicana Products, Inc., in Manatee and St. Lucie Counties, FL, to points in Alabama, Georgia, Louisiana, Maryland, Mississippi, North Carolina, South Carolina, Tennessee, Virginia, and the District of Columbia.

Condition: Publication of the authority actually granted in the Federal Register and withholding of the certificate for 30 days from publication to allow any interested party to petition for intervention, showing how it is prejudiced, as previously set forth in the decision.

[FR Doc. 79-24660 Filed 8-9-79; 8:45 am]

BILLING CODE 7035-01-M

[Amdt. No. 2 to Revised Exemption No. 143]

Exemption Under Provision of Rule 19 of the Mandatory Car Service Rules Ordered in Ex Parte No. 241

Upon further consideration of Revised Exemption No. 143 issued January 24, 1979.

It is ordered, That, under authority vested in me by Car Service Rule 19, Revised Exemption No. 143 to the Mandatory Car Service Rules ordered in Ex Parte No. 241 is amended to expire October 31, 1979.

This amendment shall become effective July 31, 1979.

Issued at Washington, D.C., July 26, 1979.

Interstate Commerce Commission.

Joel E. Burns,

Agent.

[FR Doc. 79-24663 Filed 8-9-79; 8:45 am]

BILLING CODE 7035-01-M

Fourth Section Applications for Relief

August 6, 1979.

These applications for long- and short-haul relief have been filed with the I.C.C.

Protests are due at the I.C.C. on or before August 27, 1979.

FSA No. 43724, Hong Kong Islands Line No. 2, intermodal rates on general commodities in containers, between ports in the Far East, on the one hand, and, on the other, rail carriers' terminals on the United States Atlantic Coast, by way of the U.S. Pacific Coast points of interchange, in its Tariffs IGC HKLU 300 and 301, effective August 31, 1979. Grounds for relief—water competition.

FSA No. 43725, Southwestern Freight Bureau, Agent's No. B-14, rates on acetic acid, acrylonitrile, ethylene glycol, and hexamethylene diamine solution, in tank carloads, from stations in Louisiana and Texas, to stations in North Carolina, South Carolina and Virginia, In Sup. 21 to its Tariff ICC SWFB 4615, effective September 1, 1979. Grounds for relief—revised rates and minimum weights.

By the Commission.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 79-24661 Filed 8-9-79; 8:45 am]

BILLING CODE 7035-01-M

[Amdt. No. 2 to I.C.C. Order No. 6 Under Service Order No. 1344]

Southern Pacific Transportation Co.; Rerouting Traffic

Upon further consideration of I.C.C. Order No. 6 (Southern Pacific Transportation Company), and good cause appearing therefor:

It is ordered, that I.C.C. Order No. 6 is amended by substituting the following paragraph (g) for paragraph (g) thereof:

(g) *Expiration date.* This order shall remain in effect until modified or vacated by order of this Commission.

Effective date. This amendment shall become effective at 11:59 p.m., July 31, 1979.

This amendment shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and car hire agreement under the terms of that agreement, and upon the American Short Line Railroad Association. A copy of this amendment shall be filed with the Director, Office of the Federal Register.

Issued at Washington, D.C., July 27, 1979.

Interstate Commerce Commission.

Joel E. Burns,

Agent.

[FR Doc. 79-24662 filed 8-9-79; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 29096F]

The Durango & Silverton Narrow Gauge Railroad Co.; Acquisition and Operation of a Line of Railroad From Durango to Silverton in La Plata and San Juan Counties, Colo.

The Durango & Silverton Narrow Gauge Railroad Company, Denver, CO, 80264, represented by Edward T. Lyons, Jr., 1600 Lincoln Center Building, 1660 Lincoln Street, Denver, CO 80264, hereby give notice that on the 23rd day of July, 1979, it filed with the Interstate Commerce Commission at Washington, DC, an application pursuant to 49 U.S.C. § 10901 for a decision approving and authorizing the acquisition and operation of an existing line of narrow gauge railroad extending generally in a northerly direction from engineer's survey station 3619-02 (milepost 451.45) in Durango, CO, to engineer's survey station 2345-48 (milepost 496.80) at

Silverton, CO, a total distance of 45.35 miles within La Plata and San Juan Counties, in the State of Colorado.

Applicant proposes to acquire and operate an existing line of narrow gauge railroad known as the Silverton Branch, which is presently owned and operated by The Denver and Rio Grande Western Railroad Company (the "Rio Grande"), extending from Durango, CO, to Silverton, CO. The proposed acquisition is governed by an agreement dated July 2, 1979, pursuant to which the Rio Grande has agreed to sell, and the applicant has agreed to purchase, the line of narrow gauge railroad in question, together with all of the railroad assets and properties necessary for the continued operation thereof, subject to approval of the transaction by both the Interstate Commerce Commission and the Colorado Public Utilities Commission. Service on the Silverton Branch is currently being provided by the Rio Grande, and such service will be continued by the applicant, without interruption, upon obtaining the required authorizations for the acquisition and operation of the line.

In the opinion of the applicant, the granting of the authority sought 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. In accordance with the Commission's Regulations (49 CFR 1108.8) in Ex Parte No. 55 (Sub-No. 4), *Implementation—National Environmental Policy Act*, 1969, 352 I.C.C. 451 (1976) any protests may include a statement indicating the presence or absence or any effect of the requested Commission action on the quality of the human environment. If any such effect is alleged to be present, the statement shall indicate with specific data the exact nature and degree of the anticipated impact. See *Implementation—National Environmental Policy Act, 1969, supra*, at p. 487.

Pursuant to the provisions of the Interstate Commerce Act, as amended, the proceeding will be handled without public hearings unless comments in support or opposition on such application are filed with the Secretary, Interstate Commerce Commission, 12th and Constitution Avenue, N.W., Washington, D.C. 20423, and the aforementioned counsel for applicant, within 30 days after date of first publication in a newspaper of general circulation. Any interested person is entitled to recommend to the Commission that it approve, disapprove, or take any other specified action with respect to such application.

Agatha L. Mergenovich,
Secretary.

[FR Doc. 79-24904 Filed 8-9-79; 8:45 am]
BILLING CODE 7035-01-M

Sunshine Act Meetings

Federal Register
Vol. 44, No. 156
Friday, August 10, 1979

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION.

TIME AND DATE: 9:30 a.m. (eastern time), Tuesday, August 14, 1979.

PLACE: Commission conference room, No. 5240, on the fifth floor of the Columbia Plaza Office Building, 2401 E Street NW., Washington, D.C. 20506.

STATUS: Part will be open to the public and part will be closed to the public.

MATTERS TO BE CONSIDERED: Open to the public:

1. Modification of various State and local agency fiscal year 1979 charge resolution contracts.
2. Ratification of sole source contract for expert witness services in connection with a court case.
3. Guidelines on Discrimination because of Religion.
4. Proposed new Section 82 of EEOC's Compliance Manual, concerning representation of charging parties and respondents by attorneys.
5. Revision of interim regulations for processing of certain cases by the Merit Systems Protection Board.
6. Office of Personnel Management instructions to Federal agencies to implement the Federal EEO recruitment program.
7. Revised draft annual report required by Executive Order 12067.
8. National Employment Law Project proposal.
9. Status report and recommendation on the Private Bar Program Loan Fund.
10. New York Law School Discrimination Law Clinic proposal.
11. Summer Internship Program with the Law Students Civil Rights Research Council proposal.
12. Native American proposals relating to the Tribal Employment Rights Offices and Tribal Employment Rights Planning Committee.
13. Report on Commission operations by the Executive Director.

Closed to the public.

1. Litigation Authorization; General Counsel Recommendations.
2. Decision on discrimination complaint appeal No. 01790273.
3. Decision on request to appeal concerning appeal 01790138.

Note.—Any matter not discussed or concluded may be carried over to a later meeting.

CONTACT PERSON FOR MORE INFORMATION: Marie D. Wilson, Executive Officer, Executive Secretariat, at (202) 634-6748.

This notice issued August 7, 1979.

[S-1599-79 Filed 8-8-79; 3:40 pm]

BILLING CODE 6570-06-M

2

FEDERAL DEPOSIT INSURANCE CORPORATION.

Notice of changes in subject matter of agency meeting:

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its closed meeting held at 2:30 p.m. on Monday, August 6, 1979, the Corporation's Board of Directors determined, on motion of Director John G. Heimann (Comptroller of the Currency), seconded by Director William M. Isaac (Appointive), concurred in by Chairman Irvine H. Sprague, that Corporation business required the addition of the following matters to the agenda for consideration at the meeting, on less than 7 days notice to the public:

A recommendation regarding the liquidation of assets acquired by the Corporation from Franklin National Bank, New York, New York (Case No. 44,000-L).

A policy statement with regard to reassignment of regional directors.

The Board further determined, by the same majority vote, that the public interest did not require consideration of the matters added to the agenda in a meeting open to public observation; that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4) and (c)(9)(B) of the "Government in the Sunshine Act"; and that no earlier notice of these changes in the subject matter of the meeting was practicable.

Dated: August 6, 1979.

Federal Deposit Insurance Corporation.

Hannah R. Gardiner,

Assistant Secretary.

[S-1594-79 Filed 8-8-79; 11:32 am]

BILLING CODE 6714-01-M

3

FEDERAL ENERGY REGULATORY COMMISSION.

"FEDERAL REGISTER" CITATION PREVIOUS ANNOUNCEMENT: Published august 6, 1979; 44 FR 46096.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10 a.m., August 8, 1979.

CHANGE IN MEETING: The following items have been added to the meeting of August 8, 1979.

Item No., Docket No., and Company

ER-8. E-9579 (Phase I), Texas Power & Light Co.

CAG-27. RP72-32 (PGA 79-1) and (PGA 79-1a), Kansas-Nebraska Natural Gas Co., Inc.

CAG-28. TC79-137, Northwest Pipeline Corp.

M-1. RM79- , Regulations Implementing the National Environmental Policy Act.

M-2. Staff Paper Discussing Section 210 of the Public Utility Regulatory Policies Act.

M-7. RM79-3, Interim Regulations Implementing the Natural Gas Policy Act of 1978.

M-8(A). GP79- , State of Wyoming § 102 NGPA Determination Dart, Inc. O'Connor No. 1 JD79-11256.

M-8(B). GP79- , U.S. Geological Survey at Albuquerque, N. Mex. § 103 NGPA Determination Southland Royalty Co. Davis No. 2-A JD79-11860.

M-8(C). GP79- , State of Utah § 108 NGPA Determination Gillilland and Fix Paulson 23-2 Well JD79-12344.

M-8(D). GP79- , State of Utah § 108 NGPA Determinations Fililland and Fix Whyte—State No. 2 Well JD79-12345 Legg Resources, Ltd. Joyce—State No. 1 Well JD79-12346.

M-10. RM79- , Final Part 286 Regulations Under the NGPA Of 1978.

M-11. RM79-34, Transportation Certificates for Natural Gas for the Displacement of Fuel Oil.

M-12. GP79-4, Kansas Power & Light Co. and Mesa Petroleum Co.

M-13. RM79- , Final Subpart K of Part 271 Regulations Under the Natural Gas Policy Act of 1978.

M-14. Policy Statement on Price Squeeze.

Kenneth F. Plumb,
Secretary.

[S-1595-79 Filed 8-8-79; 12:46 am]

BILLING CODE 6740-02-M

4

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION.

August 8, 1979.

TIME AND DATE: 10 a.m., August 15, 1979.

PLACE: Room 600, 1730 K Street NW., Washington, D.C.

STATUS: This meeting may be closed.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. Magma Copper Company, DENV 78-533-M.
2. Helen Mining Company, PITT 79-11-P.
3. Kentland—Elkhorn Coal Corporation, PIKE 78-399.

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen 202-653-5632.

[S-1598-79 Filed 8-8-79; 3:40 pm]

BILLING CODE 6820-12-M

5

FEDERAL TRADE COMMISSION.

TIME AND DATE: 10 a.m., Tuesday, September 25, 1979.

PLACE: Room 432, Federal Trade Commission Building, Sixth Street and Pennsylvania Avenue NW., Washington, D.C. 20580.

STATUS: Open.

MATTERS TO BE CONSIDERED: Oral Presentation in Proposed Trade Regulation Rule on Sale of Used Car Vehicles.

CONTACT PERSON FOR MORE INFORMATION: Ira J. Furman, Office of Public Information: (202) 523-3830; Recorded Message: (202) 523-3806.

[S-1596-79 Filed 8-8-79; 3:40 pm]

BILLING CODE 6750-01-M

6

FEDERAL TRADE COMMISSION.

TIME AND DATE: 1 p.m., Thursday, October 11, 1979.

PLACE: Room 432, Federal Trade Commission Building, Sixth Street and Pennsylvania Avenue NW., Washington, D.C. 20580.

STATUS: Open.

MATTERS TO BE CONSIDERED: Consideration of Proposed Trade Regulation Rule on Sale of Used Car Vehicles.

CONTACT PERSON FOR MORE INFORMATION: Ira J. Furman, Office of Public Information: (202) 523-3830; Recorded Message: (202) 523-3806.

[S-1597-79 Filed 8-8-79; 3:40 pm]

BILLING CODE 6750-01-M

7

INTERNATIONAL TRADE COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 44 FR 45029 (July 31, 1979) and 44 FR 45546 (August 2, 1979.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10 a.m., Thursday, August 9, 1979).

CHANGES IN THE MEETING: Emergency notice of cancellation of the meeting scheduled for Thursday, August 9, 1979, and addition to the agenda for Thursday, August 16, 1979:

By action jacket approved August 7, 1979, the United States International Trade Commission, in conformity with 19 CFR 201.37(b), voted that Commission business requires that the meeting previously scheduled to be held on Thursday, August 9, 1979, be cancelled, and that the discussion previously scheduled for that date be added to the agenda for Thursday, August 16, 1979, beginning at 10 a.m., as follows:

6. Investigation 332-87 (Conditions of Competition in the Western U.S. Steel Market)—consideration of the report.

Commissioners Parker, Alberger, Moore, Bedell, and Stern affirmed that no earlier announcement of the change in schedule was possible, and directed the issuance of this notice at the earliest practicable time.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary (202) 523-0161.

[S-1591-79 Filed 8-8-79; 11:25 am]

BILLING CODE 7020-02-M

8

INTERNATIONAL TRADE COMMISSION.

TIME AND DATE: 10:00 a.m., Tuesday, August 21, 1979.

PLACE: Room 117, 701 E Street NW., Washington, D.C. 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda.
2. Minutes.
3. Ratifications.
4. Petitions and complaints, if necessary.
5. Kraft condenser paper from Finland and France (Inv. AA1921-204 and -205)—briefing and vote.
6. Any items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary (202) 523-0161.

[S-1592-79 Filed 8-8-79; 11:25 am]

BILLING CODE 7020-02-M

9

NATIONAL TRANSPORTATION SAFETY BOARD.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: S-1579-79, to be published August 9, 1979.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: Thursday, August 16, 1979, 9 a.m. [NM-79-26].

CHANGE IN MEETING: The business of the Board requires that the time of this meeting be changed to:

8:30 a.m., Thursday, August 16, 1979.

The agenda remains the same as previously published.

CONTACT PERSON FOR MORE INFORMATION: Sharon Flemming, 202-472-6022.

August 8, 1979.

[S-1600-79 Filed 8-8-79; 3:40 pm]

BILLING CODE 4910-58-M

10

PAROLE COMMISSION.

TIME AND DATE: Friday, August 17, 1979.

PLACE: Room 500, 320 First Street NW., Washington, D.C.

STATUS: Open.

MATTER TO BE CONSIDERED: Budget: Ratification of the Chairman's action in preparing and forwarding the Commission's fiscal year 1981 Authorization Request.

CONTACT PERSONS FOR MORE INFORMATION: James C. Draley, Budget Officer, 724-3111.

[S-1590-79 Filed 8-8-79; 11:12 am]

BILLING CODE 4410-01-M

11

SECURITIES AND EXCHANGE COMMISSION.

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meeting during the week of August 13, 1979, in Room 825, 500 North Capitol Street, Washington, D.C.

An open meeting will be held on Monday, August 13, 1979 at 10 a.m., immediately followed by a closed meeting.

The Commissioner, their legal assistants, the Secretary of the Commission, and recording Secretaries

will attend the closed meeting. Certain staff members who are responsible for the calendared matters may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, the items to be considered at the closed meeting may be considered pursuant to one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4)(8)(9)(A) and (10) and 17 CFR 200.402 (a)(8)(9)(i) and (10).

Chairman Williams and Commissioners Evans and Karmel determined to hold the aforesaid meeting in closed session.

The subject matter of the open meeting scheduled for Monday, August 13, 1979, at 10:00 a.m., will be:

1. Consideration of the proposed amendment of paragraph (b) of rule 22c-1 under the Investment Company Act of 1940 to modify the standards regarding the days and the time during such days for determining the net asset value of an investment company's redeemable securities. For further information, please contact Mark J. Mackey at (202) 755-1547.

2. Consideration of the proposed amendment of rule 17a-6 under the Investment Company Act of 1940 to permit certain transactions between an investment company and a company whose securities are owned by the investment company. For further information, please contact Mark B. Goldfus at (202) 755-0230.

The subject matter of the closed meeting scheduled for Monday, August 13, 1979, immediately following the 10:00 a.m. open meeting, will be:

Access to investigative files by Federal, State or Self-Regulatory Authorities.

Amendment to formal order of investigation.

Formal orders of investigation.

Freedom of Information Act appeals.

Order compelling testimony.

Settlement of administrative proceedings of an enforcement nature.

Institution of injunctive action.

Regulatory matters regarding financial institutions.

Institution of administrative proceeding of an enforcement nature.

Settlement of injunctive action.

Litigation matter and institution and settlement of administrative proceedings of an enforcement nature.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Beverly Rubman at (202) 755-1103.

August 6, 1979.

[S-1593-79 Filed 8-8-79; 11:25 am]

BILLING CODE 8010-01-M

federal register

Friday
August 10, 1979

Part II

Department of Labor

Employment Standards Administration

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

DEPARTMENT OF LABOR

Employment Standards Administration

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General Wage Determination Decisions of the Secretary of Labor specify, in accordance with applicable law and on the basis of information available to the Department of Labor from its study of local wage conditions and from other sources, the basic hourly wage rates and fringe benefit payments which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of the character and in the localities specified therein.

The determinations in these decisions of such prevailing rates and fringe benefits have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 1.1 (including the statutes listed at 36 FR 306 following Secretary of Labor's order No. 24–70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of part 1 of subtitle A of title 29 of Code of Federal Regulations, Procedure for Predetermination of Wage Rates (37 FR 21138) and of Secretary of Labor's Orders 12–71 and 15–71 (36 FR 8755, 8756). The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in effective date as prescribed in that section, because the necessity to issue construction industry wage determination frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions are effective from their date of publication in the Federal Register without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision together with any modifications issued subsequent to its publication date shall be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR, Part 5. The wage rates contained therein shall be the minimum paid under such contract by contractors and subcontractors on the work.

Modifications and Supersedeas Decisions to General Wage Determination Decisions

Modifications and Supersedeas Decisions to General Wage Determination Decisions are based upon information obtained concerning changes in prevailing hourly wage rates and fringe benefit payments since the decisions were issued.

The determinations of prevailing rates and fringe benefits made in the Modifications and Supersedeas Decisions have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 1.1 (including the statutes listed at 36 FR 306 following Secretary of Labor's order No. 24–70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of part 1 of subtitle A of title 29 of Code of Federal Regulations, Procedure for Predetermination of Wage Rates (37 FR 21138) and of Secretary of Labor's orders 13–71 and 15–71 (36 FR 8755, 8756). The prevailing rates and fringe benefits determined in foregoing general wage Determination Decisions, as hereby modified, and/or superseded shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged in contract work of the character and in the localities described therein.

Modifications and Supersedeas Decisions are effective from their date of publication in the Federal Register without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5.

Any person, organization, or governmental agency having an interest in the wages determined as prevailing is encouraged to submit wage rate information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage & Hour Division, Office of Government Contract Wage Standards, Division of Construction Wage Determinations, Washington, D.C. 20210. The cause for not utilizing the rulemaking procedures prescribed in 5 U.S.C. 553 has been set forth in the original General Determination Decision.

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.

District of Columbia:	
DC78–3098	Dec. 15, 1978.
Illinois:	
IL79–2027; IL79–2028; IL79–2029; IL79–2030; IL79–2031; IL79–2032; IL79–2033	May 4, 1979.
IL79–2034; IL79–2035; IL79–2036; IL79–2037; IL79–2038	May 11, 1979.
IL79–2051; IL79–2054	June 15, 1979.
Massachusetts:	
MA79–2006	Feb. 23, 1979.
Minnesota:	
MN79–2026	May 4, 1979.
Pennsylvania:	
PA78–3015; PA78–3043	May 12, 1978.
PA79–3007	Apr. 6, 1979.

Supersedeas Decisions to General Wage Determination Decisions

The numbers of the decisions being superseded and their dates of publication in the Federal Register are listed with each State. Supersedeas Decision numbers are in parentheses following the numbers of the decisions being superseded.

New York:	
NY78–3036(NY79–3025)	Apr 14, 1978.

Cancellation of General Wage Determination Decisions

This is to advise all interested parties that the Department of Labor intends to withdraw 30 days from the date of this notice, Daviess County, Indiana, from General Wage Determination No. IN77–2021 dated February 18, 1977 in 42 FR 10196, applicable to Residential Construction consisting of single family homes and garden type apartments up to and including 4 stories.

This is to advise all interested parties that the Department of Labor intends to withdraw 30 days from the date of this notice, DuBois County, Indiana, from General Wage Determination No. IN77–2022 dated February 18, 1977 in 42 FR 10197, applicable to Residential Construction consisting of single family

homes and garden type apartments up to and including 4 stores.

This is to advise all interested parties that the Department of labor intends to withdraw 30 days from the date of this notice, Gibson County, Indiana, from General Wage Determination No. IN77-2023 dated February 18, 1977 in 42 FR 10197, applicable to Residential Construction consisting of single family homes and garden type apartments up to and including 4 stories.

This is to advise all interested parties that the Department of Labor intends to withdraw 30 days from the date of this notice, Orange County, Indiana, from General Wage Determination No. IN77-2026 dated February 18, 1977 in 42 FR 10199, applicable to Residential Construction consisting of single family homes and apartments up to and including 4 stories.

This is to advise all interested parties that the Department of Labor intends to withdraw 30 days from the date of this notice, Parke County, Indiana, from General Wage Determination No. IN77-2027 dated February 18, 1977 in 42 FR 10199, applicable to Residential Construction consisting of single family homes and apartments up to and including 4 stories.

This is to advise all interested parties that the Department of Labor intends to withdraw 30 days from the date of this notice, Vermillion County, Indiana, from General Wage Determination No. IN77-2028 dated February 18, 1977 in 42 FR 10200, applicable to Residential Construction consisting of single family homes and apartments up to and including 4 stories.

This is to advise all interested parties that the Department of Labor intends to withdraw 30 days from the date of this notice, Tippecanoe County, Indiana, from General Wage Determination No. IN77-2099 dated May 27, 1977 in 42 FR 27554, applicable to Residential Construction consisting of single family homes and type apartments up to and including 4 stories.

Signed at Washington, D.C. this 3rd day of August 1979.

William G. Blackburn,

Acting Assistant Administrator, Wage and Hour Division.

BILLING CODE 4510-27-M

MODIFICATIONS P. 1

DECISION NO. DC78-3098 - MOD. #10
(43 FR 58723 - December 15, 1978)
District of Columbia; Maryland - Montgomery & Prince George's Counties, and D. C. Training School; Virginia - Independent City of Alexandria & Arlington

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Change:					
HEAVY CONSTRUCTION EXCLUDING WATER AND SEWER LINES: All Counties					
BUILDING CONSTRUCTION: Excluding Alexandria, Virginia					
ASBESTOS WORKERS	$12.20	.75	1.39		.03
IRONWORKERS:					
Structural, Ornamental and chain link fence	11.63	.90	.96		.07
REINFORCING	11.55	.82	1.15		.07
SEWER AND WATER LINES (District of Columbia and Montgomery County only)					
Ironworkers, reinforcing	11.55	.82	1.15		.07

MODIFICATIONS P. 2

DECISION NO. IL79-2027 - MOD #2
(44 FR 26413 May 4, 1979)
Adams, Brown & Pike Counties, Illinois

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CHANGE:					
CEMENT MASONS	$10.75		1.00		
GLAZIERS	11.34	.45	.50		
PAINTERS:					
Adams County					
Sand & Waterblasting; Spray & Steamcleaning	9.80				
Roofers	9.90	.50		.50	
Sprinkler Fitters	13.08	.75	1.05		.08

DECISION NO. IL79-2028 - MOD #2
(44 FR 26415 - May 4, 1979)
Champaign & Vermilion Counties, Illinois

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CHANGE:					
GLAZIERS	$11.34	.45	.50		
SPRINKLER FITTERS	13.08	.75	1.05		.08
LABORERS:					
Champaign County:					
Unskilled	11.30	.40	.40		.035
Semi-Skilled	11.50	.40	.40		.035
Skilled	11.65	.40	.40		.035
PAINTERS:					
Vermilion County:					
Brush	12.80				
Spray	13.80				
POWER EQUIPMENT OPERATORS:					
Class I	12.20	.75	.75		.08
Class II	12.10	.75	.75		.08
Class III	11.90	.75	.75		.08
Class IV	8.00	.75	.75		.08

MODIFICATIONS P. 3

DECISION NO. IL79-2029 - MOD #2
(44 FR 26419 - May 4, 1979)
Fulton, Hancock, McDonough & Schuyler Counties, Ill.

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CHANGE:					
BRICKLAYERS:					
Fulton County:					
Bricklayers, Stonemasons, Cement Blocklayers, Pointers, Caulkers & Cleaners	$12.40	.70	1.16		.01
Marble-Tile-Terrazzo Workers	12.15	.70	1.10		.01
CEMENT MASONS & PLASTERERS:					
Fulton County:					
Cement Masons	11.86	1.00	1.00		.05
Plasterers	12.01	1.00	1.00		
ELECTRICIANS:					
Hancock & Schuyler Cos., Twps. of Lamoine, Bethel, Industry & Eldorado in McDonough County	11.77	.50	3%+1.00		1%
Twps. of Cass, Deerfield, Ellisville, Harris, Lee, Union, Young & Hickory in Fulton Co.	12.92	.50	3%+1.00		3/4%
CHANGE:					
Northern 2/3 of McDonough County	$12.92	.50	3%+1.00		3/4%
Remainder of Fulton County	12.92	.50	3%+1.00		3/4%
IRONWORKERS:					
Hancock Co., the W½ of Schuyler County	12.40	.55	.90		.06
The Southern tip of Fulton Co., (Incl. Marblotown, Astoria, Summum Twps.)	12.25	.55	1.05		.08
Remainder of Fulton & McDonough Cos.	12.825	.65	.925		
LABORERS:					
Hancock & McDonough Cos.					
Unskilled	10.87	.55	.60		.035
Semi-Skilled	11.07	.55	.60		.035
Skilled	11.27	.55	.60		.035
Schuyler County					
Unskilled	10.44	.30	.45		.035
Semi-Skilled	10.64	.30	.45		.035
Skilled	10.79	.30	.45		.035
PLUMBERS & STEAMFITTERS:					
Fulton & McDonough Cos.	13.22	.35	.35	4%	
Hancock & Schuyler Cos.	12.85	.35	.60		.05
SPRINKLER FITTERS	13.08	.75	1.05		.08

MODIFICATIONS P. 4

DECISION NO. IL79-2030 - MOD #1
(44 FR 26421 - May 4, 1979)
Ford & Iroquois Counties, Illinois

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CHANGE:					
BRICKLAYERS, STONEMASONS, Marble Setters, Terrazzo Workers, Tile Setters, Pointers, Caulkers & Cleaners:					
Remainder of Ford County:					
Bricklayers & Stonemasons	$12.60	.80	.75		
Marble Setters	12.15	.70	1.16		.01
Iroquois County:					
Bricklayers & Stonemasons	12.60	.80	.75		
Marble & Tile Setters & Terrazzo Workers	12.15	.70	1.16		.01
Carpenters, Millwrights, Soft Floor Layers & Piledrivermen	12.72	.65	.80		.01
CEMENT MASONS:					
Iroquois County	12.60	.80	.75		
ELECTRICIANS:					
Twps. of Fountain Creek, Love Joy, Prairie Green in Iroquois County	13.17	.50	3%+.50		.25%
Area S. of Roberts Twps. in Ford County; Twps. of Artesia, Pigeon Grove & Loda in Iroquois Co.	13.45	.50	3%+.40		.3%
Remainder of Ford & Iroquois Cos.	13.80	.88	3%+.70		.2%
GLAZIERS:					
Ford County	12.46	.60	.30		.01
PAINTERS:					
Ford County:					
Brush & Roller	12.05	.55			.06
Paper Hanging	12.05	.55			.06
Structural Steel	12.55	.55			.06
PLASTERERS:					
Iroquois County	12.40	.80	.75		

MODIFICATIONS P. 5

DECISION NO. IL79-2030 - (Cont'd)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CHANGE:					
PLUMBERS & STEAMFITTERS:					
Iroquois County	$13.86	.50	1.10		.08
SPRINKLER FITTERS	13.08	.75	1.05		.08
TRUCK DRIVERS:					
Northern ½ of Ford County & Remainder of Iroquois Co.					
2-3 Axle Trucks	11.45	29.00b	33.00b		
4 Axle Trucks	11.60	29.00b	33.00b		
5 Axle Trucks	11.80	29.00b	33.00b		
6 Axle Trucks	12.00	29.00b	33.00b		
LABORERS:					
Unskilled	10.77	.65	.60		.035
Semi-Skilled	10.97	.65	.60		.035
Skilled	11.17	.65	.60		.035
POWER EQUIPMENT OPERATORS:					
Ford & Iroquios Counties					
Class I	12.20	.75	.75		.08
Class II	12.10	.75	.75		.08
Class III	11.90	.75	.75		.08
Class IV	8.00	.75	.75		.08

DECISION NO. IL79-2031 - MOD #2
(44 FR 26424 - May 4, 1979)
Bureau, LaSalle, Livingston, Marshall, Putnam & Woodford Counties, Illinois

CHANGE:

CARPENTERS:					
Bureau, LaSalle & Marshall Cos. the N. ½ of Putnam County & NW Corner of Livingston County					
Carpenters, Piledrivermen & Soft Floor Layers	$12.28	.90	.85		.03
Millwrights	12.53	.90	.85		.03

MODIFICATIONS P. 6

DECISION NO. IL79-2031 - (Cont'd)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CHANGE:					
ELECTRICIANS:					
Area West of Bell Plain & Roberts Twp. in Marshall County; Area West to but not including Linn, Kansas, Palestone, Roanoke, Cazenovia & Metamora Twps. in Woodford County	$12.92	.50	3%+1.00		3/4%
Livingston County; Vicinity of Streator - S.E. part of county; Magnolia Twp. in Putnam Co.; Area East of Cazenovia & Metamora Twps, including Linn, Clayton, Minonk, Roanoke, Green & Panola Twps. in Woodford County; Remainder of Marshall County	13.45	.50	3%+.40		.3%
El Paso, Kansas & Palstine Twps.; S.E. Corner of Woodford Co.	12.85	.50	3%+.55		.002
IRONWORKERS:					
Bureau, LaSalle, Putnam & the remainder of Marshall	14.015	.75	.75		.02
LATHERS:					
S.W. Half of Marshall Co.	12.67	.65	.50		.01
PAINTERS:					
Livingston County:					
Brush	10.00				
Structural Steel	10.50				
Vicinity of Ottawa, Streator & Marseilles in LaSalle Co.					
Brush	9.75	.55	.45		
Spray	10.75	.55	.45		

DECISION NO. IL79-2031 - (Cont'd)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CHANGE:					
Putnam County & the Vicinity of LaSalle, Mendota, Oglesby, Utica & Peru in LaSalle Co.					
Brush	$ 9.75	.55	.30		
Spray & Taping	10.75	.55	.30		
PLASTERERS:					
Portion East of Roanoke in Woodford County & the Southern Part of Livingston County	13.06				.01
Marshall County & the remainder of Woodford Co.	12.01	1.00	1.00		
PLUMBERS & STEAMFITTERS:					
Illinois State Prison (Pontiac) in Livingston Co.	13.86	.50	1.10		.08
SPRINKLER FITTERS	13.08	.75	1.05		.08
TRUCK DRIVERS:					
Remainder of Woodford & Livingston Counties					
2-3 Axle Trucks	11.45	29.00a	33.00a		
4 Axle Trucks	11.60	29.00a	33.00a		
5 Axle Trucks	11.80	29.00a	33.00a		
6 Axle Trucks	12.00	29.00a	33.00a		
LABORERS:					
Livingston & Woodford:					
Unskilled	10.67	.65	.70		.035
Semi-Skilled	10.87	.65	.70		.035
Skilled	11.07	.65	.70		.035
LaSalle, Bureau & Putnam Cos.:					
Unskilled	10.67	.55	.80		.035
Semi-Skilled	10.87	.55	.80		.035
Skilled	11.07	.55	.80		.035
Marshall County:					
Unskilled	10.87	.55	.60		.035
Semi-Skilled	11.07	.55	.60		.035
Skilled	11.27	.55	.60		.035

DECISION NO. IL79-2031 - (Cont'd)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CHANGE:					
POWER EQUIPMENT OPERATORS:					
Bureau (E. of Rt. #26); LaSalle; Livingston; Putnam (E. of Illinois River):					
Class I	$13.25	1.10	1.10		.05
Class II	11.95	1.10	1.10		.05
Class III	10.80	1.10	1.10		.05
Class IV	9.55	1.10	1.10		.05
Bureau (N. of Rt. #26); Marshall; Putnam (W. of Illinois River); & Woodford Counties					
Group I	13.08	.45	.80		.05
DECISION NO. IL79-2032 - MOD #1 (44 FR 26429 - May 4, 1979) Logan, Mason & Menard Counties, Illinois					
CHANGE:					
ELECTRICIANS:					
Logan & Menard Counties; the Twps. of Bath, Lynchbury, Mason City & Salt Creek in Mason Co.	$13.17	.50	3%+.70		1/10 of 1%
Remainder of Mason County	12.92	.50	3%+1.00		3/4 of 1%
GLAZIERS	11.34	.45	.50		
LABORERS:					
Logan County & Northern Half of Menard:					
Unskilled	10.85	.45	.40		.035
Semi-Skilled	11.05	.45	.40		.035
Skilled	11.20	.45	.40		.035

MODIFICATIONS P. 9

DECISION NO. IL79-2032 - (Cont'd)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CHANGE:					
Southern Half of Menard Co.:					
Unskilled	$11.35	.45	.50		.035
Semi-Skilled	11.55	.45	.50		.035
Skilled	11.70	.45	.50		.035
PAINTERS:					
Logan & Menard Cos.:					
Brush & Roller	$10.95	.50	.60		
Spray	11.45	.50	.60		
Mason County:					
Brush	11.30	.55	.30		.03
Spray	11.95	.55	.30		.03
SHEET METAL WORKERS	12.93	3%+.75	.78		
SPRINKLER FITTERS	13.08	.75	1.05		.08

DECISION NO. IL79-2033 - MOD #2
(44 FR 26432 - May 4, 1979)
McLean County, Illinois

CHANGE:					
ELECTRICIANS:					
Cropsey, Anchor, Cheney Grove & Bell Flower Twps.	$13.45	.50	3%+.40		.3%
Remainder of County	12.85	.50	3%+.55		.002
GLAZIERS	12.46	.60	.30		.01
LABORERS:					
Unskilled	10.68	.75	.60		.035
Semi-Skilled	10.88	.75	.60		.035
Skilled	11.08	.75	.60		.035
LATHERS	12.67	.65	.50		.01
PAINTERS:					
Brush	12.05	.55			.06
Structrual Steel & Spray	12.55	.55	.06		
PLASTERERS	13.06				.01
PLUMBERS & STEAMFITTERS	13.30	.75	1.20		.15
SPRINKLER FITTERS	13.08	.75	1.05		.08

MODIFICATIONS P. 10

DECISION NO. IL79-2034 - MOD #3
(44 FR 27856 - May 11, 1979)
Christian, DeWitt, Macon, Macoupin, Moultrie, Piatt, Shelby Counties, Illinois

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CHANGE:					
BRICKLAYERS & STONEMASONS:					
DeWitt County	$12.16	.70	1.00		
CEMENT MASONS:					
Remainder of DeWitt County	12.64	.75			
ELECTRICIANS:					
Macoupin County:					
Athenville, Scottville, Girard & Areas North thereof	13.17	.50	3%+.70		1/10 of 1%
PAINTERS:					
Christian County:					
Brush & Roller	10.95	.50	.60		
Spray	11.45	.50	.60		
Macoupin County:					
Commerical	11.93	.55	.35		
Industrial & Tapers	12.18	.55	.35		
PLUMBERS & STEAMFITTERS:					
Macoupin County:					
S. of Rt. #108	14.50	.48	.96		.05
Macon; DeWitt; Moultrie Cos.; Twps. of Pana, Assumption & Radford in Christian Co.; W. of Rt. #105 in Piatt; Shelby Co.; (E. fo Rt. #105) in Piatt Co.	13.75	.35	1.00		.15
SHEET METAL WORKERS:					
Macoupin County	11.83	.60	1.00	6%	.02
SPRINKLER FITTERS	13.08	.75	1.05		.08
POWER EQUIPMENT OPERATORS:					
Moultrie County					
Class I	12.20	.75	.75		.08
Class II	12.10	.75	.75		.08
Class III	11.90	.75	.75		.08
Class IV	8.00	.75	.75		.08

MODIFICATIONS P. 11

DECISION NO. IL79-2035 - MOD #1
(44 FR 27862 - May 11, 1979)
Cass, Morgan & Scott Counties, Illinois

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CHANGE:					
ELECTRICIANS	$13.17	.50	3%+.70		1/10 of 1%
GLAZIERS:					
Morgan & Scott Cos.	11.34	.45	.50		
PAINTERS:					
Brush & Roller	10.95	.50	.60		
Spray	11.45	.50	.60		
SPRINKLER FITTERS	13.08	.75	1.05		.08

DECISION NO. IL79-2036 - MOD #3
(44 FR 27864 - May 11, 1979)
Peoria & Tazewell Counties, Illinois

CHANGE:					
ELEVATOR CONSTRUCTORS:					
Constructors	$11.84	.745	.56	a+b	.025
Helpers	70%JR	.745	.56	a+b	.025
Helpers (Prob.)	50%JR				
GLAZIERS	12.46	.60	.30		.01
LATHERS	12.67	.65	.50		.01
MARBLE & TILE SETTERS, Terrazzo Workers	12.15	.70	1.16		.01
PLASTERERS	12.01	1.00	1.00		
PLUMBERS & STEAMFITTERS:					
Peoria County & North of Hwy. #98 in Tazewell Co.	13.02	.80	1.30		.15
SPRINKLER FITTERS	13.08	.75	1.05		.08

MODIFICATIONS P. 12

DECISION NO. IL79-2037 - MOD #2
(44 FR 27867 - May 11, 1979)
Alexander, Franklin, Gallatin, Hamilton, Hardin, Jackson, Jefferson, Johnson, Marion, Massac, Perry, Pope, Pulaski, Saline, Union, White & Williamson Counties, Illinois

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CHANGE:					
IRONWORKERS:					
Jackson County Twps. of Twps. of Carbondale, Grand Tower, Murphysboro	$11.60	.55	.85		.05
Twps. of Ava, Elkville	12.95	.55	1.05		.05
PLUMBERS & STEAMFITTERS:					
Alexander, Hardin, Massac, Jackson, Johnson, Perry, Pope, Pulaski, & Union Counties	14.25	.35	.55		.08
Franklin, Hamilton, Jefferson, Gallatin, Saline & Williamson	13.50	.55	.75		.08
CHANGE:					
SHEET METAL WORKERS	$11.83	.60	1.00	6%	.02
SPINKLER FITTERS	13.08	.75	1.05		.08
POWER EQUIPMENT OPERATORS:					
Jefferson, Perry & Marion Counties:					
Group I	11.52	.87	1.51		.05
Group II	10.19	.87	1.51		.05
Group III	9.54	.87	1.51		.05
Group IV	9.44	.87	1.51		.05
Group V	9.19	.87	1.51		.05
Group VI					
a.	13.67	.87	1.51		.05
b.	13.97	.87	1.51		.05
c.	11.29	.87	1.51		.05
d.	11.79	.87	1.51		.05
Remainder of Counties:					
Class 1	11.80	.75	.60		.035
Class 2	10.80	.75	.60		.035
Class 3	10.50	.75	.60		.035
Class 4	10.20	.75	.60		.035
Class 5	9.45	.75	.60		.035
Class 6	10.80	.75	.60		.035
Class 7	10.50	.75	.60		.035
Class 8	10.00	.75	.60		.035
Class 9	9.95	.75	.60		.035
Class 10	9.35	.75	.60		.035

MODIFICATIONS P. 13

Decision No. IL79-2037 - Continued

CHANGE:	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
River Work and Levee Work on Mississippi & Ohio Rivers					
Class 11	11.90	.75	.60		.035
Class 12	9.90	.75	.60		.035

DECISION NO. IL79-2038 - MOD #2
(44 FR 27871 - May 11, 1979)
Sangamon County, Illinois

CHANGE:	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ELECTRICIANS:					
Residential	$ 8.45	.50	3%+.40		.5 of 1%
GLAZIERS	11.34	.45	.50		
LATHERS	13.15				
PAINTERS:					
Brush & Roller	10.95	.50	.60		
Spray	11.45	.50	.60		
SHEET METAL WORKERS:					
Building	12.93	.75+d	.78		
Residential	7.71	.50+d	.78		
SPRINKLER FITTERS	13.08	.75	1.05		.08
POWER EQUIPMENT OPERATORS					
Class III	9.50	.70	.80		.05

DECISION NO. IL79-2051 - MOD #1
(44 FR 34737 - June 15, 1979)
Cook County, Illinois

MODIFICATIONS P. 14

CHANGE:	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CARPENTERS:					
Building, Heavy & Highway:					
Carpenters & Soft Floor Layers	$12.70	1.08	1.08		.08
Millwrights & Piledrivermen	12.70	1.08	1.08		.08
POINTERS, CAULKERS & Cleaners	12.85	1.10	.90		
PLASTERERS	11.87	.875	.92		.07
ROOFERS:					
Composition & Water Proofers	13.05	1.27	.99		.04
Slate & Tile	13.05	1.27	.99		.04
TRUCK DRIVERS:					
Building & Residential					
2-3 Axle Trucks	10.95	29.00a	33.00a		
4 Axle Trucks	11.20	29.00a	33.00a		
5 Axle Trucks	11.40	29.00a	33.00a		
6 Axle Trucks	11.60	29.00a	33.00a		
Heavy & Highway					
2-3 Axle Trucks	10.90	.90	.90		
4 Axle Trucks	11.15	.90	.90		
5 Axle Trucks	11.35	.90	.90		
6 Axle Trucks	11.55	.90	.90		
LABORERS:					
Class 1	10.10	.57	1.20		
Class 2	10.175	.57	1.20		
Class 3	10.20	.57	1.20		
Class 4	10.20	.57	1.20		
Class 5	10.30	.57	1.20		
Class 6	10.325	.57	1.20		
Class 7	10.35	.57	1.20		
Class 8	10.42	.57	1.20		
Class 9	10.45	.57	1.20		
Class 10	10.55	.57	1.20		
Class 11	10.655	.57	1.20		
WRECKING LABORS:					
General Laborers	9.37	.57	1.20		
Wallmen, Wreckers, Burners, Air Hammermen	10.02	.57	1.20		
Smokestak or Highman	10.37	.57	1.20		
CHANGE:					
POWER EQUIPMENT OPERATORS:					
HEAVY, HIGHWAY & SEWER CONSTRUCTION					
Class I	$12.90	1.10	1.10	.60	.05
Class II	12.35	1.10	1.10	.60	.05
Class III	11.60	1.10	1.10	.60	.05
Class IV	10.50	1.10	1.10	.60	.05
Class V	9.50	1.10	1.10	.60	.05

MODIFICATIONS P. 15

DECISION NO. IL79-2054 - MOD #1
(44 FR 34741 - June 15, 1979)
Henderson, Henry, Knox, Mercer, Rock Island, Stark, & Warren Counties, Illinois

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CHANGE:					
CARPENTERS:					
Rock Island, Henry, Mercer Cos.:					
Carpenters & Soft Floor Layers	$11.86	.65	1.00		.06
Piledrivermen	12.11	.65	1.00		.06
CEMENT MASONS:					
Rock Island, Mercer, & Eastern half of Henry Co.	12.07	.70	.60		
ELECTRICIANS:					
Rock Island & the remainder of Henry & Mercer Cos.	13.29	.70	7.5%		.03
LABORERS:					
Stark County - Western ½					
Unskilled	10.44	.55	.80		.035
Semi-Skilled	10.64	.55	.80		.035
Skilled	10.84	.55	.80		.035
Stark County - Eastern ½					
Unskilled	10.87	.55	.60		.035
Semi-Skilled	11.07	.55	.60		.035
Skilled	11.27	.55	.60		.035
Henderson, Knox & Warren Cos.:					
Unskilled	10.87	.55	.60		.035
Semi-Skilled	11.07	.55	.60		.035
Skilled	11.27	.55	.60		.035
PAINTERS:					
Rock Island, Henry, Mercer, Henderson, Stark & Warren Cos.; W. of line extending from N.E. corner to S.W. corner of Knox Co.					
Brush & Roller	11.52	.60	1.00		.20
Spray & Structural Steel	12.02	.60	1.00		.20
SPRINKLER FITTERS	13.08	.75	1.05		.08

MODIFICATIONS P. 16

DECISION NO. MA79-2006 - MOD #2
(44 FR 10944 - February 23, 1979)
Berkshire, Franklin, Hampden, & Hampshire Counties, Massachusetts

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CHANGE:					
Berkshire County:					
Asbestos Worker	$11.30	1.04	1.30		.01
Bricklayers:					
Twps. of Becket, Otis & Sandisfield	11.00	.70	.95		.06
Remainder of County	12.28	.70	.55		
Ironworkers	11.10	.75	1.25		.08
Painters:					
Brush & Tapers	9.27	.88	.65		.05
Spray-Epoxy & Interior Dry Fogs & Materials thinned with anything other than water &/or Mineral Spirits	12.36	1.1733	.8667		.0667
Spray-Materials thinned with water &/or Mineral Spirits excluding Epoxys & Interior Fogs	12.89	1.1733	.8667		.0667
Plumbers & Steamfitters:					
Becket, Otis, Sandisfield & New Boston					
Plumbers	10.65	1.01	1.35	e	.10
Steamfitters	11.35	.57	1.45	.08	.03
Franklin County:					
Asbestos Worker	11.30	1.04	1.30		.01
Bricklayers, Cement Masons, Marble, Tile & Terrazzo Workers, Caulkers, Cleaners, Pointers	11.00	.70	.95		.06
Carpenters, Soft Floor Layers, Drywall, Carpenters:					
Irving, Warwick, Orange & North Orange	11.60	.70	1.00		.07
Remainder of County	10.65	.45	1.00		.02
Electricians:					
Remainder of County:					
Electrical Contracts over $75,000	11.76	.85	3%+.40		.02
Electrical Contracts under $75,000	9.50	.85	3%+.40		.02
Shaft & Tunnel Work	12.26	.85	3%+.40		.02

DECISION NO. MA79-2006 - (Cont'd)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CHANGE:					
Franklin County: (Cont'd)					
Sheet Metal Workers	$10.50	1.09	1.46		.06
Hampshire County:					
Asbestos Workers	11.30	1.04	1.30		.01
Bricklayers, Plasterers, Cement Masons, Stone Masons, Marble, Tile & Terrazzo Workers, Caulkers, Cleaners & Pointers	11.30	1.04	1.30		.01
Carpenters:					
Including Drywall Hangers in Amherst, Belchertown, Granby, South Hadley & Pelham	10.65	.45	1.00		.02
Remainder of County	10.50	.60	1.00		.02
Electricians:					
Belchertown, Ware	11.28	.85	3%+.40		.03
Remainder of County:					
Contracts over $75,000	11.76	.85	3%+.40		.02
Contracts under $75,000	9.50	.85	3%+.40		.02
Work in Shafts, Tunnel & Underground	12.26	.85	3%+.40		.02
Ironworkers	10.80	1.10	1.95		.09
Painters:					
Brush & Tapers	9.27	.88	.65		.05
Spray-Epoxy & Interior Dry Fogs	12.36	1.1733	.8667		.0667
Swing Stage under 40', Steel	9.457	.88	.65		.05
Plumbers & Steamfitters:					
Belchertown, Granby, Hintington, Middlefield, South Hadley, Ware	10.65	1.01	1.10	e	.10
Remainder of County	11.45	.85	.85		.02
Roofers:					
Composition, Damp, Waterproofing	9.815	1.10	2.03		
Slate, Tile, Pre-Cast Concrete	10.47	1.10	2.03		

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
DECISION #MN79-2026 - MOD. #1 (44 FR 26492 - May 4, 1979). Aitken, Anoka, Benton, Blue Earth, Carlton, Carver, Chisago, Cook, Dakota, Dodge, Fairbault, Fillmore, Freeborn, Goodhue, Hennepin, Houston, Itasca, Kanabec, Koochiching, Lake, LeSueur, Mille Lacs, Morrison, Mower, Nicollet, Olmsted, Ramsey, Rice, Scott, Sherburne, Sibley, Stearns, Steelo, Saint Louis, Wabasha, Waseca, Washington, Winona & Wright Counties, Minnesota					
CHANGE:					
CARPENTERS & PILEDRIVERMEN:					
Counties of Anoka, Carver, Chisago, Dakota, Hennepin, Ramsey, Scott & Washington-Sherburne County (North of the Northern Boundary of T-34-or West of the Western Boundary of R-27), & Wright County East of & Including Minnesota Highway #25	$11.06	.55	.55	.55	.02
Counties of Aitken, Cook, Itasca, Kanabec, Lake, Mille Lacs & St. Louis	12.23				
Carlton County	10.93	.40	.40	.50	
Benton County, the Remainder of Sherburne & Wright Cos; Stearns County east of a north-south line drawn from the intersection of Stearns, Todd & Morrison Counties	10.92			.50	
Blue Earth County (Entire county-except N.W. Corner including cities of Butternut, Judson & Cambria), LeSueur County (West 2/3 of County including cities of New Sweden, Nicollet, Norseland,					

MODIFICATIONS P. 19

DECISION #MN79-2026 - MOD. #1 (CONT'D)

CARPENTERS & PILEDRIVERMEN: (CONT'D)	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
North Mankato & St. Peter) Waseca County (N.W. Corner including City of Smithmill) & Sibley County (S.E. corner including cities of Henderson & Rush River)	$11.18	.50			
Rice County, Dodge County (NW portion including Cities of Clermont & West Concord), Goodhue County (Along west border including Cities of Geyon, Danison, Skyburg, Sogn, Stanton & Wanga), Steele County (Entire County except along south border including Cities of Blooming Prairie & Ellendale), Waseca Co. (Entire County except Smithmill in NW corner & along the south border including the cities of Matawan & New Richland) & the Remainder of LeSueur County	10.03	.55	.55	.55	
Olmsted County, Fillmore County (the vicinity of the cities of Borne, Concord, Dodge Center, Kasson, Dansville, Eden, Materville & Wasioja), Mower County N.W. Corner including the city of Racine & Wabasha County (in the vicinity of the cities of Elgin, Hammond, Millville, Plainview, Conception, Dunfries, Jarret, South Troy & Thoilman)	10.58	.55	.55		
Counties of Fairbault, Freeborn, Houston & Winona & the Remainder of Dodge, Fillmore, Goodhue, Mower, Steele, Wabasha & Waseca Counties	11.68				
Koochiching County	10.32	.40			
Counties of Morrison, Ramainder of Sibley & Stearns Counties	10.72				

MODIFICATIONS P.20

DECISION NO. PA78-3015 - MOD. #10 (43 FR 20697 - May 12, 1978) Greene, Somerset & Potter Counties, Pennsylvania	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Change:					
ASBESTOS WORKERS					
Zone II	$12.50	1.32	.90		.06
BRICKLAYERS & STONEMASONS:					
Zone III	12.10	.70	.60		
CARPENTERS					
Zone II	10.95	6%	8%	10%	1½%
ELECTRICIANS					
Zone II	9.98	.60	3%+.85	.75	.02
LABORERS					
Zone III					
Class 1	8.95	10%	9%		
Class 2	9.45	10%	9%		
Class 3	9.55	10%	9%		
Class 4	9.45	10%	9%		
Class 5	9.00	10%	9%		
PLUMBERS					
Zone 1	11.45	.79	.70	.75	.05
POWER EQUIPMENT OPERATORS					
Zone 2					
Class 1	12.975	1.05	1.00		.09
Class 1-A	13.225	1.05	1.00		.09
Class 1-B	13.475	1.05	1.00		.09
Class 1-C	13.725	1.05	1.00		.09
Class 2	12.825	1.05	1.00		.09
Class 3	10.95	1.05	1.00		.09
Class 3-A	11.45	1.05	1.00		.09
Class 4	10.30	1.05	1.00		.09
Class 5	9.25	1.05	1.00		.09
Class 6	9.55	1.05	1.00		.09
Class 6-A	9.65	1.05	1.00		.09
Class 6-B	9.80	1.05	1.00		.09
Class 6-C	10.55	1.05	1.00		.09
STEAMFITTERS					
Zone III	11.45	.79	.70	.75	.05
SPRINKLER FITTERS	13.30	.75	1.05		.08

MODIFICATIONS P. 21

DECISION NO. PA78-3043 - MOD. #6 (43 FR 20707 - May 12, 1978) Elk, Forest, McKean and Warren Counties, Pennsylvania	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Change:					
ASBESTOS WORKERS:					
Zone 3 - McKean & Warren	$12.50	1.32	.90		.06
BRICKLAYERS, CEMENT MASONS AND STONE MASONS:					
Zone 1 - Elk, McKean and Warren Cos.	12.10	.70	.60		
CARPENTERS & SOFT FLOOR LAYERS:					
Zone 1 - Elk, Forest, all of McKean County except Kane and Bradford	10.95	6%	8%	10%	1½%
Zone 2 - McKean County, Townships of Kane, Bradford and Warren County in its entirety	10.20	6%	8%	10%	½%
PLUMBERS & STEAMFITTERS					
Zone 3 - McKean and Warren Counties					
Contracts under $500.00	9.54	.68	.55		.04
Contracts over $500.00	13.21	.68	.55		.04
POWER EQUIPMENT OPERATORS:					
Class 1	12.975	1.05	1.00		.09
Class 1-A	13.225	1.05	1.00		.09
Class 1-B	13.475	1.05	1.00		.09
Class 1-C	13.725	1.05	1.00		.09
Class 2	12.825	1.05	1.00		.09
Class 3	10.95	1.05	1.00		.09
Class 3-A	11.45	1.05	1.00		.09
Class 4	10.30	1.05	1.00		.09
Class 5	9.25	1.05	1.00		.09
Class 6	9.55	1.05	1.00		.09
Class 6-A	9.65	1.05	1.00		.09
Class 6-B	9.80	1.05	1.00		.09
Class 6-C	10.55	1.05	1.00		.09
SPRINKLER FITTERS	13.30	.75	1.05		.08

MODIFICATIONS P. 22

DECISION NO. PA79-3007 - MOD. #4 (44 FR 20932 - April 6, 1979) Clinton, Centre, Huntingdon, Fulton & Mifflin Counties, Pennsylvania	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Change:					
CARPENTERS & SOFT FLOOR LAYERS	$10.95	6%	8%	10%	1½%
ELECTRICIANS					
Zone 2	11.36	.65	3%+.67		½%
Zone 3	9.98	.60	3%+.85	.75	.02
LINE CONSTRUCTION					
Zone 3					
Lineman	12.05	.45	3%		3/8%
Winch Truck Op.	8.43	.45	3%		3/8%
Groundman	7.23	.45	3%		3/8%
LABORERS					
Zone 1					
Unskilled Laborers	8.95	10%	9%		
Plasterers Tenders	9.00	10%	9%		
Zone 2					
Unskilled Laborers	8.70	10%	9%		
Plasterers Tenders	8.75	10%	9%		

AREA COVERED BY LABORERS ZONES

Zone 1 - Clinton County

Zone 2 - Centre, Huntingdon, Fulton and Mifflin Counties

PLUMBERS & STEAMFITTERS					
Zone 1	11.85	.79	.70	.75	.05
POWER EQUIPMENT OPERATORS:					
Class 1	$12.975	1.05	1.00		.09
Class 1-A	13.225	1.05	1.00		.09
Class 1-B	13.475	1.05	1.00		.09
Class 1-C	13.725	1.05	1.00		.09
Class 2	12.825	1.05	1.00		.09
Class 3	10.95	1.05	1.00		.09
Class 3-A	11.45	1.05	1.00		.09
Class 4	10.30	1.05	1.00		.09
Class 5	9.25	1.05	1.00		.09
Class 6	9.55	1.05	1.00		.09
Class 6-A	9.65	1.05	1.00		.09
Class 6-B	9.80	1.05	1.00		.09
Class 6-C	10.55	1.05	1.00		.09
SPRINKLER FITTERS	13.30	.75	1.05		.08

SUPERSEDEAS DECISION

STATE: NEW YORK COUNTY: MONROE
DECISION NO.: NY79-3025 DATE: DATE OF PUBLICATION
Supersedes Decision No. NY78-3036 dated April 14, 1978 in 43 FR 16088
DESCRIPTION OF WORK: Building Construction, (excluding single family homes and apartments up to an including 4 stories), Heavy and Highway Construction Projects

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ASBESTOS WORKERS	$12.22	1.40	.80		.04
BOILERMAKERS	11.80	1.00	1.50		.02
BRICKLAYERS, CEMENT MASONS, PLASTERERS AND STONE MASONS	12.62	.75	.85		.04
CARPENTERS, BUILDING	11.65	1.23	1.06		.03
CARPENTERS & PILEDRIVERS, HEAVY AND HIGHWAY	9.57	1.23	1.05	a	.025
CEMENT MASONS, HEAVY AND HIGHWAY	9.30	.75	.85		
ELECTRICIANS	12.10	1.00	3%+1.35		½%
ELEVATOR CONSTRUCTORS	12.16	.745	.56	b+c	.025
ELEVATOR CONSTRUCTORS' HELPERS	8.51	.745	.56	b+c	.025
ELEVATOR CONSTRUCTORS' HELPERS (PROB.)	6.08				
GLAZIERS	10.54	1.02	.63		.06
IRONWORKERS:					
Ornamental, Reinforcing, Stone Derrickmen, Rigger, Rodman, Structural, Machinery Movers, Fence Erectors, Precast Concrete Erector	11.95	1.00	1.05		.10
Sheeter	12.20	1.00	1.05		.10
Sheeter Bucker-up	12.075	1.00	1.05		.10
LATHERS	10.78		.50		.01
LEADBURNERS	10.75	.40	.25	d	.01
MARBLE, TILE AND TERRAZZO WORKERS	12.86				
MARBLE, TILE AND TERRAZZO FINISHERS	9.85	.55	.89		
PAINTERS:					
Brush and Roller	8.95	.60	.87		.04
Swing Scaffold	9.45	.60	.87		.04
Structural Steel:					
Up to 40 feet	9.45	.60	.87		.04
Over 40 feet	9.65	.60	.87		.04
Spray	9.55	.60	.87		.04
PILEDRIVERMEN AND MILLWRIGHTS:					
Building	11.88	1.23	1.15		.05
PLUMBERS AND STEAMFITTERS	13.18	2.485	1.22	.32+e	.20

DECISION NO. NY79-3025

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
SHEET METAL WORKERS	11.79	.70	1.01		
SOFT FLOOR LAYERS	11.12	.90	.66		
SPRINKLER FITTERS	12.31	.75	1.05		.08
TRUCK DRIVERS, BUILDING	9.20	.45	.50		
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. Paid Holidays: C and D.

b. Employer contributes 8% basic hourly rate for 5 years or more of service or 6% basic hourly rate for 6 months to 5 years of service as Vacation Pay Credit.

c. Paid Holidays: A through F, day after Thanksgiving

d. Paid Holidays: A through F, Washington's Birthday, Good Friday and Christmas Eve providing the employee has worked 30 full days during the 90 calendar days prior to the holiday and the regular, scheduled work days immediately preceeding and following the holiday.

e. Paid Holidays: A, C, D, E, F.

DECISION NO. NY79-3025

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
LINE CONSTRUCTION					
Electricial Overhead and Underground Distribution Work:					
Lineman and Technicians	$10.50	1.00	3%+.75	a	3½%
Cable Splicers	13.70	1.00	3%+.75	a	3½%
Groundman Digging Machine Operator and Groundman Dynamiteman	9.45	1.00	3%+.75	a	3½%
Groundman Mobile Equipment Operator, Mechanic 1st Class, groundman Truck Driver (tractor trailer units)	8.40	1.00	3%+.75	a	3½%
Groundman Truck Driver, Driver-Mechanic, Groundman (experienced)	7.825	1.00	3%+.75	a	3½%
All Overhead Transmission Line Work and Lighting For Athletic Fields:					
Lineman and Technicians	11.85	1.00	3%+.75	a	3½%
Groundman Digging Machine Operator, Groundman Dynamiteman	10.665	1.00	3%+.75	a	3½%
Groundman Mobile Equipment Operator, Mechanic 1st Class, Groundman Truck Driver (tractor trailer unit)	9.48	1.00	3%+.75	a	3½%
Groundman Truck Driver, Driver-Mechanic, Groundman (experienced)	8.8875	1.00	3%+.75	a	3½%
All Pipe Type Cable Installation:					
Lineman and Groundman Equipment Operator	12.45	1.00	3%+.75	a	3½%
Cable Splicer	13.695	1.00	3%+.75	a	3½%
Groundman Truck Driver Groundman (experienced)	9.3375	1.00	3%+.75	a	3½%
Sub-station, Switching Structures (when not part of the line), Traffic Signals, Street Lighting and Electrical, Telephone or CATV Commercial Work:					
Linemen and Technicians	12.45	1.00	3%+.75	a	3½%
Cable Splicers	13.695	1.00	3%+.75	a	3½%

DECISION NO. NY79-3025

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
LINE CONSTRUCTION (CONT'D):					
Groundman Digging Machine Operator, Mechanic 1st Class, Groundman Truck Driver (tractor-trailer unit)	9.96	1.00	3%+.75	a	3½%
Groundman Truck Driver, Driver-Mechanic, Groundman (experienced)	9.3375	1.00	3%+.75	a	3½%
Groundman dynamiteman, groundman digging machine operator	11.205	1.00	3%+.75	a	3½%
Telephone and other Communication Systems, both overhead and underground:					
Linemen and Installer Repairmen	8.34	.40	3%+.25	a	1%
Splicers	8.89	.40	3%+.25	a	1%
Groundman Digging Machine Operator	7.73	.40	3%+.25	a	1%
Groundman	5.72	.40	3%+.25	a	1%
Groundman Truck Driver	6.82	.40	3%+.25	a	1%
Groundman Dynamiteman	6.60	.40	3%+.25	a	1%

Paid Holidays: A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day.

FOOTNOTES:

a. Paid Holidays: A through F, Washington's Birthday, Good Friday, and Election Day for President of the United States and Governor of New York State, provided the employee works the day before and after the holiday.

DECISION NO. NY79-3025

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
LABORERS, BUILDING:					
Common Laborers	8.75	1.95	1.14		
Blasters	10.12	1.95	1.14		
Powder Monkey	9.62	1.95	1.14		
Air Track Drill Asphalt Rakers and Wagon Drill	9.15	1.95	1.14		
Chuck Tender, all work on hanging or swinging scaffold, work at heights outside the building where safety lines or belts are required, and Bosun Chair	8.95	1.95	1.14		
Jackhammers, Paving Breakers, Mortar Mixers, Concrete Vibrators, Barco Tampers, and Jumping Jacks	9.05	1.95	1.14		
Pipelayers, Cutters for wrecking and demolition work, burners	9.05	1.95	1.14		
Concrete Vibrator for Architectural Concrete	9.25	1.95	1.14		
New Chimney Work:					
From base to 100'	9.75	1.95	1.14		
From 100' to 150'	10.00	1.95	1.14		
From 150' to 200'	10.25	1.95	1.14		
From 200' to 250'	10.50	1.95	1.14		
From 250' on	10.75	1.95	1.14		

DECISION NO. NY79-3025

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
LABORERS: HEAVY CONSTRUCTION (Excavating and Paving)					
Laborers & chuck tenders	7.95	1.75	1.04	a	
Asphalt rakers, air track, wagon drill op., curb stone setters, powder monkeys	8.20	1.75	1.04	a	
Curb cockmen, pipe layers, layers of conduit and all air, electric gas and deisel motor driven tool op.	8.15	1.75	1.04	a	
Relining of all types of pipe	8.35	1.75	1.04	a	
Blasters	9.70	1.75	1.04	a	
Meter setters and meter changers	8.25	1.75	1.04	a	

PAID HOLIDAYS:
A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day.

FOOTNOTE:

a. Holidays A through F, providing employee works the working day before and the working day after the holiday.

DECISION NO. NY79-3025

LABORERS: HIGHWAY CONSTRUCTION	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CLASS A	7.70	1.75	1.04	a	
CLASS B	7.90	1.75	1.04	a	
CLASS C	8.10	1.75	1.04	a	
CLASS D	8.30	1.75	1.04	a	

PAID HOLIDAYS:
A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day.

FOOTNOTE:
A. Paid Holidays: A through F, provided the employee has worked the day before and after the holiday.

LABORERS: HEAVY AND HIGHWAY CONSTRUCTION:

CLASS A
Laborers, drill helpers, flagmen, outboard and hand boats.

CLASS B
Bull float, chain saw, concrete aggregate, bin, concrete bootman, gin buggy, hand or machine vibrator, jackhammer, mason tender, mortar mixer, pavement breakers, handlers of all steelmesh, small generators for laborers' tools, installation of bridge drainage pipe, pipelayers, vibrator type rollers, tamper, drill doctor, tail or screw op. on asphalt paver, water pump op. (1½" and single diaphram), nozzle (asphalt, gunnite, seeding and sand blasting), laborers on chain link fence erection, rock splitter and power unit, pusher type concrete saw and all other gas, electric, oil and air tool operators, wrecking laborer.

CLASS C
All rock or drill machine operators (except quarry master and similar type), acetylene torch op., asphalt raker, powderman.

CLASS D
Blasters, form setter, stone or granite curb setters.

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POWER EQUIPMENT OPERATORS: HEAVY & HIGHWAY CONSTRUCTION (Includes excavating for site preparation)	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
GROUP I	10.83	.95	1.05	a	.15
GROUP II	10.47	.95	1.05	a	.15
GROUP III	9.46	.95	1.05	a	.15
GROUP IV	8.56	.95	1.05	a	.15

PAID HOLIDAYS:
A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day.

FOOTNOTES:
a. Paid Holidays: A through F, providing the employee works the day before and the date after the holiday.

POWER EQUIPMENT OPERATORS: HEAVY AND HIGHWAY CONSTRUCTION

GROUP I: - Automated concrete spreader (CMI), automatic fine grader, backhoe (except tractor mounted, rubber tired), belt placer (CMI type), Blacktop plant (automated), cableway, caisson auger, central mix concrete plant (automated), cherry picker (over 5 tons capacity), concrete pump (8" or over) crane, cranes & derricks (steel erection), dragline, dredge, dual drum paver, excavator (all purpose-hydraulically operated, (gradall or similar), fork lift (factor rated 15 ft. and over), front end loader 4 c.y. and over), head tower (sauerman or equal) hoist (2 or 3 drum), mine hoist, mucking machine or mole, over head crane (gantry or straddle type), piledriver, power grader, quarry master (or equivalent), scraper, shovel, sideboom, slip form paver, tractor drawn belt type loader, truck crane, tunnel shovel.

GROUP II - Backhoe (tractor mounted, rubber tired), bituminous spreader and mixer, blacktop plant (non-automated), blast or rotary drill (truck or tractor mounted), boring machine, cage-hoist, central mix plant (non-automated and all concrete batching plants), cherry picker (5 tons capcity and under), compressors (4 or less) exceeding 2000 C.F.M. combined capacity concrete paver (over 16S), concrete pump (under 8"), crusher, diesel power unit, drill rigs (tractor mounted), front end loader (under 4 c.y.), hi-pressure - boiler (15

DECISION NO. NY79-3025

POWER EQUIPMENT OPERATORS: HEAVY AND HIGHWAY CONSTRUCTION CONT'D:

GROUP II (CONT'D) - lbs. and over), hoist (one drum Kolman plant loader and similar type loaders), locomotive maintenance/engineer/greaseman/welder, (for stablized base self-propelled), monorail machine, plant engineer, pump crete, ready mix concrete plant, refrigeration equipment (for soil stabilization), road widener, roller (all above subgrade), tractor with dozer and/or pusher, trencher, tugger-hoist, winch, winch cat.

GROUP III: Asphalt curb and gutter machine, blower for burning brush, chipping machine and chip spreader, compressors: 4 not exceed 2,000 c.f.m. combined capacity, 3 or less with more than 1,200 c.f.m. but not to exceed 2,000 c.f.m., compressor, dust collectors, generators, pumps, welding machines (4 of any type or combination) concrete pavement spreaders and finishers, concrete curb and gutter machine, concrete curing machines, conveyor drill core, drill well, electric pump used in conjunction with well point systems, farm tractor with accessories, fine grade machine, hammers-hydraulic-self-propelled, hydraulic rock expander or similar type machine, hydraulic pump, motorized hydraulic pin puller and seeders, post hole digger and post driver, roller (grade and fill), tractor with towed accessories, vibratory compactor, vibro tamp, well point.

GROUP IV: Aggeregate plant, boiler, (used in conjunction with production), C.M.I. and similar type concrete spreaders, cement bin operator, compressors: 3 or less not to exceed 1,200 c.f.m. combined capacity, compressors: (any size, but subject to other provisions, for compressors), dust collectors generators, pumps, welding machines (3 or less of any type or combination), concrete mixer (16S and under), concrete saw self-propelled, fitzman, form tamper, mulching machine, oiler, power broom, power heaterman, revinius widener, steam cleaner, tractor.

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	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
POWER EQUIPMENT OPERATORS					
BUILDING CONSTRUCTION					
GROUP I:					
I-A	11.21	.95	1.05	a	.15
I-B	11.46	.95	1.05	a	.15
I-C	11.71	.95	1.05	a	.15
I-D	11.96	.95	1.05	a	.15
I-E	12.46	.95	1.05	a	.15
I-F	12.96	.95	1.05	a	.15
I-G	13.46	.95	1.05	a	.15
I-H	13.96	.95	1.05	a	.15
GROUP II	11.21	.95	1.05	a	.15
GROUP III	10.98	.95	1.05	a	.15
GROUP IV	9.89	.95	1.05	a	.15
GROUP V	8.45	.95	1.05	a	.15
GROUP VI	11.71	.95	1.05	a	.15

FOOTNOTES:

a. PAID HOLIDAYS: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day regardless of the day of the week in which the holiday may fall.

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POWER EQUIPMENT OPERATORS - BUILDING CONSTRUCTION:

GROUP I - Cranes (cable and hydraulic climbing and tower)
I-A 121 ft. and under
I-B 121 ft. and 151 ft.
I-C 151 ft. and 201 ft.
I-D 201 ft. and 151 ft.
I-E 251 ft. and 301 ft.
I-F 301 ft. and 351 ft.
I-G 351 ft. and 401 ft.
I-H 401 ft. and 451 ft.

GROUP II - Air tugger, derrick, big generator plant, cableway, backhoe, clamshell, dragline, shovel and similar machines over 3/8 cubic yards capacity (factory rating), bridge crane (all types), caisson auger and similar type machine, forklift (with factory rating of 15 ft. or more of lift), hoist (on steel erection), mucking machines, ross carrier (and similar types), three drum hoist (when all three drums are in use)

GROUP III - A frame, backfilling machine, hoist (1 or 2 drums), barber green and similar type machine, maintenance engineer (mechanic), mechanical slurry machines (all kinds), belt crete and similar type machine, bituminous spreading machines, post hole digger, bulldozer, carry all type scraper, core drill, pumps, (regardless of motive power) no more than (4) in number not to exceed 20 inches in total capacity), fine grade and finish rollers, side boom tractor, stone crusher, compressors: 4 not to exceed 2000 cfm, concrete mixer, concrete placer, concrete pumps, tournadozer and similar types, crane hoe shovel 3/8 yds. capacity or less (factory rating), tournapull and similar types, dinky locomotives (all types), tower mobile and similar types, elevating grader, elevator trenching machines, fine grade machines (all kinds), welder, front end loader, forklift, with factory rating of less than 15 feet of lift, well drill, well point system, high pressure boiler.

GROUP IV - Any combination (not to exceed 3 pieces of equipment), welding, machine or mechanical conveyor (over 12 ft. in length), fireman, belt crete generator, mechanical heater, roller (fill & grade), pumps (regardless of motive power) no more than (3) in number, not to exceed twelve inches total capacity, rubber tired tractor, compressor 3 or less, not to exceed 1200 CFM combined capacity, longitudinal float.

GROUP V - Truck Crane

GROUP VI - Master Mechanic

[FR Doc. 79-24463 Filed 8-9-79; 8:45 am]

BILLING CODE 4510-27-C

DECISION NO. NY79-3025

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
TRUCK DRIVERS: HEAVY AND HIGHWAY CONSTRUCTION					
CLASS 1	9.24	.85	.80	a	
CLASS 2	9.29	.85	.80	a	
CLASS 3	9.34	.85	.80	a	
CLASS 4	9.49	.85	.80	a	
CLASS 5	9.64	.85	.80	a	

PAID HOLIDAYS:
A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day.

FOOTNOTE:
a. Paid Holidays: A through F, provided the employee has worked the working day before and after the holiday.

TRUCK DRIVERS: HEAVY AND HIGHWAY CONSTRUCTION:

CLASS 1
Pickups, panel trucks, flatboy material trucks (straight jobs), single axle dump trucks, dumpster, greasers, truck tiremen.

CLASS 2
Tandems, batch trucks, and mechanics.

CLASS 3
Semi-trailers, low-boy trucks, asphalt distributors trucks, agitator, mixer trucks and dumpcrete type vehicles, truck mechanic.

CLASS 4
Specialized earth moving equipment - euclid type or similar off-highway equipment, where not self loader, and straddle (ross) carrier.

CLASS 5
Off-highway tandem back-dump, twin engine equipment and double hitched equipment where not self loaded.

federal register

Friday
August 10, 1979

Part III

Council on Wage and Price Stability

Request for Comments on Modifications to Voluntary Pay and Price Standards

COUNCIL ON WAGE AND PRICE STABILITY

[6 CFR Part 705]

Request for Comments on Modifications to Voluntary Pay and Price Standards

AGENCY: Council on Wage and Price Stability.

ACTION: Request for comments on modifications to voluntary pay and price standards.

SUMMARY: The Council is seeking broad public participation in evaluating the voluntary pay and price standards. Public input analyzing and reviewing the first program year is essential in order to design an effective second year program.

To facilitate preparation of comments, the Council has provided background information on issues or difficulties which must be resolved for the second program year. These practical or conceptual issues relate both to the pay and price standards, and they raise possible modifications to the first year program.

From the comments received, the Council will publish proposed standards in September 1979. The final voluntary standards will be available before October 1.

DATES: Comments on change in program year by August 15, 1979. Comments on modifications to voluntary pay and price standards by September 5, 1979.

ADDRESS: Send comments to: Office of General Counsel, Council on Wage and Price Stability, Winder Building, 600 17th Street, N.W., Washington, D.C. 20006.

FOR FURTHER INFORMATION CONTACT: David A. Henderson, (202) 456-6286.

SUPPLEMENTARY INFORMATION: The Council is specifically soliciting comments on issues presented in this document, although comments on any related issues will be appreciated. Comments should be sent to the above address no later than Wednesday, September 5, 1979. Because of special time constraints for consideration of a possible change to a calendar-basis program, comments of that issue only should be received by August 15. Comments received in advance of these deadlines will, of course, be appreciated.

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

Issued in Washington, D.C., August 6, 1979.

R. Robert Russell,

Acting Director, Council on Wage and Price Stability.

I. Introduction

On October 24, 1978, the President announced an anti-inflation program that included, as one element, a set of voluntary pay and price standards. While compliance with the standards has not been universal, they have effectively restrained the rise of prices in the industrial sector of the economy, and they have also helped to hold down the increase in employment costs. But, since October, there has been a sharp acceleration of the rise in food and energy prices and in the costs of home purchase and financing. These sources of inflation have been largely beyond the reach of the program. Problems have been created by the accelerated rise in these prices, however, that must be taken into account in designing the standards for the second year. In addition, it has become evident that a few of the provisions of the standards have given rise to distortions and inequities. As the first program year comes to a close, it is vital that we evaluate the performance so far and consider various modifications for the second year.

The importance of public participation in this review process cannot be overstated. Much can be learned from the people who have had working experience with the program to date. Also, since this is a voluntary program, public cooperation is essential; and constructive public participation in the decison-making process should contribute greatly to that end.

Accordingly, the Council has chosen to solicit comments on the first-year standards, rather than issue proposed second-year standards. This is being done to encourage comments from all interested persons, companies, and organizations and to ensure, insofar as possible, that the process of public participation is as full, and our own consideration of all possibilities as open-minded, as possible. To help people present their views, we set forth below a number of major conceptual and practical issues that must be resolved before standards for the second program year are developed. While the list is fairly comprehensive, it is not intended to be exhaustive; we welcome any and all pertinent comments and suggestions.

Comments are requested by Wednesday, September 5, 1979, with the following exception. We have already received suggestions that we move the program to a calendar-year basis. This could be done either by extrapolating the first-year standards through the fourth quarter of 1979 (pro-rating the annual limitations) or by adopting a 15-month second "program year" to begin October 1, 1979. The advantage of such a change would be that for most companies the fiscal year is the calendar year; the shift might therefore reduce accounting and computational burdens on them. On the other hand, it might, on balance, increase these burdens because many companies have been making their plans in expectation of a twelve-month second program year beginning in October. We are therefore requesting comments on this issue only by August 15. A change in the program year would not impair the ability of the Council to promptly issue guidelines that would be effective October 1. But many who wish to comply with the standards have an immediate need to plan for the fourth quarter of 1979; it is for this reason that we call for these particular comments at once.

On the basis of the comments we receive by September 5 on all other issues, we will prepare drafts of standards incorporating the major policy decisions. These will be published by mid-September, providing a brief opportunity for public comment on them. Whatever modifications result from those comments will be incorporated in the final version of the standards, to be available before October 1.

Finally, and separately from the foregoing process, we are working on revising the procedural regulations. We expect to publish proposed revisions in mid-August, again allowing opportunity for public comment. The proposed regulations will be accompanied by a description of a number of procedural issues, including the proper degree of public participation in the actual administration of the program.

Section II evaluates the performance of the standards during the first program year. Section III discusses the major issues that must be considered in designing the second-year standards.

II. Economic Review of the First Program Year

During the last nine months, inflation has worsened significantly. The overall inflation rate has accelerated primarily because of severe problems in three major sectors of the economy: food, energy, and housing. Price standards alone cannot solve the problems in these special sectors because, fundamentally, they result from the pressure of growing demand in the face of comparatively fixed or contracting supplies.

Nonetheless, a high degree of compliance with the basic price standard during the first program year has prevented a sharp rise in the inflation rate outside those problem sectors.

Increases in unit labor costs have accelerated, but this has been the result of a sharp deterioration in productivity growth rather than accelerating pay-rate increases. In addition, much of the increase has been in the form of higher employment taxes and nonwage fringe-benefit costs (medical-care insurance and pension costs). Thus, the rise in labor costs has not meant a corresponding increase in take-home pay of workers to meet the increased price of purchased goods and services.

The combination of declining productivity and soaring energy and food prices has therefore led to a loss of real incomes for American workers. Workers understandably believe that they are entitled to recover this loss, but an attempt to do so would accelerate the wage/price spiral and raise the prices of a wide range of goods and services. The special problems of food, energy, and housing can no more be solved by simply granting higher nominal pay increases than by attempting artificially to hold down prices of those items. For the economy as a whole, growth in real income is the result of improving productivity and expanding supplies of goods and services. It is not the result of nominal money-wage increases.

The price and pay trends in the first program year are discussed in more detail below, with particular focus on their implications for the second-year standards.

A. *Prices*

The contribution of the three major problem sectors—food, energy, and home purchase—to the acceleration of inflation is clearly evident in Figure 1 and Table 1.

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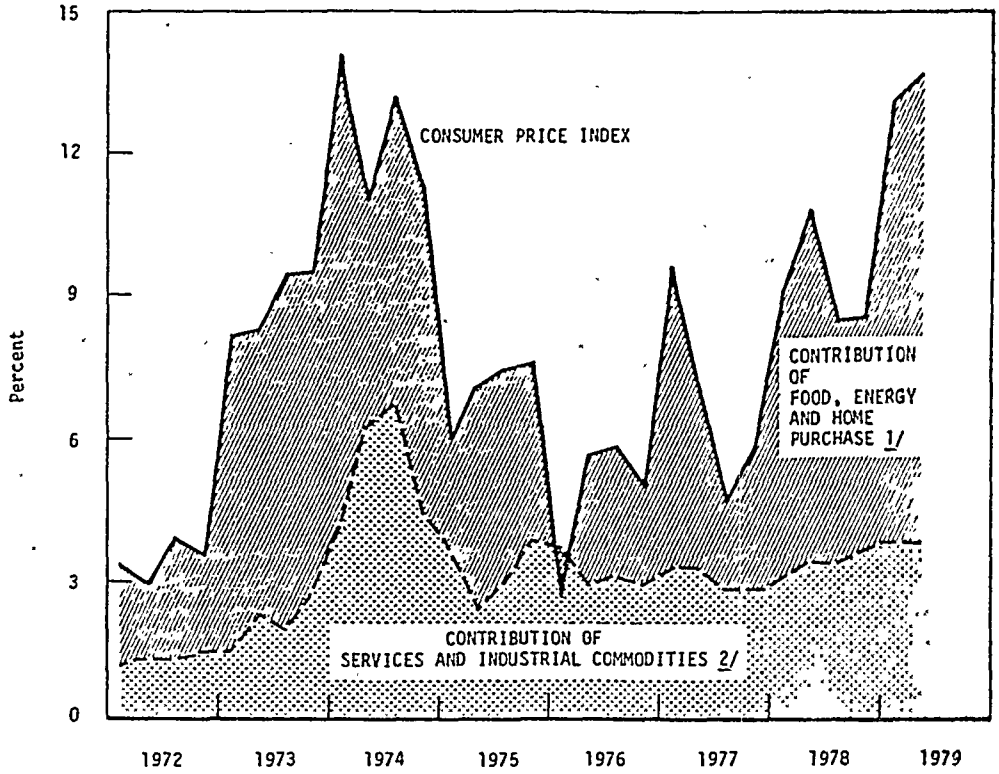
FIGURE 1

COMPONENTS OF THE CONSUMER PRICE INDEX

(ANNUAL RATES OF CHANGE)



Source: U.S. Department of Labor, Bureau of Labor Statistics -
1/Food, energy, home purchase, home finance, insurance and taxes, and used car components of the Consumer Price Index.
2/All other items of the CPI.

TABLE 1

COMPONENTS OF THE CONSUMER PRICE INDEX
(Annual Percentage Rates of Change)

	All Items	Food	Energy	Home Purchase and Finance	Other Items
1976	4.8	0.6	6.9	3.0	6.4
1977	6.8	8.0	7.2	9.8	5.9
1978	9.0	11.8	8.0	12.9	6.5
Program Year to Date	11.6	11.7	30.9	15.9	7.4
Relative Importance (%)	100.0	18.2	8.5	19.8	50.4

SOURCE: U.S. Department of Labor, Bureau of Labor Statistics.

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• Food prices surged in late 1978 and early 1979, increasing at an annual rate of nearly 18 percent from January through March 1979.

• The long-anticipated (but still slight) moderation in food-price increases in recent months has been offset by the concurrent explosion in energy prices, which have gone up at an annual rate of more than 70 percent from March through June 1979.

• Also contributing powerfully to the overall acceleration during 1978 and 1979 have been the sustained sharp increases in home-purchasing and financing costs, which rose by 10 percent in 1977, by 13 percent in 1978, and at an annual rate of 16 percent in the first nine months of the program year.

The large price increases in these problem sectors have not yet spilled over into the industrial and service sectors of the economy. On the contrary, the *underlying* inflation rate (basically industrial-commodity and service prices) has accelerated only slightly, from annual rates of 5.9 percent in 1977 and 6.5 percent in 1978 to 7.4 percent in the program year through June 1979.

On the other hand, the wholesale price indexes provide evidence of a more widespread worsening of inflation (see Table 2). While the behavior of finished-goods prices parallels the trends in the Consumer Price Index, prices of intermediate goods and crude materials surged in early 1979. In many industries, these increases reflected the unexpectedly strong growth in the economy during the latter months of 1978 and the emergence of shortages of some basic materials. Most recently, these price increases have begun to slow down as the economy has weakened. A large portion of the higher rate of price increases at the intermediate level of production, however, reflects the spreading effects of sharply higher petroleum costs into other energy-intensive industries. Price increases in these industries, unfortunately, will spread to the consumer sector in the months ahead.

B. *Pay Rates*

Despite the sharp surge of price inflation, average pay-rate increases have not accelerated thus far in the program year (see Table 3).

• Hourly earnings of production, or nonsupervisory, workers (a measure that excludes overtime in manufacturing and corrects for the effects of employment shifts between high- and low-wage industries) increased at an annual rate of 7.9 percent during the past three quarters, compared to 8.2 percent in 1978.

Table 2.—*Producer Price Index*

(Seasonally adjusted annual rates of change)

	1976	1977	1978	Program year to date [1]
Finished Goods	3.3	6.6	9.2	10.5
Capital Equipment	6.4	7.2	8.0	9.4
Consumer Goods	2.1	6.4	9.6	11.0
Less Food and Energy	4.7	5.7	8.5	7.9
Intermediate Goods	6.2	5.9	8.6	13.0
Less Food and Energy	6.3	5.7	8.9	11.6
Crude Materials	3.3	3.7	17.2	17.8
Less Food and Energy	10.2	3.6	21.3	33.0

[1] September to June at annual rates.

Source: U.S. Department of Labor, Bureau of Labor Statistics.

Table 3.—*Alternative Measures of Pay Rates* [1]

(Private nonfarm business)

	Percentage change from fourth quarter to fourth quarter			Program year to date [2]
	1976	1977	1978	
Average Hourly Earnings Index	7.4	7.5	8.2	7.9
Employment Cost Index [3]	7.2	7.0	7.7	7.2
Union	8.1	7.6	8.0	7.8
Nonunion	6.8	6.6	7.6	6.6
Total Compensation Per Hour	8.5	8.0	9.6	9.2
Contribution of: [4]				
Hourly Wages and Salaries	6.4	6.2	7.9	7.1
Private Fringes	1.3	1.2	0.9	1.1
Employer Contributions for Social Insurance	0.8	0.6	0.8	1.0

[1] Average hourly earnings and employment cost indexes are for production and nonsupervisory workers. Hourly compensation and its component series are for all employees.

[2] Annual rates of change, 1978:3 to 1979:2.

[3] Annual figures measure December-to-December changes. Program-year-to-date figures are annual rates of change from September 1978 to March 1979.

[4] The figures were constructed by taking the dollar change over the period in the hourly pay component and dividing by total hourly compensation in the initial quarter.

Sources: U.S. Department of Labor, Bureau of Labor Statistics; U.S. Department of Commerce, Bureau of Economic Analysis; and the Council of Wage and Price Stability.

• For the past three quarters, total hourly employee compensation has risen at a 9.2-percent annual rate, compared to 9.6 percent in 1978. (Total compensation differs from hourly earnings in that it covers all employees and includes payroll taxes and the costs of private fringe-benefit plans; taxes and fringe-benefit costs added approximately 2.1 percentage points to the overall rate of increase during the current program year.)

The moderate rate of increase in wages is encouraging, since a substantial acceleration of pay-rate increases would normally follow a surge of price inflation and a general tightening of labor markets, such as have occurred in recent years.

C. *Productivity and Real Incomes*

Since the surge in price increases has not been matched by an equivalent rise in pay rates, the real income of the average American worker has declined. There are several reasons. First is the sharp decline in productivity growth over the last decade (improvements in real incomes ultimately can result only from improvements in productivity). During the two decades from 1958–78 both productivity and real hourly compensation expanded at annual rates of between two and three percent (see Figure 2). In the last decade, productivity growth slowed to less than two percent, and in recent years it has been less than one percent.

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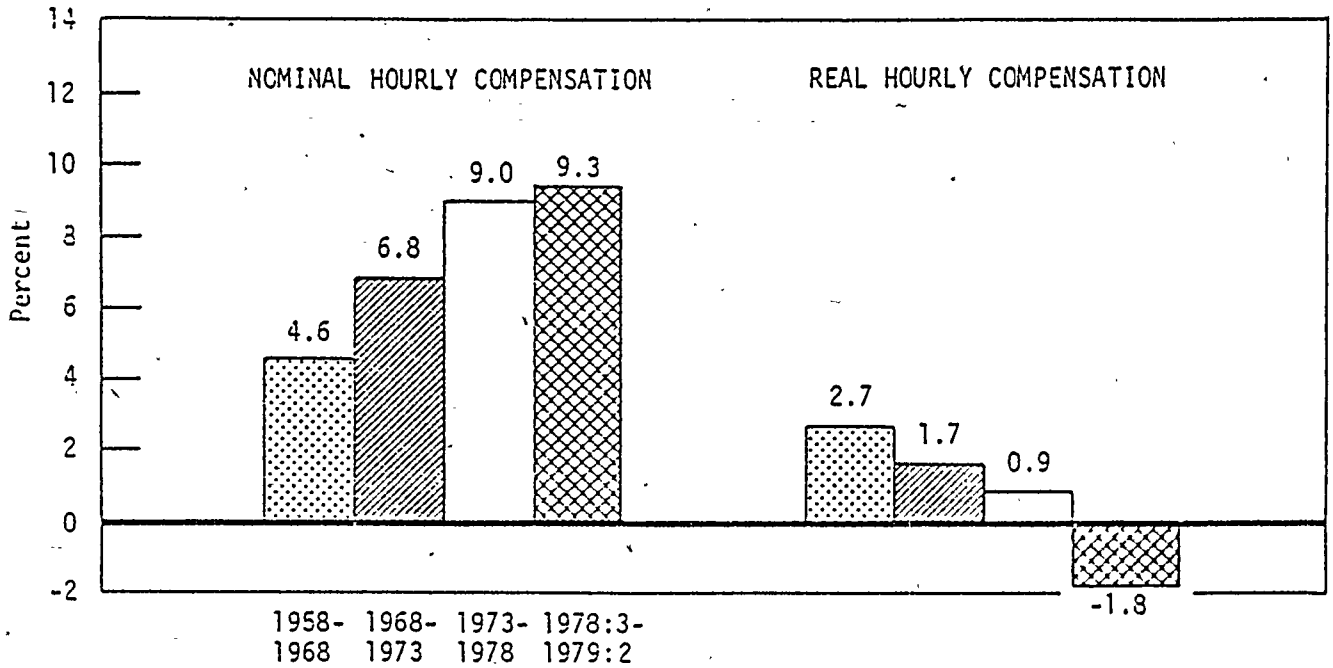
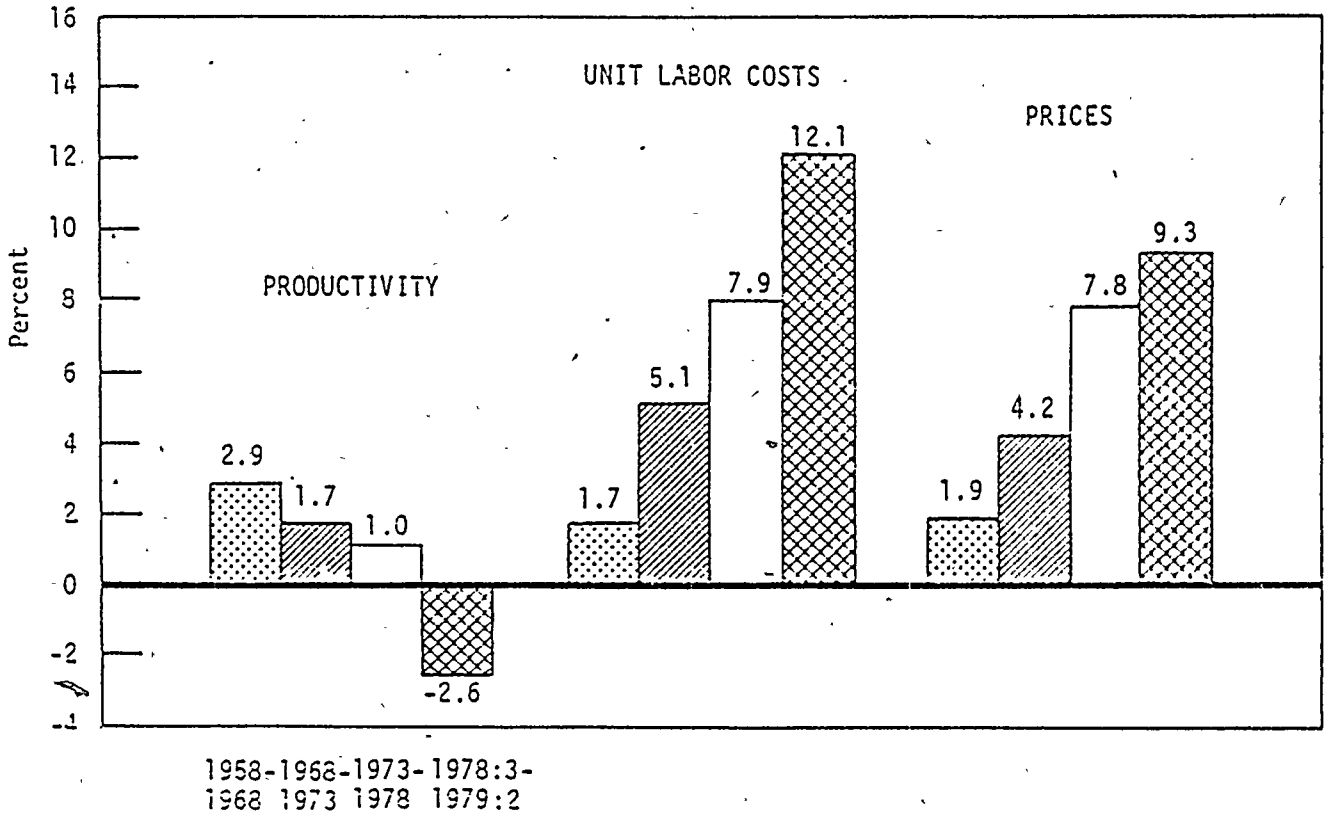
FIGURE 2

PRICES, UNIT LABOR COSTS AND PRODUCTIVITY

(ANNUAL RATES OF CHANGE)





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Second, an increasing proportion of total worker compensation is being absorbed by employment taxes and the costs of private pension and health-insurance programs. For example, employer payments for social insurance taxes and private fringe benefits increased from 6.5 percent of total compensation in 1960 to 15 percent in 1978.

Finally, a major cause of the decline in real wages has been the above-average increases in food and energy prices. Large increases in petroleum prices are imposing large costs on *all* Americans, as our purchasing power is transferred abroad. Food-price increases reflect a smaller food supply for the nation as a whole, but they also have transferred income from the nonfarm to the farm sector.

It is important to note that labor's share of national income has not declined. Thus, this drop in real income has not been borne disproportionately by labor. (This does not, of course, deny the possibility of wide differences in the effect of inflation on different parts of the labor force; it is to say only that the facts do not support the belief that the program has been more favorable to profits than wages in the aggregate.)

D. *Implications for the Standards*

Inflation has been far worse than was anticipated when the anti-inflation program was announced in the fall of 1978. As initially contemplated, the standards were not intended to apply to crude materials in the food and energy sectors, nor could they reasonably have been expected to restrict the level of mortgage interest rates or the amount that an individual could obtain from the sale of his or her personal residence. Nonetheless, the pressures of higher food, energy, and home purchase prices have significantly altered the role of the standards.

The most important function of the standards in these unexpectedly altered circumstances has been to prevent the spread of large food and energy price increases into the economy generally, which would have caused an upward ratcheting of the underlying inflation trend. In this respect, the standards have provided important benefits.

- There has been a high degree of compliance with the price deceleration standard. The annual rate of price increase in the components of the CPI for which this basic standard is applicable has been 7.4 percent, or about one percentage point above the rate anticipated if all firms had adhered to the standard. This excess is attributable primarily to situations where uncontrollable raw-material or energy price increases have pushed firms to the cost-passthrough exception, which entails a limit on profits and profit margins rather than on price increases. There have been very few cases of noncompliance with the standard by large firms.
- The rate of overall pay increase also has not accelerated significantly above year-earlier levels. Increases in hourly compensation are currently running at approximately 1 to 1½ percentage points above the original target rate. The excess reflects, in part, the costs of contracts negotiated before the beginning of the program, pay increases falling within specified exceptions, certain exempted benefit costs, the 9.4-percent increase in the minimum wage rate, and allowable pay increases dictated by cost-of-living-adjustment (COLA) clauses.

At the same time, some problems have emerged during the first program year.

- There has been wide variation in the magnitude of pay increases. Some of this variation can be traced to the effects of contracts negotiated before the program. But, in addition, pay-rate increases have varied substantially among employee units that have complied. In a few cases, individual units received substantial gains because they qualified for specific exceptions to the general standard. The most troublesome variations, however, reflect the different treatment (as discussed more fully in section III) of employee units covered by COLA clauses and units not so covered. Since the standard provides that COLA clauses are to be costed out at an annual 6-percent inflation rate, workers covered by such arrangements received pay increases as compensation for higher food and energy prices, while the remainder of the workforce did not.
- Troublesome problems of equal treatment have appeared on the price side as well. Primarily, these result from the use of earlier periods to define allowable rates of price increase and normal rates of profit. Industries that, in the earlier period, experienced abnormally low levels of demand, and thus relatively small price increases and/or low profits, are more severely constrained by the standard than are others.
- In addition, the troublesome increases in food and energy prices cannot be explained simply by the exemption of farm and other raw-material prices from the program. In both of these industries, there have been substantial increases in processor and distributor margins, which are within the scope of the standards. For example, the farm-to-retail spread within the food sector rose at an annual rate in excess of 21 percent in the first six months of 1979 and in June was 13 percent above year-earlier levels. Again in the first six months of this year, increases in crude-petroleum costs accounted for less than half of the 27-percent rise in gasoline prices and the 31-percent rise in the price of home heating oil.

III. Major Issues in the Design of the Second-Year Standards

The foregoing analysis suggests that the standards have worked as well as could have been expected in the face of adverse, largely external circumstances. A case can be made, therefore, that they should not be radically revised in the second year. Moreover, adhering as closely as possible to the format of the first-year standards has many important advantages, since the resulting continuity minimizes computational and accounting burdens on companies, facilitates administration by the Council, and capitalizes on the experience gained by companies, employee representatives, and the Council during the first year.

On the other hand, some have argued that the standards should be radically revamped. The fact that most of the worsening of the inflation situation during the first program year is attributable to special problem sectors has led some observers to suggest the possible desirability of extending the standards to encompass a larger part of the economy. Additionally, some have suggested that the price standard is overly complicated and should be simplified so that individual citizens can judge company compliance. These issues are discussed below.

A. *The Price Standard*

The first-year price standard establishes a limitation on the *company-wide average* rate of increase. The limitation is not the same for all companies. The use of a single number is impractical because of wide variations among industries in rates of productivity growth and raw-material price changes. Instead, the allowable rate of price increase for an individual firm is determined by computing its average rate of price change over a base period (1976–77) and subtracting a deceleration percentage that is the same for all firms. The deceleration percentage for the first program year, 0.5 percentage points, was selected to produce a target price increase for the entire economy consistent with the 7-

percent pay standard, after taking into account employment taxes and a normal increase in productivity.

The profit-margin exception allows a passthrough of costs in situations where cost increases substantially greater than during the 1976–77 base period make price deceleration unachievable without seriously compressing the profit share of the sales dollar. Companies qualifying for the exception are subject to a two-part limitation:

• The program-year percentage profit margin should not exceed the profit margin for the best two out of the last three years.

• The volume-adjusted growth in dollar profits should not exceed 6.5 percent, as compared with either actual dollar profits in the year preceding the program year (the base year), or what those profits would have been had the profit margin been at the best-two-out-of-three previous years' level (i.e., the profits one calculates by applying that best-two-out-of-three margin to actual total revenues in the base year). This limitation implies a dollar-for-dollar passthrough of unit-cost increases in excess of 6.5 percent.

The basic price standard has two principal advantages:

• It focuses on prices rather than cost passthrough. Price deceleration, unlike cost passthrough, is explicit, relatively easy to calculate, and relatively uncomplicated by accounting technicalities. Thus, this standard is administratively simple and relatively easy for a small staff to monitor. In addition, cost passthrough, unlike price deceleration, may have the perverse effect of dampening incentives to resist cost inflation or to improve productivity.

• It focuses on average prices, leaving companies with the flexibility to adjust relative prices in response to changing market conditions.

The price standard has several important problems:

• The focus on average price increases for all the company's products makes it difficult for the public to judge compliance.

• For many companies, the cost trends experienced in the program year have differed substantially from the base period. The recent surge in raw-material and energy prices has rippled through the economy, forcing many companies to use the profit-margin exception. As noted above, this enormously complicates the administration of the standard. The most important problem with the profit-margin exception, however, stems from the adjustment of base-year dollar profits using the best-two-out-of-three profit margin. For the vast majority of firms applying for this exception, the profit margin in the base year was substantially below what it had been in the best two out of the three preceding years. As a result, these companies can pass through cost increases *and* raise their profit margins; in effect, they are allowed to catch up to the higher profit margin of the best two years—an allowance that has no counterpart on the wage side.

• On the other hand, the price deceleration standard is relatively loose for companies whose cost increases were large in the 1976–77 base period.

• The fact that the profit-margin exception is not binding for many companies with accelerating cost increases, while companies with decelerating cost increases other than pay can meet the price deceleration standard readily, causes some slippage in the price standard.

1. *Establishing the aggregate price standard.* The first-year aggregate price standard was derived from the pay standard, assuming a constant percentage markup of prices over unit labor costs and a trend productivity growth rate of 1¾ percent. Specifically, the targeted increase in hourly labor compensation was derived by adding one-half of a percentage point to the 7-percent pay standard, reflecting the increases in employment taxes scheduled for January 1979. Subtracting a 1¾-percent estimated productivity growth trend from the 7½-percent targeted increase in hourly labor costs yielded an implied increase in unit labor costs of 5¾ percent for all companies taken together. Thus, 5¾ percent was the aggregate price standard. This was consistent with the price deceleration standard for individual firms (whose individual standards would lie above or below the 5¾ percent average), because the aggregate underlying rate of inflation in the 1976-77 base period was about 6¼ percent, and subtracting the one-half-percentage-point deceleration factor from this figure yielded the 5¾-percent aggregate standard. Some slippage was anticipated because of the various exemptions and exceptions that were included in order to avoid inequities and inefficiencies. The result was an anticipated rate of industrial price inflation near 6½ percent in the sectors of the economy covered by the standards, assuming universal compliance.

A similar derivation of the aggregate price standard for the second program year requires application of trend productivity and the effect of increased employment taxes in January 1980. Estimates of the former range between 1 and 1¾ percent. The employment tax increase will add about one quarter of one percent to average employment costs. A 1-percent productivity growth assumption and the ¼-percent add-on due to the rise in employment taxes would imply an aggregate price standard that is three quarters of one percentage point below the pay standard. The higher 1¾-percent productivity-growth assumption would imply an aggregate price standard that is 1½ percentage points below the pay standard.

2. *The range of allowable price increases.* During the first year of the program, the outer limits of allowable average price increases were 1½ percent and 9½ percent, regardless of the company's base-period rate of price change. This 8-percentage-point range was so wide that it created some inequities, in that firms with particularly large increases during 1976 and 1977 might comply easily and profitably at 9½ percent, while firms whose markets were unusually depressed at that time might have great difficulty living with the 1½ percent minimum. On the other hand, the setting of any limit at the top could be inequitable for firms confronted with even greater cost increases, but for the possibility of a profit-margin exception. Given the availability of that escape, the range of price deceleration could be narrowed symmetrically (e.g., to a 6-percentage-point range about the second-year aggregate price standard) or asymmetrically (e.g., lowering the top of the range but leaving the bottom where it is). A symmetric adjustment would reduce the inequities for firms with depressed markets during the 1976–77 base period without relaxing the overall effects of the standard—except that it would invite more applications for profit margin exceptions by companies at the top of the range—while an asymmetric adjustmemt would constitute a significant tightening of the standard.

3. *The choice of the base period.* The price deceleration standard is based on the assumption that there is some continuity over time in the differences among companies and industries in their respective productivity and cost trends, and that their relative price changes in the recent past adequately reflect these differences. In other words, the standard assumes that industries that experienced rapid productivity growth and low rates of price increase in 1976–77 will continue to do so compared to low-productivity-growth industries.

For the first program year, the 1976–77 period was selected as the base for

measuring these underlying cost trends in individual industries. The period since 1977 was excluded to avoid penalizing firms that coopeated with the Administration's informal program (announced in January 1978) to restrain price increases. Similarly, the inclusion of earlier years would bave distorted the underlying cost trend, because of the 1974–75 recession and the large energy price increases in 1973–74.

It is important to emphasize that the choice of a base period for calculating company-specific price standards is separable from the decision about the specific numerical value of the aggregate standard. Changing the base period changes the *distribution* of price limitations among individual companies, but is independent of the choice of the level of aggregate price standard.

Nonetheless, the question arises whether the base period should be changed for the second program year. The dramatic changes in the costs of energy and other raw materials since 1977 have had sharply differing effects on different industries. On the other hand, leaving the base period unchanged minimizes calculation costs since firms have already computed their base-period price changes, and no additional work must be done, in most cases, if this number is used in the second program year. The importance of this factor should not be underrated, because compliance costs were substantial for some firms, and adding to those costs is bound to result in lesser compliance with a voluntary program. In addition, the profit-margin exception provides relief for companies whose cost trends in the second program year diverge sharply from the 1976–77 experience.

Finally, shifting the base forward to incorporate 1978 and/or the first program year would have the same drawback as including 1978 in the first-year standard: it would reward companies that raised their prices sharply and penalize those that had practiced restraint.

4. *One-year vs. two-year standard.* There are two choices for the second year of the program: (1) A one-year limitation on company price increases, measured from the fourth quarter of the first program year to the corresponding quarter in 1980; or (2) A cumulative two-year limitation, measured from the base quarter in 1978 to the corresponding quarter in 1980.

There are several advantages to a cumulative two-year limitation. It has attractive equity properties, since it does not penalize (as would a one-year standard) firms that exercised more restraint than requested during the first program year. Similarly, a two-year standard does not provide firms with an incentive to use up all of their allowable price increase in each year of the program (as would a one-year standard). In addition, 1979 and 1980 taken together are likely to parallel experiences in the 1976–77 base period more closely than would either 1979 or 1980 taken alone, because the rapid raw-material price increases experienced during 1979 are likely to be offset, in large part, by smaller increases, and perhaps some declines, during 1980.

The major problem with a two-year cumulative standard (which is avoided by a one-year standard) is that it would make it more difficult for some companies that were eligible for, and used, the profit-margin exception during the first program year to return to the price deceleration standard during the second year. These companies presumably increased prices by more than would have been permissible under the price standard because of uncontrollable cost increases. In addition, a cumulative standard implies some slippage, since firms that did not make full use of their allowable price increase during the first year could raise prices by a larger amount during the second. The effect is, of course, the other side of the coin that we described as an advantage of the two-year standard: it rewards restraint in the first year and eliminates any incentive to take all permissible increases each year. This latter consideration seems to us so important at this moment, as we move through the fourth quarter of the first program year, that unless we receive comments with compelling arguments to the contrary, we intend to adopt the two year standard with such adjustments as may be required to overcome the problems that we have identified.

Finally, the adoption of a two-year standard poses problems for the treatment of new products introduced during the first year and hence excluded from the calculation of the program-year rate of price change. Excluding these same products in the second program year, as well as products newly introduced during that year, could significantly reduce the coverage of the program. Yet, incorporating prices of new products introduced during the first year into a two-year price-change calculation, taking account only of the second-year changes in these prices, introduces computational complications (they are not, however, insuperable).

5. *Excluded products.* During the first program year, most crude and raw materials (including petroleum, forestry and mineral products, and agricultural commodities at the farm level) were excluded from the program. There were two basic reasons for most of these exclusions. First, prices of many of these products (the farm value of food, for example) are determined in highly competitive markets, in which individual producers have little or no discretion in the prices at which they sell. A standard for price restraint cannot sensibly be applied to sectors of the economy where sellers have no control over the prices they receive. The second reason for excluding raw materials is closely related to the first. Competitive prices tend to be set at the level that equates demand and supply; there is a danger therefore that limitations on allowable price increases will give rise to shortages, inflicting damaging dislocations and distortions on the economy. Such effects are especially likely in crude materials because these commodities are subject to cyclical swings in prices far wider than are finished goods.

There has been a great deal of criticism of these exclusions, largely because so much of the inflation we have experienced has been precisely in the excluded areas. Although the criticism is understandable, it is difficult to see the logic of trying to apply the price standards to situations where price increases are the result of supply shortages and where sellers lack discretion in setting prices for their goods. As the economy is currently experiencing a slowdown that is expected to continue for several quarters, the source of the extraordinary price pressure in many of these areas should abate in the second program year.

Crude oil is, admittedly, a special case. Since, however, it is subject to a totally separate regulatory regime, by law, there would be no point in raising the issue here of the desirability or undesirability of extending the price standards to cover domestic production.

It is possible, however, that not *all* the other excluded areas should continue outside the price standards; we invite comments on this question.

6. *Special-sector standards.* In the first year, special standards were adopted for several sectors: retailing, wholesaling, food processing, petroleum refining, electric and gas utilities, insurance, some professions, financial institutions, government enterprises, and government-subsidized private companies. In most cases, the special standards were adopted in response to two problems: (1) Difficulties of carrying out the computation required to

determine compliance with the price deceleration standard (as in the case of wholesale and retail trade) and (2) Situations of highly volatile raw-material costs (e.g., food processors and petroleum refiners). Institutional idiosyncrasies also made application of the price deceleration standard unsuitable in some sectors (e.g., financial institutions).

The Council is soliciting comments on the advisability of continuing these special standards and suggestions for revising them. We are particularly concerned about the efficacy of the dollar-gross-margin standards in the petroleum-refining and food-processing industries. Costs of energy, containers, and certain other items have risen more rapidly in the food industry than 6½ percent, the growth in dollar gross margin allowed under the standard, making it difficult, in many cases, for firms to remain on the gross-margin standard. In addition, the contrast between our determinations that most major companies in the food and energy industries are in compliance and the evidence of sharply widening margins in these industries in the aggregate suggests that there may be problems with the applicable gross-margin standard—some of which we have not fully comprehended. The Council suspects that the problem in petroleum refining may be attributable to large changes in the mix of purchased crude oil (for refining) and refined products (for resale). Finally, it may be desirable to integrate the standards for the petroleum industry with DOE regulations.

The percentage-gross-margin standard for retail and wholesale trade has similar problems: it permits widening of *dollar* margins whenever the prices of goods sold by the retailer or wholesaler are rising rapidly. Yet, there is no relief comparable to the 1½-percent lower bound on the price standard for firms with very low or negative margin trends. It has also been argued that the standard presents compliance problems for firms, because it is not always possible to control changes in the margin precisely.

In addition, many firms have adoped the primary price deceleration standard, instead of the applicable optional standard, and then have sought to qualify for the profit-margin exception for the precise reasons for which the gross-margin standard was designed. The Council is seeking comments on the advisability of requesting that these companies first attempt to comply with the gross-margin standard before resorting to the profit-margin exception.

During the first program year, governmental units, government-subsidized companies, and nonprofit organizations were all covered by the standards. The nature of these organizations presented certain unique problems. Because of the current trend away from public subsidies toward increased user charges, the latter have sometimes increased sharply. While it is uncertain whether the effect of this trend is actually inflationary, the public perceives increases in user charges as inflationary. Proposition 13-type inititatives, for example, have caused losses in operating subsidies for many utilities and universities. The consequent increases in rates and tuitions have led many users to believe that these institutions have violated the price standard, a mistaken impression that is detrimental not only to the institution but to the credibility of the anti-inflation program. Nonprofit firms (including universities and other nonprofit entities) have posed technical problems in implementing the standard: for example, how to treat capital outlays when depreciation is not ordinarily included in their accounting practice.

We solicit comment on the advisability of retaining or modifying any of the special industry standards.

7. *The insufficient-product-coverage rule.* In the first program year, a company that derived at least 75 percent of its revenue from products that were excluded from the program could exclude all of its operations. The purpose of this rule was to avoid imposing unnecessary burdens on companies for which only a small fraction of total operations would be covered and where, therefore, the costs of compliance might not be justified in terms of the benefits to the anti-inflation program. However, it has been possible for companies to combine the 75-percent rule with the rule providing flexibility in organizing for compliance purposes so as to evade the intent of the program. That is, companies can disaggregate their operations in such a way that products that would normally be covered, and for which large price increases have occurred, are placed in compliance units that qualify for exclusion under the 75-percent rule. Moreover, for large firms the revenue that is excluded as a result of the rule can amount to several hundred million dollars—enough to warrant regular monitoring from the Council had this revenue been earned by an independent company. For these reasons, it has been suggested that the rule be revised by increasing the percentage threshold for exclusion, or perhaps that the rule be eliminated altogether.

8. *Adjusting the profit-margin limitation.* The profit-margin limitation is intended to constrain the change in price to approximately equal changes in uncontrollable costs. In the standards for the first program year, the limitation has two parts (both of which must be met if a firm is to be in compliance): (a) The profit margin (dollar profit as a percent of sales) must remain below the average of the best two of the last three years before the beginning of the program and (b) Dollar profit growth during the program year is restricted to 6½ percent (plus an adjustment for any positive growth in physical volume) on a base that could be computed in alternative ways.

Because of serious slippage in this standard, as we explain more fully below, the Council added a condition to profit-margin exceptions granted during the first year of the program (including those that were self-administered). The condition tightened up the second part of the profit-margin limitation by constraining dollar profits to an amount more nearly consistent with a passthrough of cost changes per unit of output from the base quarter to the fourth quarter of the program year.

The basic problem in using profits to monitor cost passthrough is determining which period should be used as the base for measuring the allowable passthrough. The tightest standard would limit price increases during the program year to those just sufficient to pass through increased costs incurred since the base quarter. The problem with such a tight standard, however, stems from the fact that quarterly cost accounting (and therefore reported quarterly profit) is not precise enough. Inventory valuations, for example, create major distortions in some industries. If cost-accounting practices understate costs in the base quarter, compared to normal, then profits in that quarter will be overstated, and a standard that permits cost pass-throughs sufficient to maintain that abnormally high quarterly profit would permit too much price increase. To an extent, this problem is limited in the present standard by the best-two-out-of-three-previous-years rule, which becomes binding if base-quarter or base-year profits are too much above the average.

Conversely, if accounting practices overstate costs in the base quarter, thereby understating base-quarter profits, then measuring profit growth from that quarter could permit a firm a lower rate of price increase than its longer-term cost increases would justify.

There is no relief from this problem under the standards, except in a request for an inequity or undue-hardship exception.

To summarize, conditioning the profit-margin limitation exception to restrict dollar-profit growth from the base quarter has the virtue of restricting price increases to a passthrough of unit-cost increases since that quarter, but it has the disadvantages of inaccurately relating cost passthrough to a more representative measure of costs.

The original, unconditioned standard avoided this entire problem by its flexibility—use of the best two out of three years (instead of a single year) for computing the permissible margin, and permitting a choice in computing the dollar growth limit. However, this very flexibility permitted some firms that qualified for the exception to impose price increases far in excess of a passthrough of costs.

The argument has been made to us that the profit-margin limitation discourages productivity-improving investments because it does not allow for increased margins to cover the costs of recent investments that increase the capital/output ratio. That assertion is valid, although it should also be noted that the Council's administration of the profit-margin exception during the first program year has sought to limit the potential disincentive effect: we have required firms to pass forward to the consumer in lower prices normal improvements in productivity (as measured by historic trends), but have permitted firms to retain in the form of increased profit productivity improvements exceeding that level.

In any case, this asserted disincentive is a matter of special concern because of the need to increase capital investment in order to help revive the economy's sagging productivity growth. One radical revision that would meet this criticism would be to convert the limitation to one based on the rate of return to capital. We will appreciate comments on this possible change, or on the possible ways of meeting this problem—as well as on whether the problem is actually serious enough to justify attempting to revise the standards to meet it.

The current profit-margin limitation, including the clarifications made during the first year of the program is an acceptable means of dealing with situations of uncontrollable costs. Two alternatives to the current procedures, however, have been suggested. Comments on these and other proposals would be welcome.

Option 1. Adjust the annual profit-margin limitation to partially eliminate the possibility of catch-up price increases. This could be accomplished by: (1) Holding the profit-margin in the second program year to the average over the three years before the beginning of the program (rather than the best two of these three) and (2) Limiting dollar-profit growth from the base year, with only a halfway (rather than full) catch-up adjustment if the base-year profit margin is below the two- or three-year average.

Option 2. Adjust the allowable rate of price change in specific situations of uncontrolled cost increases, rather than authorize a profit-margin exception.

Since many of the cost-passthrough exceptions are the result of large energy price increases, firms could be permitted to compute their actual price increases for purchased energy; identify the percentage increase above a cut-off level; and add this excess, weighted by its share in total revenues, to their allowable program-year rate of price change. The cut-off might be set several percentage points above the overall inflation rate in order to encourage conservation of energy.

In other cases, it is possible to increase a company's allowable program-year rate of price change by a specific amount to accomodate a cost-passthrough. It is often difficult, however, to project some cost elements over the program year as a whole and to adjust input-cost increases for offsetting improvements in productivity.

It has also been suggested that the 6.5-percent allowable growth in dollar profit be lowered in order to compensate for the slippage that is inherent in the profit-margin exception.

9. *Company organization.* In the beginning of the program year, firms were allowed to disaggregate themselves into separate compliance units if separate historical accounting records exist for each separate unit. Many firms reported to the Council as one integrated unit; others split themselves into several, and in a few cases firms organized themselves into as many as 20 or 30 separate compliance units.

This flexibility was permitted largely to hold down compliance costs and in recognition of the fact that large firms are frequently spread across sectors of the economy that are subject to vastly different economic forces. Firms could thus decide for themselves the form of organization that best matched internal record-keeping and management practices, an important consideration in obtaining cooperation with a voluntary program.

This flexibility could also be utilized to meet an objective less in keeping with the spirit of the program: by skillful manipulation of company structure, different portions of the firm could be grouped in ways that allowed access to various exceptions. This created some slippage in the price standard, but the amount was probably small since the Council did not permit reorganization during the program year.

Opportunity for reorganization must be permitted, at some point, in order to meet the original objectives. Changes within the company, changes in the economic circumstances of industries within which various parts of a large company may operate, and simple mistakes in choosing the compliance structure all argue for providing an opportunity for making corrections. It would, however, clearly be undesirable to open up, through the reorganization option, opportunities for evading the effects of the price standard. This may prove more of a problem during the second program year simply because experience during the first year has made some companies more aware than before of the implications of company structure.

10. *A product-specific vs. a company-specific price standard.* Throughout the first program year, the Council has been asked repeatedly to explain its opposition to setting specific price standards product by product. The major advantage cited for such a standard is that it could be more easily monitored by consumers. To facilitate this, retailers might be requested to post maximum prices consistent with the standard.

It is indisputable that posted price standards for every individual commodity would be easier than the company-wide standard for consumers to monitor. But it would raise numerous problems.

First, administering such a standard would require an enormous bureaucracy, many times larger than the current Council staff.

Second, by restricting relative-price adjustments, a product specific standard would inevitably intensify distortions and shortages. Leaving individual product prices free to adjust to changing market conditions, so long as the overall average is within the limit, greatly diminishes these dangers.

Third, under an individual-product price standard, application of the profit-margin exception would become much more difficult, since eligibility for the exception would depend on the costs of producing individual products. It is typically difficult, if not impossible, to

allocate costs among different products within a multi-product firm.

Moreover, if target prices are set for individual products, without the flexibility that averaging permits, there must be more frequent recourse to the profit-margin exception, with its perverse disincentive effects and administrative difficulties.

It has been suggested that, as an alternative to a product-specific standard, the Council ask companies to make public their allowable average price increases, thus providing the public with some information that can help them judge compliance. It should be emphasized, however, that these data are proprietary, and putting pressure on companies to make them public would be inappropriate. Nevertheless, the Council is soliciting comments on this suggestion, as well as on the advisability of a product-specific price standard, or on other possible ways of achieving some of its advantages while avoiding its disadvantages.

B. *The Pay Standard*

The first-year pay standard generally limits the overall rate of increase for employee units to 7 percent. Since the standard is an average, it allows for variations in the pay rates of different employees.

1. *Design of the overall second-year pay limitation.* The increase in inflation since the announcement of the program has created two problems that must be confronted in designing the second-year pay standard: first, there is considerable sentiment in favor of relaxing it; second, the allowable pay increases during the first program year have been much greater for employee units with COLAs than for others. Attempts to respond fully to these two concerns conflict sharply with the objective of maintaining a standard that does not lead to accelerating inflation.

• The sentiments in favor of increasing the pay standard reflect the view that after a year of double-digit inflation a 7-percent second-year level would be unreasonable.

—If the standard is widely viewed as unreasonable, conspicuous noncompliance will erode support by those who would otherwise comply.

—On the other hand, moderation of inflation cannot be achieved if everyone attempts to catch up with the recent surge in food, energy and housing prices.

• The assumption of a 6-percent inflation rate for evaluating new contracts with COLA clauses has meant that employee units without COLAs have been held to 7 percent annual increases while employee units with COLAs have received more.

—Cost-of-living escalator clauses normally provide less than full compensation for price increases, but a few contracts provide for 100 percent recovery.

—Some assumption of inflation rates during the life of the agreement is required in order to evaluate collective-bargaining contracts at the time they are negotiated; but the 6 percent assumption presently in use contrasts sharply with actual events during the first program year.

—Firms without COLA provisions might not continue to cooperate with the program unless adjustments are made to reduce the gap, created during the first year, between the wage increases received by those workers and wages received by workers with generous COLA clauses. Yet, since any such catch-up provision would apply to a large part of the workforce, the provision would heavily influence the overall rate of allowable pay increases.

Proposals that respond to these problems must recognize the relationship between the pay standard and the overall rate of inflation. Thus, for example, an 8-percent pay standard, after inclusion of the costs of maintaining benefit programs and employment taxes, implies a rate of employment cost increase near 9 percent. With little or no productivity growth, unit labor costs will rise by a matching amount. A proportionate passthrough of these costs (yielding constant profit margins) would imply a basic rate of industrial price inflation of 9 percent. If food, energy, and housing price increases continue to exceed the basic rate, the nation's inflation would continue to be near double-digit levels in the second program year.

The difficulties of resolving these problems within the confines of a program of meaningful restraint on inflation can be illustrated by the following examples of possible revised pay standards.

Example 1. Increase the standard to 8 percent and raise the assumed inflation rate for purposes of evaluating COLA clauses to 8 percent.

• Despite the increase from 7 to 8 percent, this configuration would tighten the standard for employee units with COLAs.

—It implies a 1-percent relaxation in fixed pay increases, but the increase in the inflation assumption from 6 percent to 8 percent raises the cost evaluation of COLA clauses by more than 1 percentage point (since the average recovery rate—that is, the average percentage of the increase in the cost-of-living that is compensated for by the COLA—is more than 50 percent).

—It implies an increase of unit labor costs near 9 percent for the economy as a whole.

• This configuration would provide for more equitable treatment between COLA and non-COLA employee units. Whether the adjustment would act to narrow or widen the present gap would depend on the actual inflation rate.

—Employee units with COLAs would receive larger wage gains than those without COLAs only if the inflation rate exceeds 8 percent.

—The costing assumption is used only for multi-year contracts, and an 8-percent inflation assumption is not unreasonable as an average rate for the next 2 to 3 years.

• This option, however, does not compensate those without COLAs for the disparity of pay-rate increases during the first program year. Any attempt to do so (on top of an 8-percent standard) could push the increase of unit labor costs into the double-digit range and result in a sharp acceleration of inflation.

Example 2. Retain a 7-percent standard but assume an inflation rate of 7 percent for evaluating COLA clauses; in addition, provide catch-up adjustments for employee units whose first-year *actual* pay increases averaged 7-percent or less.

• Limiting permissible wage increases to 7 percent offers the promise of holding increases in total unit labor costs below double-digit levels.

• It represents a tightening of the standard for employee units with COLA clauses.

• It provides an explicit catch-up for employee units without COLAs.

—If the catch-up were limited to complying units, the overall impact on employment costs would be somewhat reduced.

—The larger the catch-up adjustment, the greater the implied acceleration of inflation; on the other hand, the smaller the catch-up adjustment, the less the disparity in first-year pay-rate increases is redressed.

—Alternatively, the issue of catch-up might best be dealt with as an inequity exception on a company-by-company basis.

Example 3. Link the pay standard to the previous year's rate of price increase

(or to the increase in the CPI Minus selected items).

• Such an approach would seem to respond to arguments that the pay standard is unfair because it has implied declines in real income.

• But this approach fails to recognize that losses of real income that are the result of food and energy price increases in the context of weak productivity growth cannot be made up by larger pay increases.

• Most importantly, this formula would be by far the most inflationary. It would result in a double-digit pay standard and a substantial acceleration of the rate of inflation.

Many combinations or variants can be constructed, and comments should not be limited to the above exemples. But comments should consider the dilemma raised by the inconsistent goals of attempting to recoup past losses in real income and restraining the overall inflation rate.

2. *One-year vs. two-year standard.* The above examples have been represented in terms of a one-year rather than a two-year standard. The pay standard could alternatively be formulated as a two-year (cumulative) limitation. For example, a 15½-percent two-year standard (7 percent and 8 percent compounded) is comparable to an 8-percent second-year standard. Arguments in favor of a cumulative standard:

• There are several advantages to a two-year price standard (as discussed above), and symmetry between the pay and price standard may be desirable.

• It has attractive equity properties: under a cumulative standard, employee units that receive less than the pay standard in the first year are rewarded with a higher base pay rate for the second year; this is not so under a one-year test.

Arguments against a cumulative standard:

• Accounting for exemptions and exceptions granted during the first year would introduce complications that do not arise under the one-year standard. This is especially true of the low-wage exemption, particularly if the $4.00 cutoff is raised.

• The fixed-population method of calculating pay-rate increases (based on increases for continuing employees only) would be unrealistic for many employee units because of the large amount of attrition over a two-year period. Rather than eliminating this alternative method, which is used by a large number of companies, the Council could adopt a special one-year standard for employee units using this method. On the other hand, there are sound reasons for eliminating this alternative method, wholly apart from any change to a cumulative standard, since it affords favorable treatment to new employees, creating an inequity and encouraging turnover of workforces.

3. *Time weighting of pay-rate increases.* The Council is seeking comments on a proposal to allow time weighting of pay-rate increases as a means of evaluating compliance with the pay standard. Under the current rules, compliance is evaluated by comparing pay rates in the last quarter of the program year and the base quarter. For collective-bargaining contracts, the limitation applies to the compound annual rate of increase over the life of the agreement. Under a time-weighting computation, instead, pay-rate increases would be weighted by the portion of the program for which they are in effect.

• The primary difficulty with time weighting is that it introduces a potential loophole since, for example, a 28-percent pay-rate increase paid in the fourth quarter of the program year would be evaluated as a 7-percent annual increase.

—Yet the 28-percent increase would be incorporated into the pay-rate base for the second and subsequent years.

—Thus, if there is a concern about inflation beyond the program year, permitting larger pay increases merely because they are delayed is undesirable because it would add to long-run inflation pressures.

• The 1971–72 controls program allowed time weighting of union cost-of-living adjustments.

—This treatment was justified because the controls program limited increases for one year at a time rather than over the life of the contract, and pay increases in excess of the standard were not allowed even if dictated by a COLA.

—Without time weighting, contracts would have been negotiated to provide the maximum allowable increase on the first day of the program year. Within the current voluntary program, COLA payments are not limited even if they dictate increases in excess of the standard.

—An adoption of time weighting would increase further the attractiveness of COLAs, without the compensating ceiling restriction on the actual payment.

Commenters on the possible desirability of time weighting should address themselves to the effects it might have on the long-run inflation rate, and also whether it would not be necessary, under such a system, to take into account also the distribution of the flow of wage increases during the base year as well. That is to say, if the purpose of time weighting is to measure the behavior of total wage costs during a program year, presumably that total would have to be measured against the comparable total in the base year, rather than the wage rate at year-end.

4. *The low-wage exemption.* During the first program year, workers earning $4.00 and hour or less (in straight-time wages) were exempted from the pay standard. This can be characterized as an attempt to avoid an inequity, since current inflation has imposed demonstrably greater hardhip on low-income people. The workers excluded under this exemption account for approximately 35 percent of the workforce but, of course, a much smaller percentage of aggregate employment costs (see Table 4). Because of general inflation, if this low-wage threshold is not raised in the second year, some previously exempted workers would be covered under the standard in the second program year. Thus, one issue that must be resolved is by how much the low-wage exemption threshold should be raised.

Table 4.—*Estimated Wage Distribution for All Workers*

[Fourth quarter, 1978]

Hourly earnings, 1978:IV	Cumulative percent distribution	Estimated equivalent wage in 1979:IV
Less than $3.00	15.9	Less than $3.25.
$3.00 to $3.49	26.6	$3.25 to $3.75.
$3.50 to $3.99	35.4	$3.75 to $4.30.
$4.00 to $4.49	44.2	$4.30 to $4.85.
$4.50 to $4.99	43.0	$4.85 to $5.40.
$5.00 to $5.49	58.6	$5.40 to $5.95.
$5.50 to $5.99	61.9	$5.95 to $6.50.
$6.00 to $6.99	73.7	$6.50 to $7.55.

Source: Estimated by the Council from data of the Bureau of Labor Statistics.

The low-wage exemption also created some administrative problems during the first year. Under the present arrangement, substantial pay increases for exempt workers can seriously disrupt the structure of pay rates within an employee unit. In addition, many companies found it difficult to segregate, throughout the program year, workers who earned less than $4.00 per hour at the beginning of the program year, as is required by the present standard. Some companies erroneously computed a terminal-quarter average pay rate by excluding only workers earning $4.00 per hour or less in that quarter; this introduced a bias into the measure of compliance (i.e., some low-wage workers who should have been excluded were included in the last-quarter calculation, thus lowering the average pay rate in that quarter). Recognizing the administrative costs of making a correct calculation, the Council is seeking comments on alternative ways of implementing this exemption.

The Council has also considered the possibility of extending the exemption to employee units with *average* pay rates below the cutoff, even though some individual workers in the group would be above the exemption level. A variation of this approach would be to adopt a two-step adjustment such that employee units with average pay rates above the minimum, but less than some specified amount (e.g., $5.00), would have a more liberal standard than the general workforce. Firms would not, under this approach, separately identify low-wage workers.

5. *Exception for group-productivity incentive plans.* Because of the importance of productivity growth in improving the real standard of living and in reducing inflation, the first-year standard was designed to minimize any disincentives to productivity improvement. For example, on the pay side, specific exceptions were provided for pay increases in excess of the 7-percent standard to the extent they are attributable to the elimination of productivity-inhibiting work rules or to piecework pay, which is explicitly tied to individual productivity. No exception, however, was provided for group-productivity incentive plans, because of the difficulties of identifying productivity improvements clearly attributable to them, as opposed to improvements that would occur anyhow. These difficulties would make monitoring of such plans difficult and create a potential loophole. However, the heightened concern about the recent low productivity growth rate justifies reconsideration of this issue.

Any exception for group incentive plans would be based on improvements in physical productivity only. Moreover, the only improvement rewarded would be one that results specifically from the incentive plan. Thus, the plans would *not* reward productivity improvements that are attributable to new capital equipment, changing technology, or any other influence other than workers' performance.

6. *Deferred-compensation and profit-sharing plans.* It has been suggested that the second-year standards provide a more favorable treatment of deferred-compensation and/or profit-sharing arrangements, since each has some anti-inflationary attributes.

Part of a long-run attack on inflation might include an encouragement to savings; a favorable treatment of deferred compensation would be desirable on this account. On the other hand, employer contributions for deferred compensation increase labor costs just as much as current wage payments.

The attraction of profit-sharing is that it might increase incentives for improved productivity, and also moderate the threat to the standards that arises from the tension between claims for increased profits on the one hand and higher wages on the other. We solicit comments on the desirability of completely or partially exempting contributions to wages from profit-sharing as well as on the possibility of giving preferred treatment to Employee Stock Ownership Plans.

7. *Incremental pay plans in the public sector.* In the public sector, workers often receive individual step increments as well as across-the-board annual pay increases. In general, the existing standard treats *longevity* increases as chargeable pay increases, while *qualification* increases (associated with skill changes) may be excluded. In the public sector, however, many incremental pay plans lie in between the two extremes, and the proper classification depends on the intent of the plan.

In the first program year, the Council left the determination to the individual parties. But State and local governments have often made determinations that have resulted in differences in the treatment of similar compensation plans among neighboring jurisdictions. This has created some difficulties.

Four possible ways of handling pay increments for the second program year are illustrated below.

Example 1: Include all increments as pay increases.

This approach is easy to administer, and public employees in all jurisdictions would be treated the same. It does not, however, recognize legitimate qualification increases.

Example 2: Exclude all pay increments.

This approach would result in some public employees obtaining pay increases equal to the standard *plus* incremental pay increases of varying amounts, whereas such increases are rarely present in private-sector pay plans.

Example 3: Create a dividing line between qualification and longevity based upon years of service, e.g., count all increases after three years of employment.

This approach would provide a clear criterion, but it would, in many individual situations, not be consistent with the intent of the distinction between qualification and longevity increases.

Example 4: Distinguish conceptually between true qualification increases and mere longevity increases, perhaps by listing criteria for the former.

In principle, this is a desirable approach, but it would be difficult to administer.

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August 10, 1979

Part IV

Department of the Interior

Fish and Wildlife Service

Proposed Frameworks for Late Season Migratory Bird Hunting

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[50 CFR Part 20]

Proposed Frameworks for Late Season Migratory Bird Hunting Regulations

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Supplemental proposed rule.

SUMMARY: This document supplements proposed rulemakings published in the Federal Register on February 15 and June 13, 1979, and proposes to establish frameworks, that is, the outer limits for dates and times when shooting may begin and end, and the numbers of birds which may be taken and possessed under late season migratory bird hunting regulations for the 1979–80 season. These seasons commence on or after September 29, 1979, and include most of those for waterfowl. The Service annually prescribes hunting regulations frameworks to the States. The effects of this proposed rule are to facilitate the selection of hunting seasons by the States and to establish late season migratory bird hunting regulations for the 1979–80 season.

DATES: Comments due by August 20, 1979.

ADDRESS: Comments to: Director (FWS/MBMO), U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: John P. Rogers, Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240 (202–254–3207).

SUPPLEMENTARY INFORMATION: In the annual process for developing migratory game bird hunting regulations, "early" seasons are separated from "late" seasons. Early seasons are those which may open before September 29 while late seasons open on or after September 29. Regulations are developed independently for early and late seasons. The early season regulations cover mourning doves, white-winged doves, band-tailed pigeons, rails, gallinules, woodcock, common snipe, sea ducks in the Atlantic Flyway, teal in September in the Central and Mississippi Flyways, sandhill cranes in North Dakota and South Dakota, doves in the Virgin Islands and Hawaii, all migratory game birds in Puerto Rico and Alaska, and some extended falconry seasons. Late seasons include the general waterfowl seasons; special seasons for scaup and goldeneyes; extra scaup and blue-winged teal in regular seasons; most sandhill crane seasons in the Central Flyway; coots, gallinules, and snipe in the Pacific Flyway; and special falconry seasons.

Certain general procedures are followed in developing regulations for both the early and the late seasons. Initial regulatory proposals are first announced in a Federal Register document in mid-February, and opened to public comment. As additional information becomes available, and comments are received and considered to the initial proposals, a supplemental proposed rulemaking is announced in the Federal Register. At the termination of the comment periods and following a public hearing, the Service develops and publishes the proposed frameworks for times of seasons, season lengths, shooting hours, daily bag and possession limits, and other regulatory restraints or options. Following another public comment period, and after consideration of additional comments, the Service publishes in the Federal Register the final frameworks. Using these frameworks, State conservation agencies select hunting season dates and offered options. States may select more restrictive seasons and options than those offered in the Service's frameworks. The final regulations, reflected in amendments to Subpart K of 50 CFR 20, then appear in the Federal Register, and become effective upon publication.

This year the process was implemented as follows. On February 15, 1979, the Service published for public comment in the Federal Register (44 FR 9928) proposals to amend 50 CFR 20, with a comment period ending May 16, 1979. That document dealt with the establishment of seasons, limits and shooting hours for migratory birds under §§ 20.101 through 20.107 of Subpart K. On June 13, 1979, the Service published for public comment in the Federal Register (44 FR 34082) the second document in the series consisting of supplemental proposed rulemaking dealing specifically with a number of supplemental or modified proposals arising from comments received on the inital proposals, or from new information. Comment periods on the second document ended or will end as follows: June 21, 1979, for regulations proposed for Alaska, Puerto Rico, and the Virgin Islands; July 13, 1979, for proposed early season regulations; and August 20, 1979, for late season proposals.

On June 21, 1979, a public hearing was held in Washington, D.C., to review the status of mourning doves, woodcock, band-tailed pigeons, white-winged doves, and sandhill cranes. The meeting was announced in the Federal Register on February 15, 1979 (44 FR 9928) and June 13, 1979 (44 FR 34082). Proposed hunting regulations for these species were discussed plus those for common snipe; rails; gallinules; migratory game birds in Alaska, Puerto Rico, and the Virgin Islands; mourning doves in Hawaii; September teal seasons in the Mississippi and Central Flyways; an early duck season in Iowa; special sea duck seasons in the Atlantic Flyway; and falconry seasons. Statements or comments were invited.

On June 28, 1979, the Service also published for public comment in the Federal Register (44 FR 37857) the third document in the series of proposed, supplemental, and final rulemaking dealing specifically with proposed frameworks for early season migratory bird hunting regulations from which, when finalized, States may select season dates, shooting hours, and daily bag and possession limits for the 1979–80 season. On June 28, 1979, the Service published in the Federal Register (44 FR 37854) the fourth document in the series of proposed and final rulemakings dealing specifically with final frameworks for the 1979–80 season from which wildlife conservation agency officials in Alaska, Puerto Rico, and the Virgin Islands could select season dates for hunting certain migratory birds in their respective jurisdictions during the 1979–80 season. On July 24, 1979, the Service published in the Federal Register (44 FR 43420) the fifth document in the series of proposed and final rulemakings dealing specifically with final frameworks for early season migratory game bird hunting regulations from which State wildlife conservation agency officials selected season dates and daily bag and possession limits for the 1979–80 season.

On August 2, 1979, a public hearing was held in Washington, D.C., as announced in the Federal Register on February 15, 1979 (44 FR 9928) and June 13, 1979 (44 FR 34082) to review information on population status and proposed hunting regulations for waterfowl, coots, and gallinules; sandhill cranes in Colorado, New Mexico, Oklahoma, Texas, Montana and Wyoming; common snipe in the Pacific Flyway; and special falconry regulations. Statements or comments were invited.

On August 8, 1979, the Service published in the Federal Register (44 FR

46462) the sixth document in the series of proposed and final rulemakings dealing specifically with a correction to the final frameworks published on July 24, 1979, (44 FR 43420) to include in the final frameworks a page of text inadvertently omitted from that document. On August 7, 1979, the Service delivered to the Federal Register the seventh document in the series of proposed and final rulemakings dealing specifically with amending Subpart K of 50 CFR 20 to set open hunting seasons, certain closed areas, shooting and hawking hours and bag and possession limits for mourning doves, white-winged doves, band-tailed pigeons, rails, woodcock, snipe, and gallinules; September teal seasons; sea ducks in certain defined areas of the Atlantic Flyway; ducks in late September in Iowa; sandhill cranes in designated portions of North Dakota and South Dakota; and migratory game birds in Alaska, Hawaii, Puerto Rico, and the Virgin Islands; and which will be published on or about August 10, 1979. The present document is the eighth in the series of proposed, supplemental, and final rulemaking documents for migratory game bird hunting regulations and deals specifically with proposed regulations frameworks for 1979–80 late hunting seasons on certain migratory game birds.

This supplemental proposed rulemaking document identifies a number of changes to the original framework proposals published on February 15, 1979, in the Federal Register, and as supplemented on June 13, 1979. The present supplemental proposals are briefly described and discussed later.

Review of Public Comments and the Service's Response

Various public comments on the proposed late season regulations have been considered during the regulatory development period. The Service replied to public comments on regulations proposed in the Federal Register (44 FR 9928) dated February 15, 1979, in the Federal Register (44 FR 34082) dated June 13, 1979.

In addition to the above comments, recommendations were later received from 3 State conservation agencies, 1 sportsmen's club, and 9 individuals. Mississippi requested that the closing date of the waterfowl framework be extended from January 20 to January 31 in order to improve the distribution of duck harvest among hunters in the State. Minnesota requested that the waterfowl season framework opening be changed to coincide with the Saturday closest to October 1, as is practiced in the Central and Pacific Flyways. New Jersey requested that season length and bag limits for Canada geese be relaxed statewide in order to alleviate habitat and crop depredations problems arising from increasing numbers of these birds. A New York sportsmen's club asked that relaxations be granted in the regulations for drake canvasback ducks and greater snow geese. Six New Jersey sportsmen asked that hunting regulations be relaxed for snow geese because of their increasing populations, destruction of saltmarsh habitat, and competiton with black ducks. Three individuals requested that the season opening date for Minnesota coincide with the Saturday nearest October 1. All of the above items were addressed at the public hearing on August 2, 1979, in Washington, D.C.

Response: The Service believes that the proposed frameworks made available at the public hearing in Washington, D.C., on August 2, 1979, and included in this document, were responsive to the 13 letters described above. It was proposed that the closing date of the waterfowl framework in Mississippi be extended to January 31 for an experimental period of three years to determine whether the distribution of duck harvest among Mississippi hunters can be improved without significantly increasing the harvest of ducks, especially mallards. The frameworks proposed an increase in the bag and possession limits for snow geese in the Atlantic Flyway to 4 and 8 birds, respectively, and extended the framework closing date to January 31. The proposed frameworks provide that the waterfowl seasons in the Mississippi Flyway may open on the Saturday closest to October 1. This year that date is September 29. Although no additional harvest opportunity for drake canvasbacks is proposed for this year, the Service advised at its public hearing that a review of canvasback and redhead population objectives and management strategies would be undertaken prior to the development of next year's regulations.

On August 2, 1979, the Service held a previously announced public hearing in Washington, D.C., for the purposes of presenting waterfowl status information; making available for public comment the regulations being proposed to the Director, U.S. Fish and Wildlife Service, by the Service Regulations Committee; and receiving further information and recommendations from the public.

Mr. Hugh Boyd, Canadian Wildlife service, reported upon pertinent migratory bird matters in Canada, including: Regulations being established for the coming seasons; The need to gather additional information on the subsistence take of migratory birds; Actions to stabilize regulations so that changes in harvests and populations can be better evaluated; and Harvest of greater snow geese. Mr. Ross MacLennan, representing the Canadian Provinces, discussed: Changes in waterfowl productivity on Canadian breeding grounds; Changes in continental harvests of waterfowl in recent years; Need to determine threshold survival rates of mallards as related to recent population dynamics studies of the species; and A desire to avoid increases in mallard harvest levels.

Nine individuals made statements on behalf of various organizations. Mr. Dale E. Whitesell, representing Ducks Unlimited, Inc., commended the Canadian and U.S. management agencies for their interest in stabilizing regulations in order to gain more insight into waterfowl population dynamics. Mr. Ted L. Clark, Central Flyway Council, supported a Council recommendation that 16 additional days of hunting, to be focused on wintering populations of mallards with high survival rates, be added to the duck seasons in the Low Plains area of the Central Flyway. Mr. Richard K. Yancey, representing the Lower Region (6 southern States) of the Mississippi Flyway Council, noted that the proposed regulations will provide necessary protection to the waterfowl resource while affording adequate harvest opportunity to sportsmen. He urged that consideration be given to stabilizing hunting regulations starting with the 1980 hunting season. Mr. J. Burton Angelle, Louisiana Department of Wildlife and Fisheries, endorsed the proposed regulations and supported the concept of stabilized regulations. Mr John M. Anderson, National Audubon Society, stated that the Service's proposed regulations were in keeping with waterfowl population objectives. He favored separate management of canvasbacks and redheads where practicable, generally supported the concept of stabilized regulations, and suggested that greater attention be given waterfowl habitats along migration routes and on the wintering grounds. Mr. Herbert Doig, Atlantic Flyway Council, endorsed the present regulatory process, strongly supported cooperative planning efforts for the waterfowl resource, concurred with the concept of stabilized regulations, urged that Atlantic Flyway States be permitted to divide waterfowl seasons in three segments in lieu of

zoning, recommended relaxation of harvest regulations for Canada geese and greater snow geese, urged retention of the closed season on brant, and recommended that a limited special hunting season on drake canvasbacks on a trial basis with a view to determining whether such seasons could safely be permitted in traditional canvasback harvest areas of the Atlantic Flyway. Mr. William K. du Pont, also representing Ducks Unlimited, Inc., stated that Ducks Unlimited's independent appraisals of waterfowl production in prairie Canada generally agreed with the findings of the cooperative surveys conducted by the United States and Canada, and that no significant differences existed in the fall flight estimates. He endorsed the proposed hunting regulations, supported the concept of stabilized regulations, and stated that the present regulatory process was being implemented in a highly effective and competent manner. Dr. John R. Donaldson, spokesman for the Pacific Flyway Council, reported that States in his flyway were going into the fifth year of a study of stabilized regulations, proposed that Mexican-like ducks be included in the regular duck limits applicable to the Pacific Flyway, supported the proposed relaxations of Ross' goose bag limits, endorsed the seven goose hunting options proposed for portions of Oregon and California, and supported the openness with which the annual regulatory process is being undertaken. He recommended that improved or additional surveys be undertaken in the Pacific Flyway to better assess the population status of several species of geese, and urged that improved information on the subsistence taking of geese in Alaska be obtained. Mr. Toby Cooper, representing Defenders of Wildlife, expressed concern about the regulatory process used in developing annual hunting regulations (see 44 FR 34082). Stabilized regulations, in his view, should have a provision for response to unforeseen problems. He supported continuation of a closed season on Atlantic Flyway brant, and opposed proposals for hunting drake canvasbacks.

Response: In general, most of the statements offered at the public hearing concerned regulatory recommendations which the Service had already addressed in its proposed frameworks. Most speakers supported the concept of stabilized hunting regulations as a means of better evaluating the role of hunting regulations in waterfowl population dynamics. The Service indicated that the concept would be further explored and discussed in consultation with Canadian and flyway representatives before taking further action. Stabilizing hunting regulations for a given period could provide a unique means of evaluating changes in waterfowl populations, harvests, and mortality independent of regulatory changes.

Documents supporting the Central Flyway Council request that 16 additional hunting days be permitted in the Low Plains area were received too late in the regulatory process to allow adequate review. In response to the National Audubon Society's recommendation that canvasbacks and redheads be managed independently, the service notes that this is an objective identified in the environmental assesment titled "Proposed Hunting Regulations on Canvasback and Redhead Ducks" issued by the Service in August 1976. A review of the management of these species will be undertaken by the Service in the near future. The Service concurs with the Pacific Flyway Council recommendation that better information be gathered on the status of certain Pacific Flyway geese and the subsistence take of geese in Alaska. The Service responded previously to Defenders of Wildlife's criticism of the current regulatory process in the Federal Register dated June 13, 1979 (44 FR 34082). Other comments offered at the public hearing either supported the proposals or addressed regulatory matters not being proposed at this time.

As a result of population, habitat, production, and harvest information available from annual cooperative surveys; data supplied by the Canadian Wildlife Service, the four waterfowl flyway councils, and the various States; and information supplied by the public; the frameworks proposed for the 1979–80 hunting season differ in some respects from those effective last year. Notable changes, arranged by flyways, include the following:

Atlantic Flyway. 1. States may split waterfowl seasons into three segments equal or unequal length as an alternative to zoning. This change provides an option to States wishing to improve the distribution of hunting opportunity among hunters within the State by means other than zoning.

2. Massachusetts and Pennsylvania may select waterfowl seasons by zones in accordance with previously established criteria.

3. The green-winged teal may be taken along with the blue-winged teal as extra ducks during a 9-day period in States selecting conventional hunting regulations. The species is relatively abundant in the flyway.

4. Hunting regulations for Canada geese that were in effect in southern New Jersey last year may be applied Statewide this year. Canada geese are abundant in New Jersey and crop depredation problems are increasing.

5. The bag limit for snow geese is increased to 4 birds daily and 8 in possession, and the season framework extended to January 31, 1980. This relaxation is in response to the favorable status of the population and increasing crop depredation and habitat problems.

Mississippi Flyway. 1. States may select waterfowl seasons commencing with the Saturday nearest October 1 (the date this year is September 29). This option has been satisfactorily used in two other flyways for several years and enables States to select seasons favored by many hunters.

2. In States selecting the point system, the mid-point category is changed from 35 to 25 points. This change relieves a restriction imposed last year to give added protection to the mallard. It is judged that the status of mallards and other ducks is sufficiently improved to warrant the change.

3. Canada goose harvest quotas of 35,000 birds each are proposed for Illinois and Wisconsin in response to the anticipated fall flight and in support of a cooperative management plan for the Mississippi Valley Population.

4. Canada goose seasons are closed in Arkansas, Louisiana, Mississippi, and southwestern Tennessee. This action implements a recommendation in the management plan for Mississippi Valley Population Canada geese.

Central Flyway. 1. In States selecting the point system, the mid-point category is changed from 25 to 20 points. This change relieves a restriction imposed last year to give added protection to the mallard. It is judged that the status of mallards and other ducks is sufficiently improved to warrant the change.

2. Areas in North Dakota and South Dakota previously closed to the taking of both canvasback and redhead are opened to allow the taking of redheads in accordance with flyway limits. The area in Texas previously closed to the taking of both canvasbacks and redheads is opened. These changes reflect preliminary efforts to determine the feasibility of managing the two species independently.

3. Early closure of goose hunting in six South Dakota counties is discontinued. The restriction is no longer needed because of an improved status of

Western Prairie and locally breeding Population Canada geese.

4. Minor changes are made in sandhill crane seasons in Colorado and Wyoming, and four additional counties in Wyoming are included in the area open to crane hunting. The latter are outside the range of the whooping crane.

Central and Pacific Flyways. 1. The Ross' goose is included without restriction in the bag limits for snow geese in these flyways. It has recently been found that the Ross' goose population is much larger than formerly thought, and previous special bag limit restrictions are unnecessary.

Pacific Flyway. 1. Seven season length/bag limit options are offered in the Klamath-Tule Basin area of Oregon and California, and elsewhere in northern California, to reduce harvests of cackling Canada geese, white-fronted geese, and Wrangel Island lesser snow geese.

2. The Mexican-like duck is included in the regular duck bag in recognition that genotypically pure Mexican ducks do not occur in the United States, and that the Mexican ducks which are confined to portions of Mexico are not endangered.

Public Comment Invited

Based on the results of migratory game bird studies now in progress and having due consideration for any by interested parties, the amendments resulting from these supplemental proposals will specify open seasons, shooting and hawking hours, and bag and possession limits for waterfowl, coots, and gallinules; sandhill cranes in portions of the Central Flyway; snipe in the Pacific Flyway; and extended falconry regulations.

The Director intends that finally adopted rules be as responsive as possible to all concerned interests. He therefore desires to obtain the comments and suggestions of the public, other concerned governmental agencies, and private interests on these proposals and will take into consideration the comments received. Such comments, and any additional information received, may lead the Director to adopt final regulations differing from these proposals.

Special circumstances are involved in the establishment of these regulations which limit the amount of time which the Service can allow for public comment. Specifically, two considerations compress the time in which the rulemaking process must operate: the need, on the one hand, to establish final rules at a point early enough in the summer to allow affected State agencies to appropriately adjust their licensing and regulatory mechanisms, and, on the other hand, the unavailability before late July of specific, reliable data on the current year's status of waterfowl. Therefore, the Service believes that to allow a comment period past August 20, 1979, is contrary to the public interests.

Comment Procedure

It is the policy of the Department of the Interior, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, persons may participate in this rulemaking by submitting written comments to the Director (FWS/MBMO), U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240. Comments received will be available for public inspection during normal business hours at the Service's office in Room 525 in the Matomic Building, 1717 H Street, NW., Washington, D.C. 20240.

All relevant comments received by August 20, will be considered. The Service will attempt to acknowledge received comments, but substantive response to individual comments may not be provided.

NEPA Consideration

The "Final Environmental Statement for the Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FES 75-54)" was filed with the Council on Environmental Quality on June 6, 1975, and notice of availability was published in the Federal Register on June 13, 1975 (40 FR 25241). A number of environmental assessments have been issued by the Service to supplement the above FES. Shooting hours, dove hunting in September, black ducks, canvasbacks and redheads, Atlantic Flyway brant, and greater snow geese are among the subjects of these assessments. The 1975 FES is now out of print but copies of the environmental assessments are available from the Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240.

Endangered Species Act Consideration

Section 7 of this act provides that, "The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act," and "by taking such action necessary to insure that actions authorized, funded, or carried out . . . do not jeopardize the continued existence of such endangered or threatened species or result in the destruction or modification of habitat of such species . . . which is determined to be critical."

Section 7 consultations are presently under way regarding the late season regulatory proposals. It is possible that the findings from the consultation, which will be included in a biological opinion, may cause modification of some of the regulations being proposed in this document. Any modifications that may be desirable will be reflected in the final rulemaking on regulations frameworks for "late seasons" scheduled for publication in the Federal Register on or about August 29, 1979.

As in the past, hunting regulations this year are designed, among other things, to remove or alleviate chances of conflict between seasons for migratory game birds and the protection and conservation of endangered and threatened species and their habitats. Examples of such consideration include areas closed to dove and pigeon hunting in Puerto Rico for protection of the endangered Puerto Rican plain pigeon and parrot, and Canada goose hunting restrictions in Alaska and California for the protection of the endangered Aleutian Canada goose.

The Service's biological opinions resulting from its consultation under section 7 are considered public documents and are available for public inspection in or available from the Office of Endangered Species and the Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240.

Authorship

The primary author of this proposed rule is Henry M. Reeves, Office of Migratory Bird Management, working under the direction of John P. Rogers, Chief.

Exception From Executive Order 12044 and 43 CFR Part 14

As discussed in the Federal Register dated February 15, 1979 (44 FR 9929), the Assistant Secretary for Fish and Wildlife and Parks has concluded that the ever decreasing time frames in the regulatory process are mandated by the Migratory Bird Treaty Act and the Administrative Procedure Act. The regulatory process simply has no remaining slack in its timetable between the accumulation of critical summer survey data and the publication of the revised sets of proposed rulemakings. Compliance with the determination of significance and regulatory analysis criteria established under Executive Order 12044 would simply not be

possible if the fall hunting season deadlines are to be achieved.

Consequently, the Assistant Secretary for Fish and Wildlife and Parks has approved the exemption of these regulations from the procedures of Executive Order 12044 and 43 CFR 14 which is provided for in section 6(b)6 and § 14.3(f), respectively.

Proposed Regulations Frameworks for 1979–80 Late Hunting Seasons on Certain Migratory Game Birds

Pursuant to the Migratory Bird Treaty Act, the Secretary of the Interior has approved proposed frameworks for season lengths, shooting hours, bag and possession limits, and outside dates within which, when finalized, States may select seasons for hunting waterfowl, coots, and gallinules; sandhill cranes in parts of New Mexico, Texas, Colorado, Oklahoma, Montana, and Wyoming; and common snipe in the Pacific Flyway. Frameworks are summarized below. States may be more restrictive in selecting season regulations, but may not exceed the framework provisions.

General

States in the Pacific, Central and Mississippi Flyways may split their season for ducks or geese into two segments of equal or unequal lengths. States in the Atlantic Flyway may, in lieu of zoning, split their season for ducks or geese into two or three segments of equal or unequal lengths. Exceptions are noted in appropriate sections.

Shooting and hawking hours in all States, on all species, and for all seasons are ½ hour before sunrise until sunset, except that during September teal season the hours are sunrise until sunset.

States in the Mississippi and Central Flyways selecting neither a September teal season nor the point system may select an extra daily bag and possession limit of 2 and 4 blue-winged teal, respectively, for 9 consecutive days designated during the regular duck season. These extra limits are in addition to the regular duck bag and possession limits.

States in the Atlantic Flyway not selecting the point system may select an extra teal limit for 9 consecutive hunting days during the regular duck season of no more than 2 blue-winged teal or 2 green-winged teal or 1 of each daily and no more than 4 singly or in the aggregate in possession.

States in the Atlantic, Mississippi and Central Flyways may select a special scaup-only hunting season not to exceed 16 consecutive days, with daily bag and possession limits of 5 and 10 scaup, respectively, subject to the following conditions:

1. The season must fall between October 1, 1979, and January 31, 1980, all dates inclusive.

2. The season must fall outside the open season for any other ducks except sea ducks.

3. The season must be limited to areas mutually agreed upon between the State and the Service prior to September 1, 1979.

4. These areas must be described and delineated in State hunting regulations.

Or

As an alternative, States in the Atlantic, Mississippi, and Central Flyways, except those selecting a point system, may select an extra daily bag and possession limit of 2 and 4 scaup, respectively, during the regular duck hunting season, subject to conditions 3 and 4 listed above. These extra limits are in addition to the regular duck limits and apply during the entire regular duck season.

Selection of the point system for any State entirely within a flyway must be on a statewide basis, *except* if New York selects the point system, conventional regulations may be retained for the Long Island Area. New York may not select the point system within the Upstate zoning option, and Maine, Connecticut, and North Carolina may not select the point system pending completion of zoning studies currently under way.

States that did not select their rail, woodcock, snipe, gallinule, or sea duck seasons in July should do so at the time they make their waterfowl selections.

Frameworks for open seasons and season lengths, bag and possession limit options, and other special provisions are listed below by Flyway.

Atlantic Flyway

Between October 1, 1979, and January 20, 1980, States in this Flyway may select open seasons on ducks, coots, and mergansers of: (a) 50 days, with basic daily bag and possession limits of 4 and 8 ducks, respectively, of which no more than 2 in the daily bag and 4 in possession may be black ducks; or (b) 50 days, with basic daily bag and possession limits of 5 and 10 ducks, respectively, of which no more than 1 in the daily bag and 2 in possession may be black ducks.

Except in closed areas, the limit on canvasbacks and redheads is 1 canvasback daily and 1 in possession or 1 redhead daily and 1 in possession. Under the point system, canvasbacks count 100 points each and redheads count 70 points each, except in closed areas. Areas closed to canvasback and redhead hunting are:

New York—Upper Niagara River between the Peace Bridge at Buffalo, New York, and the Niagara Falls. All waters of Lake Cayuga.

New Jersey—Those portions of Monmouth County and Ocean County lying east of the Garden State Parkway.

Maryland, Virginia and North Carolina—Those portions of each State lying east of U.S. Highway 1.

Under conventional and point system options, the daily bag and possession limits may not include more than 2 and 4 wood ducks, respectively, except that Virginia, North Carolina, South Carolina, Georgia and Florida may split their regular hunting season so that a hunting season not to exceed 9 consecutive days occurs between October 1 and October 15. During this period under conventional regulations, no special restrictions within the regular daily bag and possession limits established for the flyway in 1979 shall apply to wood ducks. Under the point system, the point value of wood ducks shall be 25. For other ducks, daily bag and possession limits shall be the same as established for the flyway under conventional or point system regulations. For those States using conventional regulations, the 9 consecutive days extra teal option may be selected concurrent with the early wood duck season option. This exception to the daily bag and possession limits for wood ducks shall not apply to that portion of the duck hunting season that occurs after October 15.

The daily bag limit on mergansers is 5, only 1 of which may be a hooded merganser. The possession limit is 10, only 2 of which may be hooded mergansers.

The daily bag and possession limits of coots are 15 and 30, respectively.

The Lake Champlain Area of New York must follow the waterfowl seasons, daily bag and possession limits, and shooting hours selected by Vermont. This area includes that part of New York lying east and north of a boundary running south from the Canadian border along U.S. Highway 9 to New York Route 22 south of Keeseville, along New York Route 22 to South Bay, along and around the shoreline of South Bay to New York Route 22, along New York Route 22 to U.S. Highway 4 at Whitehall, and along U.S. Highway 4 to the Vermont border.

In lieu of a special scaup season, Vermont may, for the Lake Champlain Area, select a special scaup and goldeneye season not to exceed 16 consecutive days, with a daily bag limit of 3 scaup or 3 goldeneyes or 3 in the aggregate and a possession limit of 6 scaup or 6 goldeneyes or 6 in the aggregate, subject to the same provisions that apply to the special scaup season elsewhere.

New York may, for Long Island, select season dates and daily bag and possession limits which differ from those in the remainder of the State.

Upstate New York (excluding the Lake Champlain area) may be divided into three zones (West, North, South) on an experimental basis for the purpose of setting separate duck, coot and merganser seasons. Option (a) or (b) for seasons and bag limits is applicable to the zones in the Upstate area within the Flyway framework; only conventional regulations may be selected. Each zone will be permitted the full number of days offered under options (a) or (b). In addition, a two-segment split season without penalty may be selected in each zone. The basic daily bag limit on ducks in each zone and the restrictions applicable to options (a) and (b) of the regular season for the Flyway also apply. Teal and scaup bonus bird options shall be applicable to the Upstate zones, but the 16-day special scaup season will not be allowed.

The zones are defined as follows:

The West Zone is that portion of Upstate New York lying west of a line commencing at the north shore of the Salmon River and its junction with Lake Ontario and extending easterly along the north shore of the Salmon River to its intersection with Interstate Highway 81, then southerly along Interstate Highway 81 to the Pennsylvania border.

The North and South Zones are bordered on the west by the boundary described above and are separated from each other as follows:

Starting at the intersection of Interstate Highway 81 and New York Route 49 and extending easterly along Route 49 to its junction with Route 8 in Utica, then southerly along Route 8 to its intersection with U.S. Highway 20 in Bridgewater, then easterly along U.S. Highway 20 to the Massachusetts border.

Maine, Massachusetts, Connecticut, Pennsylvania, and North Carolina each may be divided into two zones on an experimental basis for the purpose of setting separate duck, coot and merganser seasons. Option (a) or (b) for seasons and bag limits is applicable to the zones within the Flyway framework; only conventional regulations may be selected in Maine, Connecticut and North Carolina. Both zones will be permitted the full number of days offered under options (a) or (b). In addition, a two-segment split season without penalty may be selected. The basic daily bag limit on ducks in each zone and the restrictions applicable to options (a) and (b) of the regular season for the Flyway also apply. Teal and scaup bonus bird options, if offered, and the 16-day special scaup season shall be allowed.

The zones are defined as follows:

Maine

North Zone—Game Management Zones 1, 2 and 3.

South Zone—Game Management Zones 4 through 8.

Massachusetts

Coastal Zone—Beginning at the New Hampshire-Massachusetts border, that portion of the State east and south of a boundary formed by Interstate 93, south to Route 3, south to Route 6, southwest to Route 28, northwest to Interstate I95, and west to the Rhode Island line.

Inland Zone—That portion of the State west and north of the above boundary.

Connecticut

North Zone—That portion of the State north of Interstate 95.

South Zone—That portion of the State south of Interstate 95.

Pennsylvania

North Zone—The Lake Erie waters of Pennsylvania and a shoreline margin along Lake Erie from New York on the east to Ohio on the west extending 150 yards inland, but including all of Presque Isle Peninsula.

South Zone—The remainder of the State.

North Carolina

East Zone—That portion of the State east of U.S. Highway 1.

West Zone—That portion of the State west of U.S. Highway 1.

As an alternative to conventional bag limits for ducks, a 50-day season with a point-system bag limit may be selected by States in the Atlantic Flyway during the framework dates prescribed. Point values for species and sexes taken are as follows: in Florida only, the fulvous tree duck counts 100 points each; in all States the canvasback counts 100 points each (except in closed areas); the female mallard, black duck, mottled duck, wood duck (except in Virginia, North Carolina, South Carolina, Georgia and Florida during the early wood duck season option), redhead (except in closed areas) and hooded merganser count 70 points each; the blue-winged teal, green-winged teal, pintail, gadwall, wigeon, shoveler, scaup, sea ducks, and mergansers (except hooded) count 10 points each; the male mallard, the wood duck during the early wood duck season option in Virginia, North Carolina, South Carolina, Georgia and Florida, and all other species of ducks count 25 points each. The daily bag limit is reached when the point value of the last bird taken, added to the sum of the point values of the other birds already taken during that day, reaches or exceeds 100 points. The possession limit is the maximum number of birds which legally could have been taken in 2 days.

In any State in the Atlantic Flyway selecting both point-system regulations and a special sea duck season, sea ducks count 10 points each during the point-system season, but during any part of the regular sea duck season falling outside the point-system, regular sea duck daily bag and possession limits of 7 and 14, respectively, apply.

Coots have a point value of zero, but the daily bag and possession limits are 15 and 30, respectively, as under the conventional limits.

Between October 1, 1979, and January 20, 1980, Maine, New Hampshire, Vermont, Massachusetts, Connecticut, Rhode Island, New York, Pennsylania, West Virginia, Maryland, and Virginia (excluding those portions of the cities of Virginia Beach and Chesapeake lying east of Interstate 64 and U.S. Highway 17) may select 70-day seasons on Canada geese; the daily bag and possession limits are 3 and 6 geese, respectively. However, in the area comprised of New Jersey, Delaware, the Delmarva Peninsula portions of Maryland and Viginia, and that portion of Pennsylvania lying east and south of a boundary beginning at Interstate Highway 83 at the Maryland border and extending north to Harrisburg, then east on U.S. Highway 22 to the New Jersey border, the Canada goose season length will be 90 days with the closing framework date extended to January 31, 1980. The daily bag limit within this area will be 4 birds with a possession limit of 8 birds. North Carolina and those portions of the cities of Virginia Beach and Chesapeake lying east of Interstate 64 and U.S. Highway 17 in Virginia may select 50-day seasons on Canada geese within the October 1, 1979, to January 20, 1980, framework; the daily bag and possession limits are 2 and 4 Canada geese, respectively. South Carolina may select a 50-day season on Canada geese

within the October 1, 1979, to January 20, 1980, framework; the daily bag and possession limits are 1 and 2 Canada geese, respectively.

The season is closed on Canada geese in Florida and Georgia.

Between October 1, 1979, and January 31, 1980, States in the Atlantic Flyway may select 70-day seasons on snow geese (including blue geese); the daily bag and possession limits are 4 and 8 geese, respectively.

The season is closed on Atlantic brant.

Mississippi Flyway

Between September 29, 1979, and January 20, 1980, States in this Flyway may select concurrent 50-day seasons on ducks, coots, and mergansers, except that in Iowa the framework opening date is September 22 and in Mississippi the framework closing date is January 31. The daily bag limit for ducks is 5, and may include no more than 3 mallards, no more than 2 of which may be female mallards; 1 black duck; and 2 wood ducks (except as noted below). The possession limit is 10, including no more than 6 mallards, no more than 4 of which may be female mallards; 2 black ducks; and 4 wood ducks (except as noted below).

Except in closed areas, the limit on canvasbacks and redheads is 1 canvasback daily and 1 in possession or 1 redhead daily and 1 in possession. Under the point system, canvasbacks count 100 points each and redheads count 70 points each, except in closed areas. Areas closed to canvasback and redhead hunting are:

Mississippi River—Entire river, both sides, from Alton Dam upstream to Prescott, Wisconsin, at confluence of St. Croix River.

Alabama—Baldwin and Mobile Counties.

Louisiana—Caddo, St. Charles, and St. Mary Parishes; that portion of Ward 1 formerly designated as Ward 6 of St. Martin Parish; and Catahoula Lake in LaSalle and Rapides Parishes.

Michigan—Arenac, Bay, Huron, Macomb, Monroe, St. Clair, Tuscola, and Wayne Counties, and those adjacent waters of Saginaw Bay south of a line extending from Point au Gres in Sec. 6, T18N, R7E (Arenac County) to Sand Point in Sec. 11, T17N, R9E (Huron County), the St. Clair River, Lake St. Clair, the Detroit River and Lake Erie, under jurisdiction of the State of Michigan.

Minnesota—Douglas, Mahnomen, Polk, Pope and Sibley Counties. Where the county line of any of the above counties crosses any portion of a lake, that entire lake is closed. In addition, all land in Sec. 13, T130N, R31W (i.e., land between Lake Christina and Pelican Lake) is closed.

Ohio—Land and water areas comprising Erie, Ottawa and Sandusky Counties.

Tennessee—Kentucky Lake lying north of Interstate Highway 40.

Wisconsin—In the Mississippi River Zone, all that part of Wisconsin west of the Burlington-Northern Railroad in Grant, Crawford, Vernon, LaCrosse, Trempealeau, Buffalo, Pepin and Pierce Counties. Also, the following lakes and waters, including a strip of land 100 yards wide adjacent to the shorelines thereof: Lake Poygan in Winnebago and Waushara Counties and Lakes Winneconne and Butte des Morts, including the connecting waters thereof, in Winnebago County.

The daily bag limit on mergansers is 5, only 1 of which may be a hooded merganser. The possession limit is 10, only 2 of which may be hooded mergansers.

The daily bag and possession limits on coots are 15 and 30, respectively.

As an alternative to conventional bag limits for ducks, a 50-day season with point-system bag and possession limits may be selected by States in the Mississippi Flyway during the framework dates prescribed. Point values for species and sexes taken are as follows: except in closed areas, the canvasback counts 100 points; the redhead (except in closed areas), female mallard, wood duck (except as noted below), black duck and hooded merganser count 70 points each; the pintail, blue-winged teal, cinnamon teal, wigeon, gadwall, shoveler, scaup, green-winged teal and mergansers (except hooded merganser) count 10 points each; the male mallard and all other species of ducks count 25 points each. The daily bag limit is reached when the point value of the last bird taken, added to the sum of the point values of the other birds already taken during that day, reaches or exceeds 100 points. The possession limit is the maximum number of birds which legally could have been taken in 2 days.

Coots have a point value of zero, but the daily bag and possession limits are 15 and 30, respectively, as under the conventional limits.

Kentucky, Arkansas, Tennessee, Louisiana, Mississippi, and Alabama may split their regular duck hunting seasons in such a way that a hunting season not to exceed 9 consecutive days may occur between October 1 and October 15. During this period, under conventional regulations, no special restrictions within the regular daily bag and possession limits established for the Flyway shall apply to wood ducks, and under the point system, the point value for wood ducks shall be 25 points. For other species of ducks, daily bag and possession limits shall be the same as established for the Flyway under conventional or point system regulations. In addition, the extra blue-winged teal option available to States in this Flyway that select conventional regulations and do not have a September teal season may be selected during this period. This exception to the daily bag and possession limits for wood ducks shall not apply to that portion of the duck hunting season that occurs after October 15.

In that portion of Louisiana west of a boundary beginning at the Arkansas-Louisiana border on Louisiana Highway 3; then south along Louisiana Highway 3 to Shreveport; then east along Interstate 20 to Minden; then south along Louisiana Highway 7 to Ringgold; then east along Louisiana Highway 4 to Jonesboro; then south along U.S. Highway 167 to Lafayette; then southeast along U.S. Highway 90 to Houma; then south along the Houma Navigation Channel to the Gulf of Mexico through cat Island Pass—the season on ducks, coots and mergansers may extend 5 additional days, provided that the season opens on November 3, 1979. If the 5-day extension is selected, and if point-system regulations are selected for the State, point values will be the same as for the rest of the State.

The waterfowl seasons, limits, and shooting hours in the Pymatuning Reservoir area of Ohio will be the same as those selected by Pennsylvania. The area includes Pymatuning Reservoir and that part of Ohio bounded on the north by County Road 306 known as Woodward Road, on the west by Pymatuning Lake Road, and on the south by U.S. Highway 322.

Michigan, Illinois, Indiana, Ohio, Missouri, Alabama, and Tennessee may select hunting seasons on ducks, coots and mergansers by zones described as follows:

Michigan: *North Zone*—The Upper Peninsula. *South Zone*—The Lower peninsula.

Illinois: *North Zone*—That portion of the State north of U.S. Highway 50. *South Zone*—The remainder of Illinois.

Indiana: *North Zone*—That portion of Indiana north of State Highway 18. *South Zone*—The remainder of Indiana.

Ohio: *North Zone*—The counties of Darke, Miami, Clark, Champaign, Union, Delaware, Licking, Miskingum, Guernsey, Harrison, and Jefferson and

all counties north thereof. In addition, the North Zone also includes that portion of the Buckeye Lake area in Fairfield and Perry Counties bounded on the west by State Highway 37, on the south by State Highway 204, and on the east by State Highway 13. *South Zone*—The remainder of Ohio.

Missouri: *North Zone*—That portion of Missouri north of a line running easterly from the Kansas-Missouri border along U.S. Highway 160 to the junction of U.S. Highway 60 in Springfield, along U.S. Highway 60 to the junction of State Highway 21, along State Highway 21 to the junction of State Highway 34, and along State Highway 34 to the Illinois-Missouri border along the Mississippi River at Cape Girardeau. *South Zone*—The remainder of Missouri.

Alabama: *South Zone*—Mobile and Baldwin Counties. *North Zone*—The remainder of Alabama.

Tennessee: *Reelfoot Zone*—Lake and Obion Counties, or a designated portion of that area. *State Zone*—The remainder of Tennessee.

Within each State: (1) The same bag limit option must be selected for both zones; (2) If a special scaup season is selected for a zone, it shall not begin until after the regular season closing date in that zone.

Between September 29, 1979, and January 20, 1980, States in this Flyway, except Louisiana, may select 70-day seasons on geese, with daily bag and possession limits of 5 geese, to include no more than 2 white-fronted geese. Regulations for Canada geese are shown below by State.

Between September 29, 1979, and February 14, 1980, Louisiana may select 70-day seasons on snow (including blue) and white-fronted geese by zones established for duck hunting seasons, with daily bag and possession limits of 5 geese, to include no more than 2 white-fronted geese.

The season on Canada geese is closed in Arkansas, Louisiana and Mississippi.

In Minnesota, in the: (a) Lac Qui Parle Zone (described in State regulations)—The season on Canada geese closes after 50 days or when 7,000 birds have been harvested, whichever occurs first. The daily bag limit is 1 Canada goose or 2 white-fronted geese, or 1 of each; the possession limit is 2 Canada geese and 2 white-formed geese.

(b) Southeastern Zone (described in State regulations)—The season for Canada geese may extend for 70 consecutive days. The daily bag limit is 2 Canada geese or 2 white-fronted geese or 1 of each; the possession limit is 4 Canada and white-fronted geese in the aggregate, of which no more than 2 may be white-fronted geese.

(c) Remainder of the State—The season on Canda geese will be concurrent with the duck season. The daily bag limit is 2 Canada geese or 2 white-fronted geese or 1 of each; the possession limit is 4 Canada and white-fronted geese in the aggregate, of which no more than 2 may be white-fronted geese.

In Iowa, the season for Canada geese may extend for 70 consecutive days. The daily bag limit is 2 Canada geese. The possession limit is 4 Canada and white-fronted geese in the aggregate, of which no more than 2 may be white-fronted geese.

In Missouri, in the: (a) Swan Lake Zone (described in State regulations)—The season on Canada geese closes after 70 days or when 25,000 birds have been harvested, whichever occurs first. Through November 25, the daily bag limit is 1 Canada goose or 2 white-fronted geese or 1 of each; the possession limit is 2 Canada and 2 white-fronted geese. After November 25, the daily bag limit is 2 Canada geese or 2 white-fronted geese or 1 of each; the possession limit is 4 Canada and white-fronted geese in the aggregate, of which no more than 2 may be white-fronted geese.

(b) Southeastern Area (east of U.S. Highway 67 and south of Crystal City)—The State may select a 45-day season on Canada geese between December 1, 1979, and January, 20, 1980, with a daily bag limit of 2 Canada geese or 2 white-fronted geese or 1 of each; and a possession limit of 4 Canada and white-fronted geese in the aggregate, of which no more than 2 may be white-fronted geese.

(c) Remainder of the State—The season on Canada geese may not exceed 45 days. The daily bag limit is 2 Canada geese or 2 white-fronted geese or 1 of each; the possession limit is 4 Canada and white-fronted geese in the aggregate, of which no more than 2 may be white-fronted geese.

In Wisconsin, the harvest of Canada geese is limited to 35,000. In the Horicon Zone, during the first hunting period, the daily bag limit is 1 Canada goose or 2 white-fronted geese or 1 of each, and the possession limit is 1 Canada goose and 2 white-fronted geese; thereafter, the daily bag limit is 2 Canada geese or 2 white-fronted geese or 1 of each, and the possession limit is 2 Canada and 2 white-fronted geese. In the Central Zone, the daily bag limit is 2 Canada geese or 2 white-fronted geese or 1 of each, and the possession limit is 2 Canada geese and 2 white-fronted geese. Elsewhere in Wisconsin, the daily bag limit is 1 Canada goose or 2 white-fronted geese or 1 of each, and the possession limit is 2 Canada geese and 2 white-fronted geese. In the Horicon Zone and the Central Zone, Canada goose hunting is restricted to those persons holding valid Canada goose hunting permits issued by the State. The Horicon Zone is defined as those portions of the counties of Fond du Lac, Green Lake, Washington and Dodge enclosed by a line beginning at the intersection of State Highway 175 and State Highway 23 in Fond du Lac County, then southerly on State Highway 175 to its intersection with State Highway 33, then westerly on State Highway 33 to the city of Beaver Dam, then northerly on State Highway 33 to its intersection with County Highway A, then northerly on County Highway A to its intersection with County Highway S, then easterly on County Highway S and continuing easterly on County Highway AS to its intersection with County Highway E, then northerly on County Highway E to its intersection with State Highway 23, then easterly on County Highway 23 to the point of beginning.

The Central Zone is defined as those portions of Fond du Lac, Winnebago, Green Lake, Marquette, Columbia and Dodge Counties enclosed by a line beginning in Winnebago County at the intersection of State Highway 21 and U.S. Highway 45, then southerly on U.S. Highway 45 to its intersection with State Highway 175, then southerly on State Highway 175 to its intersection with State Highway 23, then westerly on State Highway 23 to its intersection with County Highway E, then southerly on County Highway E to its intersection with County Highway AS, then westerly on County Highway AS and continuing westerly on County Highway S to its intersection with County Highway A, then southerly on County Highway A to its intersection with State Highway 33, then southeasterly on State Highway 33 to its intersection with U.S. Highway 151, then southwesterly on U.S. Highway 151 to its intersection with State Highway 73, then northerly on State Highway 73 to its intersection with State Highway 33, then westerly on State Highway 33 to its intersection with State Highway 22, then northerly on State Highway 22 to its intersection with State Highway 23, then northeasterly on State Highway 23 to its intersection with State Highway 49, then northerly on State Highway 49 to its intersection with State Highway 116, then easterly on State Highway 116 to State Highway 21,

then easterly on State Highway 21 to the point of beginning.

In Illinois, 70-day seasons on geese may be selected by zones established for duck hunting seasons. The harvest of Canada geese is limited to 35,000, with 29,000 birds allocated to the Southern Illinois Zone (described in State regulations). The daily bag limit is 2 Canada geese or 2 white-fronted geese or 1 of each; the possession limit is 4 Canada and white-fronted geese in the aggregate, of which no more than 2 may be white-fronted geese. The season on Canada geese may open at a later date in the Southern Illinois Zone and extend to January 20, 1980, or until the Zone's quota of 29,000 birds is reached, whichever occurs first.

In Michigan, in the: (a) Counties of Baraga, Dickinson, Delta, Gogebic, Houghton, Iron, Keweenaw, Marquette, Menominee and Ontonagon—the daily bag limit is 2 Canada geese or 2 white-fronted geese or 1 of each; the possession limit is 2 Canada and 2 white-fronted geese.

(b) Southeastern Canada Goose Management Area (described in State regulations)—the Canada goose season will open with the duck season and extend through December 9. Through November 14, the daily bag limit will be 1 Canada goose or 2 white-fronted geese or 1 of each; the possession limit is 1 Canada and 2 white-fronted geese. From November 15 through December 9, the daily bag limit will be 2 Canada geese or 2 white-fronted geese or 1 of each; the possession limit is 2 Canada and 2 white-fronted geese.

(c) Remainder of the State—the daily bag limit is 1 Canada goose or 2 white-fronted geese or 1 of each; the possession limit is 1 Canada goose and 2 white-fronted geese.

In Ohio, the daily bag limit is 2 Canada geese or 2 white-fronted geese or 1 of each and the possession limit is 2 Canada and 2 white-fronted geese, except that in the counties of Ashtabula, Trumbull, Marion, Wyandot, Lucas, Ottawa, Erie, Sandusky, Mercer and Auglaize, the daily bag limit is 1 Canada goose or 2 white-fronted geese or 1 of each.

In Indiana, the daily bag limit is 2 Canada geese or 2 white-fronted geese or 1 of each; the possession limit is 2 Canada and 2 white-fronted geese.

In Kentucky, the daily bag limit is 2 Canada geese or 2 white-fronted geese or 1 of each; the possession limit is 4 Canada and white-fronted geese in the aggregate, of which no more than 2 may be white-fronted geese. In the Ballard County Zone (described in State regulations), the harvest of Canada geese is limited to 15,000.

In Tenessee, the daily bag limit is 1 Canada goose and the possession limit is 2 Canada geese, except in that portion of the State west of State Highway 13, where the daily bag and possession limit are 2 Canada geese. The season on Canada geese is closed in that portion of Tennessee bounded on the north by State Highways 20 and 104, and on the east by U.S. Highways 45W and 45.

In Alabama, the season is closed on all geese in the counties of Henry, Russell and Barbour. Elsewhere in Alabama, the daily bag limit is 2 Canada geese or 2 white-fronted geese or 1 of each; the possession limit is 4 Canada and white-fronted geese in the aggregate, of which no more than 2 may be white-fronted geese.

When it has been determined that the quota of Canada geese allotted to the Southern Illinois Zone, the Swan Lake Zone of Missouri, and the Ballard County Zone of Kentucky will have been filled, The season for taking Canada geese in the respective area will be closed by the Director upon giving public notice through local information media at least 48 hours in advance of the time and date of closing.

Geese taken in Illinois and Missouri and in the Kentucky counties of Ballard, Hickman, Fulton, and Carlisle may not be transported, shipped, or delivered for transportation or shipment by common carrier, the Postal Service, or by any person except as the personal baggage of the hunter taking the birds.

Central Flyway

Seasons on ducks (including mergansers) and coots may be selected between September 29, 1979, and January 20, 1980, inclusive, in Central Flyway States and portions of States.

The basic season may include no more than 60 days and bag limits on ducks (including mergansers), singly or in the aggregate, are 5 daily and 10 in possession. The aggregate daily bag limit on ducks (including mergansers) may include no more than 1 redhead, 1 female mallard, 1 hooded merganser, and 2 wood ducks; and the possession limit may include no more than 1 redhead, 2 female mallards, 2 hooded mergansers, and 4 wood ducks.

The daily bag and possession limits on coots are 15 and 30, respectively.

The daily bag and possession limits, except in closed areas, may include no more than 1 canvasback. Except in closed areas, canvas-backs count 100 points each. The areas closed to canvasback hunting are:

North Dakota—that portion lying east of State Highway 3, including all or portions of 27 counties.

South Dakota—all of Marshall County; that portion of Day County east of State Highway 25; that portion of Codington County south of State Highway 20 and west of U.S. Highway 81; that portion of Hamlin County west of U.S. Highway 81; and that portion of Kingsbury County east of State Highway 25 and north of U.S. Highway 14.

As an alternative to conventional bag and possession limits for ducks, point-system regulations may be selected for States and portions of States in this Flyway. The point system season length in the High Plains Mallard Management Unit is 83 days provided that the last 23 days of such season must begin on or after December 8, 1979. The High Plains Unit, roughly defined as that portion of the Central Flyway which lies west of the 100th meridian, shall be described in State regulations. The season length for the Low Plains Unit (those portions of North Dakota, South Dakota, Nebraska, Kansas, Oklahoma, and Texas not included in the High Plain Mallard Management Unit) may not exceed 60 days.

The point values for species and sexes taken in the Central Flyway are as follows: except in closed areas, canvasbacks count 100 points each; female mallards, Mexican-like ducks, wood ducks, redheads and hooded mergansers count 70 points each; blue-winged teal, green-winged teal, cinnamon teal, scaup, pintails, gadwalls, wigeon, shovelers, and mergansers (except the hooded merganser) count 10 points each; all other species and sexes of ducks count 20 points each. The daily bag limit is reached when the point value of the last bird taken, when added to the sum of the point values of other birds already taken during that day, reaches or exceeds 100 points. The possession limit is the maximum number of birds which legally could have been taken in 2 days.

Coots have a point value of zero, but the daily bag and possession limits are 15 and 30, respectively, as under conventional limits.

Those portions of Colorado and Wyoming lying west of the Continental Divide, that portion of New Mexico lying west of the Continental Divide plus the entire Jicarilla Apache Indian Reservation, and that portion of Montana which includes the counties of Hill, Chouteau, Cascade, Meagher, and Park and all counties west thereof, must select open seasons on waterfowl and coots in accordance with the framework from the Pacific Flyway.

States in this Flyway may select goose seasons between September 29, 1979, and January 20, 1980, inclusive.

Montana, Wyoming and Colorado may select, for the Central Flyway portions, seasons of 93 days, with daily bag and possession limits of 2 and 4 geese, respectively.

New Mexico (for the Central Flyway portion) and Texas (for that portion west of U.S. Highway 81) may select seasons of 93 days with a daily bag limit of 5 geese which may include no more than 2 dark (Canada and white-fronted) geese and a possession limit of 5 geese which may include no more than 4 dark geese.

North Dakota, South Dakota, Nebraska, Kansas, Oklahoma, and Texas (for that portion east of U.S. Highway 81) may select seasons of 86 days for light (snow, including blue and Ross') geese and seasons of 72 days for dark (Canada and white-fronted) geese subject to the following:

Seasons for light and dark geese need not be concurrent.

The daily bag and possession limits may not exceed 5 geese during periods when such light and dark goose seasons may be concurrent.

The daily bag and possession limits may include no more than 5 light geese.

The daily bag limit may include no more than 2 dark geese and the possession limit may include no more than 4 dark geese subject to the following:

In North Dakota, the daily bag limit may include no more than 1 Canada goose and 1 white-fronted goose or 2 white-fronted geese. The possession limit may include no more than 2 Canada or 2 white-fronted geese or 1 of each. The season on dark geese may not extend beyond November 18, 1979.

In South Dakota, the daily bag limit may include no more than 1 Canada goose and 1 white-fronted goose and the possession limit may include no more than 2 Canada geese or 2 white-fronted geese or 1 of each. The season on dark geese may not extend beyond November 25, 1979, in the counties of Buffalo, Brule, Hughes, Hyde, Lyman, Potter, Stanley, and Sully.

In Nebraska, the season on dark geese may not extend beyond December 16, 1979. The daily bag limit may include no more than 1 Canada goose and 1 white-fronted goose and the possession limit may include no more than 2 Canada geese or 2 white-fronted geese or 1 of each except that, in that portion of the State west of U.S. Highway 183, prior to November 19, the daily bag limit may include or more than 2 Canada geese and the possession limit no more than 4 Canada geese.

In Kansas, the season on dark geese may not extend beyond December 23, 1979. The daily bag limit may include no more than 1 Canada and 1 white-fronted goose and the possession limit may include no more than 2 Canada geese or 2 white-fronted geese or 1 of each.

In the Oklahoma counties of Alfalfa, Bryan, Johston, and Marshall, the State may select either:

(a) A season of 72 days with a daily bag limit of no more than 1 Canada geese and 1 white-fronted goose, and a possession limit of no more than 2 Canada geese or 2 white-fronted geese or 1 of each.

Or

(b) A season of 53 days (within the 72-day period selected for the remainder of the State) with a daily bag limit of no more than 2 Canada geese or 1 Canada goose and 1 white-fronted goose, and a possession limit of no more than 2 Canada geese or 2 white-fronted geese or 1 of each.

In the remainder of Oklahoma, the daily bag limit may include no more than 2 Canade geese or 1 Canada goose and 1 white-fronted goose and the possession limit no more than 2 Canada geese or 2 white-fronted geese or 1 of each.

In that portion of Texas east of U.S. Highway 81, the daily bag limit may include no more than 1 Canada goose or 1 white-fronted goose and the possession limit no more than 2 Canada geese or 2 white-fronted geese or 1 of each.

Colorado, Montana, New Mexico, Oklahoma, Texas, and Wyoming may select a sandhill crane season with daily bag and possession limits of 3 and 6, respectively, within a September 29, 1979–January 31, 1980, framework as follows:

(a) 37 consecutive days from September 29 through November 18, 1979, in the Central Flyway portion of Colorado except the San Luis Valley area, and in the Wyoming counties of Crook, Goshen, Laramie, Niobrara, Platte and Weston.

(b) 93 consecutive days between October 20, 1979, and January 31, 1980, in the New Mexico counties of Chaves, Curry, De Baca, Eddy, Lea, Quay, and Roosevelt, and in that portion of Texas west of a boundary from the Oklahoma border along U.S. Highway 287 to U.S. Highway 87 at Dumas, along U.S. Highway 87 (including all of Howard and Lynn Counties) to U.S. Highway 277 at San Angelo, and along U.S. Highway 277 to the International Toll Bridge in Del Rio.

(c) 58 consecutive days on or after November 24, 1979, in that portion of Oklahoma west of U.S. Highway 81, and in that portion of Texas east of a boundary from the Oklahoma border along U.S. Highway 287 to U.S. Highway 87 at Dumas, then along U.S. Highway 87 to San Angelo, and west of a line running north from San Angelo along U.S. Highway 277 to Abilene, along State Highway 351 to Albany, along U.S. Highway 283 to Vernon, and then along U.S. Highway 183 east to the Oklahoma border.

(d) 37 consecutive days, to open with the goose season, in all of the Central Flyway portion of Montana except Sheridan County and that area south and west of Interstate Highway 90 and the Big Horn River.

All persons hunting sandhill cranes in the above designated areas of the Central Flyway must obtain and possess valid Federal permits isued by the appropriate State conservation agency on an equitable basis without charge.

Emergency closures of hunting seasons will be considered whenever portions of either the Grays Lake or Aransas flocks of whooping cranes are found in areas where there is risk to their taking by hunters.

Pacific Flyway

Between September 29, 1979, and January 20, 1980, concurrent 93-day seasons on ducks, mergansers, coots, and gallinules may be selected in Pacific Flyway States and portions of States, except as subsequently noted. Basic daily bag and possession limits on ducks are 7 and 14, respectively.

No more than 2 redheads or 2 canvasbacks or 1 of each may be taken daily and no more than 4 singly or in the aggregate may be possessed.

The daily bag and possession limits on mergansers are 5 and 10, respectively, of which no more than 1 daily and 2 in possession may be hooded mergansers.

The daily bag and possession limits on coots and gallinules are 25 singly or in the aggregate.

Waterfowl season dates for the Colorado River Zone of California must coincide with season dates selected by Arizona for waterfowl. Waterfowl season dates for the Northeastern Zone of California must coincide with season dates selected by Oregon for waterfowl, except that the season on geese may differ according to prescribed options described later. For the Southern Zone of California (as described in Title 14 California Fish and Game Code, Section

502), the State may designate season dates differing from those in the remainder of the State.

For Nevada, county of Clark, the State may designate season dates for waterfowl differing from those in the remainder of the State.

In the Idaho counties of Ada, Bannock, Benewah, Blaine, Bonner, Boundary, Camas, Canyon, Cassia, Elmore, Gem, Goodling, Jerome, Kootenai, Latah, Lewis, Lincoln, Minidoka, Nez Perce, Owyhee, Payette, Power, Shoshone, Twin Falls, Washington, and that portion of Bingham County lying outside the Blackfoot Reservoir drainage; the Oregon counties of Baker, Gilliam, Malheur, Morrow, Sherman, Umatila, Union, Wallowa, and Wasco; and in Washington all areas lying east of the summit of the Cascade Mountains and east of the Big White Salmon River in Klickitat County (all formerly identified as the Columbia Basin Area for ducks), between September 29, 1979, and January 20, 1980, the season lengths for ducks, mergansers, coots and gallinules may be 100 days with all seasons to run concurrently.

Between September 29, 1979, and January 20, 1980, 93-day seasons on geese may be selected in States or portions of States in this Flyway, except as subsequently noted. The basic daily bag and possession limits are 6, provided, that the daily bag limit includes no more than 3 white geese (snow, including blue, and Ross' geese) and 3 dark geese (Canada and white-fronted geese); the daily bag and possession limits are proportionately reduced in those areas where special restrictions apply to Canada geese. In Washington and Idaho, the daily bag and possession limits are 3 and 6 geese, respectively.

The season is closed on the Aleutian Canada goose.

Three areas in California, described as follows, are restricted to the hunting of dark geese (Canada and white-fronted geese) in order to protect the Aleutian Canada goose for which no hunting is allowed and to temporarily reduce harvests on white-fronted geese and cackling Canada geese:

(1) In the counties of Del Norte and Humboldt there will be no open season on dark geese during the 1979–80 waterfowl hunting season.

(2) In the Sacramento Valley in the area described as follows: beginning at Willows in Glenn County proceeding south on Interstate Highway 5 to the junction with Hahn Road north of Arbuckle in Colusa County; then easterly on Hahn Road and the Grimes-Arbuckle Road to Grimes on the Sacramento River; then south on the Sacramento River to the Tisdale By-pass; then easterly on the Tisdale By-pass to where it meets O'Banion Road; then easterly on O'Banion Road to State Highway 99; then northerly on State Highway 99 to its junction with the Gridley-Colusa Highway in Gridley in Butte County; then westerly on the Gridley-Colusa Highway to its junction with the River Road; then northerly on the River Road to the Princeton Ferry; then westerly across the Sacramento River to State Highway 45; then northerly on State Highway 45 to its junction with State Highway 162; then continuing northerly on State Highway 45–162 to Glenn; then westerly on State Highway 162 to the point of beginning in Willows, the hunting season for taking dark geese will not open until December 15, 1979, and will then continue to the end of the 1979–80 waterfowl hunting season.

(3) In the San Joaquin Valley in the area described as follows: beginning at Modesto in Stanislaus County proceeding west on State Highway 132 to the junction of Interstate 5; then southerly on Interstate 5 to the junction of State Highway 152 in Merced County; then easterly on State Highway 152 to the junction of State Highway 59; then northerly on State Highway 59 to the junction of State Highway 99 at Merced; then northerly and westerly to the point of beginning; the hunting season for taking dark geese will close on November 23, 1979.

Emergency closures may be invoked for all Canada geese should Aleutian Canada goose distribution patterns or other circumstances justify such actions.

In the Washington counties of Adams, Benton, Douglas, Franklin, Grant, Kittitas, Klickitat, Lincoln, Walla Walla, and Yakima, and in the Oregon counties of Gilliam, Morrow, Sherman, Umatilla, Union, Wallowa, and Wasco, the goose season may be of 100 days duration and must run concurrently with the duck season; and the bag limits for geese are to be the same as in the general goose season in their respective States.

Oregon, for Lake and Klamath Counties, and California, for the Northeastern Zone and the Balance-of-the-State Zone, may select frameworks for season and limits among the following listed seven options. The selected season must occur within that selected for ducks.

For Lake and Klamath Counties, Oregon, and the Northeastern Zone of California:

Option 1. A season of not more than 79 days between November 3, 1979, and January 20, 1980, with a basic goose bag of 6 per day and 6 in possession of which not more than 3 dark and 3 white geese may be in the daily bag.

Option 2. A season of not more than 86 days between October 27, 1979, and January 20, 1980, with a basic goose bag of 4 per day and 4 in possession, of which not more than 2 dark and 2 white geese may be in the daily bag.

Option 3. A season of 93 days between September 29, 1979, and January 20, 1980, with a basic goose bag of 2 per day and 2 in possession of which not more than 1 dark and 1 white goose may be in the daily bag.

For the Balance-of-the-State Zone in California:

Option 4. A season of not more than 88 days between September 29, 1979, and December 25, 1979, with a basic goose bag of 6 per day and 6 in possession of which not more than 3 dark and 3 white geese may be in the daily bag.

Option 5. A season of not more than 93 days between September 29, 1979, and January 1, 1980, with a basic goose bag of 4 per day and 4 in possession of which not more than 2 dark and 2 white geese may be in the daily bag.

Option 6. A season of not more than 93 days between September 29, 1979, and January 20, 1980, with a basic goose bag of 2 per day and 2 in possession of which not more than 1 dark and 1 white goose may be in the daily bag.

For Lake and Klamath Counties, Oregon (only):

Option 7. A season of not more than 93 days between September 29, 1979, and January 20, 1980, with a goose limit the same as that of Option No. 3, except that any time beginning or after October 27, 1979, the goose limit of Option No. 1 may be adopted.

In that portion of Idaho lying west of the line formed by U.S. Highway 93 north from the Nevada border to Shoshone, thence northerly on Idaho State Highway 75 (formerly U.S. Highway 93) to Challis, thence northerly on U.S. Highway 93 to the Montana border (except Boundary, Bonner, Kootenai, Benewah, Shoshone, Latah, Nez Perce, Lewis, Clearwater and Idaho Counties); in the Oregon counties of Baker and Malheur; and in that portion of Montana and Wyoming in the Pacific Flyway, the daily bag and possession limit is 2 Canada geese and the season on Canada geese may not extend beyond January 1, 1979.

In that portion of Idaho lying east of the line formed by U.S. Highway 93 north from the Nevada border to Shoshone, thence northly on Idaho State Highway 75 (formerly U.S. Highway 93)

to Challis, thence northerly on U.S. Highway 93 to the Montana border; in that portion of Colorado in the Pacific Flyway; and in Utah except Washington County, the daily bag and possession limits are 2 Canada geese, and the season on Canada geese may be no more than 72 days and may not extend beyond December 23, 1979.

For Nevada the State may experimentally designate season dates on geese in Clark County and on geese in Elko County and that portion of White Pine County within Ruby Lakes National Wildlife Refuge differing from those in the remainder of the State. The daily bag and possession limits are 2 Canada geese throughout the State.

In Arizona, except in the counties of Mohave and Yuma; in that portion of New Mexico in the Pacific Flyway; in Clark County, Nevada; in Washington County, Utah; and in the Southern Zone, except that portion in California Department of Fish and Game District 22, of California, the season on Canada geese may be no more than 72 days. The daily bag and possession limit is 2 Canada geese and the season on Canada geese may not extend beyond January 20, 1980.

In California, the balance of California Fish and Game District 22 in the Southern Zone (that portion of District 22 lying outside the Colorado River Zone), the daily bag limit is 1 Canada goose with 2 in possession and the season on Canada geese may be no more than 72 days and may not extend beyond January 6, 1980.

In the Arizona counties of Mohave and Yuma and in the Colorado River Zone of California, the seasons on Canada geese may be no more than 72 days and may not extend beyond January 6, 1980. The daily bag and possession limits on Canada geese are 2 and 2, respectively, in these areas. The season on geese in the Colorado River Zone of California must be the same as that selected by Arizona.

In the Washington counties of Island, Skagit, Snohomish, and Whatcom, the seasons on snow geese may not extend beyond January 1, 1980; and the daily bag and possession limits on snow geese are 2 and 4, respectively.

Between October 20, 1979, and February 20, 1980, States in this Flyway may select an open season on brant of 93 days with daily bag and possession limits of 4 and 8 brant, respectively.

In Utah, Nevada and Montana, an open season for taking a limited number of whistling swans may be selected subject to the following conditions: (a) The season must run concurrently with the duck season; (b) In Utah, no more than 2,500 permits may be issued, authorizing each permittee to take 1 whistling swan; (c) In Nevada, no more than 500 permits may be issued, authorizing each permittee to take 1 whistling swan in Churchill County; (d) In Montana, no more than 500 permits may be issued authorizing each permittee to take 1 whistling swan in Teton County; (e) Permits and correspondingly numbered metal locking seals must be issued by the appropriate State conservation agency on an equitable basis without charge.

For all States entirely in the Pacific Flyway, open seasons on common snipe must coincide with the duck season locally in effect. For other States partially within the Pacific Flyway seasons between September 1, 1979, and February 28, 1980, and not to exceed 93 days, may be selected. The daily bag and possession limits are 8 and 16, respectively. Any State may split its snipe season without penalty.

Special Falconry Frameworks

Falconry is a permitted means of taking migratory game birds in any State.

Any State listed in 50 CFR 21.29(k) as meeting Federal Faclonry Standards may select an extended season for taking migratory game birds in accordance with the following:

1. Seasons must fall within the regular season framework dates and, if offered, other special season freamework dates for hunting.
2. Season lengths for all permitted methods of hunting within a given area may not exceed 107 days for any species.
3. Hunting hours shall not exceed ½ hour before sunrise to sunset.
4. Falconry daily bag and possession limits for all permitted migratory game birds shall not exceed 3 and 6 birds, respectively, singly or in the aggregate, during both regular hunting seasons and extended falconry seasons.
5. Each State selecting extended seasons shall report to the Service the results of the special falconry season by March 15, 1980.
6. Each State selecting the special season must inform the Service of the season dates and publish said regulations.

General hunting regulations, including seasons, hours, and limits, apply to falconry in each State listed in 50 CFR 21.29(k) which does not select an extended falconry season.

Dated: August 7, 1979.

Lynn A. Greenwalt,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 79-24762 Filed 8-9-79; 8:45 am]

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Part V

Department of Labor

Employment and Training Administration

Public Service Employment; Procedures for Waivers of Time Limitations

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 676

General Provisions Governing Programs Under the Comprehensive Employment and Training Act; Procedures for Waivers of Time Limitations on Public Service Employment

AGENCY: Employment and Training Administration, Labor.

ACTION: Final rule.

SUMMARY: This document contains final regulations to amend 20 CFR 676.30 of the Comprehensive Employment and Training Act (CETA) regulations. The Act places limitations on the length of time a person may participate in public service employment (PSE). The Secretary of Labor, upon the application of a "prime sponsor" (generally, the State or local government which administers a PSE program within its jurisdiction), may grant a waiver of the time limitations under certain conditions. The purpose of this document is to provide new rules governing the application for, and the granting of, waivers. Absent the granting of waivers, many thousands of public service employment participants will reach the end of their participation period on September 30, 1979. In order to properly plan for Fiscal Year 1980, many local governments have a need for more definitive guidance on the waiver procedures. In addition, the public service employment participants themselves have a need for a clearer indication of the circumstances regarding continued participation after September 30.

EFFECTIVE DATE: September 10, 1979.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Anderson, Administrator, Office of Comprehensive Employment Development, Employment and Training Administration, U.S. Department of Labor, Room 5002, 601 "D" Street, N.W., Washington, D.C. 20213; Telephone: (202) 376-6254.

SUPPLEMENTARY INFORMATION: Proposed regulations to revise 20 CFR 676.30 were published on June 8, 1979, for a 17-day review and comment period. The Department received approximately 20 letters containing comments. Each of the comments in these letters was carefully studied with respect to its merits and in relation to other comments received. The most significant issues raised by the comments were as follows:

Discussion of Major Issues

Blanket Waivers

A number of the letters received by the Department favor blanket waivers for all PSE participants in qualifying prime sponsor areas.

However, the Department believes that a blanket waiver would be inconsistent with the emphasis in CETA on transitioning participants into unsubsidized employment. A blanket waiver would detract from the prime sponsor's responsibility to make efforts to transition PSE participants into unsubsidized employment. In addition, a blanket waiver would undermine the intent of Congress in enacting the 78-week limitation to maximize opportunities for eligible individuals to participate in PSE programs.

Accordingly, the regulations do not provide for the granting of blanket waivers. The Department believes that every prime sponsor should be able to immediately transition some of its participants prior to the start of the waiver period. The regulations require that prime sponsors make continuing efforts at transitioning PSE participants both prior to and during the waiver period. Furthermore, the prime sponsor must develop a transition plan which groups participants based on the prime sponsor's difficulty in transitioning such groups into unsubsidized employment.

Grouping Participants

Many of the commentors indicated that the proposed regulations were unclear as to how the grouping of participants would be used in carrying out the transition plan. Some commentors were under the impression that the prime sponsor would have to transition or transfer participants during a particular quarter only from the groups specified in the transition plan for that quarter.

The final regulations have been revised to clarify that the identification of groups is primarily a planning tool. In developing its transition plan the prime sponsor must indicate the extent to which it expects to transition these groups during each quarter of the waiver period. This requirement is to ensure that the transition plan is based upon an assessment of the relative difficulty of transitioning various groups of PSE participants into unsubsidized employment. In meeting its quarterly numerical goal, the prime sponsor may count persons who leave the program from groups listed in other quarters; however, if the prime sponsor is unable to meet its quarterly goal through transition efforts and normal attrition, and therefore, has to resort to terminations, such terminations must be from individuals belonging to groups listed for that quarter.

Transitioning of Participants

A number of commenters questioned the requirement that if the quarterly numerical goal in the transition plan could not be attained through transitioning or transferring participants, then participants would have to be terminated in order to meet the goal. Some commenters preferred a transition plan which did not require the termination of participants should efforts at transitioning or transferring prove unsuccessful.

The Department believes that allowing participants to remain indefinitely in their PSE positions under such a transition plan would run counter to the purpose of the statutory time limitations. The waiver provision was intended to allow some additional time for transitioning PSE participants beyond the 78 week limit but not an indefinite time. Furthermore, to keep PSE participants in their positions for such an extended period of time would remove opportunities for other eligible individuals to participate in PSE. Therefore, prime sponsors requesting waivers will be required to submit a transition plan with quarterly numerical goals and will be responsible for achieving such goals through transitioning, transferring, or otherwise terminating participants.

Third Quarter Benchmark

Several commenters took issue with the requirement in Section 676.30(k)(7), of the proposed regulations that "the plan shall show no more than 35 percent of all participants covered by the waiver remaining at the end of the third quarter. . . ." The Department believes it is necessary to ensure a process wherein participants covered by the waivers leave the program gradually and thus lessen the impact of large numbers leaving the program at one time. Therefore, the Department is retaining the phased approach of transitioning, including the 35% requirement. However, the Department considers that in areas of particularly severe unemployment and where there are other severe economic and transitioning problems, it would be appropriate to allow a higher percentage of participants to remain at the end of the third quarter. Therefore, the regulations set forth conditions under

which the 35% requirement may be modified.

Comment and Publication

Several of the commenters expressed concerns over publication requirements and union consultation. Some commenters indicated that the proposed regulations do not allow sufficient time for public review and do not adequately provide for prime sponsor consultation with unions. The regulations have been revised to clarify that such consultation is required. In addition, the prime sponsor's waiver request must identify the specific unions that were consulted, describe the consultation, and forward comments and recommendations of such organizations. Because of time constraints, the Department is maintaining the same time frame, 10 days, for the waiver request review by the planning council and public.

Accordingly, Title 20 CFR 676.30 is amended by revising paragraphs (h)–(k) and adding new paragraphs (l)–(o) to read as follows:

§ 676.30 Termination conditions; participant limitations.

* * * * *

(h) A temporary waiver of the 78 week limitation may be granted by the Department to a prime sponsor for a limited number of PSE participants hired prior to October 1, 1978, if the prime sponsor demonstrates that it has faced unusually severe hardships in its efforts to transition PSE participants to regular public or private employment not supported under the Act (sec. 122(h)(4)(A)). The 30 month limitation for total CETA participation shall be considered as waived as long as a PSE participant, who is covered by this waiver, is in the PSE position.

(i) A temporary waiver of the 78 week limitation may be granted by the Department to a prime sponsor for PSE participants hired on or after October 1, 1978, if at the time of the waiver request, the prime sponsor or a unit of general local government (as defined in § 675.4) within its jurisdiction:

(1) Has an average BLS official unemployment rate or hold harmless supplemental unemployment rate of as least 7 percent for the most recent three months for which data is available; and

(2) Has faced unusually severe hardship in its efforts to transition PSE participants into regular public or private employment not supported under the Act (sec. 122(h)(4)(B)).

(j) The Department will provide waivers, conditioned on transition plans and other requirements as specified in these regulations, to prime sponsors only for the purpose of affording additional time to transition, transfer, or otherwise terminate a limited number of the individuals who reach the limit of their PSE participation. As the waiver is provided to the prime sponsor for a specified number of participants, no specific individual shall be entitled to a waiver, or to a waiver of a specific period of time.

(k) A prime sponsor desiring a waiver of the 78 week limitation on PSE participation for itself or for any unit of general local government within its jurisdiction shall submit a written waiver request to the RA not more than 90, nor less than 60, days prior to the first day of the quarter during which the participants' 78 week limit occurs except that, for participants whose 78 week limit occurs on September 30, 1979, or during the first quarter of FY 1980, the waiver request shall be submitted by August 31, 1979. Waiver requests must be submitted separately for each quarter in which a prime sponsor seeks a waiver. For example, separate requests must be submitted for the quarter ending September 30, 1979, and for the quarter ending December 31, 1979. Every waiver request shall include:

(1) A description of the unusually severe hardships experienced by the prime sponsor in transitioning PSE participants;

(2) Local hiring patterns in the last 12 months of the employing and worksite agencies where PSE participants are working;

(3) A description of transition efforts which have already been undertaken;

(4) A description of the immediate efforts to be made to transition as many participants as possible prior to the beginning of the waiver period;

(5) A transition plan which specifies by quarter the number and groups of participants who will leave the PSE program through transition, transfer, or termination.

(i) Except for waivers described in paragraph (o), the plan shall not extend beyond 4 quarters following the participants' 78 week limit occurs. Prime sponsors shall take into account local circumstances in determining the number of quarters necessary to transition, transfer or otherwise terminate participants, i.e., in some areas prime sponsors may only need one or two quarters, while conditions in other areas may necessitate a three or four quarter plan.

(ii) Regardless of the number of quarters covered, plans must not show any participants remaining at the end of the last quarter, and plans of more than one quarter must show some portion of individuals leaving the PSE program at the end of each quarter. Except where a subsequent waiver pursuant to paragraph (o) is granted, prime sponsors will be responsible for ensuring that no participant remains in the program more than one year after the date he/she reaches the 78 week limit.

(iii) Plans that cover four quarters must show no more than 35 percent of all participants covered by the waiver remaining at the end of the third quarter except as provided in paragraphs (iv) and (v).

(iv) Plans must show no more than 50% of the participants covered by the waiver remaining at the end of the third quarter if:

(A) The average BLS official unemployment rate or the hold harmless supplemental unemployment rate for the area for the most recent three months for which data are available is at least 9%;

(B) The employment growth rate for the area is generally lower than the national average; and the prime sponsor can demonstrate as part of its plan that:

(C) Projected economic conditions indicate a stagnant or worsening situation during the next 12 months;

(D) There are exceptional circumstances and employment barriers which impede in transitioning groups of participants covered by the waiver;

(E) There has been a good faith and full effort to transition participants; and

(F) Any other factors indicating extraordinarily severe transition difficulties.

(v) Plans must show no more than 80% of the participants covered by the waiver remaining at the end of the third quarter if the average BLS official unemployment rate or the hold harmless supplemental unemployment rate for the area for the most recent three months for which data is available is at least 12%, the employment growth rate for the area is generally lower than the national average, and the prime sponsor can demonstrate as part of its plan that it meets the conditions of paragraph (k)(7)(iv)(C–F) above.

(vi) In order to develop the plan, the prime sponsor shall group participants based on occupational or other categories determined on the basis of the difficulty of transitioning those groups of participants into unsubsidized employment. The prime sponsor shall then determine the length of time (e.g., number of quarters) necessary to transition each group. Prime sponsors are not, however, required to show all group members leaving the PSE program in any one quarter. Further, for the purpose of meeting its numerical goal,

prime sponsors may count persons in other groups who are transitioned, transferred, or who otherwise leave the program.

(vii) The plan shall also describe the continuing efforts that will be taken to transition all the participants covered by the waiver as soon as possible.

(8) A description of consultation with appropriate labor organizations, as required in § 676.30(1)(2).

(l) *Comment and Publication.* (1) Ten days prior to submission of the waiver request to the RA, the prime sponsor shall submit the waiver request to its planning council for review and comment. Simultaneously, the prime sponsor, at a minimum, shall publish in a newspaper or newspapers of general circulation in the prime sponsor's area (including minority newspapers, where appropriate) a statement indicating the following information:

(i) The number of participants to be covered by the waiver;

(ii) The schedule for transitioning participants covered by the waiver;

(iii) The reason(s) for the waiver request;

(iv) The groups of participants to be covered by the waiver; and

(v) The location and hours where the complete waiver request can be reviewed and the address and phone number to which questions and comments may be directed.

(2) Prior to submission of the waiver request to the RA, the prime sponsor shall consult with appropriate labor organizations and obtain their comments and recommendations.

(3) Copies of the comments and recommendations of the planning council and appropriate labor organizations shall be submitted to the RA along with the waiver request, or, if the comments are received after the submission of the request, they may be sent separately to the RA.

(m)(1) The Department will approve or disapprove the waiver request based on a review of:

(i) The information required in paragraph (k);

(ii) The average BLS official unemployment rate or the hold harmless supplemental unemployment rate for the area for the most recent three months for which data is available; and

(iii) The employment growth rate for the most recent 12 months for which data is available.

(2) The RA, within 30 days of receipt of the waiver request, or the effective date of these regulations whichever is later, will notify the prime sponsor in writing of the Department's approval or disapproval and specific reasons for any disapproval. Any waiver approval will include a written condition that the prime sponsor is subject to disallowance of costs under its grant for non-compliance with terms of its approved waiver. All waiver approvals will also state that the prime sponsor must make continuing transition efforts on behalf of all participants. All waiver approvals shall be incorporated into the Annual Plan as a modification to the Annual Plan. No waiver request will be approved for the total number of PSE participants whose 78 week limit occurs in a quarter.

(3) If a waiver pursuant to § 676.30(i) is provided to a prime sponsor on behalf of a unit of general local government within its jurisdiction, only persons residing in that smaller area shall be eligible for a waiver.

(n)(1) Prime sponsors shall maintain as of the beginning of the period covered by the transition plan,

(i) A list of the names of the PSE participants covered by the waiver, and the original termination date of each such participant; and

(ii) A breakdown by significant segments of both the participants covered by the waiver and those that were terminated without a waiver.

(2) As an addendum to the Quarterly Program Status Summary, the prime sponsor shall furnish the total number of all waived participants who are transitioned, transferred, or otherwise terminated at the end of each quarter, and in the case of terminations, the group(s) of which the terminees were members.

(3) Prime sponsors shall maintain a list of the names of waived participants transitioned, transferred, or otherwise terminated during each quarter of the waiver period and the date that each left the PSE program.

(4) If the prime sponsor is unable to meet its numerical quarterly goal through transition and transfer efforts and normal attrition, then it will have to terminate participants. In undertaking terminations to meet its quarterly goal, the prime sponsor shall only terminate persons from those groups specified in the plan.

(o) *Subsequent waivers.*

(1) The Department will consider granting subsequent waivers of up to 6 months beyond the approved waiver period only if:

(i) The waiver covers only PSE participants hired prior to October 1, 1978; and

(ii) The average unemployment rate for the area for each of the most recent 3 months for which data are available is significantly above the average national unemployment rate for the same period; and

(iii) The employment growth rate is significantly lower than the national average; and

(iv) The prime sponsor demonstrates extraordinarily difficult transition problems in its request for a subsequent waiver, based on consideration of criteria such as the following:

(A) The projected economic conditions and transition circumstances indicate a stagnant or worsening situation during the next 12 months;

(B) There is extreme difficulty in transitioning groups of participants being considered for subsequent waiver;

(C) There has been a good faith and full effort to transition participants;

(D) Where initial waiver periods cover four quarters, only the allowable percentage of participants remain, with the balance of participants having been transitioned, transferred or otherwise terminated by the end of the third quarter; and

(E) Any other factors indicating extraordinarily severe transition difficulties.

(2) The subsequent waiver request shall be submitted between 60 and 90 days prior to the end of the initial waiver request period.

(3) The Department shall not grant a subsequent waiver for more than a limited number of the participants covered by the initial waiver request.

(4) The subsequent waiver request shall include the information required in paragraph (k) and paragraph (o)(1)(iv) of this section. The comment and publication procedures of paragraph (1) and the requirements of paragraph (n) shall also be applicable.

Signed at Washington, D.C. this 8th day of August, 1979.

Ray Marshall,

Secretary of Labor.

[FR Doc. 79-24838 Filed 8-9-79; 8:45 am]

BILLING CODE 4510-30-M

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Federal Register
Vol. 44, No. 156
Friday, August 10, 1979

INFORMATION AND ASSISTANCE

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AGENCY PUBLICATION ON ASSIGNED DAYS OF THE WEEK

The following agencies have agreed to publish all documents on two assigned days of the week (Monday/Thursday or Tuesday/Friday).

This is a voluntary program. (See OFR NOTICE FR 32914, August 6, 1976.)

Monday	Tuesday	Wednesday	Thursday	Friday
DOT/SECRETARY*	USDA/ASCS		DOT/SECRETARY*	USDA/ASCS
DOT/COAST GUARD	USDA/APHIS		DOT/COAST GUARD	USDA/APHIS
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DOT/FHWA	USDA/FSQS		DOT/FHWA	USDA/FSQS
DOT/FRA	USDA/REA		DOT/FRA	USDA/REA
DOT/NHTSA	MSPB/OPM		DOT/NHTSA	MSPB/OPM
DOT/RSPA	LABOR		DOT/RSPA	LABOR
DOT/SLS	HEW/FDA		DOT/SLS	HEW/FDA
DOT/UMTA			DOT/UMTA	
CSA			CSA	

Documents normally scheduled for publication on a day that will be a Federal holiday will be published the next work day following the holiday.

Comments on this program are still invited. Comments should be submitted to the Day-of-the-Week Program Coordinator, Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408

***NOTE: As of July 2, 1979, all agencies in the Department of Transportation, will publish on the Monday/Thursday schedule.**

REMINDERS

Rules Going Into Effect Today

Note: There were no items eligible for inclusion in the list of Rules Going Into Effect Today.

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 August 8, 1979

PRINCIPLES OF REGULATIONS WRITING SEMINAR—AUGUST 1979

WHAT: The aim of the seminar is to improve the quality of Federal regulations by teaching how to design and draft clear regulations.
The Principles of Regulations Writing Seminar covers the following concepts:
1. Drafting conventions, preferred usage, the rule of consistency.
2. How to arrange and organize your regulations.
3. What you can do to make regulations easier to read and easier to use.

WHO: Any Federal employee who drafts documents or who reviews documents for substance that are published in the Federal Register.

WHEN: October 3, 1979
November 7, 1979
December 5, 1979
January 16, 1980
February 13, 1980

WHERE: Office of the Federal Register, 1100 L Street, N.W., Washington, D.C., Room 9407.

COST: $75 for each person.

HOW: Each person registers by sending a training authorization form 170 or the training authorization form your office uses to: Special Projects Unit, Office of the Federal Register, NARS, Washington, D.C. 20408.

After receipt of an applicant's training authorization form, Special Projects will mail the applicant a confirmation letter that serves as an admission ticket to the seminar. Tuition will not be charged for an applicant who cancels a confirmed reservation five (5) work days before the day of the seminar. Substitutions are permitted if the applicant's training officer approves.

FOR MORE INFORMATION: Phone Viola Wilson (202) 523-5240